Perry, John vs. The St. Louis Perpetual Insurance Co. 1854 St. Louis 345/15

571/05

debt of $810

P gave "McGrungle + Way" note

CHARTER

AND BY-LAWS

OF THE

ST. LOUIS PERPETUAL INSURANCE COMPANY.

INCORPORATED BY ACT OF ASSEMBLY, IN 1837.

PUBLISHED BY ORDER OF THE BOARD OF DIRECTORS.

ST. LOUIS:
New Era Office, corner of Main and Chesnut streets.
1848.

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ST. LOUIS PERPETUAL INSURANCE COMPANY.

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ST. LOUIS:
New Era Office, corner of Main and Chesnut streets.
1848.

ST. LOUIS PERPETUAL MARINE, FIRE AND LIFE INSURANCE COMPANY.

AN ACT to establish the St. Louis Perpetual Marine, Fire and Life Insurance Company.

Be it enacted by the General Assembly of the State of Missouri as follows:

SECTION 1. There shall be, and hereby is established in the city of St. Louis, an insurance company, to be known by the name and style of "THE ST. LOUIS PERPETUAL MARINE, FIRE AND LIFE INSURANCE COMPANY," for the period of thirty years from and after the passage of this act.

SEC. 2. The capital stock of said company shall be fifty thousand dollars, with a privilege of increasing it to three hundred thousand dollars, at such times and in such manner as the stockholders, or a majority of them, may direct.

SEC. 3. Said company shall have the same powers, rights and privileges as are granted and confirmed to the Farmers and Mechanics' Insurance Company of St. Louis, as contained in its charter, passed at the present session of the General Assembly, and shall possess the power of insuring lives, and property of all kinds, perpetually, during the existence of the charter.

SEC. 4. The books for the subscription to the capital stock, shall be opened at St. Louis, under the superintendence of Abel Rathbone Corbin, Hugh O'Neil, Charles Collins, Louis Bomeisler, John H. Gay, John G. Murray, and Robert Allen, and shall be kept open ten days. Upon each share one dollar shall be paid at the time of subscription, and nine dollars on each share of the stock shall be paid before the company shall

commence business; and the balance of the stock shall be safely secured to be paid according to the provisions of the charters of the said insurance companies.

Sec. 5. The officers shall be a president and six directors, who shall be chosen from among the stockholders, shall hold their places one year, and till successors are chosen and qualified; and who shall have power to appoint a secretary and other needful agents, and to direct, manage and control the business of the company. The first election shall be held for the choice of officers within ten days after the capital stock shall have been subscribed, and shall have been divided among the subscribers by the commissioners aforenamed. The president and directors shall be individually responsible, in case of the inability or failure of the company, for the repayment of all moneys put in their hands for safe keeping, or for temporary investment.

Sec. 6. This company shall be subject to the same liabilities as the Farmers and Mechanics' Insurance Company of St. Louis.

JOHN JAMESON,
Speaker House of Representatives.
FRANKLIN CANNON,
President of the Senate.

Approved, Feb. 4, 1837.

LILBURN W. BOGGS, *Governor.*

FARMERS AND MECHANICS'

INSURANCE COMPANY.

AN ACT to incorporate the Farmers and Mechanics' Insurance Company of St. Louis.

Be it enacted by the General Assembly of the State of Missouri as follows:

Section 1. That an insurance company, to be called "The Farmers and Mechanics' Insurance Company of St. Louis," shall be established in the city of St. Louis, with a capital stock of one hundred thousand dollars, which may be increased at the will of the stockholders, to any amount not exceeding four hundred thousand dollars, divided into shares of one hundred dollars each, to be subscribed and paid for by individuals, companies or corporations, in the manner hereinafter specified.

Sec. 2. Hugh O'Neil, Dunham Spalding, Jacob R. Stine, Edward Dobyns, Edward Walsh, Warren Ayres, Robert N. Moore, Bryan Mullanphy, Thornton Grimsley, Henry Walton, Lewellen Brown, Abel Rathbone Corbin, Augustus Jones, and Bernard McMinany, or any three of them, be, and they are hereby authorized to open books of subscription in said city, for the capital stock of said company, on the first Monday in May next, and keep them open every day, from ten o'clock, A. M., till four o'clock, P. M., for the space of six days, when the same shall be closed. If, within the said six days, five hundred shares shall have been subscribed for, it shall be lawful for the subscribers to meet, after fifteen days notice, in the public prints, of the time and place of meeting shall have been given, and choose their directors, who may, at

any time, after ten days public notice given, cause the subscription books to be re-opened, and continue open, until the whole amount of said stock shall have been taken.

Sec. 3. The subscribers for the stock of the company aforesaid, their associates, successors and assigns, shall be, and they are hereby ordained, constituted, and declared a body corporate and politic, by the name and style of "The Farmers and Mechanics' Insurance Company of St. Louis," and by that name they and their successors shall have perpetual succession, and shall be capable in law of contracting and being contracted with, of sueing and being sued, of impleading and being impleaded, of answering and being answered unto, of defending and being defended against, in all courts and places whatever, in all manner of actions, suits, complaints and causes; and they and their successors may have and use a common seal.

Sec. 4. The payment of the stock subscribed shall be made and completed by the subscribers respectively, at the time and in the manner following, that is to say: At the time of subscribing there shall be paid on each share, one dollar; after the election of directors, and before the company shall go into operation, there shall be paid upon each share, ten dollars; and the balance due upon each share shall be subject to the call of the directors. And the said company shall not be authorized to make any policy or contract of insurance, until the whole amount of shares subscribed shall be actually paid or satisfactorily secured to be paid, on demand, by approved notes, by hypothecated stocks, or by mortgages on real estate.

Sec. 5. The corporation hereby created, shall have full power and authority to make all kinds of insurance against losses on goods or merchandise, in the course of transportation, whether happening on the land or on the water; to make all kinds of insurances upon lives; and to make such other insurances as they may deem expedient; to lend money upon respondentia and bottomry; to lend their surplus or unemployed money or capital on interest, not exceeding ten per cent. per annum, to companies, corporations and individuals, upon personal or

real security; and generally to do and perform all necessary matters and things relating to, or connected with, these objects, or with either of them; and they may also cause themselves to be insured against risks upon their interest which they may have in any vessel, goods or merchandise, in virtue of any such loans on bottomry or respondentia.

Sec. 6. The stock and affairs of the company aforesaid, or corporation, shall be managed and conducted by thirteen directors, who shall be stockholders of said company, and resident within the State; they shall, after the first year, be elected on the first Monday in April in each year, at such time and place, in the city of St. Louis, as the board of directors, for the time being, shall appoint, and shall hold their offices for one year, and until others shall be chosen to supply their places, and no longer. Ten days public notice of such election shall be previously given and the election shall be held under the inspection of three stockholders, to be previously appointed by the board of directors for that purpose, and shall be made by ballot, by plurality of the stockholders present, allowing one vote for every share; and stockholders not personally present, may vote by proxy, made in writing directly to the persons representing them at such election. In case that it should happen, at any time, that an election of directors should not be made on any day, when, pursuant to this act, it ought to have been made, the said corporation shall not, for that cause, be deemed to be dissolved; but it shall, and may lawful, on any other day, to make and hold an election of directors, in such manner as shall be regulated by the by-laws and ordinances of the company.

Sec. 7. The directors, regularly chosen by the stockholders of said company, shall, as soon as may be after every annual election, proceed to choose, out of their body, one person to be president, who shall preside until the next annual election thereafter; and in case of the death or resignation of the president, or any director, the vacancy may be filled by the board of directors; and in case of the absence of the president, the board of directors shall have power to appoint a president

pro tempore, who shall have all the powers, and perform all the duties, of the president regularly chosen.

Sec. 8. The directors may, by the ordinances or by-laws of said company, direct what number of directors shall constitute a board, and be competent for the transaction of the business of the corporation; and they shall have power (subject to said by-laws) to appoint, from their own body, one or more persons to act or assist in the performance of the business of the company, with such salaries and allowances as they may think proper; and also to appoint a secretary, and such clerks and other servants as they may deem expedient; and they shall also have power to declare and make dividends of the profits arising from the business of the company, and make and prescribe such by-laws, rules and regulations as to them shall seem proper, touching the business and interest of the said company: *Provided*, that a majority of the whole number of directors shall be necessary to make any such by-laws.

Sec. 9. The stock of said company shall be considered personal property, and shall be assignable and transferable according to such rules and restrictions as the board of directors shall, from time to time, make and establish, subject, however, to the general law of the State, as the same exists, or may be changed hereafter.

Sec. 10. It shall be lawful for said company to purchase and hold such real estate as may be convenient for the transaction of its business, not exceeding twenty thousand dollars in value; and also to take and hold any real estate, as a security, or in mortgage, or in pledge, to secure the payment of debts due, in good faith, to the said company, either for shares of capital stock, or otherwise; and also to purchase real estate, at any sales made in virtue of any judgment at law, or decree in equity, made in favor of said company; to receive and take in satisfaction of any debt, previously due to said company, any real estate; to hold all such real estate, except that herein first mentioned, (which is intended for the ordinary use and accommodation of the company,) so long only as may be necessary to enable said company to make sale of the same

for money or other personal property. But it shall not be lawful for the said company to use or employ any part of its stock, funds, or capital, in buying and selling goods, wares and merchandise, or any commodities whatever; nor in brokering operation, nor business; nor in the purchase of any stock or funded debt created, or to be created by, or under any act of the United States, or of any particular State; nor make any contract for the payment of money only, except under the seal of the said corporation. But it shall, nevertheless, be lawful for the said company to purchase any such stock, or funded debts, as aforesaid, for the purpose of vesting any part of the stock, funds, or money of said company therein, to be made available in the line of its ordinary business; and also to sell and transfer the same, and re-invest the proceeds thereof in other stock or funded debt, when, and as often as the exigencies of the said corporation may require.

Sec. 11. All the policies or contracts of insurance, which may be made or entered into by the said corporation, shall be subscribed by the president, or the president pro tempore, or by such other officers as shall be designated for the purpose by the by-laws, and attested by the secretary; and, being so signed and attested, shall be binding upon the said corporation, without the seal thereof, according to the tenor and effect, true intent and meaning of such policies and contracts; and all such policies and contracts may be so signed and attested, and the business of the corporation may be otherwise conducted and carried on, without the presence of the board of directors, by assistants or committees, to be appointed for such purposes; and the acts of such assistants or committees, if done in conformity with the by-laws, shall be binding upon the company to all intents and purposes.

