

A. E. Jackson }
 E. Montgomery }
 Supt. of Banks }
 vs. }
 John Langham, et als. }

CIRCUIT COURT
 OF
 BALDWIN COUNTY.

Plea A.

Come the defendants and for answer to the Complainant as last amended say that the notes mentioned therein were endorsed upon the conditions that they would not be used unless and until they were endorsed by W. D. Owens, and that the endorsement of said Owens was not secured, and said said notes were negotiated with said Bank of Bay Minette without such endorsement; and the defendants allege that said Bank acquired said notes with knowledge of the fact that they were obtained upon the promise and representation that they would not be used unless and until they were endorsed by the said W. D. Owens.

Plea B.

And for further answer to the complaint as last amended the defendants say that the endorsements on the notes sued on were obtained upon the condition that said notes would not be used unless they were also endorsed by W. D. Owens and that the Bank of Bay Minette with knowledge of such condition acquired such notes, and they were never endorsed by said ~~W. D. Owens~~ Owens.

Plea C.

and for further answer to each count of the complaint defendants plead all the matters set forth in plea B except that the bank acquired said notes with knowledge of the fact that they were acquired and says that said notes were taken as evidence as security for a preexisting debt of

Plea D.

and for further answer to the complaint defendants plead all the matters set forth in plea B except that the bank acquired said notes with knowledge of the fact that they were acquired and says that said notes were taken as evidence as security for a preexisting debt of said bank; and that the bank acquired said notes with knowledge of the fact that they were obtained upon the promise and representation that they would not be used unless and until they were endorsed by the said W. D. Owens.

In the Circuit Court of Baldwin County, Ala.

Spring Term, 1923.

A. E. JACKSON
State Superintendent
of Banks

vs.

JOHN LANGHAM, ET AL.

SUIT ON NOTE

Tried before the Hon. John D. Leigh, Judge Presiding:

A P P E A R A N C E S :

FOR THE PLAINTIFF:

MESS. GORDON & HALL.

FOR THE DEFENDANTS:

HON. LEON G. BROOKS,
HON. JAMES H. WEBB.

Mess. Stone & Stone

TRANSCRIPT OF THE EVIDENCE:

C. S. WOODSON, a witness for the plaintiff, having been first duly and legally sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

DIRECT EXAMINATION, by Mr. Gordon:

- Q. What is your name? A. C. S. Woodson.
Q. Where do you live? A. Bay Minette.
Q. What was the position - did you occupy any position with the Bank of Bay Minette during the time it was running? A. Yes sir.
Q. What position did you occupy? A. Cashier.
Q. What position did you occupy with that bank at the time it was taken over by the State Superintendent of Banks? A. Cashier.
Q. And the affairs of that bank were taken over by the Superintendent of Banks of Ala. for liquidation, were they? A. That's my understanding.

MR. GORDON: We offer certified copy of resolution of the

A. E. JACKSON,
STATE SUPERINTENDENT OF BANKS

VS.

JOHN LANGHAM, ET AL.

IN THE SUPREME COURT OF ALABAMA.
ON APPEAL FROM THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA.
SPRING TERM, 1923.

BILL OF EXCEPTIONS.

BE IT REMEMBERED that on this, the 29 day of
May, 1923, during the Spring Term of the Baldwin County
Circuit Court, the following proceedings were had therein:

Messrs. Gordon & Hall represented the plaintiff;
Leon G. Brooks, James H. Webb, and Stone & Stone, represented the
defendant.

The plaintiff introduced as a witness, C. S. WOODSON,
who testified that he was cashier of the Bank of Bay Minette, during
its operation, and when it was taken over by A.E. Walker, Superintend-
ent of Banks, for liquidation, and it was so taken over from him as
cashier, under the resolution of the Banking Board. That while he
was cashier, the note suit on came into his possession, as such.
Thompson was at that time indebted to the bank in the sum of
_____ dollars, on a note past due, which was
surrendered to him, and the balance was placed to his credit and
later checked out, *by Thompson*.

Q. At that time, did you make the transaction with Mr. Thompson?

Ans. Yes sir, I suppose so, part of it.

Q. In taking the note, - these new notes? Ans. No sir, Mr. Powell
brought the notes in to me.

Q. Was Mr. Thompson there? Ans. I don't remember whether he was
or not. I don't think he was. It has been about nine years ago.

Q. And these notes were not taken as collateral security, it was a
payment of an old note, and a deposit made to him for the balance?
Ans. Yes sir.

Q. At that time, did the bank or you, or any officer in charge of
the bank, running the bank, have any notice of any outstanding
equities against the notes, or did you buy them straight out,

Considering them good notes? Ans. Taken them straight out, considered them good notes.

CROSS EXAMINATION.

Q. Mr. Woodson, you said a while ago that you partly handled this matter, what did you mean by that? Ans. Well, you see Powell went with Thompson and got these notes endorsed and brought them back to me, that's what I meant.

Q. Who was Powell? Ans. William Powell.

Q. What did he have to do with the bank? Ans. He had that much to do with it.

Q. How much? Ans. Getting those notes signed up and endorsed.

Witness further testified that at the time J.E.McDavid was President of the bank, he did not attend to any of its affairs.

Q. The affairs of the bank were conducted by you and Mr. Powell, weren't they? Ans. I can't say that they were conducted by Mr. Powell; I think I conducted my part pretty well.

Q. You conducted your part,- what part did Mr. Powell have in the running of the bank at that time, the approval and making of loans, conduct and management of the bank? ~~xxxxThe~~

Attorney for plaintiff objected to the question on the ground that it called for immaterial, irrelevant and incompetent testimony.

The Court sustained the objection, and the defendant excepted.

Q. In this loan that was made to Thompson, you say you don't-- that he owed the bank at the time that these notes were taken, you say you don't remember the amount of it? And. No sir, I don't remember it.

Q. (By attorney for plaintiff): Let's get all of the facts out, look at that and see if you can refresh your recollection?

Ans. He owed the bank at the time this transaction was made, an amount, this amount here, and this here amount was taken up with these notes and he was given credit with the difference.

Q. What was the amount he owed? Ans. I don't know. You can look here for yourselves if you like, on this ledger, if you like.

Q. Were you in charge of the bank at that time? Ans. Yes sir.

Q. Were these the books? Ans. Yes sir.

Q. At that time? Ans. Yes sir.

Q. And you can't tell from the books of the bank what was the amount

considering them good notes? Ans. Taken them straight out, considered them good notes.

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Q. What was the amount he owed? Ans. I don't know. You can look here for yourselves if you like, on this ledger, if you like.

Q. Were you in charge of the bank at that time? Ans. Yes sir.

Q. Were these the books? Ans. Yes sir.

Q. At that time? Ans. Yes sir.

Q. And you can't tell from the books of the bank what was the amount

that was due by this man at that time? Ans. This entry was made on the 28th, if I make no mistake; these notes were on the 28th; I don't just exactly understand it; I don't understand the entry now. I am not familiar with that.

Q. This amount of money that was owed there by Thompson at the time these notes were taken, was that a loan that had been made to him by the bank? And. Yes sir.

X Q. Who made that loan?

The attorney for the plaintiff objected to the question, on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court sustained the objection.

Mr. Webb: We except. This is on cross examination, if it please the Court, and I really do not know what he is going to say; I think it may develop that he and Powell made this original loan for the bank, and this is a continuation of the same transaction.

The Court: Suppose he and Powell did; he has testified so far that he was the cashier of the bank and that he had the authority to make this transaction.

Mr. Webb: I want to inquire into all those matters and see just what authority he had; I rather anticipate that I will be able to show that they did not have any meetings of the board of directors, that the president didn't conduct any of the business, and that he and Powell did everything that was done.

The Court: I don't see the relevancy of who made the loan.

Mr. Webb: Your Honor will remember that in one of the cases I read it stated if a corporation allowed some one to act for it though that might not be strong evidence it is sufficient evidence to go to the jury.

Mr. Gordon: We object to anything he did, unless it is shown that it was ratified by the board of directors of the bank.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. All right, Now, Mr. Gordon, on his direct examination, Mr. Woodson, asked you to state the circumstances in connection with the getting and taking of these particular notes- Now I will ask you the same question over, will you please tell the jury the transaction with reference to the taking and getting of these particular notes.

Mr. Gordon: We object to the question unless he is confined to the time that the Bank, through Mr. Woodson, got these notes and not what happened before, on the ground that it is immaterial, irrelevant and incompetent.

The Court: I think whatever connection he had with Mr. Thompson at the time he presented the notes at the bank would be relevant.

Mr. Webb: Does your Honor sustain the objection?

X The Court: No sir, I overruled the objection.

Q. All right, sir. And. What was the question?

Q. (Question read to witness). Ans. These notes here?

Q. Yes sir. Ans. Powell taken these notes and went with Thompson,

I suppose he did, he taken the notes-----

Mr. Gordon: We ~~except~~ ^{object}.

The Court: I sustain the objection.

Ans. He got those notes-----

The Court: You can only testify to what you know to be a fact.

Ans. Powell got these notes signed up and endorsed and brought them

back and turned them in to me, and I entered them up; what he had to do with it, I don't know.

Q. Before Powell went and got those notes, did you and Powell have any discussion between yourselves as to the getting of them in order to save the bank on this bad loan to Thompson?

Mr. Gordon: I object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. Did you or not have any talk with Powell before he went and got these notes in reference to the going and getting of the same?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. Mr. Woodson, when Mr. Powell went to get these notes did you give him any instructions in regard to the same?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Witness further testified that he did not remember, and could not say, whether or not he had consulted with any one in regard to taking the notes in satisfaction of the indebtedness of Thompson, and for the further extension of credit to him, and that he did not know

remembrance, the custom was to leave it to the cashier and directors in making loans. If the cashier had an application for a loan, he consulted some of the directors. He would ~~not~~ always call a meeting. He consulted the ones he could see handy. That he thought in this matter he consulted Catrett; that he did not know whether or not Catrett was director at that time, but thought the books would show that he was.

Q. Now did you consult with Catrett in regard to making the original loan ^X to Thompson, whereby he became indebted to the bank?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except. I might ask him if he is not confusing this transaction with the original transaction- that's the one he consulted Catrett about.

The Court: That's not the question propounded to him.

Mr. Webb: Do you sustain the objection?

The Court: No sir, I want the question read. (Question is read). That's the way I understood it; I sustain the objection.

Mr. Webb: We except.

Witness continuing said that he did not know whether he was confusing this transaction with the original loan to Thompson, whereby he became indebted to the bank, or whether or not that was the loan he consulted Catrett about; that when Powell went out to get the endorsements on the note sued on, he took the notes with him, and they were not made out and signed by Thompson, and to the best of his remembrance, the handwriting pointed out to him on the note was that of William Powell.

Q. ~~Is that the correct date put in there? Is that the date he wrote that there and went off with them, - the 26th. of August?~~

Ans. I suppose it is, I don't know.

Q. How long after Powell took those out was it before he brought them back and gave them to you? Ans. I can't say.

Q. You have no idea, Mr. Woodson? Ans. He brought them back immediately.

signed up, or the following day, or later.

X Q. You don't know? Ans. I don't remember.

Q. You don't know how many days before he brought it back. Ans. No sir.

Q. Now, before he brought those notes back to you, and they were delivered to the bank, didn't you receive a phone call from one of the defendants, telling you about the circumstances under which these endorsements were obtained and telling you not to discount those notes?

Mr. Gordon: We object to the question on the ground that it is immaterial, irrelevant and incompetent, and vague, and don't say where it was and which one of the defendants it was, and if he is laying a predicate, he must be specific as to the time, place and person.

The Court: I will sustain the objection in the shape it is in.

Q. Didn't Mr. Briars there call you up on Tuesday morning before these notes were delivered to you, and explain to you the circumstances under which these endorsements had been gotten, and tell you for the bank not to take these notes?

Mr. Gordon: I shall object if the Court pleases, to the portion of the question which calls for the opinion of the witness, "explain to you the circumstances", he can ask him if Mr. Briars didn't call him up before he got the note, about when it was, and what Mr. Briars said.

The Court: I think you will have to lay the predicate; I sustain the objection.

Mr. Webb: We except.

Q. Mr. Woodson, when Mr. Powell brought these notes back to you, had they been signed by Thompson at that time, or did he sign them afterwards? Ans. They had been signed by Thompson when he brought them back.

Q. Now, before he took - he went out with these notes to get these endorsements, did he not say to you that you and Catrett should not have loaned Thompson that \$2000 and more, that you had loaned him without security, and that if the bank examiner came down and found that out, that it would cause trouble, and did you and he not agree then, that he should go out and endeavor to get a note with endorsements, in order to protect the bank on this loan that was made to Thompson without security?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. Those notes I had reference to, did you furnish those blanks to Mr. Powell? Ans. Yes sir.

Q. Well, when Mr. Powell came back and gave you the notes, what did he say, Mr. Woodson? Ans. I don't remember what he said.

Q. You don't remember what he said? Ans. No sir.

Q. He said something, didn't he? Ans. He must have.

Q. Sir? Ans. He must have, but I don't remember what he said.

RE-DIRECT EXAMINATION.

When Powell brought the notes back, Thompson was not with him, and the endorsements were on the back of them. Witness does not remember what, if anything, he had to say when he handed him the notes. He stamped the old note paid, and gave him credit for the difference.

Witness was then handed the ledger, and said he thought he was prepared to explain the entries. That Powell took up the note for a thousand dollars, one for five hundred and thirty, and one for a thousand, and \$2311.00 was placed to ~~his~~ ^{Thompson's} credit; that he ^{Thompson} subsequently drew it out.

ON RE-CROSS EXAMINATION, counsel for defendant asked the witness if this was not what occurred: "When Powell came back with these notes, he came in with Thompson's boy, and handed you the notes, and says: 'here are the notes, we have got ours, damn the Gid Murphy stock of cattle', and you then turned over to Thompson's boy those notes you say were taken up, and he started off with them, and Powell told you to go and get those notes back from the boy, and you went, or Powell went, and got the notes back from the boy?" ~~xxxxxx~~ Witness replied that if Thompson's boy was along with Powell, he didn't remember it.

Q. You don't remember that other conversation either? Ans. No sir.

Witness further testified that the assets of the ~~Bank of Bay~~ Minette were first turned over to the Baldwin County Bank, instead of the Superintendent of Banks, ~~the Baldwin County Bank agreeing to pay~~ the depositors. That, during the recess, Mr. Stapleton had explained the books to him, was how he was able to testify more clearly than before dinner, but that what he testified to that the books showed was true and correct, and that he then remembered what happened.

The plaintiff offered in evidence the notes set out in complaint and rested, said notes are as follows:

Bay Minette, Ala., Aug 26 1914	fees	\$2000.00
		\$4.56
	DATE PAID	BALANCE
		\$2004.56

Thirty days after date, for value received, I, we, or either of us, promise to pay to the order of
BANK OF BAY MINETTE

Two Thousand ----- Dollars,
With interest from maturity at the rate of
8 per cent per annum payable at BANK OF BAY MINETTE,
Bay Minette, Alabama.

The parties to this instrument, whether maker, endorser, surety or guarantor, each for himself, hereby severally waive as to this debt, or any renewal thereof, all right to exemption under the Constitution and Laws of Alabama, as to personal property, and they each severally agree to pay all costs of collection, or securing or attempting to collect or secure this note, including a reasonable attorney's fee, whether the same be collected or secured by suits or otherwise. And the maker, endorser, surety or guarantor of this note, severally waives demand, presentment, protest, notice of protest, suit, and all other requirements necessary to hold them, and they agree that time of payment may be extended without notice to them of such extension. The bank at which this note is payable is hereby authorized to apply on or after maturity, to the payment of this debt any funds in said bank belonging to the maker, surety, endorser, guarantor, or any one of them.

Sec. by
P.O.

C.B.Thompson.

No. 462 Notice
Due Sept 25 14
Ex.
To

The following endorsement is made in red ink across the face of said note: "Protested for non payment Sept 25th., 1914 E.W.McLeod, Notary Public, Baldwin Co., Ala."

And endorsements on the back of said note are as follows:

Lottie
"John Langham/ C.W.Hall Atmore J H Bryars Stock Alex Boone Atmore
E Word Atmore Bank of Bay Minette By C.S.Woodson, Cash.
State of Alabama)
Baldwin County)

I, J.H.H.Smith, Judge of Probate for said county, hereby certify that the following privilege tax has been paid on the within instrument as required by Acts 1902 & 1908 viz: \$ 3 cts.00
J.H.H.Smith, Judge of Probate
by J.L.Kessler Clerk

The State of Alabama,) Office of the Judge of the Probate Court,
Baldwin County.)

I, J.H.H.Smith, Judge of said Court in and for said County, do hereby certify that the within instrument was filed in this office for record on the 5th day of Sept 1914, at o'clock, and I further certify that the same is duly recorded in Record Book No. 14 Mtgs Page 345 and duly examined.
Witness my hand this 8th day of Sept 1914. J.H.H.Smith, Judge of Probate Court, by J. L. Kessler, Clerk.

6 mos Bay Minette, Ala., Aug 26 1914 \$3000.00
 Sixty days after date, for value received, I, we, or either of us, promise to pay to the order of Date Paid Balance

BANK OF BAY MINETTE

Three Thousand----- Dollars,
 With interest from maturity at the rate of
 8 per cent per annum payable at BANK OF BAY
 MINETTE, Bay Minette, Alabama.
 The parties to this instrument, whether maker,
 endorser, surety, or guarantor, each for him-
 self, hereby severally waive as to this debt,
 or any renewal thereof, all right to exemptions
 under the Constitution and Laws of Alabama as to
 personal property, and they each severally agree
 to pay all costs of collection, or securing or
 attempting to collect or secure this note, in-
 cluding a reasonable attorney's fee, whether the
 same be collected or secured by suits or other-
 wise. And the maker, endorser, surety or guaran-
 tor of this note, severally waives demand, pre-
 sentment, protest, notice of protest, suit
 and all other requirements necessary to hold
 them, and they agree that time of payment may
 be extended without notice to them of such ex-
 tension. The bank at which this note is payable
 is hereby authorized to apply on or after maturity,
 to the payment of this debt any funds in said
 bank belonging to the maker, surety, endorser,
~~xx~~ guarantor, or any one of them.

Date June 1-1914.

C.B. Thompson

Sec. by Collateral note for \$700.00
 of M.W. McLain, L. Maths & J.B. English.
 P.O. Dated Mar 14, 1914, for \$250.00

NO. 463 Notice

Due Oct. 26 14

Ex.

To

"

Across the face of said note, is the following: "Protested for
 non payment Oct 26 1914 E.W. McLeod, Notary Public, Baldwin Co., Ala."

And on the back of said note is the following: "John Langham C.W. Hall
 J.H. Bryars Alex Boone E. Ward Bank of Bay Minette by C.S. Woodson,
 Cash. State of Alabama,)
 Baldwin County.)

I, J.H.H. Smith, Judge of Probate for said coun-
 ty, hereby certify that the following privilege tax has been paid on
 the within instrument as required by Acts 1902 & 1908, viz \$ 4 cts. 50
 J.H.H. Smith, Judge of Probate, by J.L. Kessler, Clerk.

THE STATE OF ALABAMA,) OFFICE OF THE JUDGE OF THE PROBATE COURT.
 BALDWIN COUNTY.)

I, J.H.H. Smith, Judge of said Court in and for said County,
 do hereby certify that the within instrument was filed in this office
 for record on the 5th day of Sept 1914, at o'clock, and I
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Witness my hand, this 8th day of Sept 1914. J.H.H. Smith, Judge
 of Probate Court, by J.L. Kessler, Clerk. "

The plaintiff offered in evidence certified copy of the minutes of the Banking Board, for the meeting held the 4th. day of November, 1914, reading as follows:

"Montgomery, Alabama, November 4th., 1914.

A meeting of the Banking Board of Alabama was held at the office of A.E.Walker, Superintendent of Banks, at twelve o'clock, on Wednesday, November 4th, 1914.

There were present at the meeting A.E.Walker, Superintendent of Banks and Geo. A. Searcy, E.J.Buck, the other member of the Board having been duly notified of the meeting, but was unable to attend the same.

The Superintendent of Banks stated to the meeting that he had called the same for the purpose of considering the question of taking possession of the property and assets of the Bank of Bay Minette, of Bay Minette, Alabama; that notice of the meeting of the Banking Board for this purpose had been served upon the cashier and vice-president of the bank; that said notices were served on C. S. Woodson, Cashier of the Bank of Bay Minette, and W. W. Sowell, Vice-President of the Bank of Bay Minette, there being no president of said bank. Said notices were served Friday, October 30th, 1914, more than three days before this meeting was called for, to-wit: the fourth day of November, 1914. Said notices which were served on C. S. Woodson and W. W. Sowell aforesaid were as follows:

"You are hereby notified to appear before the Banking Board of the State of Alabama, at the office of A.E.Walker, Superintendent of Banks for the State of Alabama, on Wednesday November 4th., 1914, at twelve o'clock, at Montgomery, Alabama; then and there to show cause why the said A.E.Walker, Superintendent of Banks for the State of Alabama should not take possession of the property and business of the said Bank of Bay Minette, for the purpose of liquidating the same as provided in section ten (10) of an Act entitled "An Act to Create a Banking Department of the State of Alabama ", General Acts of Alabama Session 1911, Page 50."

The Superintendent of Banks then stated to the meeting that in his opinion the Bank of Bay Minette was insolvent and that the bank was in an unsound and unsafe condition to transact the business for which it was organized and that it was unsafe for it to continue in business; whereupon the following resolution was offered by Geo. A. Searcy, and upon motion the same was unanimously adopted:

"That whereas the Bank of Bay Minette has been summoned before the Banking Board by proper notice, to show cause why the Superintendent of Banks should not forthwith take possession of the property and business of the said Bank of Bay Minette and should not retain such possession until such corporation or individual banker shall resume business or its affairs be finally liquidated, and

WHEREAS it appears to the Banking Board that the Bank of Bay Minette is in a failing and insolvent condition; that it has suspended payment of its obligations, and that said bank is in an unsound and unsafe condition;

NOW, THEREFORE, be it further resolved that A. E.Walker Superintendent of Banks is hereby authorized and instructed by the Banking Board of the State of Alabama to forthwith take possession of the property and business of the Bank of Bay Minette and retain such possession until such corporation or individual banker shall resume business or its affairs be finally liquidated."

Upon motion the Banking Board adjourned.

WITNESS our hands and seals this November 4th., 1914.

(signed) A.E.Walker (L.S.)

(Signed) Geo.A.Searcy(L.S.).

✓

STATE OF ALABAMA,)
MONTGOMERY COUNTY)

I, A. E. Walker, Superintendent of Banks for the State of Alabama, hereby certify that the foregoing is a true and correct copy of the minutes of the Banking Board of its meeting held in Montgomery, Alabama on the 4th day of November, 1914.

Given under my hand and seal of office, this the 18th day of May, 1915.

