

14692

No. _____

Supreme Court of Illinois

Smith et al.

vs.

Bryan.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 197

J. W. Middleton & Co., Stationers, 196 Lake St.

STATE OF ILLINOIS,

OTTAWA, APRIL TERM, 1864.

John R. Smith & Richard T. Stockton,
Plaintiffs in Error,
—VS.—
Thomas P. Bryan,
Defendant in Error.

Error to the Circuit Court of
McLean County.

ABSTRACT OF THE RECORD.

PAGE OF RECORD.

- 1 & 2 Summons in *assumpsit* against the Lafayette Bank.
2 Return.
3 & 4 Declaration, Common Counts in *assumpsit*, motion to ~~grant~~ return, and
cross-motion to amend, &c.
5 & 6 Motion to ~~grant~~ return, cross-motion to amend, &c.
7 Plea.
8 *Non-assumpsit*—Trial, and judgment for plaintiff below
9 & 10 Bill of exceptions.
11 12 13 14 *Scire facias* against Plaintiffs in Error as Stockholders of the Bank, to
make them parties to the judgment.
15 Rule to plead to *scire facias*.
15 1st. Plea by Smith, separately, that he is not, and never was a stock-
holder of the Lafayette Bank, with *similiter*
16 2d. Plea by Smith, that the Lafayette Bank is a corporation chartered
under the general banking law, of Illinois, of 1851. Bank was chartered
in 1856. Bank was put in liquidation in 1861 by the Auditor of the State,
and a receiver appointed by the Judge of the Circuit Court of Sangamon
County, and that ever since the appointment of the receiver the assets of
the bank have been, and still are, in the hands of the auditor and receiver.
16 & 17 3d Plea, by Smith, same facts as to the charter, putting into liquidation
and appointment of receiver, as above, and charges that the assets in the
hands of the auditor and receiver are abundantly sufficient to pay and sat-
isfy all the debts and demands against said bank.
17 & 18 4th Plea by Smith, same facts as to charter, putting into liquidation,
appointment of a receiver, &c., as above, that ever since the appointment of
receiver, the assets have been, and still are, in the hands of the auditor
and receiver, and avers, that no writ of *fieri facias* or execution has been
issued against said bank and returned unsatisfied in whole or in part.

the Court, making Smith and Stockton parties to the original judgment.
Clerk's certificate.

ERROR ASSIGNED.

The Court erred in sustaining demurrer to pleas by plaintiffs in error.

R. E. WILLIAMS,

Counsel for Plaintiffs in Error.

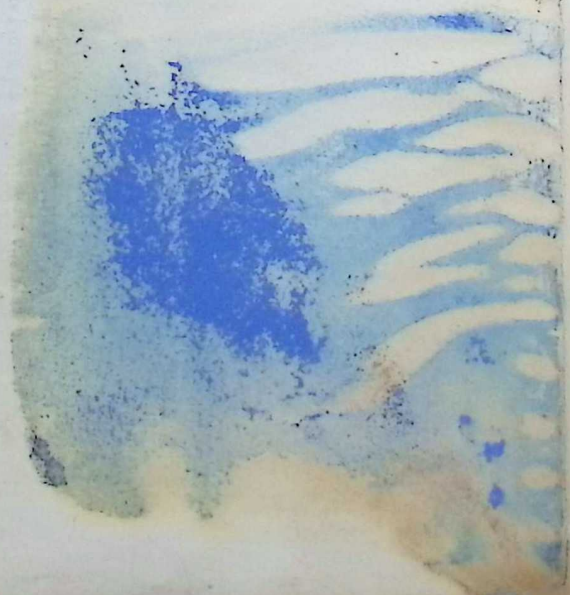
197 117

Wm D Smith D
R J Stockton

Thos P Bryan

Abstract.

Filed April 27, 1864
of Record over



State of Illinois
Supreme Court

3d Grand Division

Attorney General's Office

John R. Smith 2d Plaintiff
x Richard T. Stockton 2d Defendant
vs

Thomas P. Bryon Defendant in Error
Error to the Circuit

Court of the State Court,
Plaintiffs in Error assign the
following Error in the Record,
The Court Error to the
Production of Plaintiffs in Error,
In Sustaining the Verdict to the
2d 3d 4th & 5th Plans of
Pls in Error, to the same
Locals.