Sec. 12. If a greater amount of stock be subscribed for, than is contemplated by the first and second sections of this act, the same shall be apportioned among the subscribers, in such equitable manner as the directors shall appoint.

Sec. 13. This act shall be, and is hereby declared to be, a public act, and that the same shall be construed liberally, for

the beneficial purposes herein intended, and the corporation hereby created. This act shall take effect, and be in force, from and after the passage thereof, and shall continue in force for the term of twenty-five years, and no longer.

Sec. 14. Notwithstanding the expiration of the term for which the said corporation is created, it shall be lawful to use the corporate name, style and capacity, for the purpose of suits for the final settlement and liquidation of the affairs and accounts of the corporation, and for the sale and disposition of their estate, real, personal, and mixed; but not for any other purpose, or in any other manner whatsoever, nor for a period exceeding two years, after the expiration of the said term of incorporation.

JOHN JAMESON,
Speaker House of Representatives.
FRANKLIN CANNON,
President of the Senate.

Approved, Jan. 30, 1837.

LILBURN W. BOGGS, *Governor.*

ST. LOUIS PERPETUAL MARINE, FIRE AND LIFE INSURANCE COMPANY.

AN ACT to change the name of the St. Louis Perpetual Marine, Fire and Life Insurance Company.

Be it enacted by the General Assembly of the State of Missouri as follows:

Section 1. That the style and name of the St. Louis Perpetual Marine, Fire and Life Insurance Company may be, and the same is hereby abbreviated and changed, and shall hereafter be known by the name of "The St. Louis Perpetual Insurance Company," without depriving the stockholders of said company of any of the rights and privileges they enjoyed under their former title.

Sec. 2. That the election of the seven directors shall be held on the first Monday of each year; and the directors elect shall proceed to elect, from their own number, a president of the company, who, like the directors, shall hold his office for one year, and until his successor shall be duly elected and qualified.

Sec. 3. This company may cause themselves to be insured against any risk which they have taken or may take.

THOS. H. HARVEY,
Speaker House of Representatives.
FRANKLIN CANNON,
President of the Senate.

Approved, Feb. 13, 1839.

LILBURN W. BOGGS, *Governor.*

SAINT LOUIS PERPETUAL
INSURANCE COMPANY.

AN ACT respecting the Perpetual Insurance Company.

Be it enacted by the General Assembly of the State of Missouri as follows:

1. The president and directors of the SAINT LOUIS PERPETUAL INSURANCE COMPANY are hereby authorised and empowered, with the consent of the stockholders of said company, to reduce the capital stock thereof from three hundred thousand dollars to two hundred thousand dollars, and to issue to the stockholders new certificates for stock, conforming the amount of their stock pro rata to the aforesaid reduction of capital, in lieu of the certificates they now hold.

This act shall take effect from its passage.

APPROVED, February 16, 1847.

BY-LAWS
OF THE
ST. LOUIS PERPETUAL INSURANCE COMPANY.

WHEREAS, by an act incorporating the "ST. LOUIS PERPETUAL INSURANCE COMPANY," the directors are authorised to make and prescribe such by-laws, rules, and regulations, as to them shall seem proper; Therefore, we, the directors, by the authority thus vested in us, do resolve, that the following regulations, for the government of said company, be and are hereby established:

RULE I.

A regular meeting of the board shall be held at the office of the company, on the first Tuesday after the first Monday of each month. Three directors shall make a quorum competent for the transaction of business; at such meeting the secretary shall exhibit a balance sheet, showing the condition of the company on the last day of the preceding month.

RULE II.

A standing committee of two members shall be appointed from the board by the president, at the stated monthly meetings, (one of whom shall go out of office every month,) whose duty it shall be to attend, daily, at the office, and advise with the president or secretary in relation to the concerns of the company; and the said committee, or one of them, in conjunction with the president and secretary, shall have power to decide upon all applications for insurance, and to discount such paper as may be offered, whether local or foreign bills, and to transact all such business as the interests of the company may

require, and for which it may not be deemed necessary to call a special meeting; they shall have authority, with the concurrence of the president, to pay all losses against the company, and shall report the same to the next meeting of the board.

RULE III.

It shall be the duty of the monthly committee, as often as four times a year, to examine the accounts of the secretary, compare the vouchers with the charges for losses, expenses, &c., and to report thereon to the board of directors.

RULE IV.

All elections by the board of directors shall be by ballot, and a majority of members present shall be necessary to a choice.

RULE V.

Any director ceasing to be a stockholder shall cease to be a director, and the existing board shall fill all vacancies so created, or that may occur by death or resignation.

RULE VI.

The annual election for directors shall be held on Tuesday after the first Monday in January of each year, under the direction of three stockholders, and shall be by ballot, given in person or by proxy. In case of the non-election of directors on the day specified, the board then in existence shall appoint a time for a new election, of which due notice shall be published.

RULE VII.

The board shall have power to bestow such rewards to persons who may have been particularly active in the preservation of any property insured by the company, and to make such donations to hose, hook and ladder, and engine companies, and such compensation to agents, &c., as they may think the interests of the company require.

RULE VIII.

They shall appoint an inspector of hulls, fix his compensation, and define his duties.

RULE IX.

The office of the company shall be open on every day,

(Sundays, the 1st of January, the 4th of July, and the 25th of December, excepted,) from 8 o'clock A. M. to 6 P. M. from 1st April until 1st October, and from 9 o'clock A. M. until 5 P. M. from 1st October to 1st April.

RULE X.

Certificates shall be issued to each stockholder for the share or shares held by them.

RULE XI.

All transfers of stock shall be made on the books of the company, in person, or by letter of attorney filed with the secretary. Upon every transfer, the certificate held by the assignor of the stock shall be returned, and a new certificate issued to the assignee thereof. No transfer, by any person indebted to the company, shall be registered by the secretary, until such indebtedness, whether due or not, is otherwise secured to the satisfaction of the board.

RULE XII.

The president shall preside at all meetings of the board, shall convene the directors upon special occasions, and give such attendance at the office, and perform such duties, as the interests of the company may require; shall be at the office, for the transaction of business, as frequently as possible; sign all policies, or other contracts, by which the office is bound; to have a general inspection of the accounts, and to have a general superintendence of the executive business of the office. In case of the absence or indisposition of the president, there shall be a president *pro tempore* appointed, who shall be charged with all the duties of the president.

RULE XIII.

The secretary shall hold his office during the pleasure of the board, and shall, previous to entering on his duties, give bond, with approved security, in the sum of ten thousand dollars, for the faithful performance of his duty. It shall be the duty of the secretary to attend at the office during the business hours of each day; to keep the books of the office, and all papers relating thereto, in a neat and perspicuous manner, and as nearly posted as possible, and balanced on the last

day of each month; to receive all moneys due or payable to the company, and all premiums and stock notes, and deposit the money, to the credit of the company, in such bank or banking house as the board of directors may direct; to produce to the board, at their monthly meetings, an exhibit of the fiscal concerns of the company, made up to include the last day of the preceding month; countersign all policies, and other contracts, binding the company, and sign all checks for money; to countersign all certificates of stock, and attest the transfer of the same, which transfers are to be bound in a book; keep a register of the names and description of steamboats plying to the port of St. Louis, when and where built, and, as far as can be accurately ascertained, note the condition of each boat; and he will, at all times, hold the books and papers subject to the inspection of the president and directors. He will, also, in the absence of the president, call a meeting of the board, when necessary.

RULE XIV.

Agents may be appointed by the board, at such places as they may deem necessary; and every agent, so appointed, will be required to report monthly to the board, and will, as far as practicable, be instructed what risks to take, and at what premium.

RULE XV.

Dividends may be declared upon the 1st January and 1st July, of each year, out of the profits of the company; but no dividend shall be declared impairing the capital stock, or upon premiums for risks that are unexpired.

RULE XVI.

Any of the by-laws may be amended, revised, or repealed, and new by-laws may be enacted, by a majority of the board of directors; *provided*, a motion to that effect be made, in writing, by some director, at a previous meeting of the board; and any rule may be dispensed with, for a particular occasion, on a concurrence of five of the members of the board.

Directors.

JOHN CAVENDER, EDWARD J. GAY,
SAMUEL RUSSELL, WM. N. SWITZER,
LAWRASON RIGGS, R. M. V. KERCHEVAL.

WAYMAN CROW, *President.*

S. A. RANLETT, *Secretary.*

JANUARY, 1848.

State of Missouri.
County of St. Louis } Be it remembered that heretofore to-wit: on the 22d day of October, in the year of our Lord, Eighteen hundred and forty nine, there was filed in the office of the Clerk of the Circuit Court, within and for the County aforesaid a Petition which is in the words and figures, following, to-wit:

Petition

St. Louis Circuit Court, November Term 1849. In St. Louis County.

The St. Louis Perpetual Insurance Company, plaintiff

vs

John Perry. Defendant

The plaintiff states that on the nineteenth day of November, in the year Eighteen hundred and forty two, certain persons using the name of M'Gunnegle & May made their promissory note, in the words and figures following:

"$810 St. Louis Novem. 19, 1842.

Sixty days after date we promise to pay to John Perry Esq., or order, Eight Hundred and ten $\frac{00}{100}$ Dollars, for value received; negotiable and payable at the office of the St. Louis Perpetual Insurance Company, at St. Louis, without defalcation or discount." "M'Gunnegle & May." And the defendant to whom or whose order the said note was made payable, at or about the same time endorsed the said note to the plaintiff, which then became, and was and still is the property of the plaintiff, and is herewith filed.

And on the Twenty-first day of November, in the year Eighteen hundred and forty-two there was paid ten dollars on account of said note.

And afterwards when said note became due and payable, that is, on the twenty first day of January in the year eighteen hundred and forty three the same was presented at the office of the St. Louis Perpetual Insurance Company of St. Louis, and payment thereof demanded, which was refused. And notice of said demand and refusal of payment was duly sent to said defendant, and received by him, and shortly thereafter to-wit: after said demand and refusal and notice, said defendant admitted that he was responsible and liable to pay the said note, and requested from the plaintiff further time in which to make said payment. Yet payment thereof has never yet been made.

2 And the plaintiff further states that on the said nineteenth day of November, in the year Eighteen hundred and forty two, said persons using the name and style of McGunnegle & Way made their other promissory note in the words and figures, following:

"$2025 "St. Louis, November 19, 1842.

Sixty days after date, we promise to pay to John Perry Esq. or order Two thousand and twenty five dollars for value received, negotiable and payable at the office of the St Louis Perpetual Insurance Company, at St. Louis, without defalcation or discount. McGunnegle & Way."