(Signed) A. E. Walker,

SUPERINTENDENT OF BANKS

(Seal)

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The plaintiff offered in evidence the notes set out in the complaint, and rested.

set out notes

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The defendant offered in evidence the deposition of William Powell, which is as follows:

"My name is William Powell, my age is 48 years, and my place of residence is 1628 West Fourteenth Street, Oklahoma City, Oklahoma. I resided at Bay Minette, Alabama, from the first part of 1913, I believe it was, I can't tell exactly, up until about three years ago. Up until about 1921, I reckon. I organized the Bank of Bay Minette, and owned about one-half the stock. I really owned controlling interest in the Bank at one time, but the stock was not held in my name, it was held in the name of William Townsend, of Flomaton, Alabama. Several others owned a little stock in their names, but I can't remember them all. I owned stock in other names, but I can't remember all the names just now. I organized the bank, had controlling interest, and held this stock. I always worked for the interest of the Bank. This Bank was organized by me, and began business some time in 1913, I can't remember the dates just now. Judge William H. Anderson, I think, was President of said Bank when it began business. He is a lawyer, also of Bay Minette. I think E.W. McCloud was its cashier when it began business. I never was president of the Bank. As stated above, I was a stockholder, but the stock was held in other parties' names. I was a stockholder from the time the Bank started until it was taken over by the Baldwin County Bank, but the stock, you understand, stood in the name of this man, Townsend, and others. I was not a director of the said bank. I never was a director. I had no office at all, other than as I stated above. I worked for the interest of the Bank at all times, and spent my money to do so, because I owned a controlling interest in the Bank. I am acquainted with the defendants, John Langham, C.W. Hall, H.J. Bryars and E. Ward, and I was acquainted with Alex. Boone, now deceased. I know C.B. Thompson. I remember the circumstances connected with the execution of a note by C.B. Thompson to the Bank of Bay Minette, which note was indorsed by the defendants in this case. C.B. Thompson had succeeded in putting over a deal to get something like \$4,500 through one R.E. Catrett, who was a stockholder

and director in the Bank, also the Cashier, to buy cattle with. As soon as I found out that Thompson had gotten this money, I felt sure that the money would never be collected out of Thompson unless we got a sufficient security for same. Thereupon, I got in touch with Mr. Thompson. Not being able to collect the money, he promised to get a note endorsed by the defendants herein, and also by one W.D. Owens, but it was not convenient to see Mr. Owens and the Bank was perfectly satisfied with the endorsements of the defendants on the note given by Thompson for \$5,000.00. Now I think that about covers that. There was only one transaction of this kind. At the time said note was made, C.B. Thompson lived at Atmore, Alabama. It is hard for me to say exactly where the said note was signed by him. The fact is, he took me in his car and we drove about seventy-five miles around to see these parties. I will say it was signed at the Bank of Bay Minette before we left on the trip." In reply to the question, as to where the indorsers were when they indorsed the note, the witness replied: "Well, Langham was at home. Hall was at home, and Ward was at home. Bryars was on his way between home and Atmore, Alabama. We met him on the road." "Yes sir, I was present when said note was signed by Thompson and indorsed by the indorsers. I saw them all sign it. C.S. Woodson, the Cashier of the Bank of Bay Minette, and I negotiated with the said C.B. Thompson, in taking said note from him. Woodson was the Cashier at the time this note was made. McCloud was the first Cashier. I consulted with the said C.S. Woodson concerning the execution of said note to the Bank of Bay Minette. At the time the note was signed, or at the time it was indorsed, or at both times, I did not have any official position with the Bank of Bay Minette, except that I owned controlling interest in the Bank, in other people's names, and worked for the interest of the Bank at all times. My duties were to try to see that the Bank was a success as my interest demanded it. I think that is sufficient. I obtained the execution of said note by said Thompson. I obtained the endorsement of each of the endorsers, except myself and Woodson, the cashier, as I stated above, obtained the endorsement of Thompson, because he dealt with the Cashier direct. Well, there wasn't really anything said by me to the endorsers. Mr. Thompson took me to them in his car and told them that he wanted to get them to endorse his note to the Bank of Bay Minette for \$5,000.00,

and they discussed the matter. In fact, he had it understood with them before we went there that they would endorse this note. That was my understanding. We went there and he told them his business, and they endorsed the note. I didn't have any particular conversation with them, more than a couple of people would ordinarily have when they would meet ~~up~~ and Thompson after we had been with them a few minutes told them that he wanted to get them to endorse that note they had promised to endorse for him and they did so. One or two of the endorsers, I don't recall just which ones, but one or two of them made the remarks that old Thompson had some friends left yet, and we need not get uneasy or afraid, as he always had friends enough to back him up for a little money when he needed it. No, there wasn't anything said to me by any of these defendants with reference to W.D. Owens, Jr., signing the note, but Thompson had promised the Cashier of the Bank and me that he would get Owens to sign the note, but, as stated above, we were satisfied with the endorsements of the defendants, and it being inconvenient to see Mr. Owens, as he was not in Atmore, Alabama, we declined to get him to endorse the note, but so far as them saying anything to me about Owens endorsing the note, there was nothing said by the defendants to me about it."

In reply to the question: "Was it agreed between you, as a representative of the Bank of Bay Minette, and any one or more of said indorsers, that said note would not be accepted and used by the Bank of Bay Minette unless and until it was also indorsed by W.D. Owens, Jr.?", witness answered: "Not by me. There might have been by Thompson. Thompson, no doubt, promised them Owens would sign the note. In other words, I have an idea that Thompson did do it, no doubt he did, but there was nothing said about it to me by the defendants." "Nothing was said as to this. I feel sure it was the same day that said note was executed by C.B. Thompson, that it was delivered to the Bank of Bay Minette, but I am not perfectly certain. It might have been the next morning. I don't remember whether we made the trip and got back, and the note was delivered that evening, or not, but I feel pretty sure it was. If it wasn't, it was the next day. I delivered the note to said Bank, - to the cashier, C.S. Woodson. When said note was delivered, nothing was said concerning the circumstances under which the indorsements were made by the defendants, except that

I turned the note over to the Cashier of the Bank of Bay Minette, and told him that I had got the note endorsed, and had saved the Bank, and I hoped that there would never be another transaction of the kind pulled off by letting a man like Thompson have an amount of money like that. The fact is, I turned the note over to the Cashier and told him that there was the note, and at the same time I saved him and all the Directors, because here is the proposition: They had made this loan against the Banking Laws, and I told him to get his Board of Directors together and pass on this loan favorably, and get it all signed up in the proper shape; that I did not want to have to be called on to straighten out another matter such as this one, and if they did not do this, they, and everyone liable, would be put in jail. Five thousand dollars was the consideration of said note. This note was for a debt Thompson owed the Bank. He had been loaned the money before that. It was for a debt already owing the Bank by the said Thompson. That is, about \$4,500.00. He was in debt to the Bank. It is a fact that his debt to the Bank was past due when said note was delivered to the Bank. It was all past due, and the amount was around, in round figures, \$4,500.00. I don't know just exactly the amount. It was \$4,500.00 or more due the Bank." In answer to the question: "How much of the consideration of the note sued on was for money loaned or advanced to the said Thompson contemporaneously with the delivery of said note to said Bank?", witness replied: "Oh, after the discount was taken off, probably \$200.00. Not over \$200.00 I will say in round figures. Maybe not that much. I don't remember just the figures." "At the time the Bank was closed up by Superintendent of Banks, A.E. Walker, Mr. Walker came to the Bank of Bay Minette, and told the Bank of Bay Minette that their bank was insolvent, from the fact that this note referred to above and endorsed by the defendants was not worth the paper it was written on, and if they did not turn this Bank over to the Baldwin County Bank, who would pay the depositors he would put them all in jail. The Cashier of the Bank, and one or two of the directors came to me and told me what Mr. Walker had said, and asked me what to do about it. I told them that so far as the jail end of it was concerned, that there was nothing to that, but that Mr. Walker could close the Bank, solvent or not solvent, if he said so, and to let 'er go; that I had the majority

of the stock and was loser, but I wanted to see everybody get their money that had deposited there, and as soon as the Baldwin County Bank taken the Bank over and paid the depositors, that we would see about the jail proposition; that I would see that there was a suit brought against Mr. Walker and we would fight this thing out to a finish and if he had any grounds for putting anybody in jail, why he would certainly have a chance to do it. We did file suit against the Superintendent of Banks, and the case run along in court for two or three years, me, myself, footing most of the bills and lawyer's fees. We lost the case, however, but if we had appealed it to the Supreme Court, I feel quite sure that we would have won the case. The whole matter was a frame-up between the Baldwin County Bank, Frank Stone of Bay Minette, Alabama, and Alex Walker, Superintendent of Banks. As to who wins this case it is immaterial to me, and I am not interested, as my money is lost."

The defendant then offered in evidence, the answers of A. E. Walker, which are as follows:

"I am the plaintiff in this cause, and am Superintendent of Banks for Alabama, and have held this position since March 2nd., 1911. I am acquainted with William Powell, but did not know that he was acting as President and Manager of the Bank of Bay Minette in September, 1914. During that time, I do not know that the said Powell was connected with said Bank in any capacity. What I stated in my affidavit before C.H. Lapsley, on January 2nd., 1915, which I filed in the Chancery Court in Mobile, in the case of the Bank of Bay Minette, et al, vs. Baldwin County Bank, was as follows: 'But affiant is informed and believes and so charges that he (Powell) was in fact the active and controlling spirit in the organization of the Bank, and since its organization, he has practically dominated and controlled the officers and directors of the Bank and has been the dominating and controlling influence in the Bank.' So it will be seen that I made this statement based upon information and belief, stating same to have been based upon information and belief in said affidavit." In answer to the third interrogatory propounded to witness, as follows: "What connection did William Powell have with the procuring of the note sued on in this action? Did he or not, representing the Bank of Bay Minette, go

with one Thompson to procure the endorsements on said notes? What representations, if any, did he or the said Thompson make to the defendants in this action to procure such endorsements? After such endorsements were procured, who held possession of the notes until they were turned over to the Bank of Bay Minette, and who delivered them to said Bank?", the witness answered: "I have no personal knowledge as to the matters inquired about in the third interrogatory or the fourth interrogatory, (the fourth interrogatory inquired as to whether or not, at the time such notes were delivered to the Bank of Bay Minette, said Thompson was indebted to the bank, and if so, in what sum, and whether or not these notes were used in payment, or partly in payment of Thompson's indebtedness to the bank, what consideration Thompson received from the bank for these notes, whether any money was paid to him by the bank as proceeds or part of the proceeds of these notes, and if so, when and in what amounts, and whether or not the Bank was notified by the endorsers, or some of them, or their attorney, not to discount such notes, and whether or not this was done before they were discounted.), but will have to refer the said question to the Cashier of the Bank at that time, who was Mr. C.S. Woodson, whom I am informed still resides at Bay Minette, Baldwin County, Alabama, and who will answer said interrogatory if he has personal knowledge of the matters inquired about." Witness further answered: "I was not present at the time that the note sued upon was procured, and therefore have no personal knowledge as to whether William Powell had any connection therewith, or was even present at the time the said note was procured. I do not know that William Powell ever represented the Bank of Bay Minette, and as I was not present at the time the endorsements on the said notes were procured, I cannot say whether Powell went with Thompson at the time the notes were endorsed or not. I was not present, did not hear any of the conversation, and therefore do not personally know anything that transpired or was said at the time the notes were endorsed. I have no personal knowledge as to who held possession of the said notes, until they were turned over to the Bank of Bay Minette, nor who delivered them to said Bank. I cannot answer this interrogatory of my own personal knowledge, but the books of the Bank indicate that at about the time the said notes were delivered to said Bank, Thompson was indebted to it in the sum of \$2,530.00. These notes were used as

full payment of said indebtedness, and the sum of \$2311.00, was placed to the credit of the said Thompson and which sum was drawn out by the said Thompson subsequent thereto by checks. I am advised, and so believe, that the Bank was not notified by the endorsers, or any of them, or their attorney, not to discount such note, prior to the time that the said notes were discounted, and the deal closed as between the said Thompson and the Bank of Bay Minette."

The Court refused to permit the introduction of same, unless answers of Woodson, the cashier, were also introduced, which counsel for defendant declined to do, and excepted to the ruling of the Court.

"Mr. Webb: Now I offer the answers made by A.E. Walker under the order of the court.

Mr. Gordon: Are you going to read them all.

Mr. Webb: No, sir, just this third interrogatory.

Mr. Gordon: I object to him reading a portion of the answer unless he reads them all.

The Court: I sustain the objection.

Mr. Webb: We except.

The Court: What are you going to offer?

Mr. Webb: This is the answer of the plaintiff A.E. Walker; he was the Superintendent of Banks at the time this thing happened.

The Court: You took his depositions?

Mr. Webb: I propounded interrogatories to him under the statute and he declined to answer most of them and then I got an order from you, I think it was, to require him to answer some that he refused to answer, and then he answered some of them.

Mr. Gordon: The answers in conformity with the court's order have been filed; there were some he said he had no personal knowledge of.

The Court: I believe I will overrule your objection.

Mr. Gordon: You don't understand- Mr. Webb attempted to read our answers, we have answered- a part of the answers were simply made by Mr. Walker of facts he had in his own knowledge and the court ordered that whoever knew it must answer them all and he said he was going to read a part and I said unless he reads them all I object to him reading any of them.

The Court: You only offer a portion of the answers?

Mr. Webb: I attempted to offer in evidence a while ago the answers of Walker after the court had instructed him to answer the questions I propounded to him----

The Court: In reading to the court---

Mr. Webb: That's all I intended reading when your Honor sustained the objection.

The Court: That particular portion of the answers to the interrogatories--?

Mr. Webb: Ordered by the court---

The Court: Which the court directed that Walker answer and not the

interrogatories- the depositions taken on interrogatories as a whole?

Mr. Webb: There is no deposition, this is interrogatories.

The Court: Propounded under the statute and you only offer just that portion that the court--?

Mr. Webb: That's what I did a while ago.

The Court: And the other portion you do not propose to offer?

Mr. Webb: I didn't then but your Honor held that if I offered any part of his deposition I would have to offer the whole, so I am going to offer the whole now.

The Court: I said I would overrule the objection.

Mr. Gordon: I am afraid you don't catch the question- Mr. Walker says "I can't answer them, I have no personal knowledge", and the Court ordered us to get the person who did and answer them and Mr. Woodson answered them and attached them as a part of his answer and Mr. Webb is going to read the whole answer propounded to Mr. Walker. Anybody that is qualified can answer the question that Mr. Woodson has answered and he wishes--

The Court: I sustain the objection.

Mr. Webb: We except. Now I am offering the entire testimony of A.E. Walker who brought this suit, his answers to the interrogatories.

Mr. Gordon: Including Woodson's?

Mr. Webb: I am offering Walker's now.

Mr. Gordon: The court has already ruled on that; he has sustained an objection and said you had to put in there what Mr. Woodson said in answer to your questions.

The Court: You will have to offer all; if you offer any portion you will have to offer it all.

Mr. Webb: Offer Walker's and Woodson's, too?

The Court: Yes sir, you can't cull out that part which is against you and offer that part in your favor.

Mr. Webb: I call the Court's attention to the fact that this is not a suit by a corporation but by the Superintendent of Banks, and interrogatories were propounded to the Superintendent of Banks as the plaintiff in this case.

The Court: Let's get that straight.

Mr. Webb: I offered the interrogatories as answered by A.E. Walker and Mr. Gordon objects to my offering them unless I also offer the interrogatories answered by Woodson, which I decline to do.

The Court: The interrogatories which you requested that Walker answer and that you obtained from the court an order that if it was not within his knowledge then he was required to have some one within the bank's knowledge to answer that interrogatory, you don't offer that?

Mr. Webb: No, sir,- you sustain the objection?

The Court: Yes sir.

Mr. Webb: We except.

J. W. Frost was then examined as a witness for the defendant, and testified that he was one of the Directors of the Bank of Bay Minette, that was taken in charge some years ago by A. E. Walker, Superintendent of Banks; that up to the time it had been doing business about three or four months. That he was a Director at the time the notes sued on were taken by the Bank, but did not know anything about their being taken. That after he was elected a director in the bank, he was not called to transact any business until he was notified by Mr. Woodson that the State Bank Examiner would be down, and for him to come at once. That there were no meetings of the Board of Directors during the time he was a Director that the only time they met was when they elected him as a director. That during the time he was a director, he was in the bank several times, cannot say how many.

Q. Who was conducting the affairs of the Bank?

Attorney for the plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, "who were conducting", if the Court please, may mean a lot of things which may be entirely foreign to this case.

The Court: I overrule the objection.


Mr. Gordon: We except.

Ans. Mr. Powell seemed to be the manager of the bank.

Counsel for the plaintiff moved to rule out the answer.

The Court: I will exclude it.

Mr. Webb: Defendant excepts.



Q. What was Mr. Powell doing during that time in the management of the Bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and for the opinion of the witness, and there is no authority shown and Mr. Powell has testified, - they have introduced his testimony, - that he had no office and no authority.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. Well, when you were about the bank, did you see Mr. Powell in there too?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I overrule the objection.

Counsel for plaintiff: We except.

Q. When you were in and about the bank, did you see Mr. Powell in there, too? Ans. Yes sir.

Q. Where was he, what part of the bank?

Counsel for plaintiff. We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I can't see the competency.

Counsel for defendant: I want to show whether he was under the counter or back behind there where the bank was running.

Counsel for plaintiff: I have been behind the counter of a bank myself.

Q. What did you see him doing in and around the bank there?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. What did you see him doing in and around the bank there tending to show that he was in the management or direction of the Bank?

Counsel for plaintiff: We object to the question on the ground that it calls for the opinion of the witness and immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. You say that the only two directors meetings had while you were a director was when you were elected, and when Mr. Walker came down and took charge? Ans. Yes sir.

Q. Was Mr. Powell in those meetings?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony. Mr. Powell says he was not a director. He might have had a right there. Mr. Powell's own testimony is that he was not an officer or director; a porter can be at a director's meeting.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. At those directors' meetings you speak of, was or not what was done there in accordance with the directions of Mr. Powell?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for defendant: We except.

Q. During the time that you were connected with the bank, did or not to your knowledge, Mr. Powell ever carry on any transactions for the Bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. During that time, did he attend to the affairs of the bank under the authority and direction of the directors of the bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and hearsay testimony, and the opinion of the witness, and the gentleman says he was only at one directors' meeting, and the evidence which should prevail would be the minutes of the directors' meeting, if such were kept.

The Court: I overrule the objection.

Counsel for plaintiff: We except.

Q. Answer the question. Ans. What was the question?

Q. (Former question read to witness.) And. I never heard it mentioned.

Q. At the time, on August 26th., 1914, and for several days before and after that, who was the manager of that bank?

Counsel for plaintiff: I object to the evidence because it is immaterial, irrelevant and incompetent and calls for the opinion of the witness.

The Court: I don't know whether it calls for the opinion or not.

Counsel for Plaintiff: The election of officers of a bank are in writing, and they keep records of them, and I think the law of Alabama requires that.

The Court: I overrule the objection.

Counsel for Plaintiff: We except.

Q. All right? A. Who was in charge of the business?

Q. Former question is read to witness. Ans. Well, Mr. Woodson and Mr. McDavid, Bid McDavid, I don't know his initials, were inside I think under the dictation of Mr. Powell.

Counsel for Plaintiff: We move to exclude his answer.

The Court: Don't say what you think about the matter.-
it is ruled out.

Ans. It was with me.

The Court: What he says he thinks it was under the dictation of Mr. Powell is ruled out, all he said about Mr. Powell is excluded.

Counsel for Defendant: We except.

Q. According to your best recollection, Mr. Fraost, who was the Manager of that Bank at that time?

Counsel for plaintiff: We object to the question; he has already answered it, and it is not according to his best recollection.

Q. Did or not, with the knowledge and consent of the officers and directors of the bank, William Powell have the direction of the affairs of the Bank in August, 1914?

Counsel for plaintiff: We object to the question, because it calls for immaterial, irrelevant and incompetent testimony, and for the opinion of the witness.

The Court: I sustain the objection.

Counsel for Defendant: We except.

The Court: He has already stated that Mr. Frast and Mr. Woodson had charge of the bank.

Counsel for plaintiff: Mr. McDavid, your Honor.

Counsel for defendant: No sir, he said they were "inside"()- he didn't say they were in charge.

Witness: Inside.()

Q. During that time, what acts do you know of that Powell performed and did in the management of that bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and for the opinion or conclusion of the witness. That's for the jury to say; he might state the facts and let the jury conclude.

The Court: I sustain the objection.

Counsel for defendant: We except.

JOHN LANGHAM, one of the defendants, introduced as a witness for the defendants, testified as follows:

Q. Mr. Langham, you are one of the defendants in this case? Ans. Yes sir, unfortunately.

Counsel for plaintiff: We move to rule out his answer, unfortunately.

The Court: It is excluded.

Q. You know Mr. Wm. Powell, Mr. Langham? Ans. Yes sir.

Q. Where did you know him? Ans. The first time I ever met him was at my place up there; I was introduced to him by Mr. Thompson's son.

Q. Mr. Thompson's son? Ans. Yes sir.

Q. (hands witness paper) Ans. Yes, sir, these are the notes.

Q. Did you endorse those notes? Ans. Yes sir.

Q. Was that the time you have reference to? Ans. Yes sir.

Q. Was that about the date of these notes? Ans. That was- yes sir, in August.

Q. August, 1914? Ans. Yes sir.

Q. Just state what occurred at the time that the notes were endorsed?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and it is shown that they were not at the bank, nobody there representing the bank and whatever might have happened there is immaterial, irrelevant and incompetent in this case.

The Court: I sustain the objection.

Counsel for defendant; We except.

Q. Did or not, at that time, Mr. Powell mention- after you signed the notes who took the notes away? Ans. Mr. Powell.

Q. Mr. Langham, at the time that you endorsed that note and just prior thereto, what, if anything, did this man Powell, who you say took the notes away with him after endorsement, say to you as an inducement to get you to endorse the notes?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and for the opinion of the witness.

The Court: I sustain the objection.

Counsel for defendant: We except.

Q. What, if anything, did this man Powell say to you on that occasion, before you endorsed the note in regard to endorsing it?

Counsel for plaintiff: We object to the question on the ground that

it calls for immaterial, irrelevant and incompetent testimony, and calls for the opinion of the witness.

The Court: I sustain the objection.

Counsel for defendant: We except.

Q. What, if anything, did Powell say to you just prior to your endorsing that note?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and it is a repetition of the other two questions.

The Court: I sustain the objection.

Counsel for defendant: We except. To save time may it be agreed that each of these questions were propounded to the other defendants, and the same objections were made and sustained and exceptions reserved?

Counsel for plaintiff: Yes sir.

The Court: All you have to do is to name the witnesses.

Mr. Brooks:

Under this agreement it is understood that the following named defendants would testify in this case, and that the same questions are considered as having been propounded to each of said defendants, separately, that the same objections were made by the plaintiff to each of said questions, on the grounds stated above, that the court sustained each of said objections and that in each instance the defendants and each of them excepted to the ruling of the Court, J.H. Briars, C.W. Hall, and E. Ward. That Mr. J.H. Briars, whom it is admitted was present with Alex Boone, now deceased, when the said Powell came to them with the notes is understood to have been interrogated with the same questions as put to the witness, Langham, with respect to any conversation had between Powell and said Boone, that the same objections are considered to have been made by the plaintiff to such question to the witness Briars, upon the grounds stated above, that said objection is sustained, and that the defendant, Briars, as Executor of the estate of Alex Boone, deceased excepts.

Counsel for defendant: The defendants rest.

Counsel for plaintiff: We rest.

The foregoing was all of the evidence introduced on the trial of the above cause.

The Court, at the request in writing of counsel for plaintiff, gave the following charge in writing:

"I charge you, Gentlemen, that if you believe the evidence in this case, you should return a verdict in favor of the plaintiff for the amount sued for, with interest thereon from maturity of said notes." Given, Leigh, Judge.

And now come the defendants in the above entitled cause,

and present this, their bill of exceptions, to Honorable John D. Leigh, the Judge who presided at the trial of said cause, and pray that the true date of such presentment be endorsed hereon, and that the same be signed as a true and correct bill of exceptions in said cause, within the time allowed by law.