And for this and other errors,
that will be apparent upon an
inspection of the Record, the
Judgment should be reversed
and the case remanded to
the Court below.

H. W. Williams

Counsel for Pls in
Error.

In Atto ext certum

Thomas P. Dwyer Counsel
att'y for deft
in error

Pleas, continued and held at the Court
house in Bloomington, in the Eighth
Judicial Circuit of the State of Illinois
before the Honorable Circuit Court of
the County of McLean in said State, in
a certain cause their pendency, wherein
Thomas P. Bryan was Plaintiff and
The Lafayette Bank, by John R. Smith
and Richard T. Stockton, of said Bank
were defendants.

State of Illinois }
McLean County } ss Be it remembered
that heretofore, to-wit, - on the 19th day
of February, A.D. 1863, came Thomas P.
Bryan by his Attorney, and sued of the
office of the Clerk of the Circuit Court
of said county a writ of summons
against The Lafayette Bank: which
summons was as follows to-wit:

State of Illinois }
McLean County } ss The People of the State of Illinois:
To the Sheriff of said county, greeting -
We command you to summon The Lafayette
Bank, if found in your county, personally
to appear before the Circuit Court of
said county of McLean, on the first day of
the next Term thereof to be holden at

The Court-house in Bloomington, on the first Monday in the month of March next, to answer unto Thomas P. Bryan in a plea of Assumpsit, to his damage Two hundred dollars, as he says.

And have you then and there this writ, and make return thereon in what manner you execute the same.

Witness: Luman Burr, Clerk of
 Seal } said Circuit court, and the Seal
 hereto affixed at Bloomington
 This 19th day of Feb'y, A.D. 1863.
 Luman Burr Clerk.

Which summons was by The Sheriff of said county returned into said Clerk's office, enclosed as follows, to wit:

"Executed this writ this 20th day of February, 1863 by reading to John R. Smith, President and Stockholder of said Bank, and delivering him a true copy of the same, and by reading to Richard H. Stockton and Robert Smith, and delivered true copies to them as stockholders of said Bank.

W. Dixon, Sheriff.

And afterward, to wit, on the 20th day of February, A.D. 1863, came said Plaintiff

by his attorney, and filed his Declaration
in this cause, which declaration was as
follows; To-wit: -

State of Illinois, In the M. Lean county, Cir-
M. Lean county, 3rd civil court, of the March
Term, A. D. 1863.

Thomas P. Boyan, plaintiff in this
suit, by his attorney complains of The
Lafayette Bank, Defendant in a plea
of assumpsit. For that, Whereas, the said
defendant on the fifteenth day of January
in the year eighteen hundred and sixty-
three, at the county and state aforesaid,
was indebted to the said plaintiff in the
sum of Two Hundred dollars, for the
price and value of goods then and there
sold and delivered by the plaintiff to
the defendant at its request. And in the
sum of Two Hundred dollars for the price
and value of work then and there done
and materials provided by the Plaintiff
for defendant at its request; And in the
sum of Two Hundred dollars in so much
money then and there lent by the plaintiff
to the defendant at its request; And in the
sum of Two Hundred dollars then and there
paid by the plaintiff for the use of the de-
fendant at its request, And in the sum of

Two Hundred dollars for money then and there received ~~and~~ by the defendant for the use of the Plaintiff; and in the sum of Two Hundred dollars for interest due from said defendant to the said plaintiff for and in respect of said plaintiff having forborne and given day of payment of money due from the defendant to the plaintiff, at the defendant's request, for a long time then elapsed; And in the sum of Two Hundred dollars for money found to be due from defendant to Plaintiff on an account then and there stated between them. And whereas the Defendant afterwards, to-wit; - on the day and year last aforesaid at the County and State aforesaid, in consideration of the premises respectively, then and there promised to pay the last mentioned monies respectively to the Plaintiff on request. Yet it has disregarded its promise, and has not paid any of the said monies, or any part thereof, to the Plaintiff's damage of Two Hundred dollars; and therefore he brings suit for

By Thomas L. Tilton

his Attorney.

