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NEW JERSEY SUPREME COURT.

SAMUEL F. RIGHTER, *vs.* THE PRESIDENT, DIRECTORS, AND COMPANY OF THE FARMERS' BANK OF WANTAGE.	*In Case—On Postea, and Verdict.* JOS. P. BRADLEY, *Att'y.*

As yet of the twentieth day of May, A.D. eighteen hundred and fifty-eight. Witness HENRY W. GREEN, Esq., *Chief Justice*, CHAS. P. SMITH, *Clerk.*

ESSEX COUNTY, SS.: The President, Directors and Company of the Farmers' Bank of Wantage, were summoned to answer unto Samuel F. Righter of a plea of trespass on the case; and thereupon the said Samuel F. Righter by Joseph P. Bradley, his attorney, complains:

For that whereas heretofore, to wit, on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and fifty-seven, at Deckertown, to wit, at Newark, in the County aforesaid, the said Plaintiff was the owner of thirty-four shares of the Capital Stock of the said defendants, of the par value of sixty-five dollars per share; which shares of stock, for a valuable consideration by him given and paid therefor, had before that time been assigned to the plaintiff by one Matthew H. Cooper, the former owner of said shares, by a deed of assignment bearing date the twenty-fifth day of August, one thousand eight hundred and fifty-six. And the said Matthew H. Cooper, in and by the said assignment, had constituted and appointed, and did thereby constitute and appoint the plaintiff his true and lawful attorney, irrevocable, for him and in his the said Cooper's name and stead, but to hold, use, to sell, assign, transfer and set over all and any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and with the said assignment and power of attorney, the said Cooper, at the same time delivered to the said plaintiff two several stock certificates, or scrip for stock theretofore issued to him by the defendants, under their corporate seal, attested by the signature of their President and Cashier; one of which was for thirty-one of the said shares of capital stock, and bore date the 18th day of November, A.D. 1850, and the other of which was for three of said shares, and bore date the 18th day of March, A.D. 1851, the first of which certificates was in the words and figures following, that is to say:

"*No.* 112. 31 *Shares.* DECKERTOWN, New Jersey,
Farmers' Bank of Wantage.

This certifies that Matthew H. Cooper is entitled to thirty-one shares in the capital stock of the Farmers' Bank of Wantage, transferable personally or by attorney on return of this certificate.

In witness whereof we have affixed our hands and the seal of the said Bank, this eighteenth day of November, 1850."

(Signed,) "JAS. C. HAVENS, President,
"S. D. ARMSTRONG, Cashier. [L. S.]"

And the second of which certificates was in the words and figures following, that is to say:

"*No.* 122. 3 *Shares.* DECKERTOWN, New Jersey,
Farmers' Bank of Wantage.

This certifies that Matthew H. Cooper is entitled to three shares in the capital stock of the Farmers' Bank of Wantage, transferable personally or by attorney on return of this certificate.

In witness whereof, we have affixed our hands and the seal of the said Bank, this eighteenth day of March, 1851"

(Signed) "JAS. C. HAVENS, President
"S. D. ARMSTRONG, Cashier. [L. S.]"

And the said plaintiff avers, that he accepted and took the said assignment of the said shares of capital stock, and the said certificates or scrip therefor in good faith, and for a valuable consideration by him given and paid therefor, believing the said shares to be the property of the said Cooper, as represented in said certificates or scrip, and relying upon the terms of said certificates or scrip, and upon the representations therein contained.

And the plaintiff further avers that the said defendants are, and at the said several dates above mentioned were a body politic and corporate of this State, created by the Legislature of this State, for the purpose of carrying on the business of banking, by an act of the said Legislature approved the second day of February, in the year eighteen hundred and forty-nine, entitled "An act to incorporate the Farmers' Bank of Wantage," by which act the capital stock of said Company was made assignable; and it was amongst other things provided by said act, that the shares of the capital stock at any time owned by any stockholders, should be transferable on the books of said Company only according to such rules as should be instituted in that behalf by the laws and ordinances of the said Corporation.

And the plaintiff avers, that the scrip or stock certificates issued by the defendants prior to the assignment of the said thirty-four shares to him as aforesaid, were all of the same form and terms with the certificates hereinabove set forth, and that by the issue of said certificates, the defendants held out, represented and agreed that the shares of capital stock of the said Company should not be transferred on their books, unless the certificates or scrip issued therefor should be returned to them; which condition thereby became a rule instituted by said Company in relation to the transfer of the shares thereof.

And the plaintiff further avers, that after having thus accepted and received the said assignment of the said thirty-four shares, and the said certificates or scrip therefor, on the twenty-ninth day of June, in the year eighteen hundred and fifty-seven, he, the said plaintiff, went to the office and banking house of the defendants, at Deckertown, in the township of Wantage, and county of Sussex, and during ordinary business hours, did present and show to the Cashier of the defendants then and there being, the said deed of assignment and power of attorney, and the said two stock certificates, and did tender the same to the said Cashier, and did request permission to make an assignment of said thirty-four shares of stock to himself, the said plaintiff, on the books of the defendants; and the said Cashier, well knowing the plaintiff to be the person named in said assignment and power of attorney, refused to comply with such request, alleging that the said Cooper had already previously transferred said shares on said books without returning the certificates or scrip therefor, and the defendants did then refuse, and have ever since refused to permit the plaintiff to transfer the said shares to himself or otherwise, on their books, and did then refuse, and have ever since refused to recognize the plaintiff as the owner of said thirty-four shares, or as a stockholder in said Company by reason thereof, whereby the plaintiff has lost divers dividends and emoluments incident to the said shares, and has lost divers opportunities of selling and dis-disposing of the said shares, and has been in other respects greatly damaged: and the plaintiff says that he has sustained damage by reason of the premises, to the amount of $5,000, and therefore he brings his suit, &c And the said defendants, by Levi Shepherd, their attorney, come and defend the wrong and injury when &c., and say that they are not guilty of the said supposed grievances above laid to their charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them; and of this, they, the said defendants, put themselves upon the country, &c.