Leon G. Brooks,
Stone & Stone,
James H. Webb,
AS ATTORNEYS FOR APPELLANT.

I, John D. Leigh, the Judge presiding at the trial of the above entitled cause, do hereby certify that the above and foregoing bill of exceptions was duly presented to me on the 23rd day of August, 1923, the said date being the true date of such presentment, and the same being endorsed by me is true date.

John D. Leigh
JUDGE PRESIDING.

The above and foregoing bill of exceptions is a true and correct bill of exceptions in said cause, and having been presented to me on the 23rd day of August, 1923, within the time allowed by law for its presentment, and so endorsed by me, is hereby signed by me as the Judge presiding at the trial of said cause, as a true and correct bill of exceptions, on this, the 19th day of November, 1923.

John D. Leigh
JUDGE PRESIDING.

Q. They took it over from you as cashier? A. Yes, sir.

Q. During your time as cashier did you see those notes? (hands witness papers) A. Yes.

Q. At the time that you were cashier did those notes come into your hands as such cashier? A. Yes, sir.

Q. Will you state to the jury the transaction by which those notes came into the possession of the Bank of Bay Minette through you-who was in charge at that time of the actual operation of the inside workings of the bank? A. I was supposed to be.

Q. You were? A. Yes, sir.

Q. Did you take those notes for the bank? A. Yes, sir.

Q. Did you part for a consideration for those notes? A. Well, now, the best of my---

Q. Have you got the books here? A. I suppose Mr. Stapleton has them; I haven't got them.

Q. Look at that book (hands witness book) I hand to you and tell us what book that is? A. Well, this here, I don't know what you would call it now, it has been quite a while since -- I reckon this is the note register, aint it Mr-----

Q. Is that one of the books of the Bank of Bay Minette while you were there as cashier? A. Yes, sir.

Q. Did you make any entries in that book? A. Yes, sir.

Q. Have you got any account against the maker of those notes? See who the maker is? A. C. B. Thompson.

Q. You say you have? A. Yes, sir.

Q. State to the jury, Mr. Woodson, the transaction by which you got those notes? A. Here is one note for \$2000 and one for \$3000.

Q. Is that the note you have in your hand? A. Yes, sir, I suppose so.

Q. As cashier of that bank have those notes ever been paid to your knowledge? A. Yes, sir.

Q. Been paid? A. No, sir - no.

Q. How did you get them for the bank of Bay Minette? A. Well, Thompson owed the bank some money.

Q. How much? A. I don't know; the books will show it, I suppose.

Q. Have you got the books? A. I haven't got them all.

Q. Does that book show it? A. It shows it somewhere but I don't know where it is, some place in here.

Q. See if you can find it - is there an account in there against Mr. Thompson? A. Here's a debit right here.

Q. What did you give for those notes for the bank if you know - I will get at it that way? A. I gave him credit for the notes, gave him a note he owed in exchange and credit for the balance whatever that was.

Q. In your recollection how much was that? A. I don't remember.

Q. Please see if you can find on the book where that is - you were the book keeper at that time? A. No, sir, Mr. McDavid was the book keeper.

Q. You are sure you made a deposit to his credit? A. Yes, sir.

Q. Was that drawn out by him by checks? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. And the best of your recollection what was that amount? A. I don't remember.

Q. Show me, please sir, the account of Mr. Thompson -this is Mr. Thompson's account. A That's where---

Q. The notes were received? A. Yes, sir.

Q. At that time how much money did he owe? A. I suppose that's it.

Q. Are those your figures? A. No, sir.

Q. You don't know---? A. That's McDavid's writing, I suppose.

Q. Were those notes deposited in the Bank of Bay Minette as collateral or were they sold direct and Thompson got the money on them?

- A. They were put in the bank for an old note he owed at the bank and credit for the balance whatever it was.
- Q. Did you mark that old note paid and deliver it to him? A. Yes, sir.
- Q. And placed to his credit the balance? A. Yes, sir.
- Q. Which he drew out by checks afterwards? A. Yes, sir, whatever it was - I don't remember.
- Q. At that time did you make the transaction with Mr. Thompson? A. Yes, sir, I suppose so, part of it.
- Q. In taking the note, these new notes? A. No, sir, Mr. Powell brought the notes in to me.
- Q. Was Mr. Thompson there? A. I don't remember whether he was or not; I don't think he was; it has been about nine years ago.
- Q. And those notes were not taken as collateral security, it was a payment of the old note and a deposit made to him for the balance? A. Yes, sir.
- Q. At that time did the bank or you or any officer in charge on the bank, running the bank have any notice of any outstanding equities against the notes or did you buy them straight out considering them good notes? A. Taken them straight out, considered them good notes.

CROSS EXAMINATION, by Mr. Webb:

- Q. Mr. Woodson, you said a while ago that you partly handled this matter, what did you mean by that? A. Well, you see Powell went with Thompson and got these notes endorsed and brought them back to me, that's what I meant.
- Q. Who was Powell? A. Wm. Powell.
- Q. What did he have to do with the bank? A. He had that much to do with it.
- Q. How much? A. Getting those notes signed up and endorsed.
- Q. He had pretty much everything to do with it, didn't he?

MR. GORDON: We object unless he had some official connection - he could state that.

THE COURT: I sustain the objection.

MR. WEBB: We can't prove everything at one time.

THE COURT: Your question is objectionable, that he had pretty well everything to do with the bank.

MR. WEBB: Our contention is going to be that it was not necessary really for Powell to have any official connection with the bank, if the bank authorities there were allowing him to hold himself out as running the bank there or doing things of this kind and if in this particular instance he was acting as agent for the bank in getting these endorsements in order to save the bank on this bum loan to Thompson that any notice he acquired in the getting of these notes was notice and knowledge on the part of the Bank. That's what we conceive to be the law and it is along that line I wish to read these authorities. (Reads to court) -- We expect to show that in this instance they adopted the acts of Powell acting for the bank in this connection. We expect to show in the course of this examination that Powell was the moving spirit in the organization of this bank; that he dominated and con-

trolled its business; that the directors didn't meet; that Powell, who was practically in charge most of the time, he just controlled pretty nearly everything in connection with the bank; that he approved loans and made loans; that in this instance this defendant Thompson had become indebted to the bank in a large sum for which they had no security and that Powell representing the bank went up and made these representations and false statements to the endorsers to get them to endorse the note.

MR. GORDON:

I object to all of that going before the jury unless he proves it by the witness on the stand.

MR. WEBB:

I can't prove it all by this witness.

MR. GORDON:

I have no objection to the jury hearing the legal aspects but I do object to him arguing now something something that he does not expect to prove by this witness.

MR. WEBB:

We expect to prove----

THE COURT:

If you are going to review your whole case it is entirely improper for a lawyer to do that before he makes proof, let him state facts which he expects to prove which may not be proven at all and which the court may hold is improper to prove.

MR. WEBB:

I think under the authorities read, in my opinion, we have a right to show the course of the dealings of this man Powell with the bank, and, if possible that he was the controlling influence and spirit in the management there, acquiesced in and recognized by the directors and other officers of the bank.

THE COURT:

I sustain the objection.

MR. WEBB:

(Argues)

THE COURT:

My idea is that the question asked is clearly irrelevant because you assume in the first place that the witness has knowledge of the fact that the man Powell did have authority to do pretty much everything with the bank, while it don't make any difference whether he did or not. The question is whether or not he had a right to make this loan, is the question in issue. Now my understanding - we had just as well get at it now - my understanding is that a corporation or a bank can only act through its duly authorized agent, and who are acting in the line of their duty and within the scope of their authority unless it is shown that the bank or the corporation subsequently ratified and con-

MR. WEBB: There is no difference between us.

MR. GORDON: Not a bit, if the court pleases.

Q. Now Mr. Woodson, at the time that this transaction took place who was president of the bank? A. The president?

Q. Yes? A. J. E. McDavid.

Q. Did he or not attend to any of the affairs of the bank? A. No, sir.

Q. Q. The affairs of the bank were conducted by you and Mr. Powell, weren't they? A. I can't say that they were conducted by Mr. Powell; I think I conducted my part pretty well.

Q. You conducted your part - what part did Mr. Powell have in the running of the bank at that time, the approval and making of loans, conduct and management of the bank?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except.

Q. In this loan that was made to Thompson, you say you don't--- that he owed the bank at the time that these notes were taken, you say you don't remember the amount of it? A. No, sir, I don't remember it.

Q. (By Mr. Gordon) Let's get all of the facts out, look at that and see if you can refresh your recollection? A. He owed the bank at the time this transaction was made an amount, this amount here and this here amount was taken up with these notes and he was given credit with the difference.

Q. What was the amount he owed? A. I don't know - you can look here for yourselves if you like, on this ledger if you like.

Q. You were in charge of the bank at that time? A. Yes, sir.

Q. Were these the books? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. And you can't tell from the books of the bank what was the amount that was due by this man at that time? A. This entry was made on the 28th if I make no mistake; these notes were on the 28th; I don't just exactly understand it; I don't understand the entry now I am not familiar with that.

Q. This amount of money that was owed there by Thompson at the time these notes were taken was that a loan that had been made to him by the bank? A. Yes, sir.

Q. Who made that loan?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except. This is on cross examination, if it please the court and I really do not know what he is going to say; I think it may develop that he and Powell made this original loan for the bank and this is a continuation of the same transaction.

THE COURT: Suppose he and Powell did; he has testified so

far that he was the cashier of the bank and that he had the authority to make this transaction.

MR. WEBB: I want to inquire into all those matters and see just what authority he had; I rather anticipate that I will be able to show that they did not have any meetings of the board of directors, that the president didn't conduct any of the business and that he and Powell did every thing that was done.

THE COURT: I don't see the relevancy of who made the loan.

MR. WEBB: Your honor will remember that in one of the cases I read it stated if a corporation allowed some one to act for it though that might not be strong evidence it is sufficient evidence to go to the jury.

MR. GORDON: We object to anything he did unless it is shown that it was ratified by the board of directors of the bank.

THE COURT: I sustain the objection.

MR. WEBB: We except.

Q. Allright now, Mr. Gordon on his direct examination, Mr. Woodson, asked you to state the circumstances in connection with the getting and taking of these particular notes - Now I will ask you the same question over, will you please tell the jury the transaction with reference to the taking and getting of these particular notes.

MR. GORDON: We object to the question unless he is confined to the time that the Bank through Mr. Woodson got these notes and not what happened before on the ground that it is immaterial, irrelevant and incompetent.

THE COURT: I think whatever connection he had with Mr. Thompson at the time he presented the notes at the bank would be relevant.

MR. WEBB: Does your honor sustain the objection?

THE COURT: No, sir, I overruled the objection.

Q. Allright, sir. A. What was the question?

Q. (question read to witness) A. These notes here?

Q. Yes, sir. A. Powell taken these notes and went with Thompson, I suppose he did, he taken the notes-----

MR. GORDON: We object.

THE COURT: I sustain the objection.

A. Powell got these notes signed up and endorsed and brought them back and turned them into me and I entered them up; what he had to do with it I don't know.

Q. Before Powell went and got those notes did you and Powell have any discussion between yourselves as to the getting of them in order to save the bank on this bad loan to Thompson?

MR. GORDON: I object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except.

Q. Did you or not have any talk with Powell before he went and got these notes in reference to the going and getting of the same? A

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except.

Q. Mr. Woodson, when Mr. Powell went to get these notes did you give him any instructions in regard to the same?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except.

Q. Did you consult with anyone, and if so, who, in regard to the taking of these notes in satisfaction of the indebtedness of Thompson and for the further extension of credit to him?

MR. GORDON: We object unless it was some officer or person in authority.

THE COURT: I overrule the objection.

MR. GORDON: We except.

A. I don't remember whether I did or not.

Q. Sir? A. I can't say.

Q. What authority, if any, did you have in that connection and how was it conferred Mr. Woodson? A.

MR. GORDON: We object to the question on the ground that it calls for the opinion of the witness, "what authority if any you had and how was it conferred". If it was conferred in writing that would be the best evidence without his opinion and the question in its compound form is subject to objection.

THE COURT: I overrule the objection.

MR. GORDON: We except.

Q. (question read to witness) A. I don't know.

Q. You don't know? A. No, sir.

Q. Well, what was the custom of the bank there in the making of loans and extending credit of this character and the custom followed by the bank?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony and the pleadings are specific and upon which there is only one issue, the plea raising the proposition that these notes were endorsed on a certain condition and anything pertaining to the general business would not apply to these notes that notice and knowledge was brought home to the bank.

THE COURT: It would be relevant on the ground of whether or not he had authority as the agent acting within his line---

MR. GORDON: The cashier----

THE COURT: If he is the same one that made the notes- he testified that he did---?

MR. GORDON: That he received the notes.

THE COURT: I think he would have the right to show whether he had the authority to act for and in behalf of the bank and the bank had been accepting his acts.

MR. GORDON: We except.

Q. (Question is read to the witness)

THE COURT: Go ahead and answer the question, what the custom of the bank was in making loans and extending credit.

A. Well, the best of my remembrance it was left up to the cashier and the directors. If the cashier had an application for a loan he consulted some of the directors, he didn't always call a meeting, the ones he could get hold of if I remember right, the ones I could see handy I consulted them and made it, that's the best of my knowledge if I remember right.

Q. Then, as I understand you, the practice followed by the Bank of Bay Minette in making loans was an application would be made to the cashier and he would ask one of the directors about it and if he and the director approved of it the loan would be made - is that what I understand you to say? A. Yes, sir.

Q. Was that the course pursued in regard to this particular loan? A. If I remember right it was.

Q. Who did you consult with? A. I consulted with Catrett, I think.

Q. Was he a director? A. I think he was; I am not sure; the books will show it I think.

Q. You don't even know whether Catrett was a director at that time?

A. I think the books will show that he was.

X Q. Now did you consult with Catrett in regard to making the original loan to Thompson whereby he became indebted to the bank?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except. I might ask him if he is not confusing this transaction with the original transaction - that's the one he consulted Catrett about.

THE COURT: That's not the question propounded to him.

MR. WEBB: Do you sustain the objection?

THE COURT: No, sir, I want the question read. (Question is read) That's the way I understood it; I sustain the objection.

X MR. WEBB: We except.

Q. Now Mr. Woodson, are you not confusing this transaction with the original loan to Thompson whereby he became indebted to the bank and aint that the loan you consulted with Catrett about and not this loan?

MR. GORDON: We object to the question on the ground that it is immaterial, irrelevant and incompetent about the first loan.

THE COURT: I overrule the objection.

MR. GORDON: We except.

A. I don't remember.

Q. You don't remember? A. No, sir.

Q. Now Mr. Woodson, didn't Wm. Powell, the man whom you say----

(Court here took a recess for dinner)

Q. Mr. Woodson, when Mr. Powell went out to get the endorsements on these notes did he take those notes with him? A. Yes, sir.

Q. Were they made out and signed by Thompson before he left? A. No, sir.

Q. Whose writing is that, do you know?

MR. GORDON: We object, there is no non est factum plea or nothing questioning any part of it and it is immaterial, irrelevant and incompetent.

THE COURT: I don't suppose the object is to show non est factum; I overrule the objection.

MR. GORDON: We except.

A. The best of my remembrance that is Wm. Powell's handwriting right along here.

MR. GORDON: We move to rule out his answer on the ground that it is immaterial, irrelevant and incompetent.

THE COURT: I overrule the motion.

MR. GORDON: We except.

Q. Is that the correct date put in there, is that the date he wrote that there and went off with them, the 26th of August?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony and sheds no light on any issue in the case.

THE COURT: I overrule the objection.

MR. GORDON: We except.

A. I suppose it is; I don't know.

MR. GORDON: We move to exclude his answer, I suppose it is.

THE COURT: I will exclude it.

Q. The best of your recollection was the date put on there the day he took them and went with them? A

MR. GORDON: We object because it is not shown that he saw the paper before it was signed.; there is no evidence that he saw it before it was taken out.

MR. WEBB: He testified that Powell took them out.

MR. GORDON: He has never testified that he knew when it was written.

MR. WEBB: That's what I am trying to find out, I asked him if that was written on the date of the note there.

A. I don't know.

Q. What's your best recollection on that subject? A.

MR. GORDON: We object--

A. I haven't any recollection.

Q. When did Powell - how long after Powell took those out was it before he brought them back and gave them to you?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except. - this is a hostile witness and if the witness will step into the other room I will tell the court what it is.

MR. GORDON: It makes no difference---

MR. WEBB: I will explain to your honor--

MR. GORDON: I object- he has been talking about things he hasn't

~~and~~ gone into yet and the jury is sitting here hearing things----

THE COURT: Do you want the jury to retire?

MR. GORDON: I don't know what he wants to do; it seems to be a profound secret from the witness, what he wants you to know - I suppose the jury had better go out. It is a novel proposition, he don't want the witness to know and yet he wants to tell it in the presence of the jury and the witness.

THE COURT: I understood the gentleman to say that he didn't want the witness to hear it, in other words a leading question. If it is a question you don't want the jury to hear----

MR. GORDON: Just go ahead.

MR. WEBB: I expect, if permitted, may it please the court, to show that one of the defendants called up Mr. Woodson down there---

MR. GORDON: We shall object to that; he expects to show something and this witness has nothing in the world to do with that, answering that question - that's something else entirely, he expects something he is going to show by some other witness---

MR. WEBB: Does your honor care to hear from me?

THE COURT: Yes, sir.

MR. WEBB: I expect to show by one of the defendants, if permitted to do so, to show by one of the defendants that he called up Mr. Woodson to tell him the condition upon which these endorsements were gotten and for the bank not to take this paper unless those conditions were complied with and I want to show further if I can that that happened before Powell got back with the notes. Now I can't show everything at once; I don't know that I will be able to show that but I want to try to show that and if before Powell got back with that note and the bank took it Mr. Woodson who was cashier of the bank and so far as we know was acting for the bank in this matter, was informed of these things I think it is material.

MR. GORDON: Answering the gentleman, I have no disposition to hide anything from the jury that is legitimate and I respectfully submit to my able friend he can ask Mr. Woodson "didn't he call you up and tell you " something. He can certainly lay the proper predicate to this witness now.

MR. WEBB: Your honor knows in examining a hostile witness you do not want to discuss always just what you are driving at until you have proved some other facts that can not be questioned after they are out and that's why I am asking the question the way I did.

MR. GORDON: Your honor doesn't know judicially that witnesses are not truthful, you don't assume that they untruthful.

THE COURT: (Has Last question read.)

- A. I can't say.
- Q. You have no idea, Mr. Woodson? A. He brought them back immediately.
- Q. Q. You mean the same day? A. I don't know whether it was the same day or the following day; I wouldn't say.
- Q. You can't tell whether it was one day or 2 days or three days? A. I wouldn't say whether he brought it back the same day it was signed up or the following day or later.
- Q. You don't know? A. I don't remember.
- Q. You don't know how many days before he brought it back? A. No, sir.
- Q. Now before he brought those notes back to you and they were delivered to ~~you~~ the bank didn't you receive a 'phone call from one of the defendants telling you about the circumstances under which these endorsements were obtained and telling you not to discount those notes?

MR. GORDON: We object to the question on the ground that it is immaterial, irrelevant and incompetent and vague and don't say where it was and which one of the defendants it was and if he is laying a predicate he must be specific as to the time, place and person.

THE COURT: I will sustain the objection in the shape it is in.

- Q. Didn't Mr. Briars there call you up on Tuesday morning before these notes were delivered to you and explain to you the circumstances under which these endorsements had been gotten and tell you for the bank not to take these notes?

MR. GORDON: I shall object if the court pleases to the portion of the question which calls for the opinion of the witness, "explain to you the circumstances", he can ask him if Mr. Briars didn't call him up before he got the note, about when it was and what Mr. Briars said.

THE COURT: I think you will have to lay the predicate; I sustain the objection.

MR. WEBB: We except.

- Q. Mr. Woodson, when Mr. Powell brought these notes back to you had they been signed by Thompson at that time or did he sign them afterwards? A. They had been signed by Thompson when he brought them back.
- Q. Now before he took - he went out with these notes to get these endorsements did he not say to you that you and Catrett should not have loaned Thompson that \$2000 and more than you had loaned him without security and that if the bank examined came down and found that out that it would cause trouble and did you and he not agree then that he should go out and endeavor to get a note with endorsements in order to protect the bank on this loan that was made to Thompson without security?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except.

- Q. Those notes I had reference to, did you furnish those blanks to Mr. Powell? A. Yes, sir.
- Q. Well, when Mr. Powell came back and gave you the notes what did he say Mr. Woodson? A. I don't remember what he said.
- Q. You don't remember what he said? A. No, sir.
- Q. He said something, didn't he? A. He must have.
- Q. Sir? A. He must have but I don't remember what he said.

X RE DIRECT EXAMINATION, by Mr. Gordon:

- Q. You say that who brought those notes back to you? A. Powell.
- Q. Was he by himself or was Mr. Thompson with him? A. Thompson wasn't with him.
- Q. Thompson wasn't with him? A. No, sir. The best of my remembrance he wasn't with him.
- Q. When he brought them back those endorsements were on the back were they?? A. Yes, sir.
- Q. Did he tell you what to do with the notes, Mr. Thompson - Mr. Powell?

MR. WEBB: I object to the question on the ground that it is leading. I asked him what he said and he said he didn't know

- Q. When he handed you the note what did he say about it if anything? A. I don't remember.
- Q. What did you do with them? A. I taken up the old notes and gave him credit for the difference.
- Q. Did you stamp the old note paid? A. Yes, sir.
- Q. And gave him credit where for the difference? A. In the ledger on his account.
- Q. On that ledger there? A. Yes, sir.
- Q. Open it to the account please sir (hands witness book)-- since we adjourned for lunch have you looked over those books? A. Yes, sir.
- Q. Have you refreshed yourself on them? A. Yes, sir.
- Q. Are you now prepared to explain the account? A. Yes, sir, I think so.
- Q. Allright, sir. A. Well, he taken up one note for \$1000, one note for \$530 and one for \$1000.
- Q. When you say he took them up you mean you marked them paid and delivered them to him? A. Yes, sir.
- Q. And gave him credit with the difference of the amount of those small notes less interest.
- Q. How much was that? A. \$2311.
- Q. So he got cash \$2311 which you put to his account in the bank and which he drew out? A. Yes, sir.
- Q. That's correct, is it? A. Yes, sir.

RE CROSS EXAMINATION, by Mr. Webb:

- Q. Mr. Woodson, aint this what occurred, when Powell came back with these notes he came in with Thompson's boy and handed you the notes and says "here are the notes, we have got ours, damn the Gid

Murphy stock of cattle" and you then turned over to Thompson's boy those notes you say were taken up and he started off with them and Powell told you to go and get those notes back from the boy and you went or Powell went and got the notes back from the boy? A. If Thompson's boy was along with Powell I don't remember it.

Q. You don't remember that, other~~er~~ conversation either? A. No, sir

Q. Mr. Woodson, on your direct examination you said that you turned all of the assetss, etc., of the bank of Bay minette over to the Superintendent of Banks, did you testify to that on your direct examination? A. I suppose you would call it turning it over to him him, I don't know what else you could call it.

Q. You testified to that on your direct examination didn't you? A. Yes, sir

Q. Are you not mistaken and didn't you and the officers of the bank turn all of the assetss over to the Baldwin County Bank instead of the superintendent of banks? A. The best of my remembrance that's the way it was; it was first turned over to them and later it was turned over to the superintendent of banks, the superintendent of banks taken it over - I don't know how that was.