And thereupon, at the regular March Term of said Circuit Court, begun and held in

and for said county on the second day of
March, A.D. 1863, -

Present: Hon. John McCall, Presiding Judge,
Luman Burr, Clerk,
Norval Dixon, Sheriff.

The following proceedings were had in this
court, as appears of record - To-wit: -

Tuesday March, 30. 1863,

Thomas P. Bryan
vs. } In Assumpsit
The Lafayette Bank }

And now at this day comes the
said defendant by its Attorney and enters
its motion to quash the Sheriff's return
upon the writ of Summons issued
herein; and now comes said Plaintiff by
his Attorney, and enters his cross-motion
for leave to the Sheriff to amend said return;
which leave is granted, and the Sheriff's
return is amended: And thereupon said
Defendant's motion is overruled

Wednesday, March 31st, 1863

Thomas P. Bryan
vs. } In Assumpsit.
The Lafayette Bank }

And now at this day again
comes the said Defendant by its Attorney,

and moves the Court to quash the Sheriff's amended return upon the writ of Summons in this cause; and Thereupon on motion of said Plaintiff by his Attorney, leave is granted by the Court for the Sheriff to amend his return as aforesaid.

Friday, March 6th. 1863.

Thomas P. Bryan

v.s.

The Lafayette Bank

} In Assumpsion.

And now at this day again come the parties hereto by their Attorneys; and said Defendant now moves the Court to quash the Sheriff's return of service on Richard J. Stockton and Robert P. Smith, and the Court having heard said motion doth sustain the same, and doth order that the return of service on Robert P. Smith and Richard J. Stockton be quashed and wholly held in naught. And now ~~on motion of~~ said Plaintiffs by their Attorneys, the said Defendant is by the Court ruled to plead to the declaration filed herein against it, by Attorney ~~next~~

by leave of the Court withdraws his declaration filed herein, Feb 19th. 1863. And on motion of said ~~Defendant~~ Plaintiff,

The said Defendant is by the Court ordered to plead to the declaration filed herein against it, by Monday next.

And Thereupon, on the 10th. day of March, 1863, came said Defendant by its Attorney and filed its Plea to said Plaintiff's declaration, which plea was in words and figures as follows, to-wit:

State of Illinois

N. Lean Circuit Court

March Term, 1863.

Thomas P. Bryan

vs.

The Lafayette Bank

In Assumpsit.

And now comes The said Defendant by R. E. Williams its Attorney and defends the wrong and injury &c; and says it did not undertake and promise in manner and form as the said Plaintiff hath above complained against it; and of this the Defendant puts itself upon the country.

R. E. Williams, Attorney at Law.

And The Plaintiff doth the like

I. J. Tipton,

Attorney for Plaintiff.

And afterwards at said March Term of said Court, to wit: on the 14th day of March, 1863, came said Defendant and filed its bill of exceptions in this cause; which bill of exceptions was in words and figures as follows, to wit:

Thomas S. Bryan
vs.
The Lafayette Bank

} In Answer to.

And now at this day come the parties hereto by their Attorneys, and this cause coming on for trial by consent of the parties, the issue herein joined is submitted to the Court for trial without the intervention of a Jury. And the Court having heard the evidence produced, and being fully advised in the premises, doth find the issue for the Plaintiff, and doth assess his damages at one Hundred and Thirty-one dollars and Forty-eight cents. It is therefore considered by the Court that said Plaintiff recover of and from said Lafayette Bank the Sum of one Hundred and Thirty-one dollars and Forty-eight cents - his damages so assessed by the Court as aforesaid; and also his costs by him in this behalf expended. - And then he have execution therefor.

And thereupon on said 14th day of March A.D. 1863, came said Defendant and filed its bill of exceptions in this cause; which bill of exceptions was in words and figures as follows, to-wit:

State of Illinois

U. S. Circuit Court.

March Term, 1863.

Thomas P. Boyan

vs.