And the said plaintiff doth the like.

Therefore let a jury thereupon come before the Chief Justice, or some other justice of the Supreme Court of the State of New Jersey, at a circuit court to be holden at Newark, in the county of Essex, on the seventeenth day of September, A.D. eighteen hundred and sixty-three, to which time this cause is continued, by whom, &c. And the same day is given to the parties aforesaid, there, &c.

And now at this day, to wit, the fourth day of November, in the year last aforesaid, before the Supreme Court aforesaid, at Trenton, come the parties aforesaid, by their attorneys aforesaid, and the justice before whom, &c., having sent here his record had before him in these words, to wit:

"Afterwards, that is to say, on the seventeenth day of September, eighteen hundred and sixty-three, before the Honorable Daniel Haines, one of the justices of the Supreme Court of Judicature, of the State of New Jersey, at a circuit court holden at Newark, in and for the county of Essex, came the parties within mentioned, by their attorneys within contained, and the jurors of the jury, namely: Zadoc Tichenor, Andrew Trenchard, William S. Utter, Theodore A. Martin, David A. Nichols, William Humes, Francis Pell, John Post, Stephen O. Young, Abner D. Jones, Enoch Bolles, Jr., and Joel Moore, being summoned, also come, who, to speak the truth of the matter within contained, being chosen, tried and sworn, say upon their oath that the said the President, Directors and Company of the Farmers' Bank of Wantage, are guilty of the premises within laid to their charge in manner and form as the said Samuel F Righter hath within complained against them; and they assess the damages of the said plaintiff by reason thereof, over and above his cost and charges by him about his suit in this behalf expended, to the sum of fifteen hundred and four dollars and twelve cents.

"Therefore it is considered that the said Samuel F. Righter do recover against the said The President, Directors and Company of the Farmers' Bank of Wantage, his said damages in form aforesaid found to be fifteen hundred and four dollars and twelve cents, and also dollars and cents, his costs in this behalf by the court now here adjudged to the said plaintiff and with his assent; which said damages, costs, and charges in the whole amount to one thousand hundred and dollars and cents. Judgment signed this fourth day of November, A.D. eighteen hundred and sixty-three. E. W. Whelpley."

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the record of judgment, in the cause above stated, as the same remains of record in my office. In testimony whereof, I have hereto set my hand and the seal of said court, at Trenton, this 23d day of November, A. D. 1863.

{ Revenue Stamp 5 cts. cancelled. } [L. S.]

Chas. P. Smith, *Clerk.*

New Jersey ss. The state of New Jersey to our justices of our Supreme Court of the state of New Jersey, greeting:—

[L. S.] Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our court before you our said justices by our writ between Samuel F. Righter, plaintiff, and The President, Directors and Company of the Farmers' Bank of Wantage, defendants, of a plea of trespass on the case, manifest error hath intervened, to the great damage of the said The President, Directors and Company of the Farmers' Bank of Wantage, as by their complaint we are informed: We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, then you send to us, distinctly and openly under your seal the record and proceedings of the plaint aforesaid, with all things touching the same and this writ, so that we may have them on the first Tuesday of March, in the year one thousand eight hundred and sixty-four, at Trenton, before our judges of our Court of Errors and Appeal in the last resort in all causes both of law and equity, that the record and proceeding aforesaid being inspected, we may cause to be further done thereupon for correcting that error, what of right and according to law ought to be done. Witness the Hon. Henry W. Green, our Chancellor, the nineteenth day of November, in the year one thousand eight hundred and sixty-three.

PARKER & KEASBEY, *Att'ys.* W. S. JOHNSON.

The answer of the justices of the Supreme Court within mentioned:

The record and proceedings within mentioned, as fully as the same remain before us, we certify and send to the Court of Errors and Appeal, as within we are commanded.

E. W. WHELPLEY, [L. S.]
Chief Justice Sup. Court.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

SAMUEL F. RIGHTER,
vs.
THE PRESIDENT, DIRECTORS, AND COMPANY OF THE FARMERS' BANK OF WANTAGE. — *In Case.*

This is an action of trespass on the case brought by the above named plaintiff against the above named defendants, the pleadings in which are as follows—that is to say :

New Jersey Supreme Court of the twentieth day of May, as yet of the term of February, in the year of our Lord one thousand eight hundred and fifty-eight.

ESSEX COUNTY, ss. The President, Directors and Company of the Farmers' Bank of Wantage, were summoned to answer unto Samuel F. Righter of a plea of trespass on the case ; and thereupon the said Samuel F. Righter by Joseph P. Bradley, his attorney, complains for that whereas heretofore, to wit, on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and fifty-seven, at Deckertown, to wit, at Newark, in the county aforesaid, the said plaintiff was the owner of thirty-four shares of the capital stock of the said defendants of the par value of sixty-five dollars per share, which shares of stock for a valuable consideration by him given and paid therefor, had before that time been assigned to the plaintiff by one Matthew H. Cooper, the former owner of said shares, by a deed of assignment bearing date the twenty-fifth day of August, one thousand eight hundred and fifty-six ; and the said Matthew H. Cooper, in and by the said assignment, had constituted and appointed, and did thereby constitute and appoint the plaintiff his true and lawful attorney, irrevocable for him and in his the said Cooper's name and stead, but to hold, use, to sell, assign, transfer and set over all and any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and with the said assignment and power of attorney the said Cooper at the same time delivered to the said plaintiff two several stock certificates, or scrip for stock, theretofore issued to him by the defendants under their corporate seal, attested by the signatures of their President and Cashier, one of which was for thirty-one of the said shares of capital stock, and bore date the 18th day of November, A.D. 1850, and the other of which was for three of said shares, and bore date the 18th day of March, A.D. 1851; the first of which certificates was in the words and figures following, that is to say:—"No. 112. 31 Shares. DECKERTOWN, New Jersey, Farmers' Bank of Wantage. This certifies that Matthew H. Cooper is entitled to thirty-one shares in the capital stock of the Farmers' Bank of Wantage, transferable personally or by attorney, on return of this certificate.

In witness whereof, we have affixed our hands and the seal of the said Bank, this eighteenth day of November, 1850.

(Signed,) JAS. C. HAVENS, President. [L. S.]"
S. D. ARMSTRONG, Cashier.

And the second of which certificates was in the words and figures following, that is to say:—"No. 122. 3 Shares. DECKERTOWN, New Jersey, Farmers' Bank of Wantage. This certifies that Matthew H. Cooper is entitled to three shares in the capital stock of the Farmers' Bank of Wantage, transferable personally or by attorney, on return of this certificate.

In witness whereof, we have affixed our hands and the seal of the said Bank, this eighteenth day of March, 1851.

(Signed,) JAS. C. HAVENS, President. [L. S.]"
S. D. ARMSTRONG, Cashier.

And the said plaintiff avers that he accepted and took the said assignment of the said shares of capital stock, and the said certificates or scrip therefor in good faith and for a valuable consideration, by him given and paid therefor, believing the said shares to be the property of said Cooper as represented in said certificates or scrip, and relying upon the terms of said certificates or scrip, and upon the representations therein contained. And the plaintiff further avers, that the defendants are, and at the several dates above mentioned were, a body politic and corporate of this state, created by the Legislature of this state, for the purpose of carrying on the business of banking, by an act of the said Legislature approved the second day of February, in the year eighteen hundred and forty-nine, entitled "An act to incorporate the Farmers' Bank of Wantage," by which act the capital stock of said Company was made assignable, and it was amongst other things provided by said act, that the shares of the said capital stock at any time owned by any stockholder should be transferable on the books of said Company only according to such rules as should be instituted in that behalf by the laws and ordinances of the said Corporation; and the plaintiff avers that the scrip or stock certificates issued by the defendants prior to the assignment of the said thirty-four shares to him as aforesaid, were all of the same form and terms with the certificates hereinabove set forth, and that by the issue of said certificates the defendants held out, represented and agreed that the shares of capital stock of the said Company should not be transferable on their books unless the certificates or scrip issued therefor should be returned to them; which condition thereby became a rule instituted by said Company in relation to the transfer of the shares thereof. And the plaintiff further avers, that after having thus accepted and received the said assignment of the said thirty-four shares, and the said certificates or scrip therefor, on the twenty-ninth day of June, in the year eighteen hundred and fifty-seven, he, the said plaintiff went to the office and banking house of the defendants at Deckertown, in the township of Wantage and county of Sussex, and during ordinary business hours, did present and show to the Cashier of the defendants, then and there being, the said deed of assignment and power of attorney, and the said two stock certificates, and did tender the same to the said Cashier and did request permission to make an assignment of said thirty-four shares of stock to himself, the said plaintiff, on the books of the defendants, and the said cashier well knowing the plaintiff to be the person named in said assignment and power of Attorney, refused to comply with such request, alleging that the said Cooper had already previously transferred said shares on said books without returning the certificates or scrip therefor, and the defendants did then refuse and have ever since refused to permit the plaintiff to transfer the said shares to himself or otherwise on their books,—and did then refuse and have ever since refused to recognise the plaintiff as the owner of said shares, or as a stockholder in said Company, by reason thereof,—whereby the plaintiff has lost divers dividends and emoluments incident to the said shares, and has lost divers opportunities of selling and disposing of the said shares, and has been in other respects greatly damaged, and the plaintiff says that he has sustained damage by reason of the premises to the amount of five thousand dollars, and therefore he brings suit, &c.

JOSEPH P. BRADLEY, *Plffs. Atty.*

To which declaration the defendants by L. Shepherd, their Attorney, pleaded not guilty.

This cause came on to be tried at the Essex Circuit on September 17th of the September term, A. D. 1863, before Mr. Justice Haines and a jury, when the following evidence was given:

The Plaintiff offered in evidence the Banking Charter organising the Defendants, contained in the printed laws of 1849, and then called

AUSTIN A. BRIGGS, who being duly sworn deposed as follows: I reside in New York; I was acquainted with Alexander Coffer, the signature on the paper shown me (Stock Note Exhibit A.) is his handwriting; I saw him write it; he is now dead; I also saw Matthew H. Cooper sign the said stock note before said Coffer witnessed it; Cooper resided in Jersey City at that time; the stock note was given at that time.

The Plaintiff therefore offered said stock note in evidence, which was read. The assignment was likewise read.

SAMUEL F. RIGHTER, the Plaintiff, being duly sworn, said: The stock note and power of attorney were executed and delivered to me by Matthew H. Cooper, and the certificates I produce were delivered at the same time as security for one thousand dollars in money which I then lent to him. Cooper did not pay the note; it has never been paid; I attempted to have the stock transferred to me—think it was on June 29, 1857 I went to the Banking house and saw the cashier, John A. Whitaker. I presented the power of attorney and the scrip and asked to have the stock transferred to me. He refused, saying the Bank had allowed Cooper to come there and transfer all but four shares. It was in Banking hours; I went there twice; the second time Edward A. Stiles was with me—it was the next day or the day after; Mr. Whitaker requested time to confer with the Bank officers. At the second time Mr. Jonathan Whitaker, a Director, now the President, was called in; I did not see Mr. Havens, the then President; Mr. Shepherd, the Attorney, was there; I exhibited the certificates and the power of attorney (Exh. B) and requested a transfer.

Defendants admitted the authenticity of the certificates of stock.

Witness proceeds—They did not pretend that anything was due from Cooper to the Bank; they did not put the refusal on any other ground than that Cooper had only four shares to transfer; I had no knowledge of his transfering the stock before that time; I have retained possession of the certificates since till now; Cooper had no possession of them after giving them and the power to me; no question of identity was raised; the Bank officers knew me; I have received no dividends on this stock; I suppose it is withth e full value paid in.

Being cross-examined he said:—They declined transferring the thirty-four shares, but said that I might transfer four shares, but I declined that; I demanded the transfer of the thirty-four shares; I think they told me when Cooper transferred the thirty shares; it was previous to my calling, but when I don't remember; I don't remember their showing me the transfer on their books, nor do I remember the names of the persons to whom they were transferred; they said the shares were transferred previously to the delivery of the certificates to me; I lent Mr Cooper $1000 in money; he had had a part of it before, and when he made the note and transfer I paid him the balance; I gave him the $1000, and took the note at 7 per cent interest; I took no collateral and have not at any time; Mr Cooper did not tell me then or before that he had transferred all but *four* shares; he told me that he owned thirty-four; the body of the paper is in my handwriting; I did not receive a note of Moses Stoll on this account; I had such a note a long time after but did not get it from Cooper; Cooper has paid none of the note—not one cent—nor offered anything.

Edward A. Stites sworn:—I went with Righter; it was in June 1857; Righter demanded a transfer of the thirty-four shares; they refused a transfer of all except four shares; I don't recollect any conditions; the reason they gave was that thirty shares had already been transferred and recorded on their books; I don't recollect that they exhibited any laws of the Bank; I was a stockholder owning five shares; the Bank then paid dividend of 3½ per cent half yearly.

Being cross-examined, he said—I don't recollect whether they showed the transfer on the books.

Plaintiff offered and read in evidence two certificates marked C and D, pro ut the same, and rested.

The Defendants by their counsel opened their case, and called John A. Whitaker, who being duly sworn sayeth:—I am now Cashier of the Bank; I became such in January 1857; I know Matthew H. Cooper and know his handwriting; the book shown is the transfer-book; this other the original subscription book; this third the stock ledger; they were all in the Bank when I went there; the transfer in the transfer-book and the subscription in the old subscription-book are Mr. Matthew H. Cooper's handwriting. Said books, three in number, were then given in evidence and extracts from them read pro ut the same—(Appendix No. 1, 2, 3). These transfers, one by said Cooper of ten shares to Jonathan Whitaker dated September 13, 1851, and one by the same of thirty shares to D. W. Cooper dated January 8, 1853, were in the Bank when I went there. After July 1, 1853, the stock ledger shows Cooper to have been the owner of only four shares. Dividends appear by the Books to have been regularly paid in conformity with said transfers.

Being cross-examined:—Jonathan Whitaker is now the President of the Bank; the par value of the stock outstanding in 1857 was $65,000—there being 1000 shares; the Bank now own four shares formerly of Righter forfeited for non-payment of instalments called for; the certificates for all the stock have not been taken or delivered; Mr. Armstrong has filled up a good many which were not called for; they are all in the form of these; the book shown is the stock certificate book; it contains a receipt by D. W. Cooper 8th January 1853, for his certificate for twenty shares; the stock ledger shows who are the stockholders.

Cross examined:—The certificates were not surrendered by Mr. Cooper (M. H) when he transferred the stock to Jonathan Whitaker and D. W. Cooper.

The stock certificate book was then offered in evidence, also the book of minutes of the Directors, and the By Laws of the Corporation, the same being identified by the witness.

Daniel W. Cooper sworn:—The twenty shares were transferred to me by M. H. Cooper for a valuable consideration; since the transfer I have received the dividend on the twenty shares.

Jonathan Whitaker:—I have been President of the Bank three or four years; I own thirty-two shares of stock; I bought ten shares of M. H. Cooper for cash down; I have received the dividend on them since the transfer; I never had any certificates of my stock; I remember Mr. Righter the plaintiff being there, and we talked the whole matter over, and I presume we told him all about it; I remember we told him that D. W. Cooper had bought twenty shares, and I had bought ten; I think we told him the dates of the transfers, and showed him the transfer books.

Other testimony was given, not necessary here to be recited, and the evidence being closed and counsel having summed up, the Court charged the jury as follows:—

The plaintiff seeks to recover damages alleged to have been sustained by him by reason of the refusal of the defendants to allow the transfer of certain shares of the capital stock of their Company.

He claims title to thirty-four shares of the stock under an irrevocable power to transfer them executed to him by Matthew H. Cooper dated on the 25th August, 1856, as collateral security for the payment of a stock note for $1000, given for as much money actually lent by him to Cooper.

If his claim of title is sustained by the proof then as between him and Cooper the stock was pledged for the payment of the note. On default of payment of the note at its maturity he had a right to sell the stock at the Broker's Board, or at public or private sale without notice, and he had authority, also, to use, transfer or hypothecate it at his option, being required on tender of payment of the amount loaned and the interest to return an equal quantity of said stock.

As between him and the Bank the power of attorney to transfer gives him *prima facie*, a right to have the shares transferred to himself or to any one he might name, on the books of the Company, but only according to such rules as should be instituted in that behalf by the laws and ordinances of the Corporation.

If therefore he presented his power of transfer to the Bank and requested a transfer of the stock according to their rules, he had a right to have the transfer made. If the Bank refused to allow the transfer, it became liable to him for damages, unless it had a lawful reason for the refusal.

Several questions of fact arise:

Did he request a transfer according to the rules instituted by the laws and ordinances of the Corporation?

If the witnesses testify truly he did present the power of transfer at the counter of the Bank in *business hours* according to the provision of the By-Laws. He presented the certificates that they might be returned and surrendered according to the terms expressed on their face. It was then right in point of time and manner of making the request and the Bank refused.

2. Had the Bank a lawful reason for refusing to allow the transfer?

The reason given by the Bank was that long before the execution of the power of transfer to Righter, to wit on the 13th

September 1851, Matthew H. Cooper had in person on the books of the Company assigned ten shares of the stock to Jonathan Whitaker ; and on the 8th January 1863, twenty shares to Daniel W. Cooper, and new certificates of stock had been issued to them respectively and dividends paid on them. This presents the question whether the pledgee of stock is bound to examine the books of a Corporation to see whether the stock is standing in the name of the pledgee and free from charges :

Or, whether a Bank whose certificates of stock expresses on its face that it is transferable personally or by attorney, *on the return of the certificate*, may allow a transfer to be made upon their books without the return of the certificate, and escape liability to a party holding the certificate and power of transfer for a valuable consideration without notice.

For the purpose of this trial I charge that a pledgee of such certificate with a power of attorney to transfer for valuable consideration without notice acquires thereby a right to have the stock transferred according to the rules of the Corporation. This certificate assures him that the transfer cannot be made without its return—and as against the Bank he has a right to rely upon that, their own statement, as part of their rules and regulations, and is not bound to inspect the books

The Bank may as between it and its stockholders allow a transfer without a return of the certificate, but by so doing it assumes the risk of its being subsequently surrendered.

If a third party is thereby prejudiced the Bank is responsible. If the certificate with a power of attorney to transfer irrevocable is in the hands of another for value and without notice of any previous transfer or any equity, he has acquired a right to have the stock transferred, and that right cannot be divested by any act of the Bank without his assent. He does not acquire the stock ; that can only be obtained by a transfer on the books; but he has a right to have the transfer made. By the power of transfer he acquires an inchoate right to be completed by the actual transfer on the books.

He is said to have an equitable title—that is, a right to have it made into a legal title by the transfer.

He may hold it subject to all equities of the Bank, but if the Bank by its certificate has misled him, it has no equity on that ground as against him.

A question then arises was Righter a holder for valuable consideration without notice and in good faith ?

The witnesses agree that he loaned money to Matthew H. Cooper. If so there was a valuable consideration whatever may have been the amount loaned.

Had he notice that the thirty shares had been transferred ?

That is a question of fact to be determined by you. Mr. Cooper says he told him the day before the execution of the power of attorney that he owned only four shares, and that when he signed the power of attorney he did not observe that it was for the thirty shares. Mr. Righter says he said he owned all the shares.

Mr. Briggs says Righter asked Cooper if he owned all the stock and if it was *not* right on the books of the Company, and Cooper said it was; you are to judge and determine who is correct, and who is mistaken, on this point, judging from the testimony and from all the circumstances. If Mr. Cooper is correct and Righter had notice that Cooper only owned four shares, then he was not a *bona-fide* holder of the thirty shares, and his claim must fail. The thirty shares he knew were gone, and there was no refusal to transfer the four shares remaining in Cooper's name. But if he had not such notice then he has a right to recover, and your verdict will be in his favor.

The remaining question then will be the measure of damages.

He may recover all that he has lost by the transaction, viz: the money he lent to Cooper and the interest on it.

If the stock had not been transferred by Cooper on the books, then Righter might have recovered the whole value of the stock at its highest price between the time when the transfer ought to have been made and the time of bringing the action. But he would have held for his own use only the amount loaned and its interests, the excess as trustee for Cooper or his assignee. Cooper having transferred the stock has no equity remaining in him. His assignees have the stock itself. Hence Righter is under no obligation to recover and hold the excess for Cooper and can only claim of the Bank the amount loaned to Cooper and its interest.

There was a question raised about the amount loaned:

1. That part of the sum raised by the transaction between Cooper and Righter was to be applied to a purchase of the patent right partly for Righter. If that is so and a part was raised by Righter for his own behalf he cannot claim for that part here.

2. It is said that only $350 was paid by Righter to Cooper; if so that is all he can claim now. You are to determine whether it is so or not.

3 It is said that other collaterals were given to Righter on the account and that he realized on the note of Moses Stoll $100.

If he did so that is to be credited on the money loaned, and the dividend charged to the Bank and interest on that dividend.

Having ascertained the sum of money lent by Righter to Cooper you will compute the interest on it from the 26th of August 1856 to 3d November 1863, at 7 per cent

The defendants thereupon by their counsel excepted to so much of the said charge as directed the jury that the defendants had not a lawful reason for refusing to allow the transfer of the thirty shares of their capital stock, heretofore transferred upon their books to David W. Cooper and Jonathan Whitaker respectively, and prayed that their bill of exceptions might be sealed, and it is sealed accordingly.

DANIEL HAINES. [L. S.]

And the said Defendants likewise by their said counsel except to the following part of said charge beginning "for the purpose of this trial I charge," and end with paragraph before the words "a question then arises." And said Defendant prayed that this their second bill of exceptions might be sealed, and was sealed accordingly. DANIEL HAINES. [L. S.]

And the said Defendants by their said counsel except to so much of the said charge as related to the measure of damage in said suit, and prayed that this their third bill of exceptions might be sealed, and it was sealed accordingly.

DANIEL HAINES. [L. S.]

Whereupon said jury rendered a verdict for the plaintiff for the sum of fifteen hundred and four dollars, twelve cents and six cents costs.

New Jersey Court of Errors and Appeals.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE FARMERS' BANK OF WANTAGE,
vs.
SAMUEL F. RIGHTER.

In Error.
Assignment of Errors.

The President, Directors and Company of the Farmers' Bank of Wantage, plaintiffs in error, by Parker & Keasbey, their attorneys, come and say that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error. And the said plaintiffs hereby assign the following causes of error :

First—That the learned Justice, before whom said cause was tried, erred in directing the jury that the said plaintiffs in error, defendants below, had not a lawful reason for refusing to allow the transfer of the thirty shares of their capital stock, heretofore transferred upon their books to David W. Cooper and Jonathan W. Whitaker respectively, for that the said plaintiffs in error had in law a lawful reason for so doing.

Second—That the said Justice erred in directing the jury that "a pledgee of a certificate of stock in said corporation, with a power of attorney to transfer for valuable consideration without notice, acquires thereby a right to have such stock transferred according to the rules of the said corporation. This certificate assured him that the transfer cannot be made without its return, and as against the Bank he has a right to rely upon it as their own statement as part of their rules and regulations, and is not bound to inspect the books. The Bank may as between it and its stockholders allow a transfer without a return of the certificate, but by so doing it assumes the risk of its being subsequently surrendered. If a third party is thereby prejudiced, the Bank is responsible. If the certificate with a power of attorney to transfer irrevocable is in the hands of another for value, and without notice of any previous transfer or any equity, he has acquired a right to have the stock transferred, and that right cannot be divested by any act of the Bank without his assent. He does not acquire the stock; that can only be obtained by a transfer on the books; but he has a right to have the transfer made. By the power of transfer he acquires an inchoate right to be completed by the actual transfer on the books. He is said to have an equitable title—that is, a right to have it made into a legal title by the transfer.

He may hold it subject to all equities of the Bank, but if the Bank by its certificate has misled him, it has no equity on that ground as against him."

In all which said Justice erred, for that by law and the rules of said corporation the said stock having long before the delivery of such power of attorney to said defendant in error, been legally transferred on the books of said corporation for value received, such power of attorney was null and void and gave no right to said defendant to a transfer of said stock, and the learned Justice should have directed the jury that the said defendant in error had no right of action against said plaintiffs in error, if said stock had been transferred on the books of said corporation by the owner thereof, prior to such power of attorney being given to said defendant in error.

Third—That said learned Justice erred in directing said jury that said defendant in error might legally receive the money he lent to Cooper, and the interest thereon from the 26th August, 1856 to Nov. 3, 1963 at 7 per cent.

And also there is error in this, that the judgment aforesaid by the record aforesaid appears to have been given for the said defendant in error against said plaintiffs in error; whereas by the law of the land, said judgment ought to have been given for the said defendant in error against said plaintiffs in error. And the said plaintiffs in error pray that the judgment aforesaid for the errors aforesaid, and for other errors in said record and proceedings, may be removed, annulled and altogether holden for nought, and that they may be restored to all things which they have lost by occasion of the said judgment.

PARKER & KEASBEY,
Attorneys & Counsellors for the Plaintiffs in error.

To which assignment the defendant in error by JOSEPH P. BRADLEY, Attorney, file a common joinder.

COPY OF ORIGINAL SUBSCRIPTION.

We, the subscribers, do hereby severally agree to become stockholders of the Farmers' Bank of Wantage, the amount of shares set opposite to our respective names, as according to the provisions of an act entitled "An Act to incorporate the Farmers' Bank of Wantage," passed by the Legislature of the State of New Jersey on the second day of February, A.D. 1849.

Jonathan Whitaker, twenty shares,	20
Matthew H. Cooper, twenty shares,	20
Samuel Whitaker, thirty shares,	30
C. A. Cooper, twenty shares,	20
Sarah Cooper, forty shares,	40
Hannah E. Cooper, thirty shares,	30
John J. Cooper, twenty shares,	20
William J. Wellson, ten shares,	10
Lewis Dunn, ten shares,	10
Increase B. Stoddard, twenty shares,	20
Nathaniel Roe, ten shares,	10
Amos Munson, five shares,	5
Increase Stoddard, ten shares,	10
Eve Dewitt, ten shares,	10
Mahlon Cooper, twenty shares,	20
John B. Decker, ten shares,	10
Moses Dewitt, five shares,	5
O. Pettit, Jr., five shares,	5
Samuel Wickham, ten shares,	10
Wm. J. Owen, ten shares,	10
Daniel D. Gould, ten shares,	10
Jacob W. Dewitt, five shares,	5
Jacob Whitaker, fifteen shares,	15
Peter Willson, ten shares,	10
Wm. B. Decker, ten shares,	10
W. W. Titsworth, ten shares,	10
John Linn, five shares,	5
M. S. Hayne, five shares,	5
Peter Hoyt, two shares,	2
William Elston, ten shares,	10
John Holbert, ten shares,	10
E. A. Stites, five shares,	5

Abiah Willson, five shares,	5
Levi Shepherd, five shares,	5
Levi Davenport, five shares,	5
G. L. Durning, five shares,	5
James A. Smith, five shares,	5
James Bross, five shares,	5
James Owen, five shares,	5
James Adams, ten shares,	10
Wm. McCoy, ten shares,	10
John B. Beach, ten shares,	10
T. D. Armstrong, ten shares,	10
Abram Smith, five shares,	5
Lewis Whitaker, thirty shares,	30
James C. Havens, thirty shares,	30
H. H. Munsell, five shares,	5
W. W. Coe, ten shares,	10
Richard Vanhorn, five shares,	5
Jacob Swartze, five shares,	5
George H. Neldon, five shares,	5
Jacob Cole, five shares,	5
Isaac Bonnell, three shares,	3
Wm. Benjamin, five shares,	5
Jacob Hornbeck, Jr., fifteen shares,	15
Benjamin Hornbeck,	15
Severyn L. Westbrok, five shares,	5
John Dunning five shares,	5
Alex. Linn, five shares,	5
James B. Armstrong, five shares,	5
Alphena Bullock, five shares,	5
Andrew J. Willson, three shares,	5
Mary Willson, five shares,	5
George Roe, five shares,	5
John Beemer, five shares,	5
Philetus Willson, five shares,	5
Henry Dewitt, five shares,	5
Moses W. Post, two shares,	5
John L. Everitt, three shares,	3
Alva Burner, five shares,	5
Charles Roe, ten shares,	10
John W. Dewitt, five shares,	5
John Loomis, six sharea,	6

EXTRACTS FROM TRANSFER BOOK.

Farmers' Bank of Wantage,

DECKERTOWN, Sept. 13, 1851.

For value received, I hereby transfer to Jonathan Whitaker ten shares of the capital stock of the Farmers' Bank of Wantage.

Shares 10. M. H. COOPER.

DECKERTOWN, January 8, 1853.

For value received, I hereby transfer to D. W. Cooper twenty shares of the capital stock of the Farmers' Bank of Wantage.

Shares 20. M. H. COOPER.

EXTRACTS FROM STOCK LEDGER.

MATHEW H. COOPER.

1851.			1850.		
Sept. 13,	Transferred to J. Whitaker, (10)	$650	Jan. 8,	By subscription, 31 shares,	$1550
Jan. 8,	do. to D. W. Cooper, (20)	1300	1851.		
			Mar. 7,	Cash Instalment,	465
	Balance, 4 shares,	260	Mar. 18,	3 shares by Transfer,	185
		$2210			$2210
			1853.		
Dec. 28,	4 shares forfeited,	$260	July 1,	Balance 4 shares,	$260

2D EXTRACT FROM STOCK LEDGER.

1857.			1853.		
Aug. 24,	Transferred 5 shares,	$350	Jan. 8,	By 20 shares,	$1300
1863.			1857.		
Mar. 28,	Transferred 15 do.	$1200		Cash,	$100
			Sept. 22,	Cash,	$75
			Nov. 3,	Cash,	$75
		$1550			$1550

FARMERS' BANK OF WANTAGE.

BY-LAWS.

1st. An office of discount and deposit shall be opened in Deckertown for the transaction of business, on this twelfth day of January, A.D. 1850, every day thereafter in the year, Sundays, Fourth of July, Christmas, New Years, and public fast, thanksgiving days excepted, from ten o'clock in the forenoon, until twelve o'clock noon, and from two o'clock in the afternoon until four o'clock, P.M.

2d. The books and accounts of the Company shall be kept in dollars and cents pretaining to the office of discount and deposit, and balanced on the second Thursday in January, and the second Thursday in July in each year, preparatory to the half-yearly dividends, which shall then be declared and notice of said dividends shall be published in one or more of the newspapers published in the county of Sussex.

3d. The books of transfer shall be closed for the space of five days immediately preceding the second Thursday in January and July respectively.

4th. All current accounts with individuals shall, if deemed necessary, be duly examined and balanced every month.

5th. The officer of discount and deposit shall receive and take charge of the money of all those who choose to place it there, free of charge or expense, and keep it subject to the order of the depositor, payable on demand. Said officer shall receive deposits of ingots of gold, bars of silver and other valuable articles of small bulk subject to the order of the depositors on demand during bank hours.

6th. The officer shall receive and pay all specie coin according to the rates that are and shall be hereafter established by the laws of the United States, but no gold, or silver, or copper coined within the United States other than such as are or shall be authorized by the said laws will be received as money.

7th. All notes or bills offered for discount shall be delivered at the office by twelve o'clock noon on the day of discount, unless specially acted upon by at least three of the directors of said Company, and immediately thereafter laid before the board of directors, together with a statement made out by the cashier of the funds of the Company, the amount of bills discounted, and the amount of the liabilities of the Company.

8th. There shall be one discount day in each week, to wit: on Saturday, when a meeting of the directors shall be held, and discount may be made at the rate of six per cent. interest per annum on notes and bills of exchange that have not more than four months to run, at the discretion of the board of directors, exclusive of the days of grace, with at least two responsible names, and under such modifications as the board of directors shall deem expedient and necessary

9th. Discounts may be made on deposits of stock or on negotiable paper with at least two responsible names—the firm of a house being considered as one name. The Payer of any note offered for discount, must reside within one mile of the Banking House, or the payment must, by the tenor of the note or bill, be made payable at the Banking House. Three days of grace shall be allowed on all bills or notes discounted ;. and discounts taken for the same, the money payable to the Company on any note or bill discounted, shall be placed to the credit of the applicant on the day of discount.

10th. If a note or bill made by any of the directors of the Company shall be offered for discount, its fate shall be decided by ballot if required by either of the directors.

11th. The President shall take in his safe custody and keeping at the office, the plates, molds, note paper ; a regular account of which shall be taken and kept, which account shall be checked by the semi-monthly examination of the note paper in the custody of the President, by a committee of the Directors. The President shall superintend the conduct of all persons in the employ of the Company and shall sign all bills or notes which shall be directed to be signed.

12th. The Cashier shall countersign at the office, all notes or bills which have been signed by the President in pursuance of the the orders of the Board of Directors; he shall carefully observe the conduct of all persons employed under him in the office; he shall at least once in each week examine the settlement of all Cash Accounts and the money deposited in the vault, and compare the amount with balance of the Cash Account of that week, and in case of any disagreement, report the same to the first meeting of the Board of Directors; he shall lay before the Board of Directors on every discount day a statement of the funds of the Company; ascertaining the amount of debts and credits; the money on hand, whether in specie or notes, and the notes in circulation, which shall be kept in a book for that purpose. He shall as far as in his power prevent any person from over-drawing his account; and if in case any person should over-draw his account, he shall report such person or persons to the Board of Directors, and no discount shall be made to such person until his or their account shall be paid.

13th. An account shall be kept in a book for that purpose, of all notes or bills issued by order of the Board of Directors, signed by the President and countersigned by the Cashier, and all notes which become unfit for use or circulation shall be counted and destroyed by a committee appointed by the Directors for that purpose, and a regular account of them kept by the said committee.

14th. All bills or notes left at the office for collection, made payable at this Bank, shall be collected free of charge, but in case of non-payment and protest, the charge of protest shall be paid by the person lodging the same in the Bank; and if any note remain unpaid at the shutting of the office on the last day of grace, such note or bill being endorsed shall forthwith be protested, unless the person so lodging the same shall otherwise direct; and if any discounted note or bill shall remain unpaid at the closing of the Bank on the last day of grace, the same shall be protested forthwith; and no discount shall be made to any person whose name is on such note, either as payer or endorser, until such note is paid.

15th. All payments made at the office shall be examined at the time of payment, and no error suggested afterwards shall be counted unless deemed expedient to do so by the cashier.

16th. The transfer of stock may be made in the transfer book of the Company any day during office hours, except five days prior to the days of half yearly dividends, and no transfer of stocks in any other manner shall be valid or binding; but all debts actually due and payable at this Bank, days of grace for payment being past, by a stockholder requesting a transfer, must be satisfied before such transfer shall be made, unless the President and directors shall otherwise direct.

CERTIFICATES OF STOCK, &c.

No. 122. *3 shares.*

DECKERTOWN, NEW JERSEY,

FARMERS' BANK OF WANTAGE.

This certifies that Matthew H. Cooper is entitled to three shares in the capital stock of the Farmers' Bank of Wantage, transferable personally or by Attorney on return of this certificate.

[L. S.] In witness whereof, we have affixed our hands and the seal of the said bank this eighteenth day of March, 1851.

T. D. ARMSTRONG, Cashier. JAS. C. HAVENS, President.

(*Endorsed on above certificate.*)

"Received on the within certificate one hundred and ninety-five dollars, being sixty-five per cent. of the amount subscribed.

$195. T. D. ARMSTRONG, Cashier."

No. 112. 31 *shares*

DECKERTOWN, NEW JERSEY,

FARMERS' BANK OF WANTAGE.

This certifies that Matthew H. Cooper is entitled to thirty-one shares in the capital stock of the Farmers' Bank of Wantage, transferable personally or by attorney on return of this certificate.

[L. S.] In witness whereof, we have affixed our hands and the seal of the said bank this eighteenth day of Nov., 1850.

T. D. ARMSTRONG, Cashier. JAS. C. HAVENS, President.

(*Endorsed on above certificate.*)

"Received on the within certificate fifteen hundred and fifty hundred and fifty dollars, being fifty per cent. of the amount subscribed.

$1550. T. D. ARMSTRONG, Cashier."

"Received on the within certificate four hundred and sixty-five dollars, 7th March, 1861.

$465. T. D. ARMSTRONG, Cashier."

ASSIGNMENT AND POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS, that I, M. H. Cooper, for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto Samuel F. Righter, thirty-four shares of the capital stock of the

Farmers' Bank of Wantage, (Deckertown, New Jersey,) standing in my name on the books of the Company, and do hereby constitute and appoint Samuel F. Righter my true and lawful attorney, irrevocable for me and in my name and stead, but to *hold*, use, to sell, assign, transfer and set over all and any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that my said attorney or his substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the twenty-fifth day of August, one thousand eight hundred and fifty-six.

Sealed and delivered in the presence of ALEX. COFFIN. M. H. COOPER. [L. S.]

STOCK NOTE.

$1000. NEW YORK, Aug. 26, 1856.

Two months after date, I promise to pay to Samuel F. Righter, or order, one thousand dollars for value received, with interest from the date hereof at the rate of 7 per cent. per annum, having deposited with him as collateral security thirty-four shares of the capital stock of the Farmers' Bank of Wantage, Deckertown, New Jersey, with authority to sell the same at the Brokers' board, or at public or private sale or otherwise at their option, on the non-performance of this promise, without notice: and with authority to use, transfer or hypothecate the same at his option, he being required on payment or tender of the amount loaned and interest, to return an equal quantity of said stock and not the specific stock deposited.

M. H. COOPER.