Q. You don't really know how that was? A. About how long it was turned over.

Q. First everything was turned over to the Baldwin County Bank and the Baldwin County Bank agreed to pay the depositors?

MR. GORDON: We object to the question on the ground that it is immaterial, irrelevant and incompetent whether it was turned over to the bank.

THE COURT: I don't see the relevancy of whether it was turned over to the bank or somebody else.

MR. WEBB: He testified on his direct examination that all of the assetss were turned over to the superintendent of banks and he says now that they were turned over to the Baldwin County Bank, everything was, and the Baldwin County Bank agreed to pay the depositors of this bank.

MR. GORDON: He didn't answer that question.

Q. Din't you say that all of the assrtss of the Bank of Bay Minette by authority of the board of directors were turned over to the Baldwin County Bank upon condition of the Baldwin County Bank paying the depositors of the Bank of Bay Minette?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony and no such issue is raised.

MR. WEBB: If the plaintiff is not the owner of this property--

MR. GORDON: You haven't got a plea to that effect.

MR. WEBB: Why did you ask him about it then?

MR. GORDON: That's allright, I am running this side, you run yours.

THE COURT: I sustain the objection.

MR. WEBB: We except.

- Q. Now Mr. Woodson, who refreshed your recollection during the dinner hour in regard to what those books show, Mr. Van Stapleton over there? A. Yes, sir.
- Q. He showed you what they meant and explained them to you, is that correct? A. He called me and showed them to me, said we will go in and refresh your mind on these books.
- Q. Explained to you what they meant? A. No, sir, he didn't have to explain to me what they meant.
- Q. You couldn't tell anything about them before dinner, what did he tell you? A. That's what he told me.
- Q. What? A. Just what I just told you, he called me and says we will go in and refresh your mind on these books.
- Q. He explained the books? A. He just showed me the entries as they are.

RE DIRECT EXAMINATION, by Mr. Gordon:

- Q. What you have testified to is what the books show is true and correct? A. Yes, sir.
- Q. And you remember now that is what happened? A. Yes, sir.

MR. GORDON: We rest.

MR. WEBB: We offer the depositions of Mr. Wm. Powell.

THE COURT: Are there any objections?

MR. GORDON: There were objections filed and cross interrogatories filed but the clerk for some reason never sent them off. If Mr. Webb will allow me to file objections we will not take advantage of that to show that my heart is in the right place.

MR. WEBB: There is no motion to suppress the depositions.

MR. GORDON: I object to him introducing the depositions.

THE COURT: At this stage of the game?

MR. GORDON: Yes, sir.

THE COURT: That should have come before entering upon the trial.

MR. WEBB: Now I offer the answers made by A. E. Walker under the order of the court.

MR. GORDON: Are you going to read them all.

MR. WEBB: No, sir, just this third interrogatory.

MR. GORDON: I object to him reading a portion of the answer unless he reads them all.

THE COURT: I sustain the objection.

MR. WEBB: We except.

THE COURT: What are you going to offer?

MR. WEBB: This is the answers of the plaintiff A. E. Walker; he was the superintendent of banks at the time this thing happened.

THE COURT: You took his depositions?

MR. WEBB: I propounded interrogatories to him under the statute and he declined to answer most of them and then I got an order from you, I think it was, to require him to answer some that he refused to answer and then he answered some of them.

MR. GORDON: The answers in conformity with the courts order have been filed; there were some he said he had no personal knowledge of.

THE COURT: I believe I will overrule your objection.

MR. GORDON: You don't understand - Mr. Webb attempted to read our answers, we have answered- a part of the answers were simply made by By Mr. Walker of facts he had in his own knowledge and the court ordered that whoever knew it must answer them all and he said he was going to read a part and I said unless he reads them all I object to him reading any of them.

THE COURT: You only offer a portion of the answers?

MR. WEBB: I attempted to offer in evidence a while ago the answers of Walker after the court had instructed him to answer the questions I propounded to him----

THE COURT: In reading to the court---

MR. WEBB: That's all I intended reading when your Honor sustained the objection.

THE COURT: That particular portion of the answers to the interrogatories--?

MR. WEBB: Ordered by the court----

THE COURT: Which the court directed that Walker answer and not the interrogatories - the depositions taken on interrogatories as a whole?

MR. WEBB: There is no deposition, this is interrogatories.

THE COURT: Propounded under the statute and you only offer just that portion that the court--?

MR. WEBB: That's what I did a while ago.

THE COURT: And the other portion you do not propose to offer?

MR. WEBB: I didn't then but your honor held that if I offered any part of his deposition I would have to offer the whole so I am going to offer the whole now.

THE COURT: I said I would overrule the objection.

MR. GORDON: I am afraid you don't catch the question - Mr. Walker says "I can't answer them, I have no personal knowledge", and the court ordered us to get the person who did and answer them and Mr. Woodson answered them and attached them as a part of his an-

swer and Mr Webb is going to read the whole answer propounded to Mr. Walker. Anybody that is qualified can answer the question that Mr. Woodson has answered and he wishes ----

THE COURT: I sustain the objection.

MR. WEBB: We except. Now I am offering the entire testimony of A E Walker who brought this suit, his answers to the interrogatories.

GORDON: Including Woodson's?

MR. WEBB: I am offering Walker's now.

MR. GORDON: The court has already ruled on that; he has sustained an objection and said you had to put in there what Mr Woodson said in answer to your questions..

THE COURT: You will have to offer all; if you offer any portion you will have to offer it all.

MR. WEBB: Offer Walker's and Woodson's, too?

THE COURT: Yes, sir, you can't cull out that part which is against you and offer that part in your favor.

MR. WEBB: I call the court's attention to the fact that this is not a suit by a corporation but by the superintendent of banks and interrogatories were propounded to the superintendent of banks as the plaintiff in this case.

THE COURT: Let's get that straight.

MR. WEBB: I offered the interrogatories as answered by A E Walker and Mr. Gordon objects to ~~them~~ my offering them unless I also offer the interrogatories answered by Woodson, which I decline to do.

THE COURT: The interrogatories which you requested that Walker answer and that you obtained from the court an order that if it was not within his knowledge then he was required to have some one within the bank's knowledge to answer that interrogatory, you don't offer that?

MR. WEBB: No, sir - you sustain the objection?

THE COURT: Yes, sir.

MR. WEBB: We except.

X J. W. FROST, a witness for the defendants, having been first duly and legally sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

DIRECT EXAMINATION, by Mr. Webb:

Q. Mr. Frost, what are your initials? A. J. W. Frost.

- Q. Were you one of the directors of the bank of Bay Minette that was taken charge of some years ago by A E Walker, Superintendent of Banks, that up to that time had been doing business as a bank here in Bay Minette? A. Only for about the 3 last months, 3 or 4, along about in June to Sept., I think.
- Q. Were you a director in August when these notes sued on in this case were taken by the bank? A. I was but it was unknowingly to me, I didn't know anything about it.
- Q. You were a director at that time? A. Yes, sir.
- Q. After you were elected a director - you say you were elected a director in June? A. Some time in June, I think, I wouldn't be for certain, I was only in 3 or 4 months at the outside before it was busted.
- Q. June of what year, do you remember? A. Must have been about 1914 I think- somewhere along there.
- Q. June of the same year the bank was closed? A. Yes, sir, from along in June, some time, till in Sept.
- Q. After you were elected a director of the bank what did you have to do with the management of the affairs of the bank?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I overrule the objection.

MR. GORDON: We except.

- Q. Answer the question? A. I wasn't called to transact any business till I was notified by Mr Woodson that the bank- the state bank e ~~arrangement~~ inspector would be down and for me to come at once.
- Q. There were no meetings of the board of directors during that time? A. No, sir, only the time they met and elected me as one of the directors.
- Q. No more meetings till the bank was shut up? A. No, sir.
- Q. During that time, Mr. Frost, were you frequently about the bank?
- A. I was here several time; I can't say how many different times.
- Q. Who was conducting the affairs of the bank?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, "Who were conducting" if the court please may mean a lot of things which may be entirely foreign to this case.

THE COURT: I overrule the objection.

MR. GORDON: We except.

- A. Mr. Powell seemed to be the manager of the bank.

MR. GORDON: We move to rule out that answer.

THE COURT: I will exclude it.

MR. WEBB: We except.

- Q. What was Mr. Powell doing during that time in the management of the bank?

MR. GORDON: We object to the question on the ground that it

calls for immaterial, irrelevant and incompetent testimony and for the opinion of the witness and there is no authority shown and Mr. Powell has testified - they have introduced his testimony - that he had no office and no authority.

THE COURT: I sustain the objection.

MR. WEBB: We except.

Q. Well, when you were about the bank did you see Mr. Powell in there, too? A.

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I overrule the objection.

MR. GORDON: We except.

Q. When you were in and about the bank did you see Mr. Powell in there, too? A. Yes, sir.

Q. Where was he, what part of the bank? A.

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I can't see the competency.

MR. WEBB: I want to show whether he was under the counter or back behind there where the bank was running.

MR. GORDON: I have been behind the counter of a bank myself.

Q. What did you see him doing in and around the bank there? A.

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except.

Q. What did you see him doing in and around the bank there tending to show that he was in the management or direction of the bank?

MR. GORDON: We object to the question on the ground that it calls for the opinion of the witness and immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except.

Q. You say that the only two directors meetings had while you were a director was when you were elected and when Mr Walker came down and took charge? A. Yes, sir.

Q. Was Mr. Powell in those meetings?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony. Mr Powell says he was not a director. He might have had a right there. Mr. Powell's own testimony is that he was not an officer or director; a porter can be at a director's meeting.

THE COURT: I sustain the objection.

MR. WEBB: We except.

Q. At those directors' meetings/you speak of was or not what was done there in accordance with the directions of Mr. Powell?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except.

Q. During the time that you were connected with the bank did or not to your knowledge Mr. Powell ever carry on any transactions for the bank? A.

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

THE COURT: I sustain the objection.

MR. WEBB: We except.

Q. During that time did he attend to the affairs of the bank under the authority and direction of the directors of the bank? A

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony and hearsay testimony and the opinion of the witness and the gentleman says he was only at one directors' meeting and the evidence which should prevail would be the minutes of the directors meeting, if such were kept.

THE COURT: I overrule the objection.

MR. GORDON: We except.

Q. Answer the question? A. What was the question?

Q. Former question read to witness. A. I never heard it mentioned.

Q. At the time, on August 26, 1914, and for several days before and after that, who was the manager of that bank? A.

MR. GORDON: I object to the evidence because it is immaterial, irrelevant and incompetent and calls for the opinion of the witness.

THE COURT: I don't know whether it calls for the opinion or not

MR. GORDON: The election of officers of a bank are in writing and they keep records of them and I think the law of Alabama requires that.

THE COURT: I overrule the objection.

MR. GORDON: We except.

Q. Allright? A. Who was in charge of the business?

Q. Former question is read to witness. A. Well, Mr. Woodson and Mr. McDavid, Bud McDavid, I don't know his initials, were inside(?) I think under the dictation of Mr. Powell.

MR. GORDON: We move to exclude his answer.

THE COURT: Don't say what you think about the matter - it is ruled out.

A. It was with me.

THE COURT: What he says he thinks it was under the dictation of Mr. Powell is ruled out, all he said about Mr. Powell is excluded.

MR. WEBB: We except.

Q. According to your best recollection, Mr. Frost who was the manager of that bank at that time?

MR. GORDON: We object to the question; he has already answered it and it is not according to his best recollection.

Q. Did or not with the knowledge and consent of the officers and directors of the bank Wm. Powell have the direction of the affairs of the bank in August 1914?

MR. GORDON: We object to the question because it calls for immaterial, irrelevant and incompetent testimony and for the opinion of the witness.

THE COURT: I sustain the objection.

MR. WEBB: We except.

THE COURT: He has already stated that Mr. Frost and Mr. Woodson had charge of the bank.

MR. GORDON: Mr. McDavid, your honor.

MR. WEBB: No, sir, he said they were "inside" (?) - he didn't say they were in charge.

WITNESS: Inside. (?)

Q. During that time what acts do you know of that Powell performed and did in the management of that bank?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony and for the opinion or conclusion of the witness. That's for the jury to say; he might state the facts and let the jury conclude.

THE COURT: I sustain the objection.

MR. WEBB: We except.

JNO. LANGHAM, a witness for the defendants, having been first duly and legally sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

DIRECT EXAMINATION, by Mr. Webb:

Q. Mr. Langham, you are one of the defendants in this case? A. Yes sir, unfortunately.

MR. GORDON: We move to rule out his answer, unfortunately.

THE COURT: It is excluded.

Q. You know Mr. Wm. Powell, Mr. Langham? A. Yes, sir.

Q. Where did you know him? A. The first time I ever met him was at my place up there; I was introduced to him by Mr. Thompson's son.

Q. Mr. Thompson's son? A. Yes, sir.

Q. (hands witness paper) A. Yes, sir, these are the notes.

Q. Did you endorse those notes? A. Yes, sir.

Q. Was that the time you have reference to? A. Yes, sir.

Q. Was that about the date of these notes? A. That was- yes, sir, in August

Q. August 1914? A. Yes, sir.

Q. Just state what occurred at the time that the notes were endorsed?

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony and it is shown that they were not at the

bank, nobody there representing the bank and whatever might have happened there is immaterial, irrelevant and incompetent in this case.

THE COURT: I sustain the objection.

MR. WEBB: We except.

- Q. Did or not at that time Mr. Powell mention - after you signed the notes who took the notes away? A. Mr. Powell.
- Q. Mr. Langham, at the time that you endorsed that note and just prior thereto what if anything did this man Powell, who you say took the notes away with him after endorsement, say to you as an inducement to get you to endorse the notes?

MR. FORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony and for the opinion of the witness.

THE COURT: I sustain the objection.

MR. WEBB: We except.

- Q. What if anything did this man Powell say to you on that occasion before you endorsed the notes in regard to endorsing it? A.

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony and calls for the opinion of the witness.

THE COURT: I sustain the objection.

MR. WEBB: We except.

- Q. What if anything did Powell say to you just prior to your endorsing that note? A.

MR. GORDON: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony and it is a repetition of the other two questions.

THE COURT: I sustain the objection.

MR. WEBB: We except. To save time may it be agreed that each of these questions were propounded to the other defendants and the same objections were made and sustained and exceptions reserved?

MR. GORDON: Yes, sir.

The Court: All you have to do is to name the witnesses.

MR. BROOKS: Under this agreement it is understood that the following named defendants would testify in this case and that the same questions are considered as having been propounded to each of ~~them~~ said defendants separately, that the same objections were made by the plaintiff to each of said questions on the grounds stated above, that the court sustained each of said objections and that in each instance the defendants and each of them excepted to the ruling of the court J.H. Briars, C.W. Hall and E. Ward. That Mr. J. H. Briars whom it was admitted was ~~present~~ present with Alex Boone now deceased when the said Powell came to them with the notes is understood to have been interrogated with the same questions as put to the witness Langham with respect to any conversation had between Powell and said Boone, that the same objections are

considered to have been made by the plaintiff to such question to the witness Briars upon the grounds stated above, that said objection is sustained and that the defendant Briars as executor of the estate of Alex Boone, decd., excepts.

MR. WEBB: The defendants rest.

MR. GORDON: We rest.

State of Alabama, Baldwin County.

I HEREBY CERTIFY that the above and foregoing is a true and correct transcript of the evidence and proceedings in the cause therein mentioned.

IN TESTIMONY WHEREOF I have hereunto set my hand on this the 11th day of July, 1923.



Official Court Reporter
21st Judicial Circuit of Ala.

STATE OF ALABAMA
COUNTY OF BALDWIN

H. H. Montgomery,
Superintendent of Banks,
Complainant,
- vs -
John Langham, et als,
Defendants.

IN THE CIRCUIT COURT.

No. 1255.

D E P O S I T I O N.

Deposition of William Powell, witness sworn and examined under and by virtue of a commission issued out of the Circuit Court for Baldwin County, State of Alabama, in a certain cause therein pending wherein H. H. Montgomery, Superintendent of Banks, is complainant and John Langham, et als, are defendants, and the said William Powell, the witness named in said commission, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To interrogatory 1. (a) he saith:

My name is William Powell, my age is fortyeight years, and my place of residence is 1628 West Fourteenth Street, Oklahoma City, Oklahoma.

To interrogatory 1. (b) he saith:

Yes, Sir.

To interrogatory 1. (c) he saith:

Well, from the first part of 1913 I believe it was, I can't tell exactly, up until about three years ago. Up until about 1921 I reckon.

To interrogatory 1. (d) he saith:

Well, I organized the Bank and owned about one-half the stock. I really owned controlling interest in the Bank at one time, but the stock was not held in

my name, it was held in the name of William Townsend of Flomaton, Alabama. Several others owned a little stock in their names, but I can't remember them all. I owned stock in other names, but I can't remember all the names just now. I organized the bank, had controlling interest, and held this stock. I always worked for the interest of the Bank.

To interrogatory 1. (e) he saith:

This Bank was organized by me and began business sometime in 1913, I can't remember the dates just now.

To interrogatory 1. (f) he saith:

Judge William H. Anderson, I think. He is a lawyer, also of Bay Minette.

To interrogatory 1. (g) he saith:

E. W. McCloud, I think.

To interrogatory 1. (h) he saith:

I never was the President of the Bank.

To interrogatory 1. (i) he saith:

Yes, Sir. As I stated above, I was a stockholder but the stock was held in other parties' names.

To interrogatory 1. (j) he saith:

I was a stockholder from the time the Bank started until it was taken over by the Baldwin County Bank but the stock, you understand, stood in the name of this man, Townsend, and others.

To interrogatory 1. (k) he saith:

No, Sir.

To interrogatory 1. (l) he saith:

I never was a Director.

To interrogatory 1. (m) he saith:

I had no office at all, other than as I stated above. I worked for the interest of the Bank at all times and spent my money to do so because I owned a controlling interest in the Bank.

To interrogatory 2. (a) he saith:

Yes, Sir.

To interrogatory 2. (b) he saith:

Yes, Sir.

To interrogatory 2. (c) he saith:

Yes, Sir. C. B. Thompson had succeeded in putting over a deal to get something like \$4,500 through one R. E. Catrett who was a stockholder and director in the Bank, also the Cashier, to buy cattle with. As soon as I found out that Thompson had gotten this money, I felt sure that the money would never be collected out of Thompson unless we got a sufficient security for same. Thereupon I got in touch with Mr. Thompson. Not being able to collect the money, he promised to get a note endorsed by the defendants herein and also by one W. D. Owens, but it was not convenient to see Mr. Owens and the Bank was perfectly satisfied with the endorsements of the defendants on the note given by Thompson for \$5,000.00. Now I think that about covers that.

To interrogatory 2. (d) he saith:

There was only one. That is all.

To interrogatory 2. (e) he saith:

At Atmore, Alabama.

To interrogatory 2. (f) he saith:

It is hard for me to say exactly. The fact is, he took me in his car and we drove about seventy-five miles around to see these parties. I will say it was signed at the Bank of Bay Minette before we left on the trip.

To interrogatory 2. (g) he saith:

Well, Langham was at home. Hall was at home, and Ward was at home. Bryars was on his way between home and Atmore, Alabama. We met him on the road.

To interrogatory 2. (h) he saith:

Yes, Sir.

To interrogatory 2. (i) he saith:

I saw them all sign it.

To interrogatory 2. (j) he saith:

Myself and the Cashier of the Bank of Bay Minette, C. S. Woodson. He was the Cashier at the time this note was made. McCloud was the first Cashier.

To interrogatory 2. (k) he saith:

Yes, Sir.

To interrogatory 2. (l) he saith:

No, I did not have any official position except that I owned controlling interest in the Bank in

other people's names and worked for the interest of the Bank at all times.

To interrogatory 2. (m) he saith:

My duties were to try to see that the Bank was a success as my interest demanded it. I think that is sufficient.

To interrogatory 2. (n) he saith:

Yes, Sir.

To interrogatory 2. (o) he saith:

Yes, Sir. I obtained the endorsement of each of them, except myself and Woodson, the Cashier, as I stated above, obtained the endorsement of Thompson because he dealt with the Cashier direct.

To interrogatory 2. (p) he saith:

Well, there wasn't really anything said by me to the endorsers. Mr. Thompson took me to them in his car and told them that he wanted to get them to endorse his note to the Bank of Bay Minette for \$5,000.00 and they discussed the matter. In fact, he had it understood with them before we went there that they would endorse this note. That was my understanding. We went there and he told them his business, and they endorsed the note. I didn't have any particular conversation with them more than a couple of people would ordinarily have when they would meet up and Thompson after we had been with them a few minutes told them that he wanted to get them to endorse that note they had promised to endorse for him and they did so. One or two of the endorsers, I don't recall just which ones, but one or two of them made the remarks that old Thompson had some friends left yet and we need not get uneasy or afraid as he always had friends enough to back him up for a little money when he needed it.

To interrogatory 2. (q) he saith:

No, there wasn't anything said to me by any of these defendants with reference to Owens signing the note but Thompson had promised the Cashier of the Bank and me that he would get Owens to sign the note but as stated above, we were satisfied with the endorsements of the defendants and it being inconvenient to see Mr. Owens as he was not in Atmore, Alabama, we declined to get him to endorse the note, but so far as them saying anything to me about Owens endorsing the note, there was nothing said by the defendants to me about it.

To interrogatory 2. (r) he saith:

I believe I have answered that.

To interrogatory 2. (s) he saith:

Not by me. There might have been by Thompson. Thompson, no doubt, promised them Owens would sign the note. In other words, I have an idea that Thompson did do it, no doubt he did, but there was nothing said about it to me by the defendants.

To interrogatory 2. (t) he saith:

Nothing was said.

To interrogatory 3. (a) he saith:

Let's see. I feel sure it was the same day but I am not perfectly certain. It might have been the next morning. I don't remember whether we made the trip and got back and the note was delivered that evening or not, but I feel pretty sure it was. If it wasn't, it was the next day.

To interrogatory 3. (b) he saith:

I did.

To interrogatory 3. (c) he saith:

The Cashier, C. S. Woodson.

To interrogatory 3. (d) he saith:

No, nothing except that I turned the note over to the Cashier of the Bank of Bay Minette and told him that I had got the note endorsed and had saved the Bank and I hoped that there would never be another transaction of the kind pulled off by letting a man like Thompson have an amount of money like that.

To interrogatory 3. (e) he saith:

The fact is, I turned the note over to the Cashier and told him that there was the note and at the same time I saved him and all the Directors because here is the proposition: They had made this loan against the Banking Laws and I told him to get his Board of Directors together and pass on this loan favorably and get it all signed up in the proper shape; that I did not want to have to be called on to straighten out another matter such as this one and if they did not do this, they and everyone liable would be put in jail.

To interrogatory 3. (f) he saith:

Five thousand dollars.

To interrogatory 3. (g) he saith:

This note was for a debt Thompson owed the Bank. He had been loaned the money before that.

To interrogatory 3. (h) he saith:

It was for a debt already owing the Bank by the said Thompson. That is, about \$4,500.00.

To interrogatory 3. (i) he saith:

Yes, Sir. He was in debt to the Bank.

To interrogatory 3. (k) he saith:

It is a fact that his debt to the Bank was past due when said note was delivered to the Bank.

To interrogatory 3. (l) he saith:

It was all past due and the amount was around, in round figures \$4,500.00. I don't know just exactly the amount. It was \$4,500.00 or more due the Bank.

To interrogatory 3. (m) he saith:

Oh, after the discount was taken off, probably \$200.00. Not over \$200.00 I will say in round figures. Maybe not that much. I don't remember just the figures.

To interrogatory 4. he saith:

At the time the Bank was closed up by Superintendent of Banks, A. E. Walker, Mr. Walker came to the Bank of Bay Minette and told the Bank of Bay Minette that their Bank was insolvent from the fact that this note referred to above and endorsed by the defendants was not worth the paper it was written on, and if they did not turn this Bank over to the Baldwin County Bank, who would pay the depositors, he would put them all in jail. The Cashier of the Bank and one or two of the directors came to me and told me what Mr. Walker had said and asked me what to do about it. I told them that so far as the jail end of it was concerned, that there was nothing to that, but that Mr. Walker could close the Bank solvent or not solvent if he said so, and to let 'er go; that I had the majority of the stock and was loser, but I wanted to see everybody get their money that had deposited there, and as soon as the Baldwin County Bank taken the Bank over and paid the depositors, that we would see about this jail proposition; that I would see that there was a suit brought against Mr. Walker and we would fight this thing out to a finish and if he had any grounds for putting anybody in jail, why he would certainly have a chance to do it. We did file suit against the Superintendent of Banks and the case run along in Court for two or three years, me, myself, footing most of the bills and lawyer's fees. We lost the case, however, but if we had appealed it to the Supreme Court, I feel

quite sure that we would have won the case. The whole matter was a frame-up between the Baldwin County Bank, Frank Stone of Bay Minette, Alabama, and Alex Walker, Superintendent of Banks. As to who wins this case, it is immaterial to me and I am not interested as my money is lost.

William Powell

CERTIFICATE.

I, HUGH E. TYSON, the Commissioner named in said commission, hereby certify that I caused to come before me, on the 30th day of January, A. D., 1923, at Oklahoma City, Oklahoma, the witness, William Powell; that he was duly sworn and examined, and that his evidence was taken down, as near as may be, in his own language; that it was read over to him and subscribed by him in my presence; that I have personal knowledge of the identity of said witness, and that he is the person named in said interrogatories and commission annexed, and that I am not of counsel or kin to any of the parties to the cause, or in any manner interested in the result of the same.

As witness my hand and seal, this 30th day of January, A. D., 1923.

Fees:

Commissioner	\$ 3.30
Stenographer	1.70
Total	\$5.00

Hugh E. Tyson
Commissioner.

A. E. JACKSON,
STATE SUPERINTENDENT OF BANKS

VS.

JOHN LANGHAM, ET AL.

IN THE SUPREME COURT OF ALABAMA.
ON APPEAL FROM THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA.
SPRING TERM, 1923.

BILL OF EXCEPTIONS.

BE IT REMEMBERED that on this, the 29 day of
May, 1923, during the Spring Term of the Baldwin County
Circuit Court, the following proceedings were had therein:

Messrs. Gordon & Hall represented the plaintiff;
Leon G. Brooks, James H. Webb, and Stone & Stone, represented the
defendant.

The plaintiff introduced as a witness, C. S. WOODSON,
who testified that he was cashier of the Bank of Bay Minette, during
its operation, and when it was taken over by A.E. Walker, Superintend-
ent of Banks, for liquidation, and it was so taken over from him as
cashier, under the resolution of the Banking Board. That while he
was cashier, the note suit on came into his possession, as such.
Thompson was at that time indebted to the bank in the sum of
_____ dollars, on a note past due, which was
surrendered to him, and the balance was placed to his credit and
later checked out, *by Thompson*.

Q. At that time, did you make the transaction with Mr. Thompson?

Ans. Yes sir, I suppose so, part of it.

Q. In taking the note, - these new notes? Ans. No sir, Mr. Powell
brought the notes in to me.

Q. Was Mr. Thompson there? Ans. I don't remember whether he was
or not. I don't think he was. It has been about nine years ago.

Q. And these notes were not taken as collateral security, it was a
payment of an old note, and a deposit made to him for the balance?
Ans. Yes sir.

Q. At that time, did the bank or you, or any officer in charge of
the bank, running the bank, have any notice of any outstanding
equities against the notes, or did you buy them straight out,

Considering them good notes? Ans. Taken them straight out, considered them good notes.

CROSS EXAMINATION.

Q. Mr. Woodson, you said a while ago that you partly handled this matter, what did you mean by that? Ans. Well, you see Powell went with Thompson and got these notes endorsed and brought them back to me, that's what I meant.

Q. Who was Powell? Ans. William Powell.

Q. What did he have to do with the bank? Ans. He had that much to do with it.

Q. How much? Ans. Getting those notes signed up and endorsed.

Witness further testified that at the time J.E.McDavid was President of the bank, he did not attend to any of its affairs.

Q. The affairs of the bank were conducted by you and Mr. Powell, weren't they? Ans. I can't say that they were conducted by Mr. Powell; I think I conducted my part pretty well.

Q. You conducted your part,- what part did Mr. Powell have in the running of the bank at that time, the approval and making of loans, conduct and management of the bank? ~~xxxxThe~~

Attorney for plaintiff objected to the question on the ground that it called for immaterial, irrelevant and incompetent testimony.

The Court sustained the objection, and the defendant excepted.

Q. In this loan that was made to Thompson, you say you don't-- that he owed the bank at the time that these notes were taken, you say you don't remember the amount of it? And. No sir, I don't remember it.

Q. (By attorney for plaintiff): Let's get all of the facts out, look at that and see if you can refresh your recollection?

Ans. He owed the bank at the time this transaction was made, an amount, this amount here, and this here amount was taken up with these notes and he was given credit with the difference.

Q. What was the amount he owed? Ans. I don't know. You can look here for yourselves if you like, on this ledger, if you like.

Q. Were you in charge of the bank at that time? Ans. Yes sir.

Q. Were these the books? Ans. Yes sir.

Q. At that time? Ans. Yes sir.

Q. And you can't tell from the books of the bank what was the amount

considering them good notes? Ans. Taken them straight out, considered them good notes.

CROSS EXAMINATION.

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Q. What was the amount he owed? Ans. I don't know. You can look here for yourselves if you like, on this ledger, if you like.

Q. Were you in charge of the bank at that time? Ans. Yes sir.

Q. Were these the books? Ans. Yes sir.

Q. At that time? Ans. Yes sir.

Q. And you can't tell from the books of the bank what was the amount

that was due by this man at that time? Ans. This entry was made on the 28th, if I make no mistake; these notes were on the 28th; I don't just exactly understand it; I don't understand the entry now. I am not familiar with that.

Q. This amount of money that was owed there by Thompson at the time these notes were taken, was that a loan that had been made to him by the bank? And. Yes sir.

X Q. Who made that loan?

The attorney for the plaintiff objected to the question, on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court sustained the objection.

Mr. Webb: We except. This is on cross examination, if it please the Court, and I really do not know what he is going to say; I think it may develop that he and Powell made this original loan for the bank, and this is a continuation of the same transaction.

The Court: Suppose he and Powell did; he has testified so far that he was the cashier of the bank and that he had the authority to make this transaction.

Mr. Webb: I want to inquire into all those matters and see just what authority he had; I rather anticipate that I will be able to show that they did not have any meetings of the board of directors, that the president didn't conduct any of the business, and that he and Powell did everything that was done.

The Court: I don't see the relevancy of who made the loan.

Mr. Webb: Your Honor will remember that in one of the cases I read it stated if a corporation allowed some one to act for it though that might not be strong evidence it is sufficient evidence to go to the jury.

Mr. Gordon: We object to anything he did, unless it is shown that it was ratified by the board of directors of the bank.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. All right, Now, Mr. Gordon, on his direct examination, Mr. Woodson, asked you to state the circumstances in connection with the getting and taking of these particular notes- Now I will ask you the same question over, will you please tell the jury the transaction with reference to the taking and getting of these particular notes.

Mr. Gordon: We object to the question unless he is confined to the time that the Bank, through Mr. Woodson, got these notes and not what happened before, on the ground that it is immaterial, irrelevant and incompetent.

The Court: I think whatever connection he had with Mr. Thompson at the time he presented the notes at the bank would be relevant.

Mr. Webb: Does your Honor sustain the objection?

X The Court: No sir, I overruled the objection.

Q. All right, sir. And. What was the question?

Q. (Question read to witness). Ans. These notes here?

Q. Yes sir. Ans. Powell taken these notes and went with Thompson,

I suppose he did, he taken the notes-----

Mr. Gordon: We ~~except~~ ^{object}.

The Court: I sustain the objection.

Ans. He got those notes-----

The Court: You can only testify to what you know to be a fact.

Ans. Powell got these notes signed up and endorsed and brought them

back and turned them in to me, and I entered them up; what he had to do with it, I don't know.

Q. Before Powell went and got those notes, did you and Powell have any discussion between yourselves as to the getting of them in order to save the bank on this bad loan to Thompson?

Mr. Gordon: I object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. Did you or not have any talk with Powell before he went and got these notes in reference to the going and getting of the same?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. Mr. Woodson, when Mr. Powell went to get these notes did you give him any instructions in regard to the same?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Witness further testified that he did not remember, and could not say, whether or not he had consulted with any one in regard to taking the notes in satisfaction of the indebtedness of Thompson, and for the further extension of credit to him, and that he did not know

remembrance, the custom was to leave it to the cashier and directors in making loans. If the cashier had an application for a loan, he consulted some of the directors. He would ~~not~~ always call a meeting. He consulted the ones he could see handy. That he thought in this matter he consulted Catrett; that he did not know whether or not Catrett was director at that time, but thought the books would show that he was.

Q. Now did you consult with Catrett in regard to making the original loan ^X to Thompson, whereby he became indebted to the bank?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except. I might ask him if he is not confusing this transaction with the original transaction- that's the one he consulted Catrett about.

The Court: That's not the question propounded to him.

Mr. Webb: Do you sustain the objection?

The Court: No sir, I want the question read. (Question is read). That's the way I understood it; I sustain the objection.

Mr. Webb: We except.

Witness continuing said that he did not know whether he was confusing this transaction with the original loan to Thompson, whereby he became indebted to the bank, or whether or not that was the loan he consulted Catrett about; that when Powell went out to get the endorsements on the note sued on, he took the notes with him, and they were not made out and signed by Thompson, and to the best of his remembrance, the handwriting pointed out to him on the note was that of William Powell.

Q. ~~Is that the correct date put in there? Is that the date he wrote that there and went off with them, - the 26th. of August?~~

Ans. I suppose it is, I don't know.

Q. How long after Powell took those out was it before he brought them back and gave them to you? Ans. I can't say.

Q. You have no idea, Mr. Woodson? Ans. He brought them back immediately.

signed up, or the following day, or later.

X Q. You don't know? Ans. I don't remember.

Q. You don't know how many days before he brought it back. Ans. No sir.

Q. Now, before he brought those notes back to you, and they were delivered to the bank, didn't you receive a phone call from one of the defendants, telling you about the circumstances under which these endorsements were obtained and telling you not to discount those notes?

Mr. Gordon: We object to the question on the ground that it is immaterial, irrelevant and incompetent, and vague, and don't say where it was and which one of the defendants it was, and if he is laying a predicate, he must be specific as to the time, place and person.

The Court: I will sustain the objection in the shape it is in.

Q. Didn't Mr. Briars there call you up on Tuesday morning before these notes were delivered to you, and explain to you the circumstances under which these endorsements had been gotten, and tell you for the bank not to take these notes?

Mr. Gordon: I shall object if the Court pleases, to the portion of the question which calls for the opinion of the witness, "explain to you the circumstances", he can ask him if Mr. Briars didn't call him up before he got the note, about when it was, and what Mr. Briars said.

The Court: I think you will have to lay the predicate; I sustain the objection.

Mr. Webb: We except.

Q. Mr. Woodson, when Mr. Powell brought these notes back to you, had they been signed by Thompson at that time, or did he sign them afterwards? Ans. They had been signed by Thompson when he brought them back.

Q. Now, before he took - he went out with these notes to get these endorsements, did he not say to you that you and Catrett should not have loaned Thompson that \$2000 and more, that you had loaned him without security, and that if the bank examiner came down and found that out, that it would cause trouble, and did you and he not agree then, that he should go out and endeavor to get a note with endorsements, in order to protect the bank on this loan that was made to Thompson without security?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. Those notes I had reference to, did you furnish those blanks to Mr. Powell? Ans. Yes sir.

Q. Well, when Mr. Powell came back and gave you the notes, what did he say, Mr. Woodson? Ans. I don't remember what he said.

Q. You don't remember what he said? Ans. No sir.

Q. He said something, didn't he? Ans. He must have.

Q. Sir? Ans. He must have, but I don't remember what he said.

RE-DIRECT EXAMINATION.

When Powell brought the notes back, Thompson was not with him, and the endorsements were on the back of them. Witness does not remember what, if anything, he had to say when he handed him the notes. He stamped the old note paid, and gave him credit for the difference.

Witness was then handed the ledger, and said he thought he was prepared to explain the entries. That Powell took up the note for a thousand dollars, one for five hundred and thirty, and one for a thousand, and \$2311.00 was placed to ~~his~~ ^{Thompson's} credit; that he ^{Thompson} subsequently drew it out.

ON RE-CROSS EXAMINATION, counsel for defendant asked the witness if this was not what occurred: "When Powell came back with these notes, he came in with Thompson's boy, and handed you the notes, and says: 'here are the notes, we have got ours, damn the Gid Murphy stock of cattle', and you then turned over to Thompson's boy those notes you say were taken up, and he started off with them, and Powell told you to go and get those notes back from the boy, and you went, or Powell went, and got the notes back from the boy?" ~~xxxxxx~~ Witness replied that if Thompson's boy was along with Powell, he didn't remember it.

Q. You don't remember that other conversation either? Ans. No sir.

Witness further testified that the assets of the ~~Bank of Bay~~ Minette were first turned over to the Baldwin County Bank, instead of the Superintendent of Banks, ~~the Baldwin County Bank agreeing to pay~~ the depositors. That, during the recess, Mr. Stapleton had explained the books to him, was how he was able to testify more clearly than before dinner, but that what he testified to that the books showed was true and correct, and that he then remembered what happened.

The plaintiff offered in evidence the notes set out in complaint and rested, said notes are as follows:

Bay Minette, Ala., Aug 26 1914	fees	\$2000.00
		\$4.56
	DATE PAID	BALANCE
		\$2004.56

Thirty days after date, for value received, I, we, or either of us, promise to pay to the order of
BANK OF BAY MINETTE

Two Thousand ----- Dollars,
With interest from maturity at the rate of
8 per cent per annum payable at BANK OF BAY MINETTE,
Bay Minette, Alabama.

The parties to this instrument, whether maker, endorser, surety or guarantor, each for himself, hereby severally waive as to this debt, or any renewal thereof, all right to exemption under the Constitution and Laws of Alabama, as to personal property, and they each severally agree to pay all costs of collection, or securing or attempting to collect or secure this note, including a reasonable attorney's fee, whether the same be collected or secured by suits or otherwise. And the maker, endorser, surety or guarantor of this note, severally waives demand, presentment, protest, notice of protest, suit, and all other requirements necessary to hold them, and they agree that time of payment may be extended without notice to them of such extension. The bank at which this note is payable is hereby authorized to apply on or after maturity, to the payment of this debt any funds in said bank belonging to the maker, surety, endorser, guarantor, or any one of them.

Sec. by
P.O.

C.B.Thompson.

No. 462 Notice
Due Sept 25 14
Ex.
To

The following endorsement is made in red ink across the face of said note: "Protested for non payment Sept 25th., 1914 E.W.McLeod, Notary Public, Baldwin Co., Ala."

And endorsements on the back of said note are as follows:

Lottie
"John Langham/ C.W.Hall Atmore J H Bryars Stock Alex Boone Atmore
E Word Atmore Bank of Bay Minette By C.S.Woodson, Cash.
State of Alabama)
Baldwin County)

I, J.H.H.Smith, Judge of Probate for said county, hereby certify that the following privilege tax has been paid on the within instrument as required by Acts 1902 & 1908 viz: \$ 3 cts.00
J.H.H.Smith, Judge of Probate
by J.L.Kessler Clerk

The State of Alabama,) Office of the Judge of the Probate Court,
Baldwin County.)

I, J.H.H.Smith, Judge of said Court in and for said County, do hereby certify that the within instrument was filed in this office for record on the 5th day of Sept 1914, at o'clock , and I further certify that the same is duly recorded in Record Book No. 14 Mtgs Page 345 and duly examined.
Witness my hand this 8th day of Sept 1914. J.H.H.Smith, Judge of Probate Court, by J. L. Kessler, Clerk.

6 mos Bay Minette, Ala., Aug 26 1914 \$3000.00
 Sixty days after date, for value received, I, we, or either of us, promise to pay to the order of Date Paid Balance

BANK OF BAY MINETTE

Three Thousand----- Dollars,
 With interest from maturity at the rate of
 8 per cent per annum payable at BANK OF BAY
 MINETTE, Bay Minette, Alabama.
 The parties to this instrument, whether maker,
 endorser, surety, or guarantor, each for him-
 self, hereby severally waive as to this debt,
 or any renewal thereof, all right to exemptions
 under the Constitution and Laws of Alabama as to
 personal property, and they each severally agree
 to pay all costs of collection, or securing or
 attempting to collect or secure this note, in-
 cluding a reasonable attorney's fee, whether the
 same be collected or secured by suits or other-
 wise. And the maker, endorser, surety or guaran-
 tor of this note, severally waives demand, pre-
 sentment, protest, notice of protest, suit
 and all other requirements necessary to hold
 them, and they agree that time of payment may
 be extended without notice to them of such ex-
 tension. The bank at which this note is payable
 is hereby authorized to apply on or after maturity,
 to the payment of this debt any funds in said
 bank belonging to the maker, surety, endorser,
~~xx~~ guarantor, or any one of them.

Date June 1-1914.

C.B. Thompson

Sec. by Collateral note for \$700.00
 of M.W. McLain, L. Maths & J.B. English.
 P.O. Dated Mar 14, 1914, for \$250.00

NO. 463 Notice

Due Oct. 26 14

Ex.

To "

Across the face of said note, is the following: "Protested for
 non payment Oct 26 1914 E.W. McLeod, Notary Public, Baldwin Co., Ala."

And on the back of said note is the following: "John Langham C.W. Hall
 J.H. Bryars Alex Boone E. Ward Bank of Bay Minette by C.S. Woodson,
 Cash. State of Alabama,)
 Baldwin County.)

I, J.H.H. Smith, Judge of Probate for said coun-
 ty, hereby certify that the following privilege tax has been paid on
 the within instrument as required by Acts 1902 & 1908, viz \$ 4 cts. 50
 J.H.H. Smith, Judge of Probate, by J.L. Kessler, Clerk.

THE STATE OF ALABAMA,) OFFICE OF THE JUDGE OF THE PROBATE COURT.
 BALDWIN COUNTY.)

I, J.H.H. Smith, Judge of said Court in and for said County,
 do hereby certify that the within instrument was filed in this office
 for record on the 5th day of Sept 1914, at o'clock, and I
 further certify that the same is duly recorded in Record Book No. 14
 Mtgs, Page 345 and duly examined.

Witness my hand, this 8th day of Sept 1914. J.H.H. Smith, Judge
 of Probate Court, by J.L. Kessler, Clerk. "

The plaintiff offered in evidence certified copy of the minutes of the Banking Board, for the meeting held the 4th. day of November, 1914, reading as follows:

"Montgomery, Alabama, November 4th., 1914.

A meeting of the Banking Board of Alabama was held at the office of A.E.Walker, Superintendent of Banks, at twelve o'clock, on Wednesday, November 4th, 1914.

There were present at the meeting A.E.Walker, Superintendent of Banks and Geo. A. Searcy, E.J.Buck, the other member of the Board having been duly notified of the meeting, but was unable to attend the same.

The Superintendent of Banks stated to the meeting that he had called the same for the purpose of considering the question of taking possession of the property and assets of the Bank of Bay Minette, of Bay Minette, Alabama; that notice of the meeting of the Banking Board for this purpose had been served upon the cashier and vice-president of the bank; that said notices were served on C. S. Woodson, Cashier of the Bank of Bay Minette, and W. W. Sowell, Vice-President of the Bank of Bay Minette, there being no president of said bank. Said notices were served Friday, October 30th, 1914, more than three days before this meeting was called for, to-wit: the fourth day of November, 1914. Said notices which were served on C. S. Woodson and W. W. Sowell aforesaid were as follows:

"You are hereby notified to appear before the Banking Board of the State of Alabama, at the office of A.E.Walker, Superintendent of Banks for the State of Alabama, on Wednesday November 4th., 1914, at twelve o'clock, at Montgomery, Alabama; then and there to show cause why the said A.E.Walker, Superintendent of Banks for the State of Alabama should not take possession of the property and business of the said Bank of Bay Minette, for the purpose of liquidating the same as provided in section ten (10) of an Act entitled "An Act to Create a Banking Department of the State of Alabama ", General Acts of Alabama Session 1911, Page 50."

The Superintendent of Banks then stated to the meeting that in his opinion the Bank of Bay Minette was insolvent and that the bank was in an unsound and unsafe condition to transact the business for which it was organized and that it was unsafe for it to continue in business; whereupon the following resolution was offered by Geo. A. Searcy, and upon motion the same was unanimously adopted:

"That whereas the Bank of Bay Minette has been summoned before the Banking Board by proper notice, to show cause why the Superintendent of Banks should not forthwith take possession of the property and business of the said Bank of Bay Minette and should not retain such possession until such corporation or individual banker shall resume business or its affairs be finally liquidated, and

WHEREAS it appears to the Banking Board that the Bank of Bay Minette is in a failing and insolvent condition; that it has suspended payment of its obligations, and that said bank is in an unsound and unsafe condition;

NOW, THEREFORE, be it further resolved that A. E.Walker Superintendent of Banks is hereby authorized and instructed by the Banking Board of the State of Alabama to forthwith take possession of the property and business of the Bank of Bay Minette and retain such possession until such corporation or individual banker shall resume business or its affairs be finally liquidated."

Upon motion the Banking Board adjourned.

WITNESS our hands and seals this November 4th., 1914.

(signed) A.E.Walker (L.S.)

(Signed) Geo.A.Searcy(L.S.).

✓

STATE OF ALABAMA,)
MONTGOMERY COUNTY)

I, A. E. Walker, Superintendent of Banks for the State of Alabama, hereby certify that the foregoing is a true and correct copy of the minutes of the Banking Board of its meeting held in Montgomery, Alabama on the 4th day of November, 1914.

Given under my hand and seal of office, this the 18th day of May, 1915.