The Lafayette Bank

Be it remembered that on the trial of this cause the Plaintiff called and read before R. J. Stockton who testified that the signatures to the following paper was in his handwriting: —

"\$122.49. Bloomington, Ills. June 22, 1861

"T. P. Boyan has deposited in the Lafayette Bank One Hundred and Twenty-Two, and 49/100 dollars, payable to the order of him or his assigns six months after date, on the return of this Certificate.

R. J. Stockton, Cashier."

"No. 4049," —

Then at the date of the same he was the Cashier of Defendant: that Plaintiff had some money in the Bank, but how much he could not recollect; but had

no doubt, upon looking at the paper that the Pltff at the time had \$122 ⁴⁵/₁₀₀ there. Plaintiff offered in evidence said paper, to which Defendant objected because the paper was evidence of nothing; which objection was ~~overruled~~ overruled by the Court, to which ruling of the Court Defendant then and there expected. The above was all the evidence in the cause; and thereupon the Court gave judgment for Plaintiff for One Hundred and Thirty-one Dollars, and Forty-eight cents; to which judgment of the Court Defendant then and there expected; and afterwards moved the Court for a new trial, on the ground that the judgment was without evidence to support it; which motion was overruled by the Court - to which ruling of the Court Defendant then and there expected and

This his bill of exceptions, and joins that the same may be signed, sealed, and made part of the record - which is done by the Court.

John M. Scott, (Seal)

Judge.

And thereupon, afterwards, to-wit - on the 26th day of August, A.D. 1865, came said Plaintiff by his Attorney, and sued out of said Clerk's office a Garnishee process

4th Clause
Art. 6, p. 50
claus of 61

against John R. Smith and Richard T. Stockton, stockholders of said Lafayette Bank, which garnishee process, was in words and figures as follows, to wit:

State of Illinois }
McLean county, } ss The People of the State
of Illinois to the Sheriff of said county—
Greeting.

Whereas, Thomas P. Borton, Plaintiff,
did on the 19th. day of February, A.D. 1863
sue out of the office of the Clerk of the Circuit
Court of said county, a writ of Summons
against The Lafayette Bank, commanding
the Sheriff of said county to summon the
said Lafayette Bank if found in his county
personally to appear before the Circuit
Court of said county on the first Monday in
the month of March thereafter, to answer
unto the said Thomas P. Borton in a plea
of assumpsit to his demand for twenty
two Dollars, as he said; which said Sum-
mons was by the Sheriff of said county
returned unto said Circuit Court duly
served on the said Defendant. And whereas,
afterward, to-wit—on the 20th. day of Febru-
ary A.D. 1863, the said Thomas P. Borton,
Plaintiff filed in said Circuit Court his
Declaration against the said Lafayette Bank

Defendant, in a plea of Assumpsit. Forthas
 Whereas, the said Defendant on the fifteenth day
 of January in the year eighteen hundred
 and Sixty-three, at the county and State
 aforesaid, was indebted to the said Plaintiff
 in the sum of Two Hundred Dollars, for the
 value and price of goods then and there bar-
 gained and sold by the Plaintiff by the
 Defendant at its request; And in the sum of
 Two Hundred Dollars for the price and value
 of work then and there done, and materials
 provided by the Plaintiff for the Defendant
 at its request; And in the sum of Two-Hund-
 red Dollars for so much money then and
 there lent by the Plaintiff to the Defendant
 at its request; And in the sum of Two Hund-
 red Dollars for money then and there paid
 by the Plaintiff for the use of Defendant at
 its request; and in the sum of Two Hundred
 Dollars for money then and there received by
 the Defendant for the use of the Plaintiff; And
 in the sum of Two Hundred Dollars for in-
 terest due from said Defendant to the said
 Plaintiff, for and in respect of said Plain-
 iff having forbore and given day of
 payment of money due from the De-
 fendant to the Plaintiff at the Defendant's
 request, for a long time then elapsed. And
 in the sum of Two Hundred Dollars for

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money found to be due from defendant
to plaintiff on account, then and there stated
between them. And the Defendant afterwards -
to-wit, on the day and year last aforesaid,
at the county and State aforesaid, in con-
sideration of the premises respectively, then
and there promised to pay the last mentioned
several monies to the Plaintiff on request.
Yet the Defendant had not paid any of the said
monies or any part thereof, although often
requested so to do, - to the Plaintiff's damage
of Two Hundred Dollars, and therefore he
brought suit.

