R.

ARKANSAS.

Extract from Governor Drew's message, November 7, 1848.

The reports of the financial receiver of the State Bank, and of the secretary of the board of trustees of the Real Estate Bank, are referred to with more than ordinary satisfaction, as they each exhibit a more successful course, in the accomplishment of the objects of the act of liquidation on the one part, and of assignment on the other, by the collection of a much larger amount, than during the two years preceding their previous reports. It will be borne in mind that the State Bank and branches collected, from the 6th April, 1845, to the 30th September, 1846, only $80,567 29; but, for the two years ending the 31st October, 1848, there was collected, in every description of funds, $301,556 18; of this amount, $285,584 69 is in State bonds and coupons attached, to wit: 124 bonds sold on account of State Bank, with $42,464 69 interest, making, on this account, $166,464 69; and 82 bonds sold on account of the Real Estate Bank, with $37,120 interest, making, on that account, $119,120. For a more particular description of all, I refer you to the tabular statements accompanying the report. I have little to add to the recommendations and views furnished in my last biennial message in relation to the State Bank. Your attention is claimed with more pride for the correctness of the views there entertained, displaying my forecast in relation to the immense losses likely to result from a continuation of the present policy in winding up this institution, than to any pleasure I have in the certainty of the results. The limited and divided responsibility in the management of the State Bank and branches, under the act of liquidation, is productive of more evils, perhaps, than any other one cause. The onus should be thrown upon one responsible individual, of high business qualities and great weight of character—a financier of standing and influence, who alone should be held responsible for the faithful management of every interest connected with the final settlement of the concern. With this responsibility it would be safe to repose great authority and power. The employment of one attorney, or attorneys, should be vested alone in such person. It would then be his privilege to employ the best collectors, and obtain the best legal counsel; and, having the power and the means at command, would be able to sustain, in court and out of court, every interest of the bank.

The legislature will be able to appreciate more fully my views upon this subject, after a careful perusal of the able and voluminous report of Captain G. W. Patrick, who was appointed by me, during last spring, "bank agent," under the 16th section of the act amendatory of the act of liquidation, approved 3d February, 1845. After several months' arduous labor, Captain Patrick has, with great care and fidelity, embodied a fund of useful facts, for the consideration of the legislature, which cannot fail to assist materially the formation of a correct judgment of the real situation of these banks, and furnish data for their further action. The previous act, which has since been repealed, fixed the pay of bank agent at $4 per day. The act authorizing this appointment neither fixed the amount of pay nor made any appropriation; a very small amount, however,

was paid him in advance, out of the contingent fund of the executive department. It is desirable that an appropriation be made, as soon as practicable, and the compensation fixed by law, in accordance to justice, and commensurate with the amount and character of the labor performed.

In concluding the subject of banks, I would again call your attention to the importance of passing such laws as may be legal, and consistent with the interest of all the parties concerned, in aid of those charged with the collection of the debts due the Real Estate Bank, by releasing the land mortgaged for stock, upon payment of stock money and interest, and to authorize the trustees to foreclose the mortgage of such stockholder as may refuse to pay his regular instalment. The Real Estate Bank has taken, in payment of debts, several State bonds, a portion of which (as will be seen by reference to the report) has been obtained by the financial receiver of the State Bank, in exchange for the Real Estate Bank paper.

At this time there are outstanding, and for the payment of which the faith of the State is pledged, 1,023 bonds sold on account of the State Bank, in exchange for the Real Estate Bank paper. At this time there are outstanding, and for the payment of which the faith of the State is pledged, 1,023 bonds, sold on account of the State Bank, with interest to date, making the amount of $1,457,784 14; and 1,505 bonds, sold on account of the Real Estate Bank, with interest to date, making the sum of $2,160,180. The total responsibility is $3,617,964 14—only a small fraction more than the sum estimated two years past. I am still of opinion that the public interest will be best subserved by the present application of the proceeds of the 500,000 acres donation, to the redemption of these bonds, or whatever deficiency may be ascertained after the final liquidation of the assets of the bank, and the means shall have been so applied.

Extract from the report of Elias N. Conway, Auditor of Public Accounts of the State of Arkansas, October 1, 1848.

Statement marked K shows the amount of State bonds issued to, and sold by, the Bank of the State of Arkansas, remaining unredeemed on the 1st of October, 1848, to be one thousand and forty-four bonds for $1,000 each, making together $1,044,000. Seventy-seven of these bonds bear interest at the rate of 5 per cent. per annum, and will be due and payable on the 1st of January, 1887; and the remaining 967 bonds bear interest at the rate of 6 per cent. per annum, and will be due and payable on the 1st of January, 1868. The amount of interest remaining unpaid, by the State Bank, on these 1,044 bonds, on the 1st of October, 1848, is reported to the auditor to be $442,622 50. This statement K also shows that 75 five per cent. and 30 six per cent. bonds, each for $1,000, making together $105,000, exclusive of interest, have been received by the State Bank and its branches during the two years ending with the 30th September, 1848; and that 154 five per cent. bonds, each for $1,000, were deposited in the Bank of Washington, at Washington city, *eight or nine years since*, with the view of delivering them to the Secretary of War, who, it is stated, had contracted to purchase, but afterwards declined paying for them. It is suggested that provision be made by law for obtaining,

cancelling, and filing these 154 unsold State bonds, with the State treasurer.