(Signed) A. E. Walker,

SUPERINTENDENT OF BANKS

(Seal)

8

The plaintiff offered in evidence the notes set out in the complaint, and rested. set out notes

h
The defendant offered in evidence the deposition of William Powell, which is as follows:

"My name is William Powell, my age is 48 years, and my place of residence is 1628 West Fourteenth Street, Oklahoma City, Oklahoma. I resided at Bay Minette, Alabama, from the first part of 1913, I believe it was, I can't tell exactly, up until about three years ago. Up until about 1921, I reckon. I organized the Bank of Bay Minette, and owned about one-half the stock. I really owned controlling interest in the Bank at one time, but the stock was not held in my name, it was held in the name of William Townsend, of Flomaton, Alabama. Several others owned a little stock in their names, but I can't remember them all. I owned stock in other names, but I can't remember all the names just now. I organized the bank, had controlling interest, and held this stock. I always worked for the interest of the Bank. This Bank was organized by me, and began business some time in 1913, I can't remember the dates just now. Judge William H. Anderson, I think, was President of said Bank when it began business. He is a lawyer, also of Bay Minette. I think E.W. McCloud was its cashier when it began business. I never was president of the Bank. As stated above, I was a stockholder, but the stock was held in other parties' names. I was a stockholder from the time the Bank started until it was taken over by the Baldwin County Bank, but the stock, you understand, stood in the name of this man, Townsend, and others. I was not a director of the said bank. I never was a director. I had no office at all, other than as I stated above. I worked for the interest of the Bank at all times, and spent my money to do so, because I owned a controlling interest in the Bank. I am acquainted with the defendants, John Langham, C.W. Hall, H.J. Bryars and E. Ward, and I was acquainted with Alex. Boone, now deceased. I know C.B. Thompson. I remember the circumstances connected with the execution of a note by C.B. Thompson to the Bank of Bay Minette, which note was indorsed by the defendants in this case. C.B. Thompson had succeeded in putting over a deal to get something like \$4,500 through one R.E. Catrett, who was a stockholder

and director in the Bank, also the Cashier, to buy cattle with. As soon as I found out that Thompson had gotten this money, I felt sure that the money would never be collected out of Thompson unless we got a sufficient security for same. Thereupon, I got in touch with Mr. Thompson. Not being able to collect the money, he promised to get a note endorsed by the defendants herein, and also by one W.D. Owens, but it was not convenient to see Mr. Owens and the Bank was perfectly satisfied with the endorsements of the defendants on the note given by Thompson for \$5,000.00. Now I think that about covers that. There was only one transaction of this kind. At the time said note was made, C.B. Thompson lived at Atmore, Alabama. It is hard for me to say exactly where the said note was signed by him. The fact is, he took me in his car and we drove about seventy-five miles around to see these parties. I will say it was signed at the Bank of Bay Minette before we left on the trip." In reply to the question, as to where the indorsers were when they indorsed the note, the witness replied: "Well, Langham was at home. Hall was at home, and Ward was at home. Bryars was on his way between home and Atmore, Alabama. We met him on the road." "Yes sir, I was present when said note was signed by Thompson and indorsed by the indorsers. I saw them all sign it. C.S. Woodson, the Cashier of the Bank of Bay Minette, and I negotiated with the said C.B. Thompson, in taking said note from him. Woodson was the Cashier at the time this note was made. McCloud was the first Cashier. I consulted with the said C.S. Woodson concerning the execution of said note to the Bank of Bay Minette. At the time the note was signed, or at the time it was indorsed, or at both times, I did not have any official position with the Bank of Bay Minette, except that I owned controlling interest in the Bank, in other people's names, and worked for the interest of the Bank at all times. My duties were to try to see that the Bank was a success as my interest demanded it. I think that is sufficient. I obtained the execution of said note by said Thompson. I obtained the endorsement of each of the endorsers, except myself and Woodson, the cashier, as I stated above, obtained the endorsement of Thompson, because he dealt with the Cashier direct. Well, there wasn't really anything said by me to the endorsers. Mr. Thompson took me to them in his car and told them that he wanted to get them to endorse his note to the Bank of Bay Minette for \$5,000.00,

and they discussed the matter. In fact, he had it understood with them before we went there that they would endorse this note. That was my understanding. We went there and he told them his business, and they endorsed the note. I didn't have any particular conversation with them, more than a couple of people would ordinarily have when they would meet ~~up~~ and Thompson after we had been with them a few minutes told them that he wanted to get them to endorse that note they had promised to endorse for him and they did so. One or two of the endorsers, I don't recall just which ones, but one or two of them made the remarks that old Thompson had some friends left yet, and we need not get uneasy or afraid, as he always had friends enough to back him up for a little money when he needed it. No, there wasn't anything said to me by any of these defendants with reference to W.D. Owens, Jr., signing the note, but Thompson had promised the Cashier of the Bank and me that he would get Owens to sign the note, but, as stated above, we were satisfied with the endorsements of the defendants, and it being inconvenient to see Mr. Owens, as he was not in Atmore, Alabama, we declined to get him to endorse the note, but so far as them saying anything to me about Owens endorsing the note, there was nothing said by the defendants to me about it."

In reply to the question: "Was it agreed between you, as a representative of the Bank of Bay Minette, and any one or more of said indorsers, that said note would not be accepted and used by the Bank of Bay Minette unless and until it was also indorsed by W.D. Owens, Jr.?", witness answered: "Not by me. There might have been by Thompson. Thompson, no doubt, promised them Owens would sign the note. In other words, I have an idea that Thompson did do it, no doubt he did, but there was nothing said about it to me by the defendants." "Nothing was said as to this. I feel sure it was the same day that said note was executed by C.B. Thompson, that it was delivered to the Bank of Bay Minette, but I am not perfectly certain. It might have been the next morning. I don't remember whether we made the trip and got back, and the note was delivered that evening, or not, but I feel pretty sure it was. If it wasn't, it was the next day. I delivered the note to said Bank, - to the cashier, C.S. Woodson. When said note was delivered, nothing was said concerning the circumstances under which the indorsements were made by the defendants, except that

I turned the note over to the Cashier of the Bank of Bay Minette, and told him that I had got the note endorsed, and had saved the Bank, and I hoped that there would never be another transaction of the kind pulled off by letting a man like Thompson have an amount of money like that. The fact is, I turned the note over to the Cashier and told him that there was the note, and at the same time I saved him and all the Directors, because here is the proposition: They had made this loan against the Banking Laws, and I told him to get his Board of Directors together and pass on this loan favorably, and get it all signed up in the proper shape; that I did not want to have to be called on to straighten out another matter such as this one, and if they did not do this, they, and everyone liable, would be put in jail. Five thousand dollars was the consideration of said note. This note was for a debt Thompson owed the Bank. He had been loaned the money before that. It was for a debt already owing the Bank by the said Thompson. That is, about \$4,500.00. He was in debt to the Bank. It is a fact that his debt to the Bank was past due when said note was delivered to the Bank. It was all past due, and the amount was around, in round figures, \$4,500.00. I don't know just exactly the amount. It was \$4,500.00 or more due the Bank." In answer to the question: "How much of the consideration of the note sued on was for money loaned or advanced to the said Thompson contemporaneously with the delivery of said note to said Bank?", witness replied: "Oh, after the discount was taken off, probably \$200.00. Not over \$200.00 I will say in round figures. Maybe not that much. I don't remember just the figures." "At the time the Bank was closed up by Superintendent of Banks, A.E. Walker, Mr. Walker came to the Bank of Bay Minette, and told the Bank of Bay Minette that their bank was insolvent, from the fact that this note referred to above and endorsed by the defendants was not worth the paper it was written on, and if they did not turn this Bank over to the Baldwin County Bank, who would pay the depositors he would put them all in jail. The Cashier of the Bank, and one or two of the directors came to me and told me what Mr. Walker had said, and asked me what to do about it. I told them that so far as the jail end of it was concerned, that there was nothing to that, but that Mr. Walker could close the Bank, solvent or not solvent, if he said so, and to let 'er go; that I had the majority

of the stock and was loser, but I wanted to see everybody get their money that had deposited there, and as soon as the Baldwin County Bank taken the Bank over and paid the depositors, that we would see about the jail proposition; that I would see that there was a suit brought against Mr. Walker and we would fight this thing out to a finish and if he had any grounds for putting anybody in jail, why he would certainly have a chance to do it. We did file suit against the Superintendent of Banks, and the case run along in court for two or three years, me, myself, footing most of the bills and lawyer's fees. We lost the case, however, but if we had appealed it to the Supreme Court, I feel quite sure that we would have won the case. The whole matter was a frame-up between the Baldwin County Bank, Frank Stone of Bay Minette, Alabama, and Alex Walker, Superintendent of Banks. As to who wins this case it is immaterial to me, and I am not interested, as my money is lost."

The defendant then offered in evidence, the answers of A. E. Walker, which are as follows:

"I am the plaintiff in this cause, and am Superintendent of Banks for Alabama, and have held this position since March 2nd., 1911. I am acquainted with William Powell, but did not know that he was acting as President and Manager of the Bank of Bay Minette in September, 1914. During that time, I do not know that the said Powell was connected with said Bank in any capacity. What I stated in my affidavit before C.H. Lapsley, on January 2nd., 1915, which I filed in the Chancery Court in Mobile, in the case of the Bank of Bay Minette, et al, vs. Baldwin County Bank, was as follows: 'But affiant is informed and believes and so charges that he (Powell) was in fact the active and controlling spirit in the organization of the Bank, and since its organization, he has practically dominated and controlled the officers and directors of the Bank and has been the dominating and controlling influence in the Bank.' So it will be seen that I made this statement based upon information and belief, stating same to have been based upon information and belief in said affidavit." In answer to the third interrogatory propounded to witness, as follows: "What connection did William Powell have with the procuring of the note sued on in this action? Did he or not, representing the Bank of Bay Minette, go

with one Thompson to procure the endorsements on said notes? What representations, if any, did he or the said Thompson make to the defendants in this action to procure such endorsements? After such endorsements were procured, who held possession of the notes until they were turned over to the Bank of Bay Minette, and who delivered them to said Bank?", the witness answered: "I have no personal knowledge as to the matters inquired about in the third interrogatory or the fourth interrogatory, (the fourth interrogatory inquired as to whether or not, at the time such notes were delivered to the Bank of Bay Minette, said Thompson was indebted to the bank, and if so, in what sum, and whether or not these notes were used in payment, or partly in payment of Thompson's indebtedness to the bank, what consideration Thompson received from the bank for these notes, whether any money was paid to him by the bank as proceeds or part of the proceeds of these notes, and if so, when and in what amounts, and whether or not the Bank was notified by the endorsers, or some of them, or their attorney, not to discount such notes, and whether or not this was done before they were discounted.), but will have to refer the said question to the Cashier of the Bank at that time, who was Mr. C.S. Woodson, whom I am informed still resides at Bay Minette, Baldwin County, Alabama, and who will answer said interrogatory if he has personal knowledge of the matters inquired about." Witness further answered: "I was not present at the time that the note sued upon was procured, and therefore have no personal knowledge as to whether William Powell had any connection therewith, or was even present at the time the said note was procured. I do not know that William Powell ever represented the Bank of Bay Minette, and as I was not present at the time the endorsements on the said notes were procured, I cannot say whether Powell went with Thompson at the time the notes were endorsed or not. I was not present, did not hear any of the conversation, and therefore do not personally know anything that transpired or was said at the time the notes were endorsed. I have no personal knowledge as to who held possession of the said notes, until they were turned over to the Bank of Bay Minette, nor who delivered them to said Bank. I cannot answer this interrogatory of my own personal knowledge, but the books of the Bank indicate that at about the time the said notes were delivered to said Bank, Thompson was indebted to it in the sum of \$2,530.00. These notes were used as

full payment of said indebtedness, and the sum of \$2311.00, was placed to the credit of the said Thompson and which sum was drawn out by the said Thompson subsequent thereto by checks. I am advised, and so believe, that the Bank was not notified by the endorsers, or any of them, or their attorney, not to discount such note, prior to the time that the said notes were discounted, and the deal closed as between the said Thompson and the Bank of Bay Minette."

The Court refused to permit the introduction of same, unless answers of Woodson, the cashier, were also introduced, which counsel for defendant declined to do, and excepted to the ruling of the Court.

"Mr. Webb: Now I offer the answers made by A.E. Walker under the order of the court.

Mr. Gordon: Are you going to read them all.

Mr. Webb: No, sir, just this third interrogatory.

Mr. Gordon: I object to him reading a portion of the answer unless he reads them all.

The Court: I sustain the objection.

Mr. Webb: We except.

The Court: What are you going to offer?

Mr. Webb: This is the answer of the plaintiff A.E. Walker; he was the Superintendent of Banks at the time this thing happened.

The Court: You took his depositions?

Mr. Webb: I propounded interrogatories to him under the statute and he declined to answer most of them and then I got an order from you, I think it was, to require him to answer some that he refused to answer, and then he answered some of them.

Mr. Gordon: The answers in conformity with the court's order have been filed; there were some he said he had no personal knowledge of.

The Court: I believe I will overrule your objection.

Mr. Gordon: You don't understand- Mr. Webb attempted to read our answers, we have answered- a part of the answers were simply made by Mr. Walker of facts he had in his own knowledge and the court ordered that whoever knew it must answer them all and he said he was going to read a part and I said unless he reads them all I object to him reading any of them.

The Court: You only offer a portion of the answers?

Mr. Webb: I attempted to offer in evidence a while ago the answers of Walker after the court had instructed him to answer the questions I propounded to him----

The Court: In reading to the court---

Mr. Webb: That's all I intended reading when your Honor sustained the objection.

The Court: That particular portion of the answers to the interrogatories--?

Mr. Webb: Ordered by the court---

The Court: Which the court directed that Walker answer and not the

interrogatories- the depositions taken on interrogatories as a whole?

Mr. Webb: There is no deposition, this is interrogatories.

The Court: Propounded under the statute and you only offer just that portion that the court--?

Mr. Webb: That's what I did a while ago.

The Court: And the other portion you do not propose to offer?

Mr. Webb: I didn't then but your Honor held that if I offered any part of his deposition I would have to offer the whole, so I am going to offer the whole now.

The Court: I said I would overrule the objection.

Mr. Gordon: I am afraid you don't catch the question- Mr. Walker says "I can't answer them, I have no personal knowledge", and the Court ordered us to get the person who did and answer them and Mr. Woodson answered them and attached them as a part of his answer and Mr. Webb is going to read the whole answer propounded to Mr. Walker. Anybody that is qualified can answer the question that Mr. Woodson has answered and he wishes--

The Court: I sustain the objection.

Mr. Webb: We except. Now I am offering the entire testimony of A.E. Walker who brought this suit, his answers to the interrogatories.

Mr. Gordon: Including Woodson's?

Mr. Webb: I am offering Walker's now.

Mr. Gordon: The court has already ruled on that; he has sustained an objection and said you had to put in there what Mr. Woodson said in answer to your questions.

The Court: You will have to offer all; if you offer any portion you will have to offer it all.

Mr. Webb: Offer Walker's and Woodson's, too?

The Court: Yes sir, you can't cull out that part which is against you and offer that part in your favor.

Mr. Webb: I call the Court's attention to the fact that this is not a suit by a corporation but by the Superintendent of Banks, and interrogatories were propounded to the Superintendent of Banks as the plaintiff in this case.

The Court: Let's get that straight.

Mr. Webb: I offered the interrogatories as answered by A.E. Walker and Mr. Gordon objects to my offering them unless I also offer the interrogatories answered by Woodson, which I decline to do.

The Court: The interrogatories which you requested that Walker answer and that you obtained from the court an order that if it was not within his knowledge then he was required to have some one within the bank's knowledge to answer that interrogatory, you don't offer that?

Mr. Webb: No, sir,- you sustain the objection?

The Court: Yes sir.

Mr. Webb: We except.

J. W. Frost was then examined as a witness for the defendant, and testified that he was one of the Directors of the Bank of Bay Minette, that was taken in charge some years ago by A. E. Walker, Superintendent of Banks; that up to the time it had been doing business about three or four months. That he was a Director at the time the notes sued on were taken by the Bank, but did not know anything about their being taken. That after he was elected a director in the bank, he was not called to transact any business until he was notified by Mr. Woodson that the State Bank Examiner would be down, and for him to come at once. That there were no meetings of the Board of Directors during the time he was a Director that the only time they met was when they elected him as a director. That during the time he was a director, he was in the bank several times, cannot say how many.

Q. Who was conducting the affairs of the Bank?

Attorney for the plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, "who were conducting", if the Court please, may mean a lot of things which may be entirely foreign to this case.

The Court: I overrule the objection.


Mr. Gordon: We except.

Ans. Mr. Powell seemed to be the manager of the bank.

Counsel for the plaintiff moved to rule out the answer.

The Court: I will exclude it.

Mr. Webb: Defendant excepts.



Q. What was Mr. Powell doing during that time in the management of the Bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and for the opinion of the witness, and there is no authority shown and Mr. Powell has testified, - they have introduced his testimony, - that he had no office and no authority.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. Well, when you were about the bank, did you see Mr. Powell in there too?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I overrule the objection.

Counsel for plaintiff: We except.

Q. When you were in and about the bank, did you see Mr. Powell in there, too? Ans. Yes sir.

Q. Where was he, what part of the bank?

Counsel for plaintiff. We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I can't see the competency.

Counsel for defendant: I want to show whether he was under the counter or back behind there where the bank was running.

Counsel for plaintiff: I have been behind the counter of a bank myself.

Q. What did you see him doing in and around the bank there?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. What did you see him doing in and around the bank there tending to show that he was in the management or direction of the Bank?

Counsel for plaintiff: We object to the question on the ground that it calls for the opinion of the witness and immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. You say that the only two directors meetings had while you were a director was when you were elected, and when Mr. Walker came down and took charge? Ans. Yes sir.

Q. Was Mr. Powell in those meetings?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony. Mr. Powell says he was not a director. He might have had a right there. Mr. Powell's own testimony is that he was not an officer or director; a porter can be at a director's meeting.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. At those directors' meetings you speak of, was or not what was done there in accordance with the directions of Mr. Powell?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for defendant: We except.

Q. During the time that you were connected with the bank, did or not to your knowledge, Mr. Powell ever carry on any transactions for the Bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. During that time, did he attend to the affairs of the bank under the authority and direction of the directors of the bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and hearsay testimony, and the opinion of the witness, and the gentleman says he was only at one directors' meeting, and the evidence which should prevail would be the minutes of the directors' meeting, if such were kept.

The Court: I overrule the objection.

Counsel for plaintiff: We except.

Q. Answer the question. Ans. What was the question?

Q. (Former question read to witness.) And. I never heard it mentioned.

Q. At the time, on August 26th., 1914, and for several days before and after that, who was the manager of that bank?

Counsel for plaintiff: I object to the evidence because it is immaterial, irrelevant and incompetent and calls for the opinion of the witness.

The Court: I don't know whether it calls for the opinion or not.

Counsel for Plaintiff: The election of officers of a bank are in writing, and they keep records of them, and I think the law of Alabama requires that.

The Court: I overrule the objection.

Counsel for Plaintiff: We except.

Q. All right? A. Who was in charge of the business?

Q. Former question is read to witness. Ans. Well, Mr. Woodson and Mr. McDavid, Bid McDavid, I don't know his initials, were inside I think under the dictation of Mr. Powell.

Counsel for Plaintiff: We move to exclude his answer.

The Court: Don't say what you think about the matter.-
it is ruled out.

Ans. It was with me.

The Court: What he says he thinks it was under the dictation of Mr. Powell is ruled out, all he said about Mr. Powell is excluded.

Counsel for Defendant: We except.

Q. According to your best recollection, Mr. Fraost, who was the Manager of that Bank at that time?

Counsel for plaintiff: We object to the question; he has already answered it, and it is not according to his best recollection.

Q. Did or not, with the knowledge and consent of the officers and directors of the bank, William Powell have the direction of the affairs of the Bank in August, 1914?

Counsel for plaintiff: We object to the question, because it calls for immaterial, irrelevant and incompetent testimony, and for the opinion of the witness.

The Court: I sustain the objection.

Counsel for Defendant: We except.

The Court: He has already stated that Mr. Frast and Mr. Woodson had charge of the bank.

Counsel for plaintiff: Mr. McDavid, your Honor.

Counsel for defendant: No sir, he said they were "inside"()- he didn't say they were in charge.

Witness: Inside.()

Q. During that time, what acts do you know of that Powell performed and did in the management of that bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and for the opinion or conclusion of the witness. That's for the jury to say; he might state the facts and let the jury conclude.

The Court: I sustain the objection.

Counsel for defendant: We except.

JOHN LANGHAM, one of the defendants, introduced as a witness for the defendants, testified as follows:

Q. Mr. Langham, you are one of the defendants in this case? Ans. Yes sir, unfortunately.

Counsel for plaintiff: We move to rule out his answer, unfortunately.

The Court: It is excluded.

Q. You know Mr. Wm. Powell, Mr. Langham? Ans. Yes sir.

Q. Where did you know him? Ans. The first time I ever met him was at my place up there; I was introduced to him by Mr. Thompson's son.

Q. Mr. Thompson's son? Ans. Yes sir.

Q. (hands witness paper) Ans. Yes, sir, these are the notes.

Q. Did you endorse those notes? Ans. Yes sir.

Q. Was that the time you have reference to? Ans. Yes sir.

Q. Was that about the date of these notes? Ans. That was- yes sir, in August.

Q. August, 1914? Ans. Yes sir.

Q. Just state what occurred at the time that the notes were endorsed?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and it is shown that they were not at the bank, nobody there representing the bank and whatever might have happened there is immaterial, irrelevant and incompetent in this case.

The Court: I sustain the objection.

Counsel for defendant; We except.

Q. Did or not, at that time, Mr. Powell mention- after you signed the notes who took the notes away? Ans. Mr. Powell.

Q. Mr. Langham, at the time that you endorsed that note and just prior thereto, what, if anything, did this man Powell, who you say took the notes away with him after endorsement, say to you as an inducement to get you to endorse the notes?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and for the opinion of the witness.

The Court: I sustain the objection.

Counsel for defendant: We except.

Q. What, if anything, did this man Powell say to you on that occasion, before you endorsed the note in regard to endorsing it?

Counsel for plaintiff: We object to the question on the ground that

it calls for immaterial, irrelevant and incompetent testimony, and calls for the opinion of the witness.

The Court: I sustain the objection.

Counsel for defendant: We except.

Q. What, if anything, did Powell say to you just prior to your endorsing that note?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and it is a repetition of the other two questions.

The Court: I sustain the objection.

Counsel for defendant: We except. To save time may it be agreed that each of these questions were propounded to the other defendants, and the same objections were made and sustained and exceptions reserved?

Counsel for plaintiff: Yes sir.

The Court: All you have to do is to name the witnesses.

Mr. Brooks:

Under this agreement it is understood that the following named defendants would testify in this case, and that the same questions are considered as having been propounded to each of said defendants, separately, that the same objections were made by the plaintiff to each of said questions, on the grounds stated above, that the court sustained each of said objections and that in each instance the defendants and each of them excepted to the ruling of the Court, J.H. Briars, C.W. Hall, and E. Ward. That Mr. J.H. Briars, whom it is admitted was present with Alex Boone, now deceased, when the said Powell came to them with the notes is understood to have been interrogated with the same questions as put to the witness, Langham, with respect to any conversation had between Powell and said Boone, that the same objections are considered to have been made by the plaintiff to such question to the witness Briars, upon the grounds stated above, that said objection is sustained, and that the defendant, Briars, as Executor of the estate of Alex Boone, deceased excepts.

Counsel for defendant: The defendants rest.

Counsel for plaintiff: We rest.

The foregoing was all of the evidence introduced on the trial of the above cause.

The Court, at the request in writing of counsel for plaintiff, gave the following charge in writing:

"I charge you, Gentlemen, that if you believe the evidence in this case, you should return a verdict in favor of the plaintiff for the amount sued for, with interest thereon from maturity of said notes." Given, Leigh, Judge.

And now come the defendants in the above entitled cause,

and present this, their bill of exceptions, to Honorable John D. Leigh,
the Judge who presided at the trial of said cause, and pray that the
true date of such presentment be endorsed hereon, and that the same
be signed as a true and correct bill of exceptions in said cause,
within the time allowed by law.

Leon G. Brooks,
Stone & Stone,
James H. Webb,
AS ATTORNEYS FOR APPELLANT.

I, John D. Leigh, the Judge presiding at the trial
of the above entitled cause, do hereby certify that the above and
foregoing bill of exceptions was duly presented to me on the 23rd
day of August, 1923, the said date being the true date of such pre-
sentment, and the same being endorsed by me is true date.