Whereupon, such proceedings were had
before the Circuit Court of said county
that, afterwards, to-wit, on the 14th day of
March, A.D. 1863, the said Plaintiff by the
judgment of said Court recovered against
the said Lafayette Bank the sum of One
Hundred and Fifty-one Dollars and forty-
eight cents for his damage sustained by
reason of the premises, and also his costs
by him in this behalf expended: which
judgment has not been paid of, set
aside, or in any part satisfied.

We therefore command you to summon
John R. Smith & Richard J. Stockton, Stock-
holders of the said Lafayette Bank, if found
in your county, personally to appear

before the Circuit Court of said county on the first day of the next Term thereof, to be holden on the first Monday in September next, to answer unto the said Plaintiff why judgment should not be rendered against them for the amount of the judgment and costs heretofore rendered against the said Lafayette Bank; and further to do and receive what shall then and there be by said Court adjudged against them in this behalf. And now you then and there this writ; and endorse thereon in which manner you execute the same.

Witness: Luman Burr, Clerk of the said
 N. D. Circuit Court, and the Seal
 thereof, this 26th day of August, A.D. 1863
 Luman Burr Clerk.

And afterwards, at the regular September term of said Court, to-wit, on the 14th day of September A.D. 1863, further order was made by said Court in this cause, as appears of Record, to-wit:

Thomas P. Borgen

vs.

The Lafayette Bank,

John R. Smith & Richard J. Stover

And now at this day come the parties

In Assumpsit.

Garnishee against

Stockholders.

hereto by their Attorneys; and on motion of
said Plaintiff, the said John R. Smith &
Richard J. Stockton are by the Court ruled to
plead, answer or demur to the summons
issued against them in this cause, by Saturday
next, or judgement will be rendered a-
gainst them by default.

And thereupon the Court, to-wit, on the
23d. day of December, A.D. 1863, came said
John R. Smith & Richard J. Stockton and filed
their Pleas in this cause, which pleas were
respectively in words and figures as fol-
lows - to-wit:

State of Illinois

U. S. District Court.

December Term, 1863.

Thomas P. Bryan }

vs. }

The Lafayette Bank }

And now comes John R. Smith,
impleaded, &c., and as to said Scire facies,
saying he is not now, and never was a
stockholder in the said Lafayette Bank; and
of this Defendant puts himself upon the country.

R. C. Williams, Atty. for
Smith.

And the Plaintiff, doth the like J. Stockton, Atty. Atty.
And for a further plea in this behalf

Defendant says the said Plaintiff ought not to have or maintained his aforesaid action against him in this behalf, because he says that the said Lafayette Bank is a corporation chartered under the General Banking Law of the State of Illinois, passed by the General Assembly of the State of Illinois, on the fifteenth day of February, 1851; and that the said Bank was chartered on the 15th day of July, 1861. The said Bank was put into liquidation by the Auditor of the State of Illinois, and that on the 15th day of July, 1861, by the Honorable the Judge of the Circuit Court of Sangamon county, on application of said Auditor one William Thomas was appointed Receiver, to receive and take into his possession the assets of said Bank under the said General Banking Law; and that ever since the last mentioned time, to-wit, at the county and state aforesaid, all the assets of the said Bank then and still are in the hands of the said Auditor and Receiver, and this the Defendant is ready to verify.

Wherefore, he prays judgment, &c.

R. C. Williams, Atty for Smith.

And for a further plea in this behalf Defendant says, actio non because he says that the said Bank was a corporation,

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chartered under the General Banking Law
of the State of Illinois, as aforesaid; and
was put into liquidation by the Auditor
of the State of Illinois, as aforesaid; and
that on the 15th day of July 1881, by the
Hon. the Judge of the Circuit Court of Sang-
amon County, on application of the said
Auditor, one William Thomas was appoint-
ed Receiver to ^{appear} and take into
his possession the assets of the said Bank
under the said General Banking Law; and
that ever since the last mentioned time,
to wit, at the County and State aforesaid,
all the assets of said Bank have been
and still are in the hands of the said
Auditor and Receiver; and that the assets
of said Bank in the hands of the said
Auditor & Receiver are abundantly suffi-
cient to pay and satisfy all the debts
and liabilities of the said Bank; and
this he is ready to verify. Wherefore, he
prays judgment, &c.