Statement marked L has been formed from information furnished by the cashier and secretary of the Real Estate Bank of the State of Arkansas, and shows that 1,530 six per cent. State bonds, for $1,000 each, amounting together to $1,530,000, were issued to, and sold by, that bank; that these 1,530 bonds will be due and payable on the 26th October, 1861; that, in addition to the bonds sold, there were 500 six per cent. State bonds, which had been issued to that bank, hypothecated to the North American Trust and Banking Company of New York, and a loan of $122,389 77 obtained upon these bonds by the Real Estate Bank, on the 7th day of September, 1840; that the North American Trust and Banking Company, without paying any further consideration for these 500 State bonds, sold them to Holford & Co.; and that the interest remaining unpaid, *by the bank*, on the $122,389 77, at 6 per cent. per annum, and on the 1,530 bonds sold, amounts in the aggregate to $724,786 65 on the 1st of October, 1848.

It appears that the funds which had accrued to the State of Arkansas, under the act of Congress to appropriate the proceeds of the sales of the public lands, approved September 4, 1841, before the suspension of that act by the tariff act of 30th August, 1842, as well as the 5 per cent. of the net proceeds of the sales of the public lands accruing to this State, under the compact between the State and the United States, have been withheld, the former under section four of the act granting them, and the latter under the joint resolution of Congress, approved March 3, 1845, to pay interest on bonds of the State of Arkansas, which were purchased and are held by the Secretary of the Treasury and the Secretary of War, as trust funds. The auditor has no accurate information of the amount of money of the State so retained and applied; but, whatever that amount may be, it should *be deducted* from the aggregate amount of interest stated as unpaid *by the banks*, and then the real amount of interest due upon the bonds would be shown. Five hundred of the State bonds so held in trust were issued to, and sold by, the Real Estate Bank; and the remaining thirty-eight, it is believed, were issued to, and sold by, the Bank of the State of Arkansas. The State has not received any money from the United States on account of the 5 per cent. fund since October, 1841; and the amount then received, it is believed, had accrued on the sales of public lands before the 1st day of October, 1841. It is, therefore, to be inferred, that a large amount of money which belonged to the State has been applied, and more, as it accrues, is still being applied, to the payment of interest on bonds sold by the Real Estate Bank, for which interest the bank and the stockholders under the charter were and are liable. These facts the auditor has deemed it his duty to lay before the executive and the legislature.

RECEIVER'S OFFICE,
STATE BANK, LITTLE ROCK, *Oct.* 27, 1848.

SIR: In compliance with your request of this date, I have the honor to state, that the *cash* of all kinds received at the principal bank and branches, from the 31st October, 1846, to the 30th September, 1848, so

far as reported to this office, amounts to three hundred and one thousand five hundred and fifty-six dollars and fifteen cents, a table to explain which more fully, marked No. 1, is herewith presented; showing also the present character of the funds.

Table marked No. 2 shows that one hundred and twenty-five of the bonds issued for the State Bank, amounting, principal and interest, to the sum of one hundred and sixty-three thousand five hundred and eight dollars and sixty-eight cents, have been taken in by the bank, leaving outstanding on the 1st October, 1848, one thousand and forty-four bonds, with interest due, amounting to the sum of four hundred and forty-two thousand six hundred and twenty-two dollars and fifty cents; making the debt on that day, on account of outstanding bonds, issued for the State Bank, the sum of *one million four hundred and eighty-six thousand six hundred and twenty-two dollars and fifty cents.* It is also shown that *sixty-one* bonds, issued for the Real Estate Bank, bearing six per cent. interest, and amounting, principal and interest, to the sum of eighty-seven thousand seven hundred and fifty dollars, are now held by this bank, and which we have some expectation of being able to exchange with the Real Estate Bank, for bonds or bank paper issued for the State Bank.

Of the bank notes issued by the State Bank and branches, there was outstanding, and yet in circulation, on the 1st October, 1848, the sum of *eighty-three thousand four hundred and twenty-seven dollars and fifty cents.*

As Captain Patrick, the bank agent, who has investigated most industriously and faithfully the affairs of this bank and branches, will most likely lay before you, and before the legislature, a full and detailed statement of the condition and amount of all their assets, it has not been deemed important that I should present a more regular report.

You will be pleased, however, to inform me of any additional information in relation to the affairs of the bank that may seem to be required by law, or desired by you.

I have the honor to be, most respectfully, your obedient servant,

A. E. THORNTON,
Financial Receiver.

To his Excellency T. S. DREW,
Governor of the State of Arkansas.

foreclosure thirty thousand dollars, or that any individual bond-holder does the same. The money must be divided *pro rata*. I presume then that any bill filed must be, not in the *names* of all the bond-holders, because that is impracticable, but by one or more *for the benefit of all*. All can come in, prove their debts before the master and recover their dividends. Any dividends not recovered would remain in chancery until called for. So far I think is certain. The State could not take possession of it, because she cannot represent the bond-holders without their consent. If she received their money for them and failed to pay them, they could again have recourse on the debtors.

I think, therefore, this may be stated with certainty. *To every suit* for foreclosure the bond holders must all be parties, not by name, but by suing for the benefit of all: and all the funds collected would be distributed and administered by the court. This is *judicial* power which the legislature cannot usurp.

But as to the rights of the stockholders. Suppose A is a stockholder to the amount of three hundred shares. His stock-bond and mortgage for thirty thousand dollars, secures the payment of that number of the bonds. For how much is he liable in equity? For his *proportion* of the ultimate loss sustained by the bank—not for the whole thirty thousand dollars. If a bill is filed against him, how much can be collected?

Now it is clear that if the whole thirty thousand dollars and interest on it is collected of him alone, he can file a bill against every other stockholder for contribution, to make each repay to him his proportional part of the excess he has paid over his share. How can that be ascertained? Suppose twenty stockholders are sued, and the whole amount of his mortgage collected of each. Each can then have his bill against all the rest for contribution. When can it be ascertained how much each is to contribute? When would these twenty suits, each having every stockholder or his legal representatives for parties, be determined? It would need a separate court of chancery, always in session, to end them.

Has the State, or have the bond-holders, a *legal* right to collect of any one or any twenty of the stockholders the *whole* amount of their mortgages? Can this be done, and these unfortunates compelled to enforce contribution from the others? That I cannot answer. The charter is too uncertain to allow me to do it.

Would all the bond-holders have to sue all the stockholders in one great mammoth bill, to foreclose the mortgages and marshal the assets? If so, it would be necessary, first, to exhaust all the other funds, then apportion the deficit among the different mortgages, and make a simultaneous sale of all the lands, the charge on which remained unpaid. This would be vesting an immense trust in the court. What court would have jurisdiction? And as every person having a lien, prior or subsequent, on any tract of the land, would have to be a party, there would be several thousand defendants. The death of a single one would delay the suits, and at every term one would be dead. It would never end.

Or, must the State and bond-holders wait until all the other assets are administered, and then proceed to collect by foreclosure his proportion from each? Suppose that proportion ascertained. Suppose decree against each for his proportion. But if one fails to pay—if one tract of land does not pay its proportion—there must be a new apportionment, and so on *ad infinitum*.

All this seems impracticable—seems to force us back to separate suits against such of the stockholders as may be selected out, for the *whole* amount of their mortgages. Then in every suit there must be a dividend among the bond-holders, and after every one a suit by the unfortunate victim against all his brother stockholders for contribution; and, as he would be in equity substituted to the lien of the bond-holders on *all* the other lands mortgaged, for the proportion to be contributed to him, *his* would be also a huge foreclosure suit against every other stockholder, on every other mortgage at once.

No doubt the State may, by legislative act, vest all *her* interest in the bonds and mortgages in the trustees; no doubt, too, they could file bills; and if they did so on behalf of all the bond holders, and the mortgages selected out were foreclosed for the whole amount of the stock-bond in each case, and the amount realized was administered by the court and divided among all the bond-holders *pro rata*, the lien on the specific land sold under the foreclosue would be at an end. This is the only way in which the State can act for and bind the bond-holders.

Suppose A, B, and C hold fifty bonds each, the State fifty, and D is a stockholder to the amount of 30 shares. Now, neither A, B, C, nor the State, can collect and keep for his or its own benefit the whole amount due by D. Every holder of a bond has a lien on every tract of land mortgaged. Suppose D gets thirty bonds, and is ready to pay them over. Does that release him? Not at all. A, B, C and the State each still have the liens on his land, *pro rata* with all the other bond-holders. D can no more pay the 30 bonds he holds out of his lands, to the exclusion of all other bonds, than A, B, or C could *collect* his fifty bonds out of the same, to the exclusion of all other creditors. It is therefore of no use for a stockholder to buy up bonds, in order to secure himself against a sacrifice of his property.

It seems to me that for the State or bond-holders to proceed to foreclose the mortgages now would be to administer the whole funds of the bank in chancery. The ruin of the stockholders would be irretrievable and the cost and loss to the State immense.

His Excellency will see that I state frankly all my impressions, and all the difficulties surrounding the subject. Having done so, I can only state with equal frankness the best conclusion to which I can arrive.

That conclusion is that every facility should be given the trustees to collect the debts due the institution, by such legislation as may be expedient and proper. That no general course of foreclosing the mortgages be adopted, but the trustees be authorized, whenever a stockholder becomes insolvent or dies, and his debt remains unpaid, or whenever he is unreasonably in default, to proceed to foreclose in the name of the State, on behalf of itself and the bond-holders, such person's mortgage, the funds so collected being administered and marshalled in chancery. To do this, the court of Pulaski county should have the jurisdiction of all such foreclosure cases.

Very respectfully, yours,

ALBERT PIKE,
Attorney Trustees R. E. Bank.

THOMAS W. NEWTON, Esq.