And the defendant to whom or to whose order the said note was made payable at or about the same time endorsed the said note to the plaintiff, which then became and was, and still is, the property of the plaintiff and is herewith filed, and on the said Nineteenth day of November Eighteen hundred and forty two, the sum of twenty five dollars was paid on account of said note.

And afterwards when said note became due and payable, that is on the twenty first day of January, in the year eighteen hundred and forty three, the same was presented at the office of the St. Louis Perpetual Insurance Company, at St Louis, and payment thereof demanded, which was refused And notice of said demand and refusal was duly sent to said defendant and received by him.

And shortly after said demand and refusal and notice thereof said defendant admitted that he was responsible and liable to pay said note; and requested from the plaintiff further time in which to make said payment and payment of said note has never yet been made.

Wherefore the plaintiff demands judgment for the amount of said notes unpaid, and interest on the same from the maturity of said notes to the time of rendering such judgment Gamble & Bales pltffs attys.

S. A Randlett, Secy & agent, being duly sworn says that he is Secretary and Agent in this behalf of the plaintiff, and that he believes the foregoing petition and matters therein as stated to be true. S. A. Randlett, Secy & Agent

Upon the foregoing petition, the following summon was issued:

3

"County of St. Louis ss.

Summons

The State of Missouri, to the Sheriff of St. Louis County — Greeting: We command you to summon John Perry, that he be and appear before the Judge of our Circuit Court, 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 third Monday of November next, then and there to answer unto the St. Louis Perpetual Insurance Company, and have you then there this writ:

Witness Michael S. Cerre, Clerk of said Court, with the seal thereof hereto affixed at office in the City of St. Louis, this 22d day of October in the year of our Lord, eighteen hundred and forty-nine M. S. Cerre, Clerk"

Upon which summon, the Sheriff made the following return:

Sheriff's Return

"John Perry, the within named defendant, not found in my County."

Louis J. LaBeaume, Shff.

Afterwards to-wit: at the November Term 1849, of our said Court, on Saturday December 22d, 1849, the following proceedings were had, viz:

Alias Summon order

St. Louis Perpetual Ins Co.
vs
John Perry

"On motion of plaintiff's attorney, it is ordered that an alias writ of summons issue herein". . Which said alias summons was in the words and figures following "County of St Louis ss.

Alias Summons

The State of Missouri, to the Sheriff of St. Louis County — Greeting: "We commond you as you have been before commanded to summon John Perry that he be and appear before the Judge of our Circuit Court, 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 third Monday of April next, then and there to answer unto The St. Louis Perpetual Insurance Company of its petition hereto annexed, and have you then there this writ.

Witness Michael S. Cerre, Clerk of said Court, with the seal thereof hereto affixed, at office, in the City of St. Louis, this 27th day of December, in the year of our Lord, eighteen hundred and forty-nine. M. S. Cerré, Clk"

Upon which summon, the Sheriff made the following return:

Sheriff's Return on Alias Summons

"John Perry the within named defendant, not found in my county"

Louis J. LaBeaume by Theodore LaBeaume

And afterwards to-wit, on the Eighth day of May A.D. 1849, the following plurias sum-

mons was issued from the office of the Clerk of the Circuit Court:

Pluries summons

"County of St Louis—ss.

The State of Missouri, to the Sheriff of St. Louis County—Greeting:—We again command you to summon John Perry, to appear before the Judge of our Circuit Court, 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 third Monday of November next, then and there to answer unto the St. Louis Perpetual Insurance Company, of its petition hereto annexed, and have you then there this writ.

Witness Michael S. Cerre, Clerk of said Court, with the seal thereof hereto affixed at office in the City of St Louis, this 8th day of May, in the year of our Lord, eighteen hundred and fifty M. S. Cerre, Clerk.

Upon which summons, the following return was made by the Sheriff:

Sheriffs Return

"Executed this writ in the County of St. Louis, on the 11th day of May 1850, by delivering to the defendant a true Copy of the petition and writ. Louis T. LaBeaume Shff

And afterwards to wit: at the November Term 1850, of this Court, on Tuesday November 19th, 1850, the following further proceedings were had:

"St. Louis Perpetual Ins Co.
vs
John Perry

The plaintiffs by attorney files a petition suggesting the death of the defendant, John Perry, and the same is not denied; and on motion of said plaintiff, it is ordered that a Scirefacias issue to Edward Bredell and Eliza M. Perry his administrators, to make them parties defendant to this action: Whereupon the following Scirefacias issued;—

Scirefacias

"The State of Missouri, To the Sheriff of St Louis County—Greeting: Whereas the Perpetual Insurance Company of St Louis, did on the 22d day of October 1849, commence a civil action against John Perry, and whereas it was on the 19th day of November 1850, suggested to our said Court, that said John Perry had departed this life, and it was ordered that a Scirefacias issue against Eliza M. Perry and Edward Bredell, his administrators to make them parties defendant to this suit, These command you to summon said Eliza M Perry and Edward Bredell, to appear at the next term of this Court to be begun and held at the City of St Louis, on the Third Monday of April next, and shew cause if any they can, why they should not be made

5 parties defendant, and why Judgment as prayed in said petition should not be rendered". Witness Michael S. Cerre, Clerk of our said Court at office in St. Louis (SS) with the seal thereof, hereto affixed this 12th day of March A.D. 1851.

M. S. Cerre, Clerk."

Sheriff's Return — Upon which said writ of Scire facias, the Sheriff made the following return: "Executed this writ in the County of St. Louis, on the 13th day of March, 1856, by offering to read the same to Edward Bredell, admr &c., which he refused to hear. Eliza M. Perry not found in my county. Henry B. Belt, Shff."

And afterwards, at the April Term of said Court for the year 1851, on the 22d day of April 1851, the following answer was filed:

Answer — "The defendants say, that their intestate John Perry, in his life time did not have notice of the protest of the note or of the non-payment thereof as set forth in the plaintiffs Petition — nor did he promise to pay said note, or any part thereof — or admit that he was indebted to the plaintiffs on account of the same as in manner and form set forth in their petition — and the defendants deny that they owe any thing whatever to the plaintiffs on account of the protest or the note as alledged by them. Garland & Norris, for defendants.

Personally appeared before me H. A. Garland, and made oath that he believes the foregoing facts to be true. Sworn to and subscribed before me this 22d April 1851. M. S. Cerre Clerk.

And afterwards at the November term 1852, on the 26th day of January 1853 the defendants filed the following motion:

Motion for leave to file amended answer — "The said defendants move the Court for leave to file amended answer to said petition in this cause. Haight & Shepley — Garland Attys for defts."

In support of said motion defendants filed the following affidavit on the 1st day of February 1853:

Affidavit — "In preparing the answer of the defendants in the above cause, my object was to respond specifically to all the allegations in the bill supposing I could, under the general denial of all indebtedness, and the specific responses introduce any evidence that would go to shew that my client was not indebted at all, or not so much as charged. There seems to be doubt about this; and the Courts have intimated an opinion that a statement must be made of each particular ground of defence. Not wishing to hazzard the cause on a mere question of pleading, I make this affidavit and concur in the motion to amend. Signed & Sworn to before me this 1st February 1853.

M. S. Cerre Clerk. Hugh A. Garland.

And afterwards to-wit: on the fourth day of February 1853 of the same term, the following amended answer was filed:

Amended Answer

"The defendants have no knowledge of the execution of the several notes in the petition of the plaintiff mentioned, but they believe from information the same were duly executed at the time in said petition stated by McGunnegle & Way and that said John Perry endorsed the said notes for the accommodation of the makers and as their surety and not having any interest in the transaction and they admit the makers of said note paid ten dollars on account of the said note first mentioned in said petition, as therein stated.

As to the presentation of the first note in said petition mentioned for payment at the time, and in the manner therein stated, these defendants have not knowledge sufficient to form a belief, and they deny that notice of non-payment was duly sent to the defendant and received by him, or that said defendant admitted that he was responsible, and liable to pay said note: And these defendants say they have not knowledge sufficient to form a belief as to the presentation or demand ~~of payment~~ of payment of the note secondly in said petition mentioned, and they require proof thereof, and they deny notice of demand and refusal was duly sent to said John Perry and received by him, or that he admitted he was responsible and liable to pay said note, and asked time for payment thereof.

These defendants further say, that about the 22d day of February 1842, the plaintiff loaned to McGunnegle & Way, twenty-five hundred dollars in notes of the State bank of Illinois, for four months & secured by the note of said McGunnegle & Way, endorsed by the said John Perry, which note was taken up by a new note of the same parties for twenty two hundred and fifty dollars, and payment of three hundred and eight dollars and seventy five cents. This note was given on the 18th August 1842, or about that time, & in renewal in part of said note of twenty five hundred dollars of said payment, fifty eight dollars and seventy five cents, being for interest on the new note or on the debt - said new note was payable

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7 ninety days after date. On the nineteenth day of November 1842, the last note became due & was taken by a new note of the same parties at sixty days date for two thousand & twenty five dollars on which was endorsed at date twenty five dollars, and was then paid of principal two hundred & fifty dollars & for interest thirty five dollars & fifty five cents in specie funds as all previous payments were made: And these defendants further say that at the time of the advance of the said sum of twenty five hundred dollars in notes of the state bank of Illinois said paper was greatly depreciated in the market, and was not redeemed in coin or specie and shortly thereafter became of small value by the failure of said Bank. That before the said twenty second day of February, the plaintiff had declined to receive said notes in payment or deposite, and at the time of the advance of the same to M'Gunnegle & May they were at (a) discount of ten to thirty per cent - these defendants cannot state more precisely the said transaction or the rate of discount, but they say the same was a contrivance to get & obtain a greater rate of interest for the advance of said notes than they were authorized by their act of incorporation to charge, and that said note of twenty five hundred dollars was void & all subsequent notes in renewal thereof were also void: the ~~said~~ said note in said petition mentioned, of two thousand & twenty five dollars being in renewal in part of said note of twenty five hundred dollars; and these defendants say they are not liable to pay the same as they are advised, or any part thereof, but these defendants in any event claim that no interest can or ought to be collected on said original debt the same being void by the statute in that case made & provided, and in force at the time of making said loan.

The facts in the above answer I believe to be true. H. A. Garland Atty for Defts.
Signed and sworn to, before me, this 4th February 1853. M. S. Cerre, Clerk

Motion to strike out amended answer

And afterwards to-wit: at the said November Term 1852, on the fifth day of February 1853, the following motion to strike out amended answer, was filed.