R. E. Williams. Atty for Smith,

And for a further plea in this behalf,
Defendant says, actio non, because he says
that the said Lafayette Bank is a Corporation,
chartered under the General Banking Law
of the State of Illinois, passed by the General
Assembly of the State of Illinois on the 15th.

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day of February, 1861, and that the said Bank was chartered on the 15th day of July, 1861. The said Bank was put into liquidation by the Auditor of the State of Illinois; and that on the 15th day of July 1861, the Hon. the Judge of the Circuit Court of Sangamon county on application of said Auditor, one William Thomas was appointed Receiver, to receive and take into his possession the assets of the said Bank under the general Banking law; and that ever since the last mentioned time, to-wit, at the County and State aforesaid, all the assets of said Bank have been, and still are in the hands of the said Auditor and Receiver; and that no writ of *habeas corpus* or execution has been issued as against said Bank, and returned unsatisfied in whole or in part; and this the Defendant is ready to verify. Wherefore, he prays judgment, &c. R. E. Williams

Attorney for Smith.

And for a further plea in this behalf Defendant says, actio non, because he says that the said Lafayette Bank is a corporation, chartered under the General Banking Law of the State of Illinois, passed by the General Assembly of the State of Illinois on the 15th day of February, 1861, and that

said Bank was chartered on the 15th. day of July, 1856, and that on the 15th day of February, 1861, said Bank was put into liquidation by the Auditor of the State of Illinois; and on the 15th day of July, 1861 on the application of the said Auditor, one William Thomas was by the Hon. the Judge of the 18th, Circuit, in and for the said State of Illinois, appointed receiver to receive and take into his possession the assets of said Bank under the said General banking law; and that said Bank has not yet been wound up by the said Auditor and Receiver. And this the Defendant is ready to verify: Wherefore he prays judgement. &c. R. E. Williams, Atty for Smith.

State of Illinois,

U. S. Circuit Court

December Term, 1863.

Thomas. P. Bryan

vs.

The Lafayette Bank

And now comes Reuben J. Stockton impleaded &c. and as to said scieri facies, says that he is not now and never was a stockholder of the said Lafayette Bank; and of this Defendant puts himself upon the country.

R. E. Williams, Atty for Stockton.

[And the Pltff. cloth the Libs. J. H. Tipton, Atty for Pltff.]

And for a further plea in this behalf Defendant says the said Plaintiff ought not to have or maintained his aforesaid action against him in this behalf, because he says that the said Lafayette Bank is a Corporation, chartered under the general banking law of the State of Illinois, passed by the General Assembly of the State of Illinois, on the 15th day of February 1851, and that the said Bank was chartered on the 15th day of July, 1856; and that on the 15th day of July 1861 the said Bank was put into liquidation by the Auditor of the State of Illinois; and that on the 15th day of July 1861, the Hon. the Judge of the Circuit Court of Sangamon county, State of Illinois, on application of the said Auditor, one William Thomas was appointed Receiver, to receive and take into his possession the assets of the said Bank, under the General Banking Law; and that ever since the last mentioned time, to wit, at the county and state aforesaid, all the assets of said Bank have been and still are in the hands of the said Auditor and Receiver; and this the Defendant is ready to verify. Wherefore, he prays judgment for—

R. E. Williams, Atty for Defendant.

And for a further plea in this

behalf Defendants says - actio non, because
Defendant says that the said Lafayette Bank
is a corporation, chartered under the Gen-
eral Banking Law of the State of Illinois,
passed by the General Assembly of the State
of Illinois on the 15th day of February,
1851; and that the said Bank was chartered
on the 15th of July, 1856, and that on the
15th day of July 1861, said bank was
put into liquidation by the Auditor of the
State of Illinois; and that on the 15th day
of July 1861, by the Hon. the Judge of the
Circuit Court of Sangamon County coun-
ty, State of Illinