

Case No. 4,805. FIRST NAT. BANK OF MOUNT PLEASANT V. TINSTMAN.

{36 Leg. Int. 228;¹ 2 Browne, Nat. Bank Cas. 182; 26 Pittsb. Leg. J. 95.}

Circuit Court, W. D. Pennsylvania.

Jan. 20, 1879.

NATIONAL BANKS—USURY—RATE OF INTEREST CHARGED BY STATE BANKS.

The several acts incorporating certain state banks, taken in connection with the several

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banking laws of the state, gave these banks the power to issue; the charters of these banks permitted them to receive on the discount of notes, &c, such an amount of interest as was agreed upon between the customer and the bank. *Held*, that therefore under section 5197 of the Revised Statutes of the United States, any national bank in Pennsylvania could take and charge the same rate of interest as any state bank of issue is authorized to charge. *First Nat. Bank of Mt. Pleasant v. Duncan* [Case No. 4,804]. Strong, J., followed.

The plaintiff is a national bank, duly organized and incorporated in 1868 under the acts of congress of the United States providing for the incorporation and regulation of national banks, and is located at Mt Pleasant, in the state of Pennsylvania, where it has been carrying on business since 1868. On the 1st day of October, A. D. 1875, the defendant being then indebted to the plaintiff gave to it in good faith to secure said pre-existing debt a mortgage dated October 1st, A. D. 1875, and duly recorded in the recorder's office of Westmoreland county, Pennsylvania, in Mortgage Book, vol. 9, page 28, which is the mortgage upon which the above suit was brought.

The indebtedness originated in manner as follows: The defendant, desirous of procuring a loan from the plaintiff, procured his (defendant's) brother, A. O. Tinstman, to endorse defendant's note for him (defendant), and defendant took this note to the plaintiff. Whereupon the plaintiff, knowing the endorsement to be for the accommodation of the maker, took the note, deducted from the face of it the amount of interest agreed upon, to wit, at the rate of nine per centum per annum, and paid to the defendant the balance in money. This note was renewed from time to time at same rate of interest until the mortgage was given on the 1st day of October, 1875, which was given for the amount then due on said loan for debt and interest as aforesaid. The total sum of the said precedent debt, principal and interest, was \$8233.79. The rate of interest taken, charged and received by the bank on account of said indebtedness was agreed upon between said bank and said defendant, and was nine per centum per annum, and amounts in the aggregate to the sum of \$3134.20, and was so taken by said bank between the 28th day of July, A. D. 1871, and the 1st day of October, A. D. 1875. The defendant admits that plaintiff is entitled to a judgment in this case for \$5099.59, being the whole of said principal, less said \$3134.20, but the plaintiff claims a judgment for the whole of said \$8233.79, with interest from June 4, 1876.

The following named banks of the state of Pennsylvania have from the date of their respective charters, by special acts of assembly, been organized and carrying on business under said charters and acts in the state of Pennsylvania, and said acts of assembly of the state of Pennsylvania herein referred to by title and date of approval shall be considered as though they were each recited at length herein, and may be so regarded for the purposes of this case: An act entitled "An act to incorporate the Manayunk Bank, located in the city of Philadelphia." Approved June 14, A. D. 1871. An act entitled "An act to incorporate the Bank of America." Approved April 27th, A. D. 1870. An act entitled "An act to

incorporate the People's Bank of Philadelphia." Approved February 25th, A. D. 1870. An act entitled "An act to incorporate the United States Banking Company." Approved June 2d, A. D. 1871. An act entitled "An act to incorporate the Twenty-second Ward Bank of Germantown." Approved May 17th, A. D. 1871. An act entitled "An act to incorporate the Iron Bank of Philadelphia." Approved May 19th, A. D. 1871. An act entitled "An act to incorporate the Iron Bank of Phoenixville." Approved May 4th, A. D. 1871. An act entitled "An act to incorporate the State National Bank." Approved June 2d, A. D. 1871. An act entitled "An act to incorporate the Tenth Ward Bank of Philadelphia." Approved March 12th, A. D. 1872. An act entitled "An act to incorporate the City Bank of Scranton." Approved March 20th, A. D. 1871. An act entitled "An act to incorporate the State Bank of Delaware County." Approved May 19th, A. D. 1871. An act entitled "An act to incorporate the Butchers' and Drovers' Bank." Approved April 27th, A. D. 1870. An act entitled "An act to incorporate the Market Bank." Approved April 27, A. D. 1870. An act entitled "An act to incorporate the Quaker City Bank." Approved May 23d, A. D. 1871. An act entitled "An act to incorporate the Franklin Bank." Approved April 1, A. D. 1870. An act entitled "An act to incorporate the West End Bank of Philadelphia." Approved November 20th, A. D. 1871. An act entitled "An act to incorporate the Southwark Banking Company." Approved June 2d, A. D. 1871. True copies of three of the charters of these banks are hereto attached as part hereof.

Each of said banks claims the right to issue its own bank notes under the said acts of assembly and the acts of assembly hereinafter referred to; but no one of said banks ever issued its own bank notes, and the defendant claims that under said acts of assembly none of said banks have the right to issue. And the following acts of assembly of the state of Pennsylvania, referred to by title and date of approval, shall be considered as though they were each recited at length herein, and may be so regarded for the purposes of this case: An act entitled "An act for reducing the interest of money from eight to six per cent, per annum." Approved March 2, A. D. 1823. An act entitled "An act regulating banks." Approved April 16, A. D. 1850. An act entitled "An act regulating the rate of interest." Approved May 28th, A. D. 1858. An act entitled "An act

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to establish a system of free banking in Pennsylvania, and secure the public against loss from insolvent banks." Approved March 31, A. D. 1860. An act entitled "A supplement to an act to establish a system of free banking in Pennsylvania, and to secure the public against loss from insolvent banks, approved March 31, A. D. 1860." Approved May 1, A. D. 1881. And the supplements and amendments to any and all of said acts and all of the aforesaid acts and the various supplements thereto may be copied and added hereto and made part hereof by either party at any time-during the pendency of this suit, and the other party shall consent thereto. If the court should be of opinion on the above stated facts that the plaintiff could lawfully take, charge and receive of and from the defendant by agreement between the plaintiff and defendant on such a direct loan interest at the rate of nine per centum per annum then judgment shall be entered in favor of the plaintiff for the sum of \$8233.79, with interest from June 4, 1876; but if the court should be of opinion that the plaintiff could not legally take, charge and receive by agreement as aforesaid interest at the rate of nine per centum per annum, but that the same was usurious, and that the offset of \$3134.20 was claimed by the defendant in due time under the act of congress, then judgment shall be entered for the plaintiff for the sum of \$5099.59, with such, if any, interest it may be entitled to under the above stated facts, either party reserving the right to sue out a writ of error.

{Signed} D. T. Watson,

Att'y for plaintiff.

{Signed} Welty McCullough,

Att'y for defendant.

Dec. 21, 1878.

For the plaintiff, it was argued that the several acts incorporating the state banks, taken in connection with the several banking laws of the state, gave these banks power to issue. That having the power it was immaterial whether it had ever been exercised. That as the charters of these banks permitted them to receive on the discount of notes, &c, such an amount of interest as was agreed upon between the customer and the bank; that therefore under section 5197 of the Revised Statutes of the United States any national bank of Pennsylvania could take and charge the same. *First Nat. Bank of Mt Pleasant v. Duncan* [Case No. 4,804], Strong, J. Plaintiff further contended, that congress intended national banks to be national favorites; that they intended to give them the vantage ground as against state banks. *Tiffany v. Bank of Missouri*, 18 Wall. [85 U. S.] 410. It therefore gave to the national bank in each state the power to take, receive, &c, such a rate of interest as by the laws of the state is allowed to banks of issue. It is obvious that the mere fact of the state banks of issue being incorporated, each by a special act, or all under general act, is immaterial, if the power is given to them to charge more than the general rate fixed

for natural persons by general law of the state; otherwise the state banks would have the vantage ground.

The defendant claimed that section 5197 referred to the general laws of a state, and not to any special law incorporating and granting any special privilege to one particular bank, and that as the general law, in reference to interest, limited in Pennsylvania the rate to six per cent, a national bank in Pennsylvania could take or charge no more. Act May 28, 1858, § 1 (P. L. 622); Purd. Dig. p. 803, pl. 1.

D. T. Watson, for plaintiff.

Welty McCullough, for defendant

MCKENNAN, Circuit Judge. Judgment is hereby rendered for the plaintiff in the within case for \$8233.79, with interest from June 4th, 1876.

{NOTE. This case was taken to the supreme court on writ of error, and was there dismissed for want of jurisdiction, the difference between plaintiff's claim, and the amount defendant admits to be due, or \$3,134.20. being the actual amount in dispute, which is less than the \$5,000 required to give the court jurisdiction. 100 U. S. 6.}

¹ [Reprinted from 36 Leg. Int. 228, by permission.]