

ability of the witnesses, which is the peculiar province of the jury. Cases may occur, in which honest men may be temporarily the victims of perjury and malice; but virtue and integrity cannot long suffer under the benignant reign of our laws. Is the citizen or the man illegally arrested? The indictment and the action for false imprisonment afford an ample redress. Is the citizen prosecuted without cause, with fraud and malice? He finds a reparation in the action of malicious prosecution. Is he falsely charged? The degrading and everlasting punishment of perjury atones for the outrage on his reputation and honour.

At the same time, then, that I feel myself obliged to obey the stubborn principles of law, in opposition perhaps to what abstract principles of justice may suggest, it ought to be a consolation to the persons who must submit to this opinion, that for every injury the law affords a coextensive remedy. Though I cannot receive this evidence on a motion to discharge the prisoner, yet I am not precluded by any principle of law from permitting it to regulate the bail which I conceive it proper to require.

It is therefore ordered, that the prisoner be bailed in the sum of 500 hundred dollars, and two securities in 200 dollars each, to appear at the next court, to answer to a bill of indictment, for the felony charged, and that security in similar sums, to prosecute, be given by *Lewis Mallet*.

Noel for the prosecution; *Mitchell* and *Bulloch*, for the prisoner.

Massachusetts: Court of Common Pleas.

SUFFOLK COUNTY, JULY TERM, 1808.

Gilbert and Dean *v.* The Nantucket Bank.

THE case which is here briefly reported, was founded upon what is commonly termed a *bank bill*, issued by the *Nantucket* bank. The plaintiffs, being possessed of a thirty dollar bill, sent an authorized agent to present it to the bank

for payment, who on a certain day presented the same, and after spending a large portion of the bank hours in the bank, could not obtain payment. All the bills issued by the *Nantucket* bank, are in the same form and worded in a similar manner. By each of these bills "*The President Directors and COMPANY of the Nantucket Bank*" promise to pay a certain person, or the bearer, so many dollars on demand. Payment not having been made when the plaintiffs' thirty dollar bill was presented, "The president, directors and company of the *Nantucket* bank," (the words used in the bills) were summoned to answer the plaintiffs in a plea of the case, founded upon the promise contained in the bill, the plaintiffs averring that they were the bearers, and that the bill came to them for a valuable consideration. "*The President and Directors of the Nantucket Bank*, the defendants in the action came, &c. and plead they never promised, &c."

The evidence for the plaintiffs was as follows: A witness was called, who testified that on the day named, he was in the *Nantucket* bank, when he saw the plaintiffs' agent come in, and in their name demand payment of a certain thirty dollar bill, which he (the witness) was enabled to identify, because he then put the initials of his own name on the back of it. Upon examination, he said it was the bill declared upon and shown to him at the trial. The counsel for the plaintiffs then offered to read the bill to the jury, but the counsel for the bank objected. The objection was, that there was no such corporation in being as the defendants summoned; that in this action no judgment could be rendered, and if a judgment was rendered, no execution could be levied. The style of the bank in the act of incorporation was *the President and Directors of the Nantucket Bank*; the word *company* was not mentioned. True it was, from accident or design, if you please, the *President, Directors and Company of the Nantucket Bank*, was the name and style of the promisors in the bills issued by the bank; yet because the bank had issued their bills in a *wrong* name (purposely perhaps) and had been sued by the *same name*, therefore the plaintiffs ought not to be permitted to read the bill to

the jury, and ought not to have a verdict, judgment and execution in their favour. This was the substance of the objection.

To this it was replied, that if the defendants were misnamed, they ought to have plead the misnomer in abatement: That now it was too late, after coming in and confessing themselves the real defendants summoned, and pleading in bar: That to permit the objection to prevail was to permit the defendants to defraud the public, and take advantage of their own wrong, &c.

After consultation, the court permitted the bill to be read to the jury; the hand writing of *Joseph Chase*, the president, having first been proved.

It there appeared in evidence, from two witnesses, who were in the bank when the demand was made, one of whom kept a journal of the proceedings there, that the person who acted as teller did not *absolutely refuse* payment, but stated that his rule was to attend to one person half an hour, and if he had not then finished with him, to give the next half hour to the next person in waiting, and so on. The agent of the plaintiffs then waited upwards of an hour, and was afterwards told that his turn could not come before the bank hours were over for the morning. In the afternoon he attended again and met no better treatment, and could not during the *whole* day get his bill paid. It appeared further from the testimony of these witnesses, that the person who acted as teller, (and there was but one person in the bank) purposely wasted the time and avoided payment as long as he could. That to every body *but an inhabitant of the island of Nantucket*, he paid in *fourpence halfpenny pieces*; that he fumbled each of these pieces over between his thumb and finger several times, to discover whether it was a fourpence halfpenny piece or a five cent piece, and when this discovery was made, with a pen and ink and large piece of paper he set down several figures and made a long sum in arithmetic, to find out whether sixteen fourpence halfpennies made a dollar, and this being at last ascertained, *one dollar* was thus paid: In this way half the amount of a bill might be paid in the course of half a day. But the difficulty ended not

here; he would not let you carry half the money away unless you left the whole bill, although you offered to indorse it or give a receipt for it; and you must go away at dinner time and go through the same trouble in the afternoon to get your bill paid. One of the witnesses stated that he was on the island seventeen days and had several bills to be paid; that he attended the bank assiduously every day, and in the seventeen days with the greatest industry and exertions, he was able to get the sum of *four hundred and seventy-two* dollars paid, and no more, which was counted in less than half an hour at one of the *Boston* banks.

The plaintiffs insisted that the shameful conduct of the bank in this case amounted to a refusal, and believed they had proved every thing necessary to obtain a verdict.

The defence was of a singular nature, and as we could gather it from the desultory and immethodical argument of the counsel for the bank, who was for several hours addressing the jury, consisted principally in the following points: he first relied upon the misnomer to the jury, notwithstanding this objection had been overruled by the court. Then he found, or thought he found, some other defect of form in the writ. Then he argued *Gilbert* and *Dean* could not be the bearers of the bill, because *their agent* presented it. Then he said there was no evidence of a demand upon the president or cashier, the person in the bank at the time of the demand being neither, and no evidence of a refusal; and having made all other objections that had the appearance of being legal, he next addressed himself to the feelings and passions of the jury. He said that the bank was *run upon*, that the jury ought not to assist in making the wheels of speculation revolve; that the plaintiffs did not want gold or silver money; they had no customhouse bonds to pay, and that the jury ought not to oblige the bank to pay its bills, because speculators wanted to make two or three per cent. by getting specie for the bank note. That in these hard embargo times, no country bank could pay all its bills, and should not be compelled to pay them; that the bank must call in that case upon individuals, and the injury

would spread; and many arguments of a like kind were used, founded upon the supposed inability of the bank, and the compassion of the jury.

The counsel for the plaintiffs made a satisfactory reply to each part of the defence, and commented with some severity upon that public institution, which, incorporated by one name, should attempt to mislead and defraud the public by using another, and ridiculed with much success the weakness of that argument, which contended that a bank ought not to be called upon to give specie for its notes, because it had foolishly or fraudulently issued more bills than it could pay. The stigma of speculation has often been attached to pursuits which compel an unwilling debtor to pay his honest debts; but he saw no dishonourable employment nor unfair gain in asking a person to pay his note of hand, given for a valuable consideration, nor in sending back to their sources the floods of that paper currency, with which the metropolis has been so often inundated by the country banks. It was perhaps of the greatest public utility.

Wetmore Chief Justice, and *Donnison* Justice, then charged the jury, who, after retiring for a short time, returned a verdict for the plaintiffs.

The bank, still unwilling to pay its own bill, moved an arrest of judgment upon a supposed defect and omission in the declaration; which motion was argued near a whole day; but the court eventually decided that the defect was formal only and not substantial, and could not be taken advantage of after verdict, and would not arrest the judgment.

Still determined not to pay its note, the bank claimed an appeal to the supreme court, where many months will elapse before a decision can be had. It may not be improper to add, that there were between ninety and one hundred actions entered in the same court against the same bank, the merits of which are similar to the one above reported; and which will not sooner be determined. Judicious people will make their own comments; and it may perhaps be a question hereafter agitated, whether it be not the duty of legislators to disfran-

chise a corporation which should be guilty of gross misconduct.

Two observations more perhaps should be made. The first is, that *Nantucket Pacific Bank* have always paid their bills punctually; secondly, that "The President and Directors of the *Nantucket Bank*" and their officers, since the above reported trial was had, can tell without the use of pen, ink and paper how many fourpence halfpennies make a dollar, and have promptly paid all bills presented to them.

Let us say with an old author, "he is foolish indeed, whom experience maketh not wise."

[From the Paris Argus of October 6, 1808.]

LAW OF NATIONS.

THE court of cassation in *France*, has lately decided an important question which concerns the law of nations and public right, viz. Whether the effects of the right of asylum, relative to fugitive criminals, ceased by the union of the country where the crime was committed to the one in which the criminal has taken refuge. The court decided that these effects ceased; from the motive that the right of asylum is not a personal right belonging to fugitives, but a result of the respective rights of nations, which ceased by their union under the same laws and the same government. This principle, of which the court made a just and rigorous application, occasioned the rejection of the appeal of a man of the name of *Odone*, a *Genoese*, condemned to twenty five years' hard labour, in irons, by the criminal court of *Genoa*, as being convicted of a robbery committed in 1800, in the house of Mr. *Figari*, and for which robbery the said *Odone* was at that time condemned to nine years' hard labour in irons, by default. The rigour of the principles got the better of the consideration that *John Odone*, upon seeking refuge in *France*, had entered into the service, and had even distinguished himself by his valour in the battle of *Trafalgar*