John D. Leigh
JUDGE PRESIDING.

The above and foregoing bill of exceptions is a
true and correct bill of exceptions in said cause, and having been
presented to me on the 23rd day of August, 1923, within the
time allowed by law for its presentment, and so endorsed by me, is
hereby signed by me as the Judge presiding at the trial of said
cause, as a true and correct bill of exceptions, on this, the 19th
day of November, 1923.

John D. Leigh
JUDGE PRESIDING.

A. E. JACKSON,
STATE SUPERINTENDENT OF BANKS

VS.

JOHN LANGHAM, ET AL.

IN THE SUPREME COURT OF ALABAMA.
ON APPEAL FROM THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA.
SPRING TERM, 1923.

BILL OF EXCEPTIONS.

BE IT REMEMBERED that on this, the 29 day of
May, 1923, during the Spring Term of the Baldwin County
Circuit Court, the following proceedings were had therein:

Messrs. Gordon & Hall represented the plaintiff;
Leon G. Brooks, James H. Webb, and Stone & Stone, represented the
defendant.

The plaintiff introduced as a witness, C. S. WOODSON,
who testified that he was cashier of the Bank of Bay Minette, during
its operation, and when it was taken over by A.E. Walker, Superintend-
ent of Banks, for liquidation, and it was so taken over from him as
cashier, under the resolution of the Banking Board. That while he
was cashier, the note suit on came into his possession, as such.
Thompson was at that time indebted to the bank in the sum of
_____ dollars, on a note past due, which was
surrendered to him, and the balance was placed to his credit and
later checked out, *by Thompson*.

Q. At that time, did you make the transaction with Mr. Thompson?

Ans. Yes sir, I suppose so, part of it.

Q. In taking the note, - these new notes? Ans. No sir, Mr. Powell
brought the notes in to me.

Q. Was Mr. Thompson there? Ans. I don't remember whether he was
or not. I don't think he was. It has been about nine years ago.

Q. And these notes were not taken as collateral security, it was a
payment of an old note, and a deposit made to him for the balance?
Ans. Yes sir.

Q. At that time, did the bank or you, or any officer in charge of
the bank, running the bank, have any notice of any outstanding
equities against the notes, or did you buy them straight out,

Considering them good notes? Ans. Taken them straight out, considered them good notes.

CROSS EXAMINATION.

Q. Mr. Woodson, you said a while ago that you partly handled this matter, what did you mean by that? Ans. Well, you see Powell went with Thompson and got these notes endorsed and brought them back to me, that's what I meant.

Q. Who was Powell? Ans. William Powell.

Q. What did he have to do with the bank? Ans. He had that much to do with it.

Q. How much? Ans. Getting those notes signed up and endorsed.

Witness further testified that at the time J.E.McDavid was President of the bank, he did not attend to any of its affairs.

Q. The affairs of the bank were conducted by you and Mr. Powell, weren't they? Ans. I can't say that they were conducted by Mr. Powell; I think I conducted my part pretty well.

Q. You conducted your part,- what part did Mr. Powell have in the running of the bank at that time, the approval and making of loans, conduct and management of the bank? ~~xxxxThe~~

Attorney for plaintiff objected to the question on the ground that it called for immaterial, irrelevant and incompetent testimony.

The Court sustained the objection, and the defendant excepted.

Q. In this loan that was made to Thompson, you say you don't-- that he owed the bank at the time that these notes were taken, you say you don't remember the amount of it? And. No sir, I don't remember it.

Q. (By attorney for plaintiff): Let's get all of the facts out, look at that and see if you can refresh your recollection?

Ans. He owed the bank at the time this transaction was made, an amount, this amount here, and this here amount was taken up with these notes and he was given credit with the difference.

Q. What was the amount he owed? Ans. I don't know. You can look here for yourselves if you like, on this ledger, if you like.

Q. Were you in charge of the bank at that time? Ans. Yes sir.

Q. Were these the books? Ans. Yes sir.

Q. At that time? Ans. Yes sir.

Q. And you can't tell from the books of the bank what was the amount

considering them good notes? Ans. Taken them straight out, considered them good notes.

CROSS EXAMINATION.

Q. Mr. Woodson, you said a while ago that you partly handled this matter, what did you mean by that? Ans. Well, you see Powell went with Thompson and got these notes endorsed and brought them back to me, that's what I meant.

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Q. The affairs of the bank were conducted by you and Mr. Powell, weren't they? Ans. I can't say that they were conducted by Mr. Powell; I think I conducted my part pretty well.

Q. You conducted your part, - what part did Mr. Powell have in the running of the bank at that time, the approval and making of loans, conduct and management of the bank? ~~Ans. The~~

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Q. In this loan that was made to Thompson, you say you don't-- that he owed the bank at the time that these notes were taken, you say you don't remember the amount of it? And. No sir, I don't remember it.

Q. (By attorney for plaintiff): Let's get all of the facts out, look at that and see if you can refresh your recollection?

Ans. He owed the bank at the time this transaction was made, an amount, this amount here, and this here amount was taken up with these notes and he was given credit with the difference.

Q. What was the amount he owed? Ans. I don't know. You can look here for yourselves if you like, on this ledger, if you like.

Q. Were you in charge of the bank at that time? Ans. Yes sir.

Q. Were these the books? Ans. Yes sir.

Q. At that time? Ans. Yes sir.

Q. And you can't tell from the books of the bank what was the amount

that was due by this man at that time? Ans. This entry was made on the 28th, if I make no mistake; these notes were on the 28th; I don't just exactly understand it; I don't understand the entry now. I am not familiar with that.

Q. This amount of money that was owed there by Thompson at the time these notes were taken, was that a loan that had been made to him by the bank? And. Yes sir.

X Q. Who made that loan?

The attorney for the plaintiff objected to the question, on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court sustained the objection.

Mr. Webb: We except. This is on cross examination, if it please the Court, and I really do not know what he is going to say; I think it may develop that he and Powell made this original loan for the bank, and this is a continuation of the same transaction.

The Court: Suppose he and Powell did; he has testified so far that he was the cashier of the bank and that he had the authority to make this transaction.

Mr. Webb: I want to inquire into all those matters and see just what authority he had; I rather anticipate that I will be able to show that they did not have any meetings of the board of directors, that the president didn't conduct any of the business, and that he and Powell did everything that was done.

The Court: I don't see the relevancy of who made the loan.

Mr. Webb: Your Honor will remember that in one of the cases I read it stated if a corporation allowed some one to act for it though that might not be strong evidence it is sufficient evidence to go to the jury.

Mr. Gordon: We object to anything he did, unless it is shown that it was ratified by the board of directors of the bank.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. All right, Now, Mr. Gordon, on his direct examination, Mr. Woodson, asked you to state the circumstances in connection with the getting and taking of these particular notes- Now I will ask you the same question over, will you please tell the jury the transaction with reference to the taking and getting of these particular notes.

Mr. Gordon: We object to the question unless he is confined to the time that the Bank, through Mr. Woodson, got these notes and not what happened before, on the ground that it is immaterial, irrelevant and incompetent.

The Court: I think whatever connection he had with Mr. Thompson at the time he presented the notes at the bank would be relevant.

Mr. Webb: Does your Honor sustain the objection?

X The Court: No sir, I overruled the objection.

Q. All right, sir. And. What was the question?

Q. (Question read to witness). Ans. These notes here?

Q. Yes sir. Ans. Powell taken these notes and went with Thompson,

I suppose he did, he taken the notes-----

Mr. Gordon: We ~~except~~ ^{object}.

The Court: I sustain the objection.

Ans. He got those notes-----

The Court: You can only testify to what you know to be a fact.

Ans. Powell got these notes signed up and endorsed and brought them

back and turned them in to me, and I entered them up; what he had to do with it, I don't know.

Q. Before Powell went and got those notes, did you and Powell have any discussion between yourselves as to the getting of them in order to save the bank on this bad loan to Thompson?

Mr. Gordon: I object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. Did you or not have any talk with Powell before he went and got these notes in reference to the going and getting of the same?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. Mr. Woodson, when Mr. Powell went to get these notes did you give him any instructions in regard to the same?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Witness further testified that he did not remember, and could not say, whether or not he had consulted with any one in regard to taking the notes in satisfaction of the indebtedness of Thompson, and for the further extension of credit to him, and that he did not know

remembrance, the custom was to leave it to the cashier and directors in making loans. If the cashier had an application for a loan, he consulted some of the directors. He would ~~not~~ always call a meeting. He consulted the ones he could see handy. That he thought in this matter he consulted Catrett; that he did not know whether or not Catrett was director at that time, but thought the books would show that he was.

Q. Now did you consult with Catrett in regard to making the original loan ^X to Thompson, whereby he became indebted to the bank?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except. I might ask him if he is not confusing this transaction with the original transaction- that's the one he consulted Catrett about.

The Court: That's not the question propounded to him.

Mr. Webb: Do you sustain the objection?

The Court: No sir, I want the question read. (Question is read). That's the way I understood it; I sustain the objection.

Mr. Webb: We except.

Witness continuing said that he did not know whether he was confusing this transaction with the original loan to Thompson, whereby he became indebted to the bank, or whether or not that was the loan he consulted Catrett about; that when Powell went out to get the endorsements on the note sued on, he took the notes with him, and they were not made out and signed by Thompson, and to the best of his remembrance, the handwriting pointed out to him on the note was that of William Powell.

Q. ~~Is that the correct date put in there? Is that the date he wrote that there and went off with them, - the 26th. of August?~~

Ans. I suppose it is, I don't know.

Q. How long after Powell took those out was it before he brought them back and gave them to you? Ans. I can't say.

Q. You have no idea, Mr. Woodson? Ans. He brought them back immediately.

signed up, or the following day, or later.

X Q. You don't know? Ans. I don't remember.

Q. You don't know how many days before he brought it back. Ans. No sir.

Q. Now, before he brought those notes back to you, and they were delivered to the bank, didn't you receive a phone call from one of the defendants, telling you about the circumstances under which these endorsements were obtained and telling you not to discount those notes?

Mr. Gordon: We object to the question on the ground that it is immaterial, irrelevant and incompetent, and vague, and don't say where it was and which one of the defendants it was, and if he is laying a predicate, he must be specific as to the time, place and person.

The Court: I will sustain the objection in the shape it is in.

Q. Didn't Mr. Briars there call you up on Tuesday morning before these notes were delivered to you, and explain to you the circumstances under which these endorsements had been gotten, and tell you for the bank not to take these notes?

Mr. Gordon: I shall object if the Court pleases, to the portion of the question which calls for the opinion of the witness, "explain to you the circumstances", he can ask him if Mr. Briars didn't call him up before he got the note, about when it was, and what Mr. Briars said.

The Court: I think you will have to lay the predicate; I sustain the objection.

Mr. Webb: We except.

Q. Mr. Woodson, when Mr. Powell brought these notes back to you, had they been signed by Thompson at that time, or did he sign them afterwards? Ans. They had been signed by Thompson when he brought them back.

Q. Now, before he took - he went out with these notes to get these endorsements, did he not say to you that you and Catrett should not have loaned Thompson that \$2000 and more, that you had loaned him without security, and that if the bank examiner came down and found that out, that it would cause trouble, and did you and he not agree then, that he should go out and endeavor to get a note with endorsements, in order to protect the bank on this loan that was made to Thompson without security?

Mr. Gordon: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Mr. Webb: We except.

Q. Those notes I had reference to, did you furnish those blanks to Mr. Powell? Ans. Yes sir.

Q. Well, when Mr. Powell came back and gave you the notes, what did he say, Mr. Woodson? Ans. I don't remember what he said.

Q. You don't remember what he said? Ans. No sir.

Q. He said something, didn't he? Ans. He must have.

Q. Sir? Ans. He must have, but I don't remember what he said.

RE-DIRECT EXAMINATION.

When Powell brought the notes back, Thompson was not with him, and the endorsements were on the back of them. Witness does not remember what, if anything, he had to say when he handed him the notes. He stamped the old note paid, and gave him credit for the difference.

Witness was then handed the ledger, and said he thought he was prepared to explain the entries. That Powell took up the note for a thousand dollars, one for five hundred and thirty, and one for a thousand, and \$2311.00 was placed to ~~his~~ ^{Thompson's} credit; that he ^{Thompson} subsequently drew it out.

ON RE-CROSS EXAMINATION, counsel for defendant asked the witness if this was not what occurred: "When Powell came back with these notes, he came in with Thompson's boy, and handed you the notes, and says: 'here are the notes, we have got ours, damn the Gid Murphy stock of cattle', and you then turned over to Thompson's boy those notes you say were taken up, and he started off with them, and Powell told you to go and get those notes back from the boy, and you went, or Powell went, and got the notes back from the boy?" ~~xxxxxx~~ Witness replied that if Thompson's boy was along with Powell, he didn't remember it.

Q. You don't remember that other conversation either? Ans. No sir.

Witness further testified that the assets of the ~~Bank of Bay~~ Minette were first turned over to the Baldwin County Bank, instead of the Superintendent of Banks, ~~the Baldwin County Bank agreeing to pay~~ the depositors. That, during the recess, Mr. Stapleton had explained the books to him, was how he was able to testify more clearly than before dinner, but that what he testified to that the books showed was true and correct, and that he then remembered what happened.

The plaintiff offered in evidence the notes set out in complaint and rested, said notes are as follows:

Bay Minette, Ala., Aug 26 1914	fees	\$2000.00
		\$4.56
	DATE PAID	BALANCE
		\$2004.56

Thirty days after date, for value received, I, we, or either of us, promise to pay to the order of
BANK OF BAY MINETTE

Two Thousand ----- Dollars,
With interest from maturity at the rate of
8 per cent per annum payable at BANK OF BAY MINETTE,
Bay Minette, Alabama.

The parties to this instrument, whether maker, endorser, surety or guarantor, each for himself, hereby severally waive as to this debt, or any renewal thereof, all right to exemption under the Constitution and Laws of Alabama, as to personal property, and they each severally agree to pay all costs of collection, or securing or attempting to collect or secure this note, including a reasonable attorney's fee, whether the same be collected or secured by suits or otherwise. And the maker, endorser, surety or guarantor of this note, severally waives demand, presentment, protest, notice of protest, suit, and all other requirements necessary to hold them, and they agree that time of payment may be extended without notice to them of such extension. The bank at which this note is payable is hereby authorized to apply on or after maturity, to the payment of this debt any funds in said bank belonging to the maker, surety, endorser, guarantor, or any one of them.

Sec. by
P.O.

C.B.Thompson.

No.462 Notice
Due Sept 25 14
Ex.
To

The following endorsement is made in red ink across the face of said note: "Protested for non payment Sept 25th., 1914 E.W.McLeod, Notary Public, Baldwin Co., Ala."

And endorsements on the back of said note are as follows:

Lottie
"John Langham/ C.W.Hall Atmore J H Bryars Stock Alex Boone Atmore
E Word Atmore Bank of Bay Minette By C.S.Woodson, Cash.
State of Alabama)
Baldwin County)

I, J.H.H.Smith, Judge of Probate for said county, hereby certify that the following privilege tax has been paid on the within instrument as required by Acts 1902 & 1908 viz: \$ 3 cts.00
J.H.H.Smith, Judge of Probate
by J.L.Kessler Clerk

The State of Alabama,) Office of the Judge of the Probate Court,
Baldwin County.)

I, J.H.H.Smith, Judge of said Court in and for said County, do hereby certify that the within instrument was filed in this office for record on the 5th day of Sept 1914, at o'clock , and I further certify that the same is duly recorded in Record Book No. 14 Mtgs Page 345 and duly examined.
Witness my hand this 8th day of Sept 1914. J.H.H.Smith, Judge of Probate Court, by J. L. Kessler, Clerk.

6 mos Bay Minette, Ala., Aug 26 1914 \$3000.00
 Sixty days after date, for value received, I, we, or either of us, promise to pay to the order of Date Paid Balance

BANK OF BAY MINETTE

Three Thousand----- Dollars,
 With interest from maturity at the rate of
 8 per cent per annum payable at BANK OF BAY
 MINETTE, Bay Minette, Alabama.
 The parties to this instrument, whether maker,
 endorser, surety, or guarantor, each for him-
 self, hereby severally waive as to this debt,
 or any renewal thereof, all right to exemptions
 under the Constitution and Laws of Alabama as to
 personal property, and they each severally agree
 to pay all costs of collection, or securing or
 attempting to collect or secure this note, in-
 cluding a reasonable attorney's fee, whether the
 same be collected or secured by suits or other-
 wise. And the maker, endorser, surety or guaran-
 tor of this note, severally waives demand, pre-
 sentment, protest, notice of protest, suit
 and all other requirements necessary to hold
 them, and they agree that time of payment may
 be extended without notice to them of such ex-
 tension. The bank at which this note is payable
 is hereby authorized to apply on or after maturity,
 to the payment of this debt any funds in said
 bank belonging to the maker, surety, endorser,
~~xx~~ guarantor, or any one of them.

Date June 1-1914.

C.B. Thompson

Sec. by Collateral note for \$700.00
 of M.W. McLain, L. Maths & J.B. English.
 P.O. Dated Mar 14, 1914, for \$250.00

NO. 463 Notice

Due Oct. 26 14

Ex.

To "

Across the face of said note, is the following: "Protested for
 non payment Oct 26 1914 E.W. McLeod, Notary Public, Baldwin Co., Ala."

And on the back of said note is the following: "John Langham C.W. Hall
 J.H. Bryars Alex Boone E. Ward Bank of Bay Minette by C.S. Woodson,
 Cash. State of Alabama,)
 Baldwin County.)

I, J.H.H. Smith, Judge of Probate for said coun-
 ty, hereby certify that the following privilege tax has been paid on
 the within instrument as required by Acts 1902 & 1908, viz \$ 4 cts. 50
 J.H.H. Smith, Judge of Probate, by J.L. Kessler, Clerk.

THE STATE OF ALABAMA,) OFFICE OF THE JUDGE OF THE PROBATE COURT.
 BALDWIN COUNTY.)

I, J.H.H. Smith, Judge of said Court in and for said County,
 do hereby certify that the within instrument was filed in this office
 for record on the 5th day of Sept 1914, at o'clock, and I
 further certify that the same is duly recorded in Record Book No. 14
 Mtgs, Page 345 and duly examined.

Witness my hand, this 8th day of Sept 1914. J.H.H. Smith, Judge
 of Probate Court, by J.L. Kessler, Clerk. "

The plaintiff offered in evidence certified copy of the minutes of the Banking Board, for the meeting held the 4th. day of November, 1914, reading as follows:

"Montgomery, Alabama, November 4th., 1914.

A meeting of the Banking Board of Alabama was held at the office of A.E.Walker, Superintendent of Banks, at twelve o'clock, on Wednesday, November 4th, 1914.

There were present at the meeting A.E.Walker, Superintendent of Banks and Geo. A. Searcy, E.J.Buck, the other member of the Board having been duly notified of the meeting, but was unable to attend the same.

The Superintendent of Banks stated to the meeting that he had called the same for the purpose of considering the question of taking possession of the property and assets of the Bank of Bay Minette, of Bay Minette, Alabama; that notice of the meeting of the Banking Board for this purpose had been served upon the cashier and vice-president of the bank; that said notices were served on C. S. Woodson, Cashier of the Bank of Bay Minette, and W. W. Sowell, Vice-President of the Bank of Bay Minette, there being no president of said bank. Said notices were served Friday, October 30th, 1914, more than three days before this meeting was called for, to-wit: the fourth day of November, 1914. Said notices which were served on C. S. Woodson and W. W. Sowell aforesaid were as follows:

"You are hereby notified to appear before the Banking Board of the State of Alabama, at the office of A.E.Walker, Superintendent of Banks for the State of Alabama, on Wednesday November 4th., 1914, at twelve o'clock, at Montgomery, Alabama; then and there to show cause why the said A.E.Walker, Superintendent of Banks for the State of Alabama should not take possession of the property and business of the said Bank of Bay Minette, for the purpose of liquidating the same as provided in section ten (10) of an Act entitled "An Act to Create a Banking Department of the State of Alabama ", General Acts of Alabama Session 1911, Page 50."

The Superintendent of Banks then stated to the meeting that in his opinion the Bank of Bay Minette was insolvent and that the bank was in an unsound and unsafe condition to transact the business for which it was organized and that it was unsafe for it to continue in business; whereupon the following resolution was offered by Geo. A. Searcy, and upon motion the same was unanimously adopted:

"That whereas the Bank of Bay Minette has been summoned before the Banking Board by proper notice, to show cause why the Superintendent of Banks should not forthwith take possession of the property and business of the said Bank of Bay Minette and should not retain such possession until such corporation or individual banker shall resume business or its affairs be finally liquidated, and

WHEREAS it appears to the Banking Board that the Bank of Bay Minette is in a failing and insolvent condition; that it has suspended payment of its obligations, and that said bank is in an unsound and unsafe condition;

NOW, THEREFORE, be it further resolved that A. E.Walker Superintendent of Banks is hereby authorized and instructed by the Banking Board of the State of Alabama to forthwith take possession of the property and business of the Bank of Bay Minette and retain such possession until such corporation or individual banker shall resume business or its affairs be finally liquidated."

Upon motion the Banking Board adjourned.

WITNESS our hands and seals this November 4th., 1914.

(signed) A.E.Walker (L.S.)

(Signed) Geo.A.Searcy(L.S.).

✓

STATE OF ALABAMA,)
MONTGOMERY COUNTY)

I, A. E. Walker, Superintendent of Banks for the State of Alabama, hereby certify that the foregoing is a true and correct copy of the minutes of the Banking Board of its meeting held in Montgomery, Alabama on the 4th day of November, 1914.

Given under my hand and seal of office, this the 18th day of May, 1915.

(Signed) A. E. Walker,

SUPERINTENDENT OF BANKS

(Seal)

8

The plaintiff offered in evidence the notes set out in the complaint, and rested. set out notes

h
The defendant offered in evidence the deposition of William Powell, which is as follows:

"My name is William Powell, my age is 48 years, and my place of residence is 1628 West Fourteenth Street, Oklahoma City, Oklahoma. I resided at Bay Minette, Alabama, from the first part of 1913, I believe it was, I can't tell exactly, up until about three years ago. Up until about 1921, I reckon. I organized the Bank of Bay Minette, and owned about one-half the stock. I really owned controlling interest in the Bank at one time, but the stock was not held in my name, it was held in the name of William Townsend, of Flomaton, Alabama. Several others owned a little stock in their names, but I can't remember them all. I owned stock in other names, but I can't remember all the names just now. I organized the bank, had controlling interest, and held this stock. I always worked for the interest of the Bank. This Bank was organized by me, and began business some time in 1913, I can't remember the dates just now. Judge William H. Anderson, I think, was President of said Bank when it began business. He is a lawyer, also of Bay Minette. I think E.W. McCloud was its cashier when it began business. I never was president of the Bank. As stated above, I was a stockholder, but the stock was held in other parties' names. I was a stockholder from the time the Bank started until it was taken over by the Baldwin County Bank, but the stock, you understand, stood in the name of this man, Townsend, and others. I was not a director of the said bank. I never was a director. I had no office at all, other than as I stated above. I worked for the interest of the Bank at all times, and spent my money to do so, because I owned a controlling interest in the Bank. I am acquainted with the defendants, John Langham, C.W. Hall, H.J. Bryars and E. Ward, and I was acquainted with Alex. Boone, now deceased. I know C.B. Thompson. I remember the circumstances connected with the execution of a note by C.B. Thompson to the Bank of Bay Minette, which note was indorsed by the defendants in this case. C.B. Thompson had succeeded in putting over a deal to get something like \$4,500 through one R.E. Catrett, who was a stockholder

and director in the Bank, also the Cashier, to buy cattle with. As soon as I found out that Thompson had gotten this money, I felt sure that the money would never be collected out of Thompson unless we got a sufficient security for same. Thereupon, I got in touch with Mr. Thompson. Not being able to collect the money, he promised to get a note endorsed by the defendants herein, and also by one W.D. Owens, but it was not convenient to see Mr. Owens and the Bank was perfectly satisfied with the endorsements of the defendants on the note given by Thompson for \$5,000.00. Now I think that about covers that. There was only one transaction of this kind. At the time said note was made, C.B. Thompson lived at Atmore, Alabama. It is hard for me to say exactly where the said note was signed by him. The fact is, he took me in his car and we drove about seventy-five miles around to see these parties. I will say it was signed at the Bank of Bay Minette before we left on the trip." In reply to the question, as to where the indorsers were when they indorsed the note, the witness replied: "Well, Langham was at home. Hall was at home, and Ward was at home. Bryars was on his way between home and Atmore, Alabama. We met him on the road." "Yes sir, I was present when said note was signed by Thompson and indorsed by the indorsers. I saw them all sign it. C.S. Woodson, the Cashier of the Bank of Bay Minette, and I negotiated with the said C.B. Thompson, in taking said note from him. Woodson was the Cashier at the time this note was made. McCloud was the first Cashier. I consulted with the said C.S. Woodson concerning the execution of said note to the Bank of Bay Minette. At the time the note was signed, or at the time it was indorsed, or at both times, I did not have any official position with the Bank of Bay Minette, except that I owned controlling interest in the Bank, in other people's names, and worked for the interest of the Bank at all times. My duties were to try to see that the Bank was a success as my interest demanded it. I think that is sufficient. I obtained the execution of said note by said Thompson. I obtained the endorsement of each of the endorsers, except myself and Woodson, the cashier, as I stated above, obtained the endorsement of Thompson, because he dealt with the Cashier direct. Well, there wasn't really anything said by me to the endorsers. Mr. Thompson took me to them in his car and told them that he wanted to get them to endorse his note to the Bank of Bay Minette for \$5,000.00,

and they discussed the matter. In fact, he had it understood with them before we went there that they would endorse this note. That was my understanding. We went there and he told them his business, and they endorsed the note. I didn't have any particular conversation with them, more than a couple of people would ordinarily have when they would meet ~~up~~ and Thompson after we had been with them a few minutes told them that he wanted to get them to endorse that note they had promised to endorse for him and they did so. One or two of the endorsers, I don't recall just which ones, but one or two of them made the remarks that old Thompson had some friends left yet, and we need not get uneasy or afraid, as he always had friends enough to back him up for a little money when he needed it. No, there wasn't anything said to me by any of these defendants with reference to W.D. Owens, Jr., signing the note, but Thompson had promised the Cashier of the Bank and me that he would get Owens to sign the note, but, as stated above, we were satisfied with the endorsements of the defendants, and it being inconvenient to see Mr. Owens, as he was not in Atmore, Alabama, we declined to get him to endorse the note, but so far as them saying anything to me about Owens endorsing the note, there was nothing said by the defendants to me about it."

In reply to the question: "Was it agreed between you, as a representative of the Bank of Bay Minette, and any one or more of said indorsers, that said note would not be accepted and used by the Bank of Bay Minette unless and until it was also indorsed by W.D. Owens, Jr.?", witness answered: "Not by me. There might have been by Thompson. Thompson, no doubt, promised them Owens would sign the note. In other words, I have an idea that Thompson did do it, no doubt he did, but there was nothing said about it to me by the defendants." "Nothing was said as to this. I feel sure it was the same day that said note was executed by C.B. Thompson, that it was delivered to the Bank of Bay Minette, but I am not perfectly certain. It might have been the next morning. I don't remember whether we made the trip and got back, and the note was delivered that evening, or not, but I feel pretty sure it was. If it wasn't, it was the next day. I delivered the note to said Bank, - to the cashier, C.S. Woodson. When said note was delivered, nothing was said concerning the circumstances under which the indorsements were made by the defendants, except that

I turned the note over to the Cashier of the Bank of Bay Minette, and told him that I had got the note endorsed, and had saved the Bank, and I hoped that there would never be another transaction of the kind pulled off by letting a man like Thompson have an amount of money like that. The fact is, I turned the note over to the Cashier and told him that there was the note, and at the same time I saved him and all the Directors, because here is the proposition: They had made this loan against the Banking Laws, and I told him to get his Board of Directors together and pass on this loan favorably, and get it all signed up in the proper shape; that I did not want to have to be called on to straighten out another matter such as this one, and if they did not do this, they, and everyone liable, would be put in jail. Five thousand dollars was the consideration of said note. This note was for a debt Thompson owed the Bank. He had been loaned the money before that. It was for a debt already owing the Bank by the said Thompson. That is, about \$4,500.00. He was in debt to the Bank. It is a fact that his debt to the Bank was past due when said note was delivered to the Bank. It was all past due, and the amount was around, in round figures, \$4,500.00. I don't know just exactly the amount. It was \$4,500.00 or more due the Bank." In answer to the question: "How much of the consideration of the note sued on was for money loaned or advanced to the said Thompson contemporaneously with the delivery of said note to said Bank?", witness replied: "Oh, after the discount was taken off, probably \$200.00. Not over \$200.00 I will say in round figures. Maybe not that much. I don't remember just the figures." "At the time the Bank was closed up by Superintendent of Banks, A.E. Walker, Mr. Walker came to the Bank of Bay Minette, and told the Bank of Bay Minette that their bank was insolvent, from the fact that this note referred to above and endorsed by the defendants was not worth the paper it was written on, and if they did not turn this Bank over to the Baldwin County Bank, who would pay the depositors he would put them all in jail. The Cashier of the Bank, and one or two of the directors came to me and told me what Mr. Walker had said, and asked me what to do about it. I told them that so far as the jail end of it was concerned, that there was nothing to that, but that Mr. Walker could close the Bank, solvent or not solvent, if he said so, and to let 'er go; that I had the majority

of the stock and was loser, but I wanted to see everybody get their money that had deposited there, and as soon as the Baldwin County Bank taken the Bank over and paid the depositors, that we would see about the jail proposition; that I would see that there was a suit brought against Mr. Walker and we would fight this thing out to a finish and if he had any grounds for putting anybody in jail, why he would certainly have a chance to do it. We did file suit against the Superintendent of Banks, and the case run along in court for two or three years, me, myself, footing most of the bills and lawyer's fees. We lost the case, however, but if we had appealed it to the Supreme Court, I feel quite sure that we would have won the case. The whole matter was a frame-up between the Baldwin County Bank, Frank Stone of Bay Minette, Alabama, and Alex Walker, Superintendent of Banks. As to who wins this case it is immaterial to me, and I am not interested, as my money is lost."

The defendant then offered in evidence, the answers of A. E. Walker, which are as follows:

"I am the plaintiff in this cause, and am Superintendent of Banks for Alabama, and have held this position since March 2nd., 1911. I am acquainted with William Powell, but did not know that he was acting as President and Manager of the Bank of Bay Minette in September, 1914. During that time, I do not know that the said Powell was connected with said Bank in any capacity. What I stated in my affidavit before C.H. Lapsley, on January 2nd., 1915, which I filed in the Chancery Court in Mobile, in the case of the Bank of Bay Minette, et al, vs. Baldwin County Bank, was as follows: 'But affiant is informed and believes and so charges that he (Powell) was in fact the active and controlling spirit in the organization of the Bank, and since its organization, he has practically dominated and controlled the officers and directors of the Bank and has been the dominating and controlling influence in the Bank.' So it will be seen that I made this statement based upon information and belief, stating same to have been based upon information and belief in said affidavit." In answer to the third interrogatory propounded to witness, as follows: "What connection did William Powell have with the procuring of the note sued on in this action? Did he or not, representing the Bank of Bay Minette, go

with one Thompson to procure the endorsements on said notes? What representations, if any, did he or the said Thompson make to the defendants in this action to procure such endorsements? After such endorsements were procured, who held possession of the notes until they were turned over to the Bank of Bay Minette, and who delivered them to said Bank?", the witness answered: "I have no personal knowledge as to the matters inquired about in the third interrogatory or the fourth interrogatory, (the fourth interrogatory inquired as to whether or not, at the time such notes were delivered to the Bank of Bay Minette, said Thompson was indebted to the bank, and if so, in what sum, and whether or not these notes were used in payment, or partly in payment of Thompson's indebtedness to the bank, what consideration Thompson received from the bank for these notes, whether any money was paid to him by the bank as proceeds or part of the proceeds of these notes, and if so, when and in what amounts, and whether or not the Bank was notified by the endorsers, or some of them, or their attorney, not to discount such notes, and whether or not this was done before they were discounted.), but will have to refer the said question to the Cashier of the Bank at that time, who was Mr. C.S. Woodson, whom I am informed still resides at Bay Minette, Baldwin County, Alabama, and who will answer said interrogatory if he has personal knowledge of the matters inquired about." Witness further answered: "I was not present at the time that the note sued upon was procured, and therefore have no personal knowledge as to whether William Powell had any connection therewith, or was even present at the time the said note was procured. I do not know that William Powell ever represented the Bank of Bay Minette, and as I was not present at the time the endorsements on the said notes were procured, I cannot say whether Powell went with Thompson at the time the notes were endorsed or not. I was not present, did not hear any of the conversation, and therefore do not personally know anything that transpired or was said at the time the notes were endorsed. I have no personal knowledge as to who held possession of the said notes, until they were turned over to the Bank of Bay Minette, nor who delivered them to said Bank. I cannot answer this interrogatory of my own personal knowledge, but the books of the Bank indicate that at about the time the said notes were delivered to said Bank, Thompson was indebted to it in the sum of \$2,530.00. These notes were used as

full payment of said indebtedness, and the sum of \$2311.00, was placed to the credit of the said Thompson and which sum was drawn out by the said Thompson subsequent thereto by checks. I am advised, and so believe, that the Bank was not notified by the endorsers, or any of them, or their attorney, not to discount such note, prior to the time that the said notes were discounted, and the deal closed as between the said Thompson and the Bank of Bay Minette."

The Court refused to permit the introduction of same, unless answers of Woodson, the cashier, were also introduced, which counsel for defendant declined to do, and excepted to the ruling of the Court.

"Mr. Webb: Now I offer the answers made by A.E. Walker under the order of the court.

Mr. Gordon: Are you going to read them all.

Mr. Webb: No, sir, just this third interrogatory.

Mr. Gordon: I object to him reading a portion of the answer unless he reads them all.

The Court: I sustain the objection.

Mr. Webb: We except.

The Court: What are you going to offer?

Mr. Webb: This is the answer of the plaintiff A.E. Walker; he was the Superintendent of Banks at the time this thing happened.

The Court: You took his depositions?

Mr. Webb: I propounded interrogatories to him under the statute and he declined to answer most of them and then I got an order from you, I think it was, to require him to answer some that he refused to answer, and then he answered some of them.

Mr. Gordon: The answers in conformity with the court's order have been filed; there were some he said he had no personal knowledge of.

The Court: I believe I will overrule your objection.

Mr. Gordon: You don't understand- Mr. Webb attempted to read our answers, we have answered- a part of the answers were simply made by Mr. Walker of facts he had in his own knowledge and the court ordered that whoever knew it must answer them all and he said he was going to read a part and I said unless he reads them all I object to him reading any of them.

The Court: You only offer a portion of the answers?

Mr. Webb: I attempted to offer in evidence a while ago the answers of Walker after the court had instructed him to answer the questions I propounded to him----

The Court: In reading to the court---

Mr. Webb: That's all I intended reading when your Honor sustained the objection.

The Court: That particular portion of the answers to the interrogatories--?

Mr. Webb: Ordered by the court---

The Court: Which the court directed that Walker answer and not the

interrogatories- the depositions taken on interrogatories as a whole?

Mr. Webb: There is no deposition, this is interrogatories.

The Court: Propounded under the statute and you only offer just that portion that the court--?

Mr. Webb: That's what I did a while ago.

The Court: And the other portion you do not propose to offer?

Mr. Webb: I didn't then but your Honor held that if I offered any part of his deposition I would have to offer the whole, so I am going to offer the whole now.

The Court: I said I would overrule the objection.

Mr. Gordon: I am afraid you don't catch the question- Mr. Walker says "I can't answer them, I have no personal knowledge", and the Court ordered us to get the person who did and answer them and Mr. Woodson answered them and attached them as a part of his answer and Mr. Webb is going to read the whole answer propounded to Mr. Walker. Anybody that is qualified can answer the question that Mr. Woodson has answered and he wishes--

The Court: I sustain the objection.

Mr. Webb: We except. Now I am offering the entire testimony of A.E. Walker who brought this suit, his answers to the interrogatories.

Mr. Gordon: Including Woodson's?

Mr. Webb: I am offering Walker's now.

Mr. Gordon: The court has already ruled on that; he has sustained an objection and said you had to put in there what Mr. Woodson said in answer to your questions.

The Court: You will have to offer all; if you offer any portion you will have to offer it all.

Mr. Webb: Offer Walker's and Woodson's, too?

The Court: Yes sir, you can't cull out that part which is against you and offer that part in your favor.

Mr. Webb: I call the Court's attention to the fact that this is not a suit by a corporation but by the Superintendent of Banks, and interrogatories were propounded to the Superintendent of Banks as the plaintiff in this case.

The Court: Let's get that straight.

Mr. Webb: I offered the interrogatories as answered by A.E. Walker and Mr. Gordon objects to my offering them unless I also offer the interrogatories answered by Woodson, which I decline to do.

The Court: The interrogatories which you requested that Walker answer and that you obtained from the court an order that if it was not within his knowledge then he was required to have some one within the bank's knowledge to answer that interrogatory, you don't offer that?

Mr. Webb: No, sir,- you sustain the objection?

The Court: Yes sir.

Mr. Webb: We except.

J. W. Frost was then examined as a witness for the defendant, and testified that he was one of the Directors of the Bank of Bay Minette, that was taken in charge some years ago by A. E. Walker, Superintendent of Banks; that up to the time it had been doing business about three or four months. That he was a Director at the time the notes sued on were taken by the Bank, but did not know anything about their being taken. That after he was elected a director in the bank, he was not called to transact any business until he was notified by Mr. Woodson that the State Bank Examiner would be down, and for him to come at once. That there were no meetings of the Board of Directors during the time he was a Director that the only time they met was when they elected him as a director. That during the time he was a director, he was in the bank several times, cannot say how many.

Q. Who was conducting the affairs of the Bank?

Attorney for the plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, "who were conducting", if the Court please, may mean a lot of things which may be entirely foreign to this case.

The Court: I overrule the objection.


Mr. Gordon: We except.

Ans. Mr. Powell seemed to be the manager of the bank.

Counsel for the plaintiff moved to rule out the answer.

The Court: I will exclude it.

Mr. Webb: Defendant excepts.



Q. What was Mr. Powell doing during that time in the management of the Bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and for the opinion of the witness, and there is no authority shown and Mr. Powell has testified, - they have introduced his testimony, - that he had no office and no authority.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. Well, when you were about the bank, did you see Mr. Powell in there too?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I overrule the objection.

Counsel for plaintiff: We except.

Q. When you were in and about the bank, did you see Mr. Powell in there, too? Ans. Yes sir.

Q. Where was he, what part of the bank?

Counsel for plaintiff. We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I can't see the competency.

Counsel for defendant: I want to show whether he was under the counter or back behind there where the bank was running.

Counsel for plaintiff: I have been behind the counter of a bank myself.

Q. What did you see him doing in and around the bank there?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. What did you see him doing in and around the bank there tending to show that he was in the management or direction of the Bank?

Counsel for plaintiff: We object to the question on the ground that it calls for the opinion of the witness and immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. You say that the only two directors meetings had while you were a director was when you were elected, and when Mr. Walker came down and took charge? Ans. Yes sir.

Q. Was Mr. Powell in those meetings?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony. Mr. Powell says he was not a director. He might have had a right there. Mr. Powell's own testimony is that he was not an officer or director; a porter can be at a director's meeting.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. At those directors' meetings you speak of, was or not what was done there in accordance with the directions of Mr. Powell?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for defendant: We except.

Q. During the time that you were connected with the bank, did or not to your knowledge, Mr. Powell ever carry on any transactions for the Bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony.

The Court: I sustain the objection.

Counsel for Defendant: We except.

Q. During that time, did he attend to the affairs of the bank under the authority and direction of the directors of the bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and hearsay testimony, and the opinion of the witness, and the gentleman says he was only at one directors' meeting, and the evidence which should prevail would be the minutes of the directors' meeting, if such were kept.

The Court: I overrule the objection.

Counsel for plaintiff: We except.

Q. Answer the question. Ans. What was the question?

Q. (Former question read to witness.) And. I never heard it mentioned.

Q. At the time, on August 26th., 1914, and for several days before and after that, who was the manager of that bank?

Counsel for plaintiff: I object to the evidence because it is immaterial, irrelevant and incompetent and calls for the opinion of the witness.

The Court: I don't know whether it calls for the opinion or not.

Counsel for Plaintiff: The election of officers of a bank are in writing, and they keep records of them, and I think the law of Alabama requires that.

The Court: I overrule the objection.

Counsel for Plaintiff: We except.

Q. All right? A. Who was in charge of the business?

Q. Former question is read to witness. Ans. Well, Mr. Woodson and Mr. McDavid, Bid McDavid, I don't know his initials, were inside I think under the dictation of Mr. Powell.

Counsel for Plaintiff: We move to exclude his answer.

The Court: Don't say what you think about the matter.-
it is ruled out.

Ans. It was with me.

The Court: What he says he thinks it was under the dictation of Mr. Powell is ruled out, all he said about Mr. Powell is excluded.

Counsel for Defendant: We except.

Q. According to your best recollection, Mr. Fraost, who was the Manager of that Bank at that time?

Counsel for plaintiff: We object to the question; he has already answered it, and it is not according to his best recollection.

Q. Did or not, with the knowledge and consent of the officers and directors of the bank, William Powell have the direction of the affairs of the Bank in August, 1914?

Counsel for plaintiff: We object to the question, because it calls for immaterial, irrelevant and incompetent testimony, and for the opinion of the witness.

The Court: I sustain the objection.

Counsel for Defendant: We except.

The Court: He has already stated that Mr. Frast and Mr. Woodson had charge of the bank.

Counsel for plaintiff: Mr. McDavid, your Honor.

Counsel for defendant: No sir, he said they were "inside"()- he didn't say they were in charge.

Witness: Inside.()

Q. During that time, what acts do you know of that Powell performed and did in the management of that bank?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and for the opinion or conclusion of the witness. That's for the jury to say; he might state the facts and let the jury conclude.

The Court: I sustain the objection.

Counsel for defendant: We except.

JOHN LANGHAM, one of the defendants, introduced as a witness for the defendants, testified as follows:

Q. Mr. Langham, you are one of the defendants in this case? Ans. Yes sir, unfortunately.

Counsel for plaintiff: We move to rule out his answer, unfortunately.

The Court: It is excluded.

Q. You know Mr. Wm. Powell, Mr. Langham? Ans. Yes sir.

Q. Where did you know him? Ans. The first time I ever met him was at my place up there; I was introduced to him by Mr. Thompson's son.

Q. Mr. Thompson's son? Ans. Yes sir.

Q. (hands witness paper) Ans. Yes, sir, these are the notes.

Q. Did you endorse those notes? Ans. Yes sir.

Q. Was that the time you have reference to? Ans. Yes sir.

Q. Was that about the date of these notes? Ans. That was- yes sir, in August.

Q. August, 1914? Ans. Yes sir.

Q. Just state what occurred at the time that the notes were endorsed?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and it is shown that they were not at the bank, nobody there representing the bank and whatever might have happened there is immaterial, irrelevant and incompetent in this case.

The Court: I sustain the objection.

Counsel for defendant; We except.

Q. Did or not, at that time, Mr. Powell mention- after you signed the notes who took the notes away? Ans. Mr. Powell.

Q. Mr. Langham, at the time that you endorsed that note and just prior thereto, what, if anything, did this man Powell, who you say took the notes away with him after endorsement, say to you as an inducement to get you to endorse the notes?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and for the opinion of the witness.

The Court: I sustain the objection.

Counsel for defendant: We except.

Q. What, if anything, did this man Powell say to you on that occasion, before you endorsed the note in regard to endorsing it?

Counsel for plaintiff: We object to the question on the ground that

it calls for immaterial, irrelevant and incompetent testimony, and calls for the opinion of the witness.

The Court: I sustain the objection.

Counsel for defendant: We except.

Q. What, if anything, did Powell say to you just prior to your endorsing that note?

Counsel for plaintiff: We object to the question on the ground that it calls for immaterial, irrelevant and incompetent testimony, and it is a repetition of the other two questions.

The Court: I sustain the objection.

Counsel for defendant: We except. To save time may it be agreed that each of these questions were propounded to the other defendants, and the same objections were made and sustained and exceptions reserved?

Counsel for plaintiff: Yes sir.

The Court: All you have to do is to name the witnesses.

Mr. Brooks:

Under this agreement it is understood that the following named defendants would testify in this case, and that the same questions are considered as having been propounded to each of said defendants, separately, that the same objections were made by the plaintiff to each of said questions, on the grounds stated above, that the court sustained each of said objections and that in each instance the defendants and each of them excepted to the ruling of the Court, J.H. Briars, C.W. Hall, and E. Ward. That Mr. J.H. Briars, whom it is admitted was present with Alex Boone, now deceased, when the said Powell came to them with the notes is understood to have been interrogated with the same questions as put to the witness, Langham, with respect to any conversation had between Powell and said Boone, that the same objections are considered to have been made by the plaintiff to such question to the witness Briars, upon the grounds stated above, that said objection is sustained, and that the defendant, Briars, as Executor of the estate of Alex Boone, deceased excepts.

Counsel for defendant: The defendants rest.

Counsel for plaintiff: We rest.

The foregoing was all of the evidence introduced on the trial of the above cause.

The Court, at the request in writing of counsel for plaintiff, gave the following charge in writing:

"I charge you, Gentlemen, that if you believe the evidence in this case, you should return a verdict in favor of the plaintiff for the amount sued for, with interest thereon from maturity of said notes." Given, Leigh, Judge.

And now come the defendants in the above entitled cause,

and present this, their bill of exceptions, to Honorable John D. Leigh,
the Judge who presided at the trial of said cause, and pray that the
true date of such presentment be endorsed hereon, and that the same
be signed as a true and correct bill of exceptions in said cause,
within the time allowed by law.

Leon G. Brooks,
Stone & Stone,
James H. Webb,
AS ATTORNEYS FOR APPELLANT.

I, John D. Leigh, the Judge presiding at the trial
of the above entitled cause, do hereby certify that the above and
foregoing bill of exceptions was duly presented to me on the 23rd
day of August, 1923, the said date being the true date of such pre-
sentment, and the same being endorsed by me is true date.

John D. Leigh
JUDGE PRESIDING.

The above and foregoing bill of exceptions is a
true and correct bill of exceptions in said cause, and having been
presented to me on the 23rd day of August, 1923, within the
time allowed by law for its presentment, and so endorsed by me, is
hereby signed by me as the Judge presiding at the trial of said
cause, as a true and correct bill of exceptions, on this, the 19th
day of November, 1923.

John D. Leigh
JUDGE PRESIDING.