

No. 13193

Supreme Court of Illinois

Harrison

vs.

Chipp

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 146.

Harrison
vs
Chapman

1892

SUPREME COURT OF THE STATE OF ILLINOIS,
Of the April Term, 1861.

NATHAN B. HARRISON, <i>Plaintiff in Error,</i> vs. JOHN CHIPP, <i>Defendant in Error.</i>	}	Error to the Superior Court of Chicago.
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PETITION FOR AN APPEAL BY WRIT OF CERTIORARI UNDER THE STATUTE.

The Petition is as follows:

2 "John Chipp, the defendant in the above entitled cause, and petitioner herein, being first duly sworn, deposes and says, that on or about the 28th day of April, A. D. 1860, he was served by summons to appear before Charles H. Bamm, Esq., a Justice of the Peace of the County of Cook, on the 5th day of May, A. D. 1860, at 10 o'clock a. m. of said day, to answer to a suit wherein Nathan B. Harrison was plaintiff, and this deponent was defendant. Deponent further says, that said suit was brought by said Harrison to recover from him for his, the said Harrison's services in obtaining a divorce for one Jane Chipp, in the Superior Court, from this defendant. Deponent further says, that under the order, as will fully appear by reference to the cause in this Court, of the said Superior Court of Chicago aforesaid, he, as defendant in the suit of Jane Chipp against John Chipp, paid into Court for Harrison the sum of fifty dollars, as his solicitor's fees, and that he is not in the least cent indebted to said Harrison, and that he never employed him in said cause, or in any other way; and that said Harrison does not pretend to have any claim of any kind, name or nature against him, except the said claim for services in obtaining a decree for divorce as aforesaid.

3 Deponent further says, that he employed one E. F. Runyan, an attorney and counsellor at law, to defend said suit, and that said Runyan did appear upon the trial and defend the same for him; that after the trial of said cause, and at the time the same was argued, said Justice was not, as he claimed, able to decide the same, and wished to have time to advise with the Judges of the Superior Court aforesaid, or some one of them, about it; but that no time was specified as to when the same was to be decided.

Deponent further says, that he intended, if said Justice should enter a judgment therein against him, to appeal the same, and for that purpose

(he being absent from the city) employed said Runyan to watch the same and see to the appealing of the same. That, as he is informed and verily believes, said Runyan inquired of said Justice, and also of his clerk, Mr. Witt, at various times from said 10th day of May, the time that said cause was tried, up to the middle of July, as to whether said cause had ever been decided, and was invariably informed that it was not. And said Runyan was not informed of the same, as this deponent is informed and verily believes, until the 25th day of July.

Deponent further says, that said Justice now says and pretends to this deponent and his attorney, that he entered said judgment against him, and in favor of said Harrison, on the 13th day of June, for the sum of seventy-five ——— and costs of suit, and therefore refuses to grant his appeal.

4 Deponent further says, that it is not owing to any negligence or default of his, and, as he believes, not on account of any negligence of said Runyan, that he was unable to take his appeal in the usual way; but he avers that the reason of his not taking the same was because he or his attorney were not permitted to know of said judgment being entered until after the time for taking appeals had expired; that this application is not made for the purpose of delay, but that justice may be done. Deponent therefore prays that the affidavits hereto attached may be made a part of this his petition, and that a writ of certiorari may issue in said cause, in pursuance of the statute in such cases made and provided."

5 Daniel J. Avery, in his affidavit attached to said petition, says, that he is clerk of E. F. Runyan; that he recollects the trial of suit of Harrison vs. Chipp, before C. H. Barmm, J. P.; that he at various times, at the request of said Runyan and Jane Chipp, enquired of said Justice and his clerk, he thinks once as late as the middle of July, if said suit had been decided, and was informed that it was not. That he has heard Runyan request said Barmm to let him know when the same was decided. That he verily believes said Runyan was not informed of the same until after the time to appeal had passed.

6 E. F. Runyan, in his affidavit attached to said petition, says he was employed as attorney of said Chipp in the suit of N. B. Harrison vs. John Chipp; that he was authorized by said Chipp to do everything in said cause that might be necessary to protect the rights of said Chipp. That he tried said cause before the J. P. That he after enquired of said J. P. and his clerk if the same was decided; they said not. The last enquiry was about the middle of July, of the clerk, Mr. Witt; he was informed by Witt that the J. P. had not decided said suit. That he remarked to Witt that he guessed it had gone up; Witt replied he

thought so. That he did not learn what the judgment was until the 25th of July; then he learned it was against Chipp, for \$75.00 and costs.

7 Endorsed on said petition is the order granting the writ of certiorari in usual form, dated August 11th, 1860.

VAN H. HIGGINS, *Judge*.

7 & 8 The appeal bond is in usual form, approved and filed by the Clerk of said Court, August 13th, 1860.

9 The writ of certiorari to the Justice, in due form, under the seal of said Court and attest of the Clerk, issued Aug. 13th, 1860.

September 13th, 1860, the said plaintiff filed his motion, and the affidavits of C. H. Barmm, J. P., and P. H. Witt, with the Clerk of said Court, in the words and figures as follows, to wit:

10 "Now comes the said plaintiff in the above entitled cause, and moves the Court to dismiss the proceedings in the said cause in this Court, quash the writ of certiorari, and order a writ of procedendo to issue, for the reasons following, to wit:

1st. That the petition does not set forth and show that the judgment before the Justice was not the result of negligence on the part of the petitioner.

2d. That the petition does not set forth and show wherein the judgment is unjust and erroneous, nor does the petitioner in his petition state that said judgment set forth in his petition is unjust and erroneous in his opinion.

11 3d. That the petition does not show and set forth such a state of facts and circumstances as excuse the petitioner from taking an appeal in the ordinary way, or that will entitle him to a writ of certiorari.

4th. For that the Judges of the Superior Court of Chicago, nor either of them, are authorized to grant a writ of certiorari.

11 C. H. Barmm, in his affidavit, says, that he is and has been an acting Justice for two years last past. That Nathan B. Harrison brought suit before him vs. John Chipp, April 27th, 1860. That such proceedings were had before him. That all the testimony offered in said case was heard and arguments concluded on the 10th day of May, 1860. That by consent of the counsel he took said case under advisement. That on the 13th of June he decided said case, and caused his judgment to be entered in his docket. That his docket is and ever has been open

and free for the inspection of all parties and their attorneys who have suits therein.

12 That he knows said E. F. Runyan and D. J. Avery ; that neither of them ever requested him to inform them when he gave judgment in said case. That he never told either of them that he had not decided said case after the 13th day of June, 1860.

13 P. H. Witt, in his affidavit, says, that he was employed as scribe by C. H. Lamm, J. P., in 1859 and 1860. That he recollects the suit of N. B. Harrison vs. John Chipp, before said J. P. That the same was taken under advisement by said J. P., by consent of the parties thereto. That said Justice rendered his judgment on the 13th day of June, 1860. That he wrote the same in the docket of said J. P. the same day. That said docket was always open to parties and their attorneys for examination. That he knows said E. F. Runyan and D. J. Avery ; that each of them frequently examined said Justice's docket ; that he never told said Runyan nor said Avery, after said 13th day of June, 1860, that said Justice had not decided said case.

14 & 15 The Justice's transcript, filed with the Clerk, Oct. 20th, 1860, is in usual form.

16 Feb. 20th, 1861. At the February term of said Court, plaintiff in error submits his said motion to quash the writ.

Motion overruled, and exceptions taken.

Feb. 21st, 1861. Plaintiff in error filed his bill of exceptions, in the words and figures as follows :

17 "Be it remembered, that on the seventh day of February, A. D. 1861, at the February term of said Court, the said plaintiff called up his motion, filed in this case on the 13th day of September, A. D. 1860, to dismiss the proceedings in the said case in this Court, quash the writ of certiorari, and order a writ of procedendo, &c.

And thereupon the said plaintiff, after reading the defendant's petition, moved the Court to strike off the affidavits of E. F. Runyan and D. J. Avery, thereto attached. Which said motion the Court overruled. To which ruling of the said Court the said plaintiff then and there excepted.

And thereupon the said plaintiff offered to read counter affidavits of C. H. Barmm, Esq., and P. H. Witt, on file in this case, September 13th, A. D. 1860. To the reading of which affidavits defendant objected.

Which objection was sustained by the Court. To which ruling of the said Court the said plaintiff then and there excepted.

18 Whereupon the said plaintiff proceeded with his argument upon the original motion to dismiss and quash the writ of certiorari, after which the said Court overruled said motion.

To which ruling of the said Court the said plaintiff then and there excepted.

And thereupon the said plaintiff moved the Court to dismiss said appeal for want of an affidavit of merits. Which said motion is overruled by the said Court.

To which ruling of the said Court the said plaintiff then and there excepted.

And inasmuch as the matters aforesaid do not appear upon the record of said Court, the said plaintiff prayed that the said Judge of the said Court would set his hand and seal to this Bill of Exceptions, containing the several matters as aforesaid, &c.

VAN H. HIGGINS, [SEAL.]
Judge."

March 7th, 1861, one of the days of the March term of said Court, the following proceedings were had in said case.

18 "This day comes said defendant, by Eben F. Runyan, his attorney, and this cause being called for trial in its order on the docket, and plaintiff not appearing to prosecute, on motion of defendant, it is ordered that the above entitled suit be and is hereby dismissed at the plaintiff's costs of prosecution.

Therefore it is considered that the said defendant do have and recover of and from the said plaintiff his costs in this as well as in the Court below, in this behalf expended, and thereof have execution."

The plaintiff in error now assigns the following errors, to wit:

1st. The Court erred in overruling plaintiff's motion to strike from the defendant's petition the affidavits of E. F. Runyan and D. J. Avery.

2d. The Court erred in sustaining defendant's objection to the plaintiff's reading the counter affidavits of C. H. Barman and P. H. Witt.

3d. The Court erred in overruling plaintiff's motion to quash the writ of certiorari.

4th. The Court erred in overruling plaintiff's motion to dismiss the defendant's appeal for want of an affidavit of merits.

5th. The Court erred in dismissing the suit and rendering judgment against said plaintiff for costs.

SUPREME COURT.

April Term, 1861.

NATHAN B. HARRISON, }
Plaintiff in Error, }
vs. }
JOHN CHIPP, }
Defendant in Error. }

Points in Plaintiff's Argument and Reference to Authorities Cited.

1st. *Ex parte* affidavits ought not to be allowed in support of the petition. The statute is explicit. R. S. 325, Sec. 75.

2nd. The correct practice is to hear counter affidavits on motions to set aside or vacate orders granted on *ex parte* affidavits.

3rd. The Judges of the Superior Court of Chicago are not authorized to grant the statutory writ of certiorari. R. S. 325, Sec. 72; and Appendix, page 572, Sec. 1.

4th. The petition does not set forth and show that the judgment was not the result of negligence in the petitioner. R. S. 325, Sec. 75.

23 Ill., 336, *Clifford v. Waldrop*.

16 Ill., 275, *Murry v. Murphy*.

17 Ill., 31, *Russell v. Pickering*.

5th. The petition does not set forth and show wherein the injustice and error consists. The presumption of law is, that the evidence made a proper cause of action for the judgment before the justice.

Chicago & Rock Island R. R. v. Fill, 22 Ill., 336.

6th. The averments in the petition are not positive, and do not show that it was out of the power of the petitioner to take his appeal in the ordinary way.

Cushman v. Rice, 1st Scam., 565.

Clifford v. Waldrop, 23 Ill., 336.

Lord v. Burk, 4 Gilm., 363.

7th. The court ought to have dismissed the appeal for want of affidavit of merits. R. S. 325, Sec. 74, (concluding clause.) Vide Laws of 1857, page 11, Sec. 7; and Laws of 1853, Purple's Statutes, 323, Sec. 87.

8th. The plaintiff was not in court to receive its judgment.

Hannum v. Thompson, 1st Scam., 238.

Anglin v. Nott, 1st Scam., 395.

Norton v. Dow, 5 Gilm., 459.

Boilein v. Edwards, 4 Gilm., 115.

Mitchell v. Jacobs, 17 Ill., 235.

Hooper v. Smith, 19 Ill., 53.

146-18

Dr. B. Harrison

vs

John Chipps

Abstract

Filed Apr 16. 1861

W. A. Land

Clark

United States of America }
State of Illinois - Cook County, } ss.

Pleas before the Honorable the Judges
of the Superior Court of Chicago, within
and for the County of Cook in the State
of Illinois at a regular term of said
Superior Court of Chicago, begun and
held at the Court House in the City of
Chicago in the County and State aforesaid
on the first Monday being the Fourth
day of February in the year of our Lord
one thousand eight hundred and sixty one
and of the Independence of the United
States of America the eighty fifth.

Present The Honorable John M. Wilson. Chief Justice
of the Superior Court of Chicago
New St. Higgins & Grant Goodrich .. Charged
Carlos Hawes Prosecuting Attorney
Anthony G. Mesing .. Sheriff of Cook County

Attest,

Walter Kimball .. Clerk.

Be it remembered that heretofore to wit on the thirteenth day of August A. D. Eighteen hundred and sixty came John Chipp by his attorney and filed in the Office of the Clerk of the Superior Court of Chicago his Petition and Affidavits for Writ of Certiorari; Which Petition and Affidavits is in words and figures as follows to wit,

"State of Illinois
County of Cook } vs The Superior Court of Chicago.
Nathan B. Harrison
vs
John Chipp } Petition
State of Illinois
County of Cook } vs.

John Chipp the defendant in the above entitled cause, and Petitioner herein, being first duly sworn deposes and says, that on or about the 28th day of April A. D. 1860 he was served by Summons to appear before Charles H. Barron Esq. a Justice of the Peace of the County of Cook on the 4th day of May A. D. 1860 at 10 o'clock A. M. of said day to answer to a suit wherein Nathan B. Harrison was Plaintiff and this Defendant was the Defendant - Depoent further says that said suit was brought by said Harrison to recover from him for his the said Harrison's services in obtaining a divorce for one Jane Chipp in the Superior Court from this defendant - Depoent further says that under the order

Be it remembered that heretofore to wit on the thirteenth day of August A. D. Eighteen hundred and sixty came John Chipp by his attorney and filed in the Office of the Clerk of the Superior Court of Chicago his Petition and Affidavits for Writ of Certiorari; Which Petition and Affidavits is in words and figures as follows to wit,

"State of Illinois
County of Cook } vs The Superior Court of Chicago.
Nathan B. Harrison
vs
John Chipp } Petition
State of Illinois
County of Cook } vs.

John Chipp the defendant in the above entitled cause, and Petitioner herein, being first duly sworn deposes and says, that on or about the 28th day of April A. D. 1860 he was served by Summons to appear before Charles H. Barron Esq. a Justice of the Peace of the County of Cook on the 4th day of May A. D. 1860 at 10 o'clock A. M. of said day to answer to a suit wherein Nathan B. Harrison was Plaintiff and this Defendant was the Defendant - Depoent further says that said suit was brought by said Harrison to recover from him for his the said Harrison's services in obtaining a divorce for one Jane Chipp in the Superior Court from this defendant - Depoent further says that under the order

as will fully appear by reference to the cause in this Court of the said Superior Court of Chicago aforesaid he as Defendant in the suit of Jane Chipp against John Chipp paid into Court for Harrison the sum of Fifty dollars, as his Solicitors fees, and that he is not in the least cent indebted to said Harrison, and that he never employed said Harrison in said cause or in any other way and that said Harrison does not pretend to have any claim of any kind name or nature against him except the said claim for services in obtaining a decree for divorce as aforesaid. Deponent further says that he employed one E. J. Remyan an attorney and Counsellor at Law to defend said suit, and that said Remyan did appear upon the trial and defend the same for him, that after the trial of said cause and at the time the same was argued, said Justice was not as he claimed to be able to decide the same and wished to have him to advise with the Judges of the Superior Court aforesaid or some one of them about it - but that no time was specified as to when the same was to be decided - Deponent further says that he intended if said Justice should enter a Judgment therein against him to appeal the same and for that purpose (he being absent from the City) employed said Remyan to watch the same and see to the appealing of the same - That as he is informed - and verily believes said Remyan inquired of said Justice and also of his Clerk Mr. Kirk at various times from said 10th day of May, the time that said

cause was tried up to the middle of July as to whether said cause had ever been decided, and was invariably informed that it was not - and said Runyan was not informed of the same as deponent is informed and verily believes until the 25th day of July - Deponent further says that said Justice now says and pretends to this Deponent and his attorney that he entered said Judgment against him and in favor of said Harrison on the 13th day of June for the sum of seventy five - and costs of suit, and therefore refuses to grant his Appeal -

Deponent further says that it is not owing to any negligence or default of his and as he believes not on account of any negligence of said Runyan, that he was unable to take his appeal in the usual way - but he avers that the reason of his not taking the same was because he and his attorney were not permitted to know of said Judgment being entered until after the time for taking appeals had expired - that this application is not made for the purpose of delay but that Justice may be done

Deponent therefore prays that the Affidavits hereto attached may be made a part of this his Petition and that a Writ of Habeas Corpus may issue in said cause in pursuance of the Statute in such case made and provided

Subscribed and sworn to before
me this 1st day of August A.D. 1860

John Chipp."

Chs H Barron (Seal)
J. P."

5
"State of Illinois
County of Cook }

Daniel A. Avery of said County -
being duly sworn deposes and says that he is acting
as Clerk for E. J. Ryan - that he recollects the time
that the cause of N. B. Harrison also referred to against
John Chipp was tried before Charles St. Barmon that after
the same were tried he at various times at the request
of said Ryan and also at the request of said Chipp
called at the Office of said Justice Barmon and Enquired
of said Justice and also of his Clerk Mr. Whit whether
the same had been decided or not, and was invariably
told that they were not - Deponent further says that at
one time he thinks as late as the middle of July he
talked with said Justice Barmon about said cause
and he was told that he had not decided the same
and that Judge Goodridge refused to advise him with
reference thereto - Deponent further says that he has heard
said Ryan request said Barmon to let him know
when the same was decided - Deponent further says
that he verily believes no knowledge was given to said
Ryan, and that he was never informed of the same
being entered until the last of July and long after the
time for appealing the same had passed.

Subscribed and sworn to
before me this day of
August A. D. 1860 . . .

D. J. Avery "

Chas. St. Barmon (Jus)
J. P "

"State of Illinois }
 County of Cook } ss

Eber J. Runyan of said County being first duly sworn deposes and says that he as the attorney of John Chipp was employed to defend the suit of N.B. Harrison vs. John Chipp - that he had authority from said Chipp to do everything in said cause that might become necessary to protect the rights of said Chipp - Deponent further says that he tried said cause before said Charles St. Barron Esq. a Justice of the Peace of said County - that he often enquired of said Justice and his Clerk Mr. Whit whether or not the cause was decided and was always told that they had not, deponent further says that the last time he made enquires of the same was in the month of July, about the middle of said month, at which time he asked Mr. Whit the Clerk of said Justice whether the cause was at that time decided and what the Judgment of the Court was - Deponent says that said Whit informed deponent that the said Justice had not as yet decided said cause - Deponent then says that he remarked to said Whit that he guessed said suit together with some others against said Chipp had gone up, to which said Whit replied that he thought they had - Deponent further says that he never was able to learn anything about what had been done with said suit until on or about the 25th day of July when he was informed that a Judgment was entered against said Chipp and in favor of said Harrison

7 For the sum of Seventy five dollars and costs of suit
Subscribed and sworn to
before me this 10th day of } E. J. Ryan "
August A. D. 1860 . . . }

(Seal) James B. Braxwell
Notary Public "

Endorsed on which said Petition is the following
Order, to wit,

" Sup: Court of Chicago
Sept Term A. D. 1860.

Newton B. Harrison

vs

John Chipp . . .

} Appeal by Certiorari

to
The Clerk will please issue a writ
of Certiorari in the above entitled cause upon the filing
the foregoing petition and affidavits and bond as required
by the Statute.

Chicago August 11th 1860 -

Wm H. Higgins
Judge."

And hereupon accordingly on the thirteenth
day of August A. D. Eighteen hundred and six, there
was filed in the Office of the Clerk of said Court a
certain Bond as aforesaid which Bond is in words and
figures as follows to wit,

" Know all Men by these presents that we John
Chipp and Josiah Greenwood of the County of Cook in

The State of Illinois are held and firmly bound unto
 Nathaw B. Harrison in the penal sum of One hundred
 and seventy five dollars lawful money of the United States,
 for the payment of which well and truly to be made we
 bind ourselves our heirs executors and administrators jointly
 severally and jointly, by these presents written our hands
 and seals this 11th day of August A.D. 1860,

The condition of the above obligation is such
 that whereas the said Nathaw B. Harrison did on the
 thirteenth day of June A.D. 1860 before Charles H. Barn
 a Justice of the Peace for the said County of Cook receive
 a Judgment against the above bounden John Chipp for
 the sum of Seventy five dollars and costs of suit, from
 which Judgment the said John Chipp has taken an appeal
 by certiorari to the Superior Court of Chicago in the
 County of Cook aforesaid and State of Illinois

Now if the said John Chipp shall prosecute his
 appeal with effect and shall pay whatever Judgment may
 be rendered by the Court upon dismissal or trial of said
 appeal then the above obligation to be void otherwise to
 remain in full force and effect.

Approved by me at my office

this 13th day of August 1860

John Chipp (Seal)

Josiah Greenwood (Seal)

W. Kimball - Clerk

And hereafter also on the said thirteenth day of
 August A.D. Eighteen hundred and sixty there was
 issued out of and under the Seal of said Court

Peoples Writ of Certiorari: Which Writ with the Sheriff
returned thereto, endorsed is in words and figures as follows
to wit.

"State of Illinois
County of Cook } ss

The People of the State of Illinois
to Charles H. Barron, Esquire, a Justice of
the Peace in and for said County.

Whereas in a certain suit lately pending in a Court
held before you wherein Nathan B. Harrison was Plaintiff
and John Chipp Defendant, such proceedings were had
that judgment hath been given by you in your said
Court against the said John Chipp as it is said, and we
being willing for certain Causes that the record of the
said proceedings and judgment should be certified by you
to our Superior Court of Chicago, in and for the said
County of Cook Do therefore command you that the
record of the said proceedings and judgment, with the
process pleadings and all other things touching the same
to our said Superior Court of Chicago in and for the
County of Cook forthwith in as full and ample manner
as the same remain before you, distinctly and plainly you
send under your Seal together with this Writ that our
said Superior Court of Chicago may further cause to be
done thereupon what of right ought to be done.

Witness Walter Kimball Clerk of our said
Court and the Seal thereof at Chicago in

(Seal)

said County this 13th day of August A.D. 1860.

Walter Knibb - Clerk "

To the Sheriff of Cook County to execute."

And hereafter to wit on the thirteenth day of September A.D. Eighteen hundred and sixty came the said plaintiff and filed in the Office of the Clerk of said Court his certain Motion & Affidavits in said cause which said Motion & Affidavits are in words and figures as follows, to wit:

"State of Illinois } The Superior Court of Chicago
County of Cook } do At the September Term A.D. 1860

Mathew B. Harrison

vs

John Chipp

Certiorari

Now comes the said Plaintiff in the above entitled cause and moves the Court to dismiss the proceedings in the said cause in this Court - quash the Writ of Certiorari - and order a Writ of Proceudo to issue for the reasons following to wit

1st That the petition does not set forth and show that the Judgment before the Justice was not the result of negligence on the part of the Petitioner.

2nd That the petition does not set forth and show wherein the Judgment is unjust and erroneous, nor does the petitioner in his petition state that said judgment set forth in his petition is unjust and erroneous in his opinion

That the Petition does not show and set forth such a State of facts and circumstances as excuse the Petitioner from taking an Appeal in the Ordinary way so that will justify him in a Writ of Certiorari.

14th For that the Judges of the Superior Court of Chicago no either of them are authorized to grant a Writ of Certiorari in Vacation.

N. B. Harrison

Per O.

" Nathaw B. Harrison	}	In the Superior Court of Chicago.
vs		Sept Term A. D. 1860.
<u>John Chipp</u>		By Certiorari.
		State of Illinois
		<u>County of Cook</u>

Charles H. Barron of said County being duly sworn upon his Oath says that he is and has been for the space of two years last past an acting Justice of the Peace in and for the County of Cook and State of Illinois And deponent further says that Nathaw B. Harrison brought suit before him against John Chipp on the 27th day of April A. D. 1860 that such proceedings were had in said suit before him - that all the testimony offered in the said case was heard and the arguments of Counsel was concluded on the 10th day of May 1860 that by consent of Counsel he took said case under advisement, and that on the 13th day of June A. D. 1860 he decided said case and caused his Judgment in the same

to be written out in full in his docket on the said 13th day of June A. D. 1860. And deponent further says that his docket and ever has been since he has held the Office of Justice of the Peace in said County free for the inspection and examination of all parties and their attorneys who have suits entered therein.

And this deponent further says that he well recollects that while he had said suit under advisement that E. J. Runyan and Daniel J. Query who keep their office in the adjoining room to his, asked him several times if he had decided said suit and he told them he had not-- that he does not now recollect that either of them asked him about said suit after he decided the same until about the last of July 1860. And this deponent further says that said Runyan, nor said Query did ever request him to inform them or either of them when he decided said suit, and that he never told them or either of them that he had not decided the same after the 13th day of June A. D. 1860.

Subscribed and sworn to before
 me this 11th day of September 1860. Chas. H. Barnum.
 A. D. 1860

Chas. D. Sturtevant J.P."

"Nathan B. Harrison } In the Superior Court of Chicago
 vs } Of the September Term A. D. 1860
John Chipp . . . } By Certiorari
 State of Illinois - County of Cook. ss. Peter H. Whit

of said County first being duly sworn upon his oath says That he is now employed and is at work for Calvin, Jr. D'Hoff Esq. J. P. of said County as his Scribe - That two two years or more prior to the first of August A. D. 1860 he was employed by and worked for Charles H. Barren Esq. J. P. of said County as Scribe in his Justice Office - Depoent further says that he well recollects the suit of Nathan B. Harrison against John Clipp before said Justice Barren - That the same was taken under advisement by said Justice by consent of the parties thereto on the 10th day of May A. D. 1860 & the first knowledge this Depoent had that said Justice Barren had decided said cause was on the 13th day of June A. D. 1860 at which time he under the direction of said Justice Barren wrote the Judgment of the said Justice Barren in the said case in the docket of the said Justice Barren And this Depoent further says that he never at any time after the said 13th day of June A. D. 1860, told them, F. Runyan or Daniel, C. Avery that said Justice Barren had not decided said suit, - that he knows said Runyan and said Avery well, - that they occupy an office in adjoining Room to the said Justice Barren's office - That they both were frequently in Justice Barren's office examining his docket during the entire time this Depoent was with said Justice Barren And this Depoent further says that the docket of the said Justice Barren was always free for all parties and their attorneys who had suits

Wherein to examine at their pleasure and when they desired
 to do during all the time he was with the said
 Justice Barron and further Dependent said not
 Subscribed and sworn to before

On this 11th day of September
 A.D. 1860

Peter H. Whit

Chancellor. E. Lewis
 Notary Public."

And thereafter to wit on the twelfth day of
 October A.D. 1860 there was filed in the Office of the
 Clerk of said Court, Transcript of the proceedings in
 said cause before said Justice Barron; Which Transcript
 is in words and figures as follows to wit:

2784	Nathan B. Harrison	Demand \$100.
Justice fees	do	April 27/60.
\$2.00	John Shipp	Sum: issued to Mitchell, Constable
Trans 50		returnable May 5 th at 1. P.M. Sum: returned perused
\$2.50		by reading to the deft, April 28/60.
R. Scott 50		May 5/60 - Case called for trial and cont: by consent
W. Shinn 50		of parties to May 10 th at 3. P.M.
Wm Gray 50		May 10 th at 3 P.M. Parties present and join issue and
J.B. Clements 50		proceed to trial, after hearing the evidence and arguments
R. Keating 50		of the Counsel as well for the Plt and Deft, this cause is
E. Whit 50		latter under advisement.
H.B. Stevens 50		
Blank 50		

Now 13/60 - The Court being fully advised in the premises
 of this cause, and orders & adjuges that the Plaintiff have

and received of the Debt the sum of \$75⁰⁰ and costs of
Suit, and that execution issue in due time.

Mitchell \$1000 Ed: issued to Mitchell Const. July 5/60.

Writ of Certiorari served on A. J. from Superior Court
August 14/60.

"State of Illinois }
Book County. } b

I certify the foregoing is a true
Transcript of all the proceedings before me in the above
entitled cause from my docket and the papers herewith
transmitted to said Court contain a full and perfect
statement of all the proceedings before me.

Given under my hand and Seal this 14th day
of August A. D. 1860.

Chas. H. Barron (Seal)

Judge of the Peace."

And afterwards to wit on the Seventh day
February (being one of the days of the February term
of said Court) in the year of our Lord one thousand
eight hundred and Sixty one, the following proceedings
were had in said cause and entered of record in
said Court, to wit:

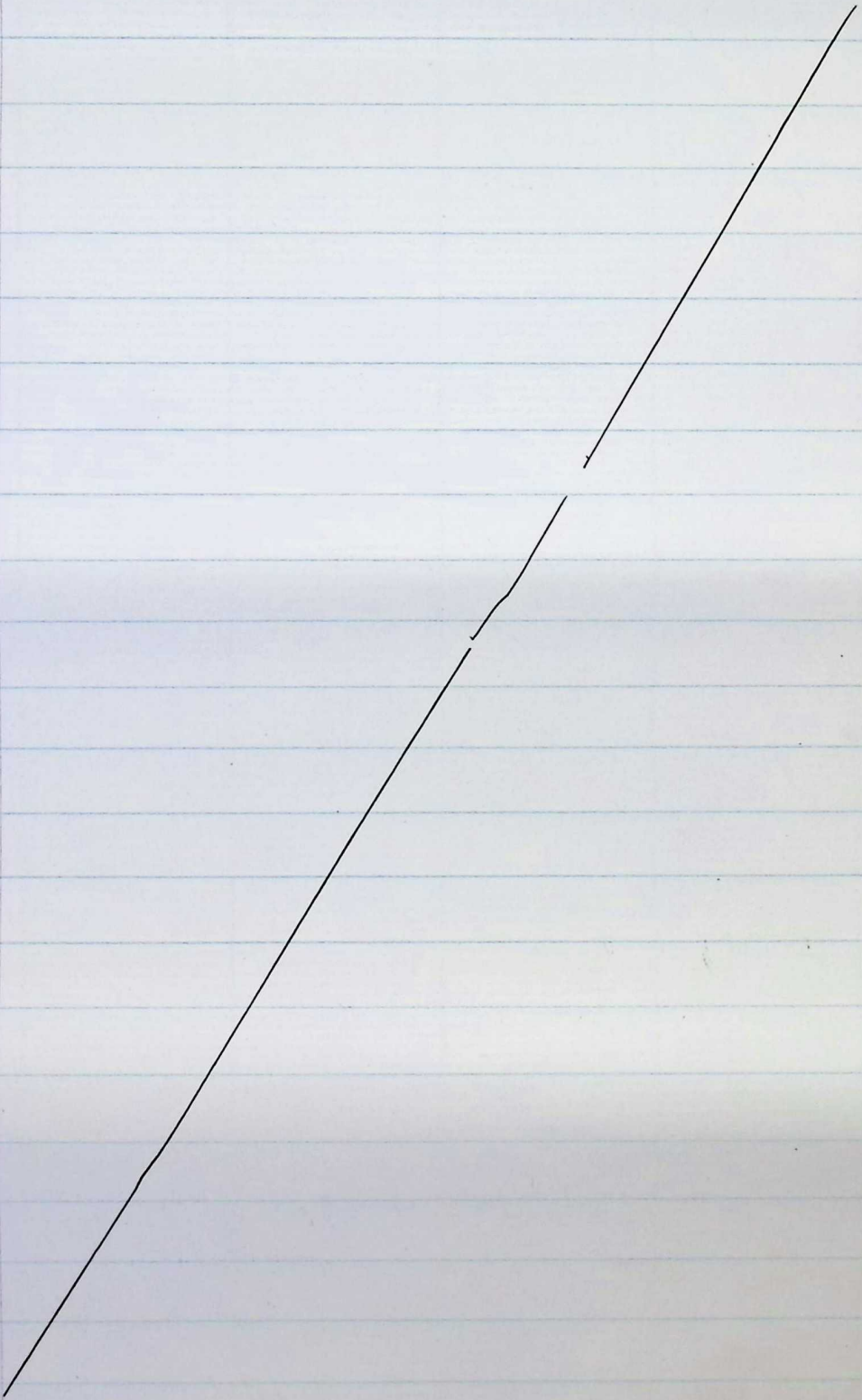
"Nathan B. Harrison

vs

John Chipp . . .

} Certiorari.

This day comes the said plaintiff in his own proper person and submits his Motion to quash the writ of Certiorari issued in said cause which being considered the Court overrules the said Motion to which Plaintiff excepts.



And thereafter to wit on the twenty first day of February A.D. Eighteen hundred-and sixty one came the said Plaintiff and filed in the Office of the Clerk of said Court, his Bill of Exceptions in said cause; Which Bill of Exceptions is in words and figures as follows, to wit.

" On the Superior Court of Chicago
Book Bounty

"Nathan B. Harrison	}	Certiorari.
vs		
John Schipp		

Be it remembered that on the Seventh day of February A.D. 1861 at the February Term of said Court - the said Plaintiff called up his Motion filed in this case on the 13th day of September A.D. 1860 to dismiss the proceedings in the said case in this Court - Quash the Writ of Certiorari and order a Writ of procedendo &c

And thereupon the said Plaintiff after reading the Defendants Petition moved the Court to strike off the Affidavits of E. P. Runyan and D. J. Avery thereto attached. Which said Motion the Court overruled

To which ruling of the said Court the said Plaintiff then and there excepted.

And thereupon the said Plaintiff offered to read counter affidavits of E. H. Barron Esq. and P. H. Witt on file in this case September 13th A.D. 1860 - To the reading of which Affidavits Defendants objected, Which

objection was sustained by the Court

To which ruling of the said Court the said Plaintiff then and there excepted.

Whereupon the said Plaintiff proceeded with his argument upon the Original Motion to dismiss and Quash the Writ of Certiorari, after which the said Court overruled said Motion.

To which ruling of the said Court the said Plaintiff then and there excepted.

And thereupon the said Plaintiff moved the Court to dismiss said appeals for want of an Affidavit of Merits which said Motion is overruled by the said Court.

To which ruling of the said Court the said Plaintiff then and there excepted.

And inasmuch as the matters aforesaid do not appear upon the record of said Court the said Plaintiff prayed that the said Judge of the said Court would set his hand and seal to this Bill of Exceptions containing the several matters as aforesaid &c

Wm H. Higgins (Seal)
Clerk.

And afterwards to wit on the Eleventh day of March (being one of the days of the March Term of said Court) A.D. eighteen hundred and sixty one, the following proceedings were had and entered of record in said Court to wit.

Northam, B. Harrison	}	Certiorari
and		
John Chipps		

This day comes said defendant by Eben J. Runyan his attorney and this cause being called for trial in its order on the docket and plaintiff not appearing to prosecute on Motion defendant it is ordered that the above entitled suit be and is hereby dismissed at plaintiffs costs want of prosecution.

Therefore it is considered that the said defendant do have and recover of and from the said Plaintiff his costs in this as well in the Court below in this behalf expended and thereof have execution.

State of Illinois }
County of Cook } So

I Walter Kimball Clerk of
the Superior Court of Chicago within and for the County
of Cook in the State of Illinois Do hereby certify the
above and foregoing to be a full true and perfect

Transcript of the papers now on file in my Office,
together with all orders entered of record in said Court
in a certain suit heretofore pending in said Court
wherein Mathew B. Harrison is Plaintiff and John
Chippin Defendant.



In testimony whereof I have hereunto
set my hand and affixed the Seal of
said Superior Court at Chicago in said
County the twenty eighth day of March
A.D. 1861.

Walter Kimball Clerk

146
State of Illinois }
Cook County . . . } s.s.

Nathan B. Harrison }
vs }
John Chipp . . . }

Record.

Filed April 16. 1861

A. Delmar
Clerk

Fees } Paid by Harrison
\$5 ⁵⁰/₁₀₀ } W Kimball Clerk

146
State of Illinois }
Cook County . . . } s.s.

Nathan B. Harrison }
vs }
John Chipp . . . }

Record.

Filed April 16. 1861

A. Delmar
Clerk

Fees } Paid by Harrison
\$5 ⁵⁰/₁₀₀ } W Kimball Clerk

1 of The April Term 1861

Notham B Harrison Plaintiff in Error
vs
John Chipp Defendant in Error

Now comes the
said Plaintiff in Error and says
that in the ~~and~~ proceeding afore-
-said and also in giving the
Judgment aforesaid there is man-
-ifest Error in this

1st The Court erred in overruling the
said Plaintiffs motion to strike from
the Defendants petition the affidavits
of E. F. Rungan and D. J. Avery.

2^d The Court erred in sustaining defendants
objection to the plaintiffs reading the
Counter affidavits of C. H. Barmen and
P. H. Witt

3rd The Court erred in overruling Plaintiffs
motion to quash the writ of
Certiorari

4th The Court Erred in overruling Plaintiffs

Motion to dismiss the defendants
appeal for want of an affidavit
of merits

5th The Court erred in dismissing the
suit and rendering judgment
against said p^{ty} for costs.
V.B. Harrison
per, su

Supreme Court

V.B. Harrison p^{ty} is an

or

John Phillips. Supt in error

Assignment of Errors

of the April Term 1861
Nathan B Harrison Plaintiff in Error
vs
John Chipp Defendant in Error

And now comes the said
Defendant in Error by E. F. Runyan his
Attorney and says, that there is
no error either in the record and
proceedings aforesaid, or in giving
the Judgment aforesaid; and there-
fore he prays, that the said Judgment
may be affirmed and that his Costs
may be adjudged to him &c.

E. F. Runyan
Sef. C. H.

146 - 18
Supreme Court,

N. B. Harrison ^{Error} Plff in
v

John Chipp ^{Error} def in

Spinder in Error