MURPHY *vs.* STATE BANK.

The Bank of the State of Arkansas is a corporation, and may sue as such, as held in *Mahoney et al. vs. The State Bank,* 4 *Ark. R.* 620, and *Underhill vs. the same,* 1 *English's R.* 135.

The notes of the Bank of the State of Arkansas, and branches, are not bills of credit within the meaning of the Federal Constitution, as held in *McFarland et al. vs. The State Bank,* 4 *Ark. R.* 44, *&c.*

The clause in the charter conferring upon the Branches the power to discount notes executed to the Bank is not repugnant to the constitution of the State.

A delivery of a note for discount to the Branch is a delivery to the Bank.

Writ of Error to the Circuit Court of Washington County.

This was an action of debt brought by the Bank of the State of Arkansas against Murphy, Evans and Oldham, and determined in the Washington circuit court, at the May term 1845, before the Hon. S. G. SNEED, Judge.

The suit was founded on a promissory note made by the defendants to the Bank for $950, dated on the 10th November 1841, due at six months, and negotiable and payable at the Branch of the Bank at Fayetteville; and upon an account stated.

The action was discontinued as to Evans for the want of service of the writ. The other two defendants filed six pleas: the first, *nul tiel* corporation: the second, third, fourth and fifth, alleged in different forms that the note sued on was executed for a loan of the notes of the Branch of the Bank at Fayetteville, which notes were bills of credit, and unconstitutional: the sixth plea is stated in the opinion of this court. The Bank demurred to all the pleas, the court sustained the demurrer, rendered judgment for the Bank, and Murphy brought error.

PASCHAL & OGDEN, for plaintiff.

LINCOLN, contra. The questions raised by the pleadings in this case have been settled, and it is only necessary to refer to the pre-

vious decisions of this court to sustain the judgment of the circuit court, see *McFarland et al. vs. State Bank,* 4 *Ark. R.* 44, *same vs. same, Ibid.* 410. *Webster et al. vs. same, Ibid.* 423. *Mahoney et al. vs. same, Ibid.* 620. *Underhill vs. same,* 1 *English's R.* 135.

JOHNSON, C. J. The first five pleas interposed by the plaintiff in error present no new question for the adjudication of this court. Every point raised by those pleas has been heretofore decided by this court, either directly or by necessary implication, in the cases of *McFarland et al. vs. The State Bank,* 4 *Ark. R.* 44, *same vs. same, Ib.* 410. *Webster et al. vs. same, Ib.* 423. *Mahoney et al. vs. same,* 621, *and Underhill vs. same,* 1 *English's R.* 135. We consider it clear from these authorities that the circuit court decided correctly in sustaining the demurrer to each of the first five pleas of the plaintiff in error. The point presented by the sixth and last plea is still an open question, yet we do not conceive that it involves the least difficulty. The plea avers that "the note sued upon was executed and delivered to the Branch Bank of the State of Arkansas at Fayetteville, that the same has never been delivered to the Bank of the State of Arkansas, nor has she any title thereto or interest therein, and that therefore said note is void, and for want of any consideration moving between the said plaintiff and said defendants, the same being an escrow, and never yet delivered to said plaintiff." The language used in this plea is somewhat indefinite, but from the whole context, we feel warranted in the inference that it was the intention of the party pleading to admit that the note was executed to and in favor of the principal Bank of the State of Arkansas, but deposited with the Branch at Fayetteville to be delivered upon the performance of certain conditions. If this is the legitimate construction of the language of the plea, and that it is we think will scarcely admit of a doubt, the question arising upon it is not whether the Branch had the constitutional right to contract in its own corporate name, but whether it was authorized to discount the paper of the principal institution. The constitution confers upon the General Assembly the power to incorporate one State Bank with such amount of capital as may be

deemed necessary, and such number of Branches as may be required for the public convenience. The act of incorporation expressly confers upon Branches the power of discounting. We can see nothing in conflict with the provisions of the constitution in the power thus conferred. If we are right in our view of the law, it then follows that a delivery to the Branch Bank at Fayetteville was tantamount to a delivery to the principal institution itself, and that therefore the matter set up in the plea was no defence to the action. Judgment affirmed.