"The plaintiff moves the Court to strike out the amended answer filed in this cause on February 4th, 1853, Because - 1st Said answer is not subscribed by the parties defendant, or their attorney. 2. Said answer

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is not verified by affidavit as required by law. 3. Said answer is not in accordance with the leave granted by the Court, to file an amended answer, in setting up usury as a defence & claiming benefit & advantage from it. 4 The only matters amendatory and additional to those contained in the original answer are the allegations in respect to the character and amount of the consideration of one of the notes sued on - & those allegations show no defence to the action of the plaintiff or any part thereof. E & B. Bates for plff

And afterwards to-wit: at the November Term 1853, on the 10th day of March 1854, the following proceedings were had:

"The Court having duly heard and considered the motion of said plaintiff, by his attorney to strike out amended answer, and being thereof fully advised, doth order that said motion be sustained without prejudice to the rights of the defendants within ten days to file answer according to leave given heretofore for that purpose."

And afterwards to-wit: on the 18th day of March, 1854, the following amended answer was filed:

Amended Answer

"For amended answer in this case, the defendants state, that defendants have no knowledge of the execution of the several notes in the petition of the plaintiff mentioned, but they believe from information the same was duly executed at the time in said petition mentioned by McGunnegle & May, and that said John Perry endorsed the said notes for the accommodation of the makers and as their surety, and not having any interest in the transaction; and they admit that the makers of said note paid ten dollars on account of the note first mentioned in said petition as therein stated As to the presentation of the first note in said petition mentioned for payment, at the time and in the manner therein stated, these defendants have not knowledge sufficient to form a belief, and they deny that notice of non-payment was duly sent to John Perry, and received by him, or that said John Perry admitted that he was responsible and liable to pay ~~said~~ said note, and these defendants say that they have not knowledge or information sufficient to form a belief as to the presentation or

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demand of payment of the note secondly in said petition mentioned and they require proof thereof, and they deny that notice of demand and refusal was duly sent to said John Perry and received by him or that he admitted he was responsible and liable to pay said note and asked time for the payment thereof

These defendants state that about the 22d day of February 1842, the plaintiff discounted a promissory note, made by McGunnegle & Way & endorsed by John Perry for the sum of twenty-five hundred dollars, payable four months after date, which note was taken up by a new note of the same parties for twenty two hundred and fifty Dollars and a payment of three hundred & eight dollars & seventy five cents, which last note was given on or about the 18th day of August 1842, in renewal in part of said note of twenty five hundred dollars as well as for interest upon said new note, which said note was payable ninety days after date. That on the nineteenth day of November 1842, the said last note became due & was taken up by a new note of the same parties payable sixty days after date, for two Thousand & twenty five dollars, on which was endorsed at date twenty five dollars, and there was paid of principal two hundred & fifty dollars & thirty five Dollars & fifty five cents for interest.

The defendants further state that the said note for Eight hundred & ten dollars described in said petition was discounted by the said plaintiff and the money for the same was paid to said McGunnegle & Way by said plaintiff as Bankers, which said notes and the renewals thereof were void not being connected with or growing out of the business of insurance or in the loaning of the surplus funds of said company, but the same were discounted by said plaintiff in the conducting of a banking business contrary to the act of incorporation, creating the said Company

H. M. Field & J. R. Shepley & Garland
Attys for defts

State of Missouri
County of St Louis } Eliza M Perry, for herself and the other defendants being duly sworn, on her oath states that said answer & the matters & things, as therein stated, she believes to be true. Eliza M. Perry. —
Sworn to & subscribed before me this 18th day of March 1854.
Manw Butler, Justice of the Peace.

Trial

And afterwards to wit: at the April Term 1854, on the 21st day of April, in the year 1854, the following proceedings were had:

"Now at this day come the parties aforesaid, by their respective attorneys, and thereupon come a Jury, to-wit: Joseph C. Finnegan, John O Quigg, Adam Zwiffel, John Graham, James H Gillespie, James P. Noland, David Reed David Shepherd, William Gaines, John Young, William Brown and William P. Hoit, twelve good and lawful men, who being duly elected tried and sworn, the matters in controversy will and truly to try, the trial of the cause having progressed, but not being finished, the Court adjourned until to-morrow morning at nine o'clock.

Saturday, April 22, 1854

"Now at this day come again said parties, by their respective attorneys, and the Jury empannelled and sworn herein also come, and the trial of this cause having been finished, the Jurors aforesaid, upon their oaths aforesaid, do find that said defendants are indebted to said plaintiff in the sum of Four thousand six hundred and ninety dollars. It is therefore considered and adjudged by the Court, that the said plaintiff recover of the said defendants the sum aforesaid in form aforesaid as found.

And afterwards to-wit: at the same term, on the 24th day of April 1854 the following motion to set aside Judgment was filed:

Motion to set aside

"The defendants move the Court to set aside the verdict & Judgment and grant a new trial in the above entitled cause for the following reasons to-wit: First. The verdict was against law. Second. It was against evidence. Third.- It was against both law and evidence. Fourth. Because the Court gave improper & illegal instructions asked by plaintiff. Fifth. Because the Court, of its own motion gave improper & illegal instructions. Sixth.- Because the Court refused to give proper and legal instructions asked by defendants

Field & Shepley attys.

And afterwards to-wit: at the same terms, on the 3d day of May 1854, the following further proceedings were had:

Motion overruled

"The Court having duly heard and considered the motion of said defendants

11 to set aside verdict and for a new trial, and being thereof fully advised doth order that said motion be overruled."

And afterwards, to-wit: at the same term, on the 6th day of May 1854, there was "Five days extension of time given to file Bill of Exceptions."

And afterwards, to-wit: at the same term, on the 15th day of May 1854,

Bill of Exceptions filed. the "Bill of Exceptions filed"; and the said Bill of Exceptions, ~~is~~ in words and figures as follows, to wit:

Bill of Exceptions. "Be it remembered that the said plaintiff on the 5th day of February, 1853, filed the following motion: 'The plaintiff moves the Court to strike out the amended answer filed in this cause on February 4th, 1854, Because, 1. Said answer is not subscribed by the parties defendant or their attorney. 2. Said answer is not verified by affidavit according to law. 3. Said answer is not in accordance with the leave granted by the Court to file an amended answer, in setting up usury as a defence & claiming benefit & advantage from it.— 4. The only matters amendatory & additional to those contained in the original answer, are the allegations in respect to the character and amount of the consideration of one of the notes, sued on & these allegations show no defence to the action of the Plaintiff or any part thereof E. & D. Bates for plff;" which motion the Court sustained, and ordered the amended answer of said defendants to be stricken out, to which action of the court, the said defendants, then and there excepted. The condition upon which leave to file an amended answer was given and taken was, that the defence of usury, as such, should not be set up, and that on the trial of the above cause the plaintiff read in evidence the deposition I. Smith Homans as follows.

Deposition of I. Smith Homans. "I Smith Homans of lawful age being produced affirmed and examined on the part of the plaintiffs deposes and says, being shewn a promissory note and certificate of protest, which hereunto are annexed and marked A, he says that he as a notary public in and for the County of St Louis did on the twenty first day of January 1843, present said note at the office of the St Louis Perpetual Insurance Company at St. Louis, where the same by its tenor is made payable, and demanded payment thereof by request of the holders of said note & that payment thereof was refused; and the affiant further says that on same day he deposited in the Post office at St Louis, a notice of

the protest of the aforesaid promissory note; addressed to John Perry the endorser thereof at his then reputed place of residence in Missouri - the name of which place, this deponent cannot state from recollection, but he says, that said place of residence of said Perry is entered on the official record kept by him as such notary, which records are now on file according to law in the City of St. Louis, and that the said entry is correct. That the said notice so directed to said Perry and mailed as aforesaid was in substance, and as far as witness can recollect in form as follows: viz - "St Louis, Mo. January 21st 1843; You are hereby notified, that a promissory note for two thousand and twenty five dollars, drawn by M'Gunnegle & Way, dated November 19, 1842. payable sixty days after date, and endorsed by you has been this day protested for non-payment, and the holders look to you for payment thereof. J. Smith Homans, Notary Public. That at the foot of of said notice was a memorandum, that a credit of (twenty five dollars) $25 appeared on the back of said note. This affirmant can and does state positively from his recollection that the said notice so directed and mailed by him to said Perry did contain all the particulars stated in the form above given - and that the memorandum of the place to which said notice was directed was on the same day of the date entered by this affiant in the said official records so kept by him as notary as aforesaid. J. Smith Homans

J. Smith Homans of lawful age, being produced affirmed and examined on the part of the plaintiffs deposes and says as follows to-wit: being shown a promissory note and certificate of protest, which are hereunto annexed marked B., he says that he did as a notary public, in and for the County of St. Louis on the twenty first day of January 1843, present said note at the office of the St. Louis Perpetual Insurance Company at St Louis, where the same by its tenor is made payable and demanded payment thereof at request of the holders, and that payment thereof was then and there refused. And the affirmant further says that on same day he deposited in the Post office at St. Louis, a notice of the Protest of the aforesaid promissory note, addressed to John Perry the endorser thereof, at his then reputed place of residence in Missouri, the name of which place this affirmant can-

13 not state from recollection, but he says that said place of residence of said Perry is entered on the official records kept by him as such Notary, which records are now on file, according to law in the City of St Louis, and that the said entry is correct. That the said notice, so directed to said Perry was in substance, and so far as witness can recollect, in form as follows, viz: "St. Louis Mo. January 21st 1843, You are hereby notified that a promissory note for Eight hundred and ten dollars, drawn by ell^c Gunnegle & Way, dated November 19, 1842, payable sixty days after date and endorsed by you has been this day protested for non payment, and the holders look to you for payment thereof, I. Smith Homans Notary Public" That at the foot of said Notice was a memorandum that a credit of ten dollars, appeared on the back of said note. This affiant can and does state positively from his recollection that the said notice, so directed and marked by him to said Perry, did contain all the particulars stated in the form above given, and that the memorandum of the place, to which said notice was directed was on the same day of the date of said notice entered by this affirmant in the said official Records so kept by him as notary aforesaid I. Smith Homans.

Deposition of Bacon And also the deposition of Sherman J. Bacon, as follows: "Sherman J. Bacon, of the City of St. Louis, Mo. of lawful age, being duly sworn and examined on the part of the plaintiff, deposeth and saith: In the year 1842, I was a director in the St Louis Perpetual Insurance Company also in the year 1843; As such director, I was acquainted with the notes, drawn by ell Gunnegle & Way, and endorsed by John Perry, here exhibited, and made a part of this deposition. These notes were then the property of the plaintiff. At maturity they remained unpaid. I presume they were protested for non-payment. I know they were ordered to be protested. After these notes were protested, I had a conversation with defendant, in relation to them. On that occasion, Mr. Perry came into the Perpetual office and my impression is, that he said he had received a notice of the protest of said notes. I know he talked about the protest of the notes. He talked about the protest, and wished to make some arrangements for the payment of these notes, now here exhibited,

and made part of this deposition. The custom of the office prior to that time, had been to make a call upon the paper in its possession of ten per cent. I think Mr. Perry wished this accommodation to be extended to him on these notes – he making on them a payment of ten per cent. This privilege was denied him, as the condition of the office had then changed, and she needed all the money she could get, to meet her own obligations. When a call of this kind was made, a new note was taken for the debt, less the ten per cent called in. The office at the time agreed to extend Mr. Perry's paper four or six months upon his giving security for the payment of the same.— The proposition was acceded to, on Mr. Perry's part – but the security he offered was not satisfactory to the office. He offered to give some real estate in Jefferson City, in this State, to secure said notes, and the office required him to pledge real estate in St. Louis. I think Mr. Perry said in reply to the demand made upon him to give as security real estate in St. Louis. – that his real estate in St. Louis was encumbered, and that he had special reasons for wishing to give the property in Jefferson City as security, to wit: that that property had come into his hands by McGunnegle & Way, the makers of these notes, and that he wished to make their property go as far – it could towards the payment of their debts, upon which he was endorser, before his own property was taken. The burthen of Mr. Perry's conversation, at that time, was that he had become very much involved on account of McGunnegle & Way, by endorsing their paper. That if time were allowed him, to extricate himself from these difficulties he could do so – that his recources were such as to enable him to do it. When he left at that time, I think he said that he would come in again and see if he could not give the office security upon some of his property here. These two notes here exhibited and made part of this deposition were the subject of that conversation. And I think this was the only paper in the office, at that time, with his name on it. This conversation held with me, was as a director of said Company. I am neither a director nor Stockholder in said Insurance Company at this time.

Cross Examined. In the year Eighteen hundred and forty seven, in the

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months of May, I ceased to be a director and Stockholder, in the said Insurance Company, by the selling of my stock to said Company. I have no future interest in this stock so transferred, nor do I expect it, to be returned to me. The Company paid me for this stock, and do not owe me any thing therefor. These notes here exhibited and made part of this deposition were given by Mr. Gunnegle & Way for money loaned them, by said Company. The loan for the largest note, I think was made in February 1842;- Twenty five hundred dollars was then loaned - subsequently the note was renewed several times, which brought it down to the present amount. The other note was originally given, for balances due on several ~~smaller~~ smaller notes. And this was renewed several times, until reduced to its present amount. Perry the defendant was accommodation endorser, Perry in the conversation alluded to in my examination in chief, did not deny his responsibility on these notes, or question it in any way, but only wanted time to convert his means. I think this conversation occured between the months of March and May in the year 1843, in the office of said Insurance Company. I recollect that Mr. Lauden, the President of said Company was present at the time, and talked with defendant, in relation to these notes. I know that Mr. Perry commenced this conversation; and my impression is that he said he had received a notice of their protest, and he wanted to fix the matter in some way, without paying the money right down. I dont know that said Insurance office had had any intercourse with defendant by letter or otherwise in relation to these notes, prior to this conversation. Defendant offered the land at Jefferson City, only as security for the payment of the notes, that he should give for these two notes. I dont recollect that any thing was said in that conversation by defendant in relation to a compromise of the matter.- Defendant never asked for a compromise - but always said he had means enough to pay his debts. I dont recollect that there was any negotiation between the Insurance Company and Mr. Gunnegle & Way in reference to these notes. Upon the original of the larger note, I think no interest was charged Mr. Gunnegle & Way for the time it had to run. No interest was reserved on the face of the note, nor was any retained

by way of discount, for the time the original note had to run, which I think was four months. The reason why no interest was charged, was that the loan was made in Illinois State Bank paper. At the time the loan was made, the Gas Light Company was receiving this Illinois paper at par, in payment of debts; My impression also is, that the Gas Light Company at that time was acting as agent of said Bank, receiving said paper in payment of debts due said Bank, at par. This note was renewed twice, I think, and on the first renewal the usual interest was reserved, which I think was at the rate of ten per cent per annum, and also a call of ten per cent of the principal. On the renewal of the note there was paid a call of ten per cent on the original sum, and the renewal note was discounted at the usual rate charged by the office, which I believe was ten per cent. per annum. There was a second renewal of this note, on the same terms, which said second renewal note was discounted in the same way, and is the one now here exhibited.

Direct resumed – Mr Gunnegle & Way's application for the original loan of Illinois paper, was as they said, according to my impression, to pay their debt to the Gas Light Company, and that they could use their money so that it would answer their purpose as well as any other money.

Counsel for defendant, objects to the foregoing answer as incompetent.

Sherman & Bacon."

Plaintiff also read the deposition of John B. Camden, as follows:

Deposition of Camden

"John B. Camden, of lawful age, being produced, sworn and examined on behalf of plaintiff, deposeth and saith: In January 1843, & before & after that time, I was President of St. Louis Perpetual Insurance Company. About the 23d of February 1843, I loaned Mr. Way, of the firm of Mr Gunnegle & Way twenty five hundred dollars in paper of the State Bank of Illinois for four months without interest, for the note of Mr Gunnegle & Way endorsed by John Perry which note, at maturity, was taken up by a new note made by the said parties for twenty two hundred and fifty dollars, and a cash payment of two hundred and fifty dollars. At the maturity of this twenty two hundred and fifty dollar note, it was taken up by a payment of two

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hundred & twenty five dollars cash, & a new note of two thousand and twenty five dollars, which last mentioned note, is hereto annexed marked (A.) The note of Eight hundred and ten dollars was discounted for McGunnegle & Way, on account of accommodation loans made of the St. Louis Perpetual Insurance Co. Said Eight hundred & ten dollar note is hereto annexed marked (B.) Neither of these notes had ever been paid up to the time of my leaving the office in January 1848. In the spring or summer of 1843, John Perry called upon me at the office, with the notice of the protest in his hand of the note for $2025, and I believe also, of the $810. note, though I am not certain about the latter, & told me we had protested him for his endorsements for McGunnegle & Way, & that he had called to see if he could settle the matter with me & proposed paying the debt by property in Jefferson City. Not being authorized to take property myself, I consulted one or two of the Directors of the St. Louis Perpetual Insurance Co. in regard to his proposition, and it was declined. After some time I put the notes in suit by direction of the Board of Directors, I have no interest in the notes nor in the Company, either as a Stockholder, or in any way whatever; and since I ceased to be President, I have known nothing about what has been done with those notes. John Perry proposed to pay both of the notes spoken of by me by property in Jefferson City.

Cross Examination by Hugh A Garland Esq., About the 22d of February 1842, I think that Illinois State Bank notes were at ten per cent discount. The Bank was in a failing condition & its paper declined very much in a few days after, but about that day, I disposed of, for the firm of J. B & M Camden & Co., as well as for the St Louis Perpetual Insurance Co., a pretty large amount of the notes of the State Bank of Illinois, at just ten per cent. discount; and when I made this loan to Mr. Way, he said he could afford to take the Illinois notes on those terms at four months without interest because he was going to pay some money to the Gas Light Co., & this would answer his purpose, as they were receiving such money at par in payment of debts. I believe this failing condition of the State Bank of Illinois was anticipated by business men some

days before it took place. At that time there was a great deal of uncertainty existing as to whether the Bank would sustain itself or not. The Gas Light Company, the agent of the Bank here was proclaiming its good & receiving it at par, while others doubted. I do not know that there was a general disposition to get rid of its paper, though doubtless some were anxious to do so. I do not remember particularly as to whether there was a rumor of the failure of the Bank on the day that I negotiated the loan to Mr. Way or not, but there were such rumors in the City, almost every day & might have been on that day, though I don't recollect now. At that time I regarded ell'Gunnegle & Way as good & solvent men. They were merchants doing a large business. I suppose there were other men who were considered more undoubtedly rich than ell'Gunnegle & Way, but they then had a good credit. The two notes marked (A) & (B) I believe were both protested on the same day. So far as I know, I believe it is usual when different notes are protested on the same day to send out separate notices. I understood from John Perry, that the property in Jefferson City which he proposed to turn out in payment of these notes, had been received by him of ell'Gunnegle & Way. He told me he had received a large amount of property from ell'Gunnegle & Way to secure him for his endorsements for them, which were very considerable, and that he should lose a good deal by them. Further this deponent saith not John B. Camden."

Plaintiff also read in evidence the notarial protest of the notes sued on with the memorandum by Homans of the mailing of notices, from the book of notarial records of said Homans as follows:

Protest Marked (A) State of Missouri,
County of St. Louis } ss. Be it Known, that on the day of the date hereof, I, J. Smith Homans, Notary Public, in and for the County of St Louis, in the State of Missouri duly commissioned and qualified, residing in the City of St Louis, in said State, at the request of the St. Louis Perpetual Insurance Company, the holder of the original Promissory Note, a copy of which is on the reverse hereof written

19 presented the said note at the office of the St. Louis Perpetual Insurance Company and demanded payment thereof, and was informed by the Teller that no funds had been provided for it. I therefore, duly notified the Endorser of the non payment of the said Promissory note. Whereupon, I, the said Notary, at the request aforesaid, have protested, and do hereby solemly protest against the drawer of said promissory note, the Endorsers, and all others concerned, for all exchange, Re-exchange, damage, interest and costs, accrued and to accrue, by reason of the non-payment of the said promissory note. Thus done and protested, at St. Louis, aforesaid, this twenty first day of January AD. 1843. In testimony whereof, I, the said Notary, have hereunto set my hand and affixed my notarial seal, the day and year above written.

J. Smith Homans. Notary Public

$2025. "St. Louis, November 19, 1842.

Sixty days after date, we promise to pay to John Perry Esq, or order Two Thousand and twenty-five dollars for value received, negotiable and payable at the office of the St. Louis Perpetual Insurance Company, at St. Louis, without defalcation or discount. McGunnegle & May.

Endorsed by John Perry. Received Twenty five dollars on a/c Nov. 19, 1842.

January 21, 1843, at 6 p.m. mailed a notice to address of John Perry Potosi, Mo., — also to John Perry Selma Mo.

J. Smith Homans

Protest Marked (B.) State of Missouri,
County of St. Louis } ss. Be it Known, that on the day of the date hereof, I, J. Smith Homans, Notary Public, in and for the County of St. Louis, in the State of Missouri, duly commissioned and qualified, residing in the City of St. Louis, in the said State of Missouri, at the request of the St. Louis Perpetual Insurance Company, the holder of the original promissory note, a copy of which is on the reverse hereof written, presented the said note at the counter of the St. Louis Perpetual Insurance Company and demanded payment thereof, and was informed by the Teller, that no funds had been provided for it. - I, therefore duly notified the endorser of the non-payment of the said promissory note. Whereupon, I, the said Notary, at the request aforesaid, have protested, and do hereby solemnly protest against the drawers of said promissory note, the endorsers, and all others concerned, for all Exchange, re-exchange, damages, Interest and costs,

accrued, and to accrue, by reason of the non-payment of said promissory note. — Thus done and protested, at St. Louis, aforesaid, this twenty first day of January 1843. In testimony whereof, I, the said Notary, have hereunto set my hand and affixed my Notarial Seal, the day and year above written. J. Smith Homans, Notary Public.

$810. St. Louis, Novemr. 19, 1842.

Sixty days after date we promise to pay to John Perry Esq., or order, Eight hundred and Ten 100 Dollars for value received, negotiable and payable at the office of the St. Louis Perpetual Insurance Company, at St. Louis, without defalcation or discount.

M'Gunnegle & Way.

Endorsed John Perry. Received ten dollars on a/c Nov. 21, 1842.

Notice mailed January 21, 6 p. m. addressed to John Perry Selma Mo. also John Perry, Potosi Mo.

The plaintiffs here rested.

The defendants then examined James C. Way as a witness who testified that he was a partner of the firm of M'Gunnegle & Way, and that he well knew John Perry in his life time: that he became endorser, on these notes for the accommodation of the house of M'Gunnegle & Way: that he was on intimate terms with said John Perry. I am unable to state where John Perry resided at the maturity of these notes. I always understood that he resided at St. Louis. He spent a great deal of his time at his mines in St. Francis. I cannot state where his residence was. I was absent at that time. Coonville was his place when he was absent from here at all times. Avoca was the nearest Post office to Coonville, 4 miles off. Hazel Run Post office was near them, but not so near as Coonville, being ten miles off. Avoca is called about four miles from Coonville. Coonville is 20 or 25 miles from Selma, and it is some 15 or 18 from Potosi I think. The Two Thousand & Twenty five dollar note was a renewal of a note originally made at four months, for twenty five hundred dollars, for loan of Illinois State Bank paper. This was a second renewal of the note, It was reduced by payments made partly by M'Gunnegle & Way & partly by John Perry: the last wholly by John Perry. The difference was paid and a new note given. I cannot recollect what was done with the note for $810. I have lost sight of it. From the fact that it was made ~~made~~ payable

ble at the Perpetual Insurance Company's office, I presume it was discounted by them. The witness was then asked in what business the plaintiff was engaged at the time of the discount. (This question was objected to by plaintiff, and the objected sustained by the Court & the defendants then and there excepted.) The witness was asked to state the circumstances under which the discount was obtained of the $2500 note. He answered that the loan was made without interest, provided I would take the notes of the State Bank of Illinois. No application was made for Insurance in the matter to the plaintiff. It had nothing to do with insurance. I do not know where the Illinois money came from. I received it at the office of the Co. Had no conversation with officers of plaintiff, in relation to where the Illinois State Bank money came from. I went to get the money for the note. Question. What business was then being transacted at the office of the plaintiff (Objected to by the plaintiff, which objection was sustained by the Court and the defendants then excepted.) — As to the eight hundred and ten dollar note, I have no distinct recollection about that. The witness was asked if the plaintiff was engaged in any insurance business, and did it do any insurance business at & about the time these notes were discounted. To the asking of which plaintiff objected, and the objection was by the Court sustained, to which decision the defendant then excepted. The witness was then asked if the plaintiff did not day by day, at that time receive deposits of money from various persons, to the asking of which plaintiff objected & the Court sustained the objection & defendant then excepted to that decision. On Cross Examination witness said I addressed Mr. Perry generally at Avoca sometimes I addressed him at Potosi, when he was about in that region I have also addressed him at Rush Towers. He was generally moving about, and was not more than two weeks at any one place. — He was often at Potosi. He called Coonville his home, except when here with his family. I do not know where other people addressed letters to him. My wife was a connection of Mrs. Perry's.

On re-examination witness said that John Perry had some security from McGunnegle & Way, for his endorsements for them, but how much he realized out of it, I cannot say. I believed at the time, that he was indemnified, but how much was realized from them I cant say. I believed at the time these securities

were ample but I never could get any account from him in relation to them.

Dr. Bryan's testimony. — Dr. Bryan on part of defendants testified that he was acquainted with John Perry in his life time, and in fall of 1842, & Winter of 1843, his home at that time was at Silver Springs or Coonville, as it was called. He called that his home. There was his main furnace. He had a store there and sold a good many goods there & had a good many hands there. — Avoca, or what was usually called Jonathan Smith's Post office was the nearest Post office to Coonville. It was 2 or 3 miles distant Coonville is about 16 miles from Potosi & about 18 miles from Selma, I think Mac-Kenzie, then had rented Perry's house in this City, and that Mrs. Perry was at Coonville, in 1842-3 & 4. He voted at Avoca. They would not allow him to vote at Potosi. On Cross examination witness stated that he thought that Post office was at Avoca about that time, but am not certain. I do not know as a fact, whether there was any Post Office at Avoca in January 1843. On re-examination witness said I have understood there was a Post office at Hazel Run, but cant say the year the Post office was located. On cross-examination witness said, it was very hard to tell where Perry's residence was. He generally got his letters at Potosi, Rush Tower & at Herculaneum, and at Selma - Would sometimes get ten or a dozen letters at a time

Louis A Benoist examined on part of defendant testified that he was in the City of St. Louis in 1842, and was engaged in the Exchange and Banking business. I was then acquainted with the character of the business of the St. Louis Perpetual Insurance Company. The witness was here asked whether or not the plaintiff was then engaged in the business of banking, to the asking of which plaintiff objected as irrelevant and incompetent, and the Court sustained the objection & defendants then excepted thereto. Witness stated that he did not know whether plaintiff that year effected any insurance. The witness was then asked whether or not the plaintiff during the whole or any part of 1842, acted as agent of the State Bank of Illinois, or Bank of Shawneetown, or any other Bank or Banking Company, or were they

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connected with any such bank in the loaning of the money of said bank, to the asking of which plaintiff objected and the Court sustained the objection & excluded the question to which action of the Court the defendants then excepted. Witness stated he did not know whether in that year the plaintiff acted as agent of the State Bank of Illinois or had any connection in the loaning of money of that Bank during any part of said year.

S. A. Randlett's testimony.

S. A. Randlett, on the part of defendants testified, That he had been in the employment of the Company since 1839, I was teller in 1839, 1840, 1841 & part of 1842. I was engaged in receiving money for the institution & in paying it out. I know about these notes. These notes were taken in the usual course of business in discounting notes. (The witness was then asked the Question State what the regular course of business was to which witness answered. We were loaning out our capital & surplus funds and were loaning all the money we received when we could loan it, that is upon such notes as we considered good. The Company received money that year, from premiums of Insurance & deposits, but could not state to what extent deposits were made with the Company in that year, - nor can I tell how many thousand, these deposits amounted to - whether to five or fifty thousand dollars. The witness was here asked whether plaintiff by advertisement or otherwise during that year held out to the world that they would receive deposits, to the asking of which plaintiff objected & the Court sustained the objected, & excluded the question to which defendants then excepted. The business done by plaintiff in Insurance was as large that year as in any ordinary year. I cant say which was the larger business done by plaintiff that year, that of Insurance or receiving deposits. More money was received that year from deposits by plaintiff, than from premiums for Insurance. I dont know what was paid out to M'Gunnegle & Fay, for these notes. Cant remember The plaintiff during the whole of that year previously got notes of the State Bank of Illinois by receiving them on deposits and for premiums. The plaintiff was not the agent and obtained no loans from the State Bank of Illinois during that year.

Question.- Did the business of the Company differ from the ordinary business done by bankers in the City? Answer - I think it did because I am not aware of any ordinary banker doing Insurance. Question. Was the fact that the Company did the additional business of Insurance, the only difference between the two? Answer. I do not know what the bankers did. The defendants then asked the witness whether or not the plaintiff paid out money on Checks to depositors and others, to the asking of which plaintiff objected, and the Court sustained the objection & excluded the question, to which defendants then excepted. The defendants then asked witness whether or not plaintiff used & furnished to persons printed checks upon themselves, to the asking of which the plaintiff objected & the Court sustained the objection & excluded the question, to all which defendant, then and there excepted.

The defendants then gave in evidence charters of plaintiff & of Farmers & Mechanics Insurance Company, which it is agreed may be read from the Statutes, and need not be _____

The Court gave the following instructions to the Jury on its own motion.

Instruction 3. Given

There is not sufficient evidence to overcome the presumption in favor of Plaintiff, that the notes sued upon grew out of, or were taken and received by the plaintiff in the course of such business as was authorized by its charter, and therefore upon that issue, the Jury will find for the Plaintiff.

Instruction 4 Given

If Perry, in the interview spoken of by Camden, offered to pay the notes in property in Jefferson City, knowing at the time, that the notes had been dishonored, and having in his hand notice or notices thereof mailed on the same day of the dishonor, and during such interview made no objections that he had not been regularly charged as endorser, this is prima facia evidence that he had received due notice, and was legally bound to pay the said notes," and also

Instruction 5. Given

gave the following instruction asked by plaintiff: The Jury are instructed, that if they are not satisfied from the evidence as to the facts required in the foregoing instruction, then they will inquire - First, Were the notes presented for payment at maturity, according to their tenor?

Second. Was notice of dishonor of the notes & that he was looked to for payment mailed by post of the same day or the next day to the endorser, directed to the post office, or to one of the post offices (if there more than one) where he was in the habit of receiving his letters? If they find this was done, then notice is sufficently proven. Instruction No 1. for pltff having been refused, viz:

Instruction No 1. Refused

"The Jury are instructed that a promise to pay, made by an endorser, who has his notice of the dishonor in his hand, or who at the time knows the fact of dishonor, and to whom notices were mailed, on the same day of the dishonor, is prima facia evidence that he has received due notice & was legally bound to pay — it is an admission on his part, from which the Jury are authorized to infer his liability on the notes, which he so proposes to pay.

Instruction No 1 Refused

The defendants asked the following instructions: "The Jury are instructed that no sufficient notice has been proved in this cause, to make defendant liable on said notes, or either of them, as endorser in this case

Instruction No 2 Refused

"If the Jury believe from the evidence, that at the time of the maturity of said notes, John Perry resided at Leonville, and that neither Potosi nor Selma was the nearest Post office to that place, then the Jury are instructed that there is no sufficient notice has been proved in this case to make the defendant liable on said notes or either of them as endorser of the same."

Instruction No 3. Refused

"If the Jury find that the plaintiff before and at the time of the date of the notes now in controversy was engaged in the business of banking — by receiving money on deposits, and discounting notes with the money so deposited, that John Perry was a mere accommodation endorser for the makers of said notes on whose account said notes were discounted in the ordinary course of said business of banking, then the plaintiff cannot recover in this action;" which the Court refused to give, and to which refusal the defendants then & there excepted.

Verdict

The Jury found a verdict for plaintiff for $4.690.

Motion to set aside

The defendants in due time filed their motion to set aside verdict & Judgment & grant a new trial for the following reasons, to-wit: — First The verdict was against law. Second It was against evidence — Third — It was against both law and evidence. Fourth. Because the Court gave improper & illegal instructions asked by plaintiff. Fifth — Because

the Court of its own motion, gave improper and illegal instructions ~~and~~ Sixth. Because the Court refused to give proper & legal instructions asked by defendants. Field & Shepley attys, which Motion the Court overruled, and to which action of the Court, in overruling the same defendants then and there excepted - and files now his bill of Exceptions & prays that the same may be signed, which is accordingly done.

A. Hamilton

State of Missouri }
County of St Louis } ss I, William J. Hammond, Clerk of the Circuit Court, within and for the County aforesaid certify the foregoing to be a full and complete transcript of the Record and proceedings in the case of the St. Louis Perpetual Insurance Company vs John Perry 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 St. Louis, this twenty sixth day of August 1854

William J. Hammond Clk

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March T. 1855

St. Louis Perpetual Ins. Co
respondent

vs } Transcript

John Perry
appellant

Appeal St Louis Circ. Court.

Shepley atty

Filed 29th September 1855.
W. L. Glanville
clerk

Fee $13.00 pd by Shepley

84 ~~7~~

84.60/ 84.60/

The St Louis Perpetual Assurance Company
vs
John Perry's Administrators

In the ~~St Louis~~ Supreme Court of the State of Missouri

The said defendants now come and say that there is manifest error in the judgment & proceedings in said cause and for error assign the following

1st The court erred in striking out portions of defendants ~~answer~~ amended answer filed on the 4th July 1883.

2d. The court erred in excluding legal and competent testimony offered on part of defendants.

3d. The court erred in giving wrong & illegal instructions to the Jury asked on part of plaintiff,

4th The Court erred in refusing to give to the Jury proper & legal instructions asked on part of defendants.

....

5th The Court erred in overruling the motion of the defendants to set aside verdict & grant them a new trial in said cause.

There is other & manifest error in said judgment & proceedings

For all which said ~~judg~~ defendants say that said judgment ought to be reversed

Fields & Shipley
for Defts

No 76
Supreme Court

The Perpetual Insurance Company
vs
John Perrys
Pldrs

Assignment of Errors

Field & Shipley
Atty for Defts

Filed 21st Oct. 1853,
M. S. Glamine
Ck.

The Perpetual Insurance Company
vs
John Perry's Administrator

In the Supreme Court of the State of Missouri

Now come the defendants appellants and says that there is manifest error in the judgment & proceedings in said cause and assigns the following as error.

First Because the Court below erred in striking out the first amended answer filed on 4 Feby 1853

2d " Because the Court ruled proper & legal testimony offered on part of defendants

3d " Because the Court admitted improper & illegal testimony offered on part of plaintiff

4th " Because the verdict was against law

5th " Because the Court erred in giving improper & illegal instructions asked by plaintiff

6th " Because the Court erred in refusing to give proper & legal instructions for the part of defendant.

7th " Because the Court erred upon its own motion in giving improper & illegal instructions ~~on the part~~

8th " Because there is other and manifest error in the judgment & proceedings in said cause.

Wherefore the said defendants say that said Judgment should be reversed & for naught held

Field & Shepley
Attys for Deft.

In the Supreme Court of
The State of Missouri

The St Louis Perpetual
Insurance Company
vs.
John Perry's
Administrators

Assignment of Errors
F. M. Field &
J. R. Shepley
Atty's

Filed 23 March 1855
W. L. Glanville
Cl.

(4)

The St Louis Perpetual Insurance Company } In the Supreme
vs } Court of the State
John Perry's Adm } of Missouri.

The defendants appellants submit that the following points and authorities on their part

II The Court erred in striking out the amended answer.

The leave given was that defendants might file answer setting up every defence except Usury.

The amended answer did not do this but set up as a defence that the rate of interest being greater than that allowed by the charter (which was 10 per cent) rendered the whole transaction null & void.

See Charter of the Farmers & Mechanics Ins. Co. & St Louis Perpetual Ins Company Acts of 1836-7 page 215-16.

III The Court improperly rejected the testimony offered by defendants as that

The notes were not discounted in using the surplus funds of the Company or in any way connected with the ~~banking~~ business of Insurance but were discounted by said Company as a part of a banking business done by the said Company which was illegal

Blair vs Perpetual 10. Mo. R. 559.

A corporation created for insuring property has no power to engage in a banking business

The Perpetual Insurance Company has no right to engage in banking.

See also. Rossiter vs St Louis Perpetual Ins Company 15. Mo R. 248

Field & Shepley
Attys for appellants

In the Supreme Court
of the State of Missouri

The St Louis Perpetual
Insurance Company

vs

John Perry's
Adm^r

Brief
Field & Shepley

Filed 5 April 1855

(81)

The St Louis Perpetual Insurance Company
vs
John Perry's Administrators.

In the Supreme Court of the State of Missouri

Statement of the case

This was a suit brought by plaintiff upon two negotiable promissory notes both dated same day executed by Wm Gauvegle & Wife payable to John Perry or order and endorsed by Perry, alleging presentment at office of plaintiff where the same were payable, refusal of payment, notice to Perry and also alleged that defendant admitted that he was responsible & was liable to pay the notes & asked further time from plaintiff.

The suit was originally brought against John Perry in his life time, service was had on him but before answer, Perry died & plaintiff sued out a scire facias to make Ed Bredell & Nancy Perry the administrators of said John Perry, parties to the suit. The administrators filed an answer and afterwards they asked to file an amended answer supported by affidavits. The Court allowed an amended answer to be filed, which answer set up as a defence denies that notice of non payment was duly sent or received by Perry or that he admitted himself responsible therefor & asked time; that the notes were discounted by plaintiff by paying amount in paper of the State Bank of Illinois when it was greatly depreciated & that it was only a contrivance to obtain a rate of interest usurious & ~~not authorized~~ and greater than was authorized by the act of

incorporation: that thereby the first notes that were made and all subsequent renewals were void –

The plaintiff moved to strike out amended answer for the reason that it was not subscribed by Defts or attys: that it was not verified by affidavit: that the answer is not in accordance with the leave granted and that the additional matters contained in the answer formed no defence

The Court sustained the motion & ordered that amended answer be stricken out & giving defendant 10 days to file another answer "according to leave heretofore given for that purpose".

The defendants filed a further answer setting forth the same facts as contained in the former amended answer except that instead of charging that that the transaction out of which these notes originated was usurious and against the act of incorporation. stated that moneys aforesaid was paid by plaintiffs as bankers & that said discounts were not made or connected with nor did the notes grow out of the business of insurance or in the loaning of the surplus funds of said Company but the same were discounted in the conducting of a banking business – contrary to act of incorporation of said company.

The plaintiff on the trial offered evidence tending to prove presentment ~~& notice to Perry~~ non-payment and notice to Perry & also that Perry offered plaintiff to secure the $ amount of said notes, after they were past due if plaintiff would give him time – The evidence was that the notice was mailed ~~at Potosi~~ addressed to Perry at Potosi & that he sometimes received his letters there

The defendant introduced evidence tending to show

that Perry did not live at Potosi, and that Potosi was not the nearest Post office to his residence. but that Coonville was —
Defendants also in cross examination of Pltf's witnesses & by evidence introduced by them gave evidence tending to show that the notes the renewals of which were sued on were discounted by plaintiff in notes of the State Bank of Illinois at their nominal value when they were not used as a currency & were greatly depreciated
The defendants asked the witnesses what business the plaintiff was engaged in at time of discount of these notes: if the plaintiff at that time was engaged in or did it do any Insurance business: whether the plaintiff did not day by day receive deposits of money from different persons: whether defendants held out that they would receive deposits: whether Plaintiff paid out money to depositors on Checks. & whether or not they furnished to others & used printed checks upon themselves — whether the plaintiff was engaged in the banking business: whether they were connected with the Bank of Illinois in the loaning of money or acted as its agent.

To all which Plaintiff objected, the Court sustained the objection & excluded the testimony to which defendants excepted.
The Court gave to the Jury the following instructions

24 The Court on its motion gave the following instructions:-

3. There is not sufficient evidence to overcome the presumption in favor of Plaintiff, that the note sued upon grew out of or were taken & received by the plaintiff in the course of such business as was authorised by its charter, & therefore upon that issue, the jury will find for the plaintiff.

4. If Perry, in the interview spoken of by Camden, offered to pay the notes in property in Jefferson City, knowing at the time, that the notes had been dishonored, & having in his hands notice or notices thereof mailed on the same day of the dishonor, & during such interview made no objections that he had not been regularly charged as endorser, this is prima facie evidence that he had received due notice & was legally bound to pay the said notes."

And the Court gave the following asked by plaintiffs.

The jury are instructed, that if they are not satisfied from the evidence as to the facts required in the foregoing instructions, then they will enquire - First, Were the notes presented for payment at maturity, according to their tenor?

25 Second. Was notice of the dishonor of the notes & that he was looked to for payment, mailed by post of the same day or the next day, to the endorser, directed to the post office, or to one of the post offices (if there were more than one) where he was in the habit of receiving his letters? If they find this was done, there notice is sufficiently proved. Instruction No 1 having been refused, viz:

The jury are instructed that a promise to pay, made by an endorser, who has his notice of the dishonor in his hand, or who at the time knows the fact of dishonor, & to whom notices were mailed, on the same day of the dishonor, is prima facie evidence that he has received due notice & was legally bound to pay - it is an admission on his part, from which the jury are authorised to infer his liability on the notes, which he so proposes to pay.

The defendant asked the following instructions, which the Court refused:

1. The jury are instructed that no sufficient notice has been proved in this cause to make deft. liable on said notes or either of them, as endorser in this case.

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(24)

2. If the jury believe from the evidence that at the time of the maturity of the said notes, John Perry resided at Coonville, & that neither Potosi nor Selma was the nearest Post Office to that place, then the jury are instructed that there is no sufficient notice has been proved in this case to make the defendant liable on said notes or either of them as endorser of the same.

3. If the jury find that the plaintiff before and at the time of the date of the notes now in controversy was engaged in the business of banking - by receiving money on deposite, and discounting money with the notes so deposited that John Perry was a mere accommodation endorser for the makers of said notes on whose account said notes were discounted in the ordinary course of said business of banking, thus the plaintiff cannot recover in this action.

To the giving of which instructions & the refusal to give those asked by defendants defendants then & there excepted. The Jury found a verdict for the amount of notes & interest.

Defendants in due time moved for a new trial which was refused & they bring this case here by appeal.

Field & Shepley for Defts

84

In the Supreme Court of the State of Missouri

The Affonis Perpetual Ins. Company vs John Perry's Administrators

Filed 5th April 1855

Shepley

C

St. Louis Perpet. Ins. Co.
vs
John Perry's Adm^rs } In Supreme Court.
March Term 1855.

This suit was brought by Plaintiff against John Perry in his life time, & revived against his administrators, to charge him as endorser of two promissory notes.

The issues were 1st Notice of nonpay^t. to Endorser: 2^d. Perry's subsequent admission of his liability: 3^d. Due presentment for payment: 4th Defence special; that the notes were given to the Plaintiff for a loan of money made by it as doing a Banking business, & not out of its own insurance moneys, & so in violation of its charter.

The evidence tended to show due presentment, non-payment, Protest, & notice by next mail to the endorser, addressed to Selma & Potosi, two out of three or four Post offices where he was accustomed to receive letters; also a subsequent unconditional offer to pay the notes, if the company would take payment in land, the endorser then personally appearing with the notices of protest in his hand, & so making the offer. It also appeared

by Defendants witness (Wray) that he held Securities for all his endorsements of this Character, which were supposed to be ample to cover them.

Evidence was offered by Defendant tending to shew that Perry's residence was at Cornville, and there was a Post office there, where he frequently, or usually received his letters.

Defendant also offered evidence tending to shew that in making the loan in question, they had gone beyond their chartered Privileges

24 St Louis Perp. Ins. Co. v. Perry.

The Court gave the following instructions on its own motion:

Given. 3. There is not sufficient evidence to overcome the presumption in favor of Plaintiff, that the notes sued upon grew out of, or were taken and received by the plaintiff in the course of such business as was authorised by its Charter & therefore upon that issue the Jury will find for the plaintiff.

Prim 4. If ~~the Jury~~ Perry, in the interview spoken of by Camden, offered to pay the notes in property in Jefferson City, Knowing at the time that the notes had been dishonored, & having in his hands notice or notices thereof mailed on the same day of the dishonor, & during such interview made no objections that he had not been regularly charged as endorser, this is prima facie evidence that he had received due notice & was legally bound to pay the said notes," and also gave the following instruction asked by plaintiff

Given. 5. The Jury are instructed that if they are not satisfied from the evidence as to the facts required in the foregoing instruction, they will inquire — First, Were the notes presented for payment at maturity, according to their tenor?

25 Second. Was notice of the dishonor of the notes & that he was looked to for payment mailed by post of the same day or the next day to the endorser, directed to the post office, or to one of the post-offices (if there were more than one) where he was in the habit of receiving his letters? If they find this was done, then notice is sufficiently proven. Instruction No 1 having been refused viz.

Refused. The Jury are instructed that a promise to pay, made by an endorser, who has his notice of the dishonor in his hand, or who at the time knows the fact of dishonor, & to whom notices were mailed, on the same day of the dishonor, is prima facie evidence that he has received due notice & was legally bound to pay — it is an admission on his part, from which the

25 Jury are ~~authorised~~ to infer his liability on the notes, which he so proposes to pay,

The defendant asked the following instructions:

Refused 1. "The Jury are instructed that no sufficient notice has been proved in this cause, to make defendant liable on said notes, or either of them, as endorser in this case.

Refused 2. If the Jury believe from the evidence, that at the time of the maturity of said notes, John Perry resided at Coonville, & that neither Potosi nor Selma was the nearest post office to that place, then the Jury are instructed that there is no sufficient notice has been proved, in this case to make the defendant liable on ~~his~~ said notes or either of them as endorser of the same."

Refused 3. If the Jury find that plaintiff before and at the time of the date of the notes now in controversy was engaged in the business of banking - by receiving money on deposite, and discounting notes, with the money so deposited, that John Perry was a mere accommodation endorser for the makers of said notes on whose account said notes were discounted in the ordinary course of said business of banking, thus the plaintiff cannot recover in this action; which the Court refused to give, & to which refusal the defendants then & there excepted.

Attest: a true copy from the transcript on file in my office in the cause herein first before stated. Wm L Glanville Clerk

Supreme Court.

St. Louis Perpetl. Ins. Co.
vs
John Perry, Applt. } Plaintiff's Brief.

John A. Kasson for Plaintiff:

I. The Instructions touching the facts which would create a liability against the Endorser, are correct.

An offer ~~to pay~~ by an Indorser to pay a note, "after its known dishonor, where no circumstances "appear to show that due notice has not been "given will be prima facie proof of due "notice, upon the ground that men do not "usually promise to pay money unless "legally bound so to do."

(Story on Notes § 359-)

"If he is accustomed ~~sometimes~~ to receive his "letters sometimes from the Post office of "his own town, & sometimes from that ~~of~~ in a "neighboring town, x x x or sometimes "from postoffices in different towns in "his neighborhood, the letter sent to "either will be good notice" x x.

(ibid § 343, 4th section)

~~Bank of Utica v. Smith, 18 J.R. 230~~

II. The first & second Instructions for Defendant were rightly refused. The 1st is clearly improper, as it took a *prima facie* case from the Jury. The 2d was wrong because it declared the principle that it is absolutely necessary to send notice to the nearest post office, which is contradicted by all the treatises, & by numerous decisions, and emphatically so by the Sup: Court of the U.S., which says,

(Bank U.S. v Carneal 2. Pet. 543, '49, '50)

"the rule as to the nearest post office "is not of universal application, for "if the party is in the habit of receiving "his letters at a more distant post "office, × × and that fact is known "to the person sending notice, notice "sent by the latter mode will be good. And "where the party is in the habit of receiving "his letters at various post offices, to suit "his own convenience or business, it "may be sufficient to send it to either"

And the rule thus enlarged is especially applicable here, where the Defendant's witnesses testify to the facts of various residence, & various post offices; and where he in fact held the notes in his hands, and held means supposed to be ample to meet all his endorsements as testified to by Gray, a maker of the note.

III. The Instruction given, and that refused, touching the illegality of Plaintiff's business, in connection with discounting these notes, were respectively right. In fact, the Instruction given should have been stronger, that there was no defence arising out of that issue made by the defendant. Because,

1st Their Charter (§ 5. A. 1837) contemplated & conceded the right to have "moneys put in their hands "for safe keeping, or for temporary investment." Also (§ 5. of the Charter of Farmers' & Me=chanics' Ins. Co. which is made their own) "to lend their surplus or unemployed "money or capital on interest, not "exceeding ten per cent per annum, "to Companies, Corporations, or individuals, "upon personal or real security."

2. At the time of granting this Charter (Feb. 4. 1837) the general law respecting Corpora=tions, and reserving the power to alter or Amend their Charters, did not exist. The Charter was a contract between the State & the Stockholders, and as such unaffected by subse=quent legislation, and protected by the constitutional provision against laws impairing the obligation of Contracts.

(Dartmouth College vs. Woodward 4. Wheat. 518.)

(12)

(~~[illegible]~~)

(~~State of New Jersey v. Wilson 7. Church 164~~)

3d. But if there were any doubt about the two preceding points, still this part of the defence fails, because the prohibitory statute against Corporations receiving money on deposit, discounting notes &c. &c., incorporated into the statutes of 1845, under the name of illegal Banking, was not enacted until Feb. 28. 1843, while the transaction in question, sought to be impeached on that account, took place in Feb. 1842, a year before! Prior to that time there was no penal or prohibitory law on the subject, general or special, and the whole defence should have been ruled out, and all evidence touching it. I repeat, the Instruction given was correct pro tanto, but should have been broader and stronger.

4th And it also fails, because even if the contract in question was in violation, or rather in excess, of their charter, it might be cause for proceeding judicially as for forfeiture of the charter; but it would not render the contract void.

(Chester Glass Co. v. Dewey, 16. Mass. 94.
Col. Ins. Co. v. Walsh, 18. Ms. 238.)

S.P.
2. Alab^a R. 464.
4. Smedes & Marsh. 82. 84.

This question cannot be inquired into collaterally. (15. Ohio R. 322.)

IV. There was ~~[illegible]~~ illegal evidence admitted on the part of the Defendant, but none that was competent & proper was excluded. The motion for a new trial takes no ground of exception to any point touching the admission or exclusion of evidence.

V. The first amended answer was rightly stricken out. It was no answer at all. No affidavit ~~to it~~, as well as not in accordance with leave granted.

There is no error in the court below injurious to the legal rights of Defendant.

The questions rejected were directed to the general business of Plaintiff, not to the business out of which this liability sued on arose. This of itself rendered the evidence inadmissible. If this loan was legally made, it is of no consequence what other transactions may have been illegal.

VI. So also the answer only sets up a Banking business. This is not the same as a broker's business. The charter does not ~~mention nor~~ prohibit nor mention a banking business. (See definition of "Broker")
The provision of the charter is directory. The failure to observe that clause of the charter

(4)

as shown by the cases in Mass^ts, in Alabama, & in Miss'pi, does not give it the effect of a contract having its inception in a violation of public law. The principles applicable to the two classes of cases are radically distinct. The one has relation to principles of public law, & public safety: the other to the private management of a corporation, and the expediencies of business. The cases hastily quoted by appellant in conclusion, are those where a defence went to the value of the consideration, not to the principles of law governing a contract which is conceded to be lawful in one aspect of facts, & is only disputed in another aspect of the same facts. How can the question be here pursued whether this money was money from Capital or surplus funds; or money received as a broker? The money once received is merged with the general fund. And these notes are shown to have been only renewals of former notes.

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Plaintiff's Brief &c.

St. Louis Perpet^l Ins. Co.
vs
John Perry's Adm^r

Sup. Ct. March T. 1855

Kasson for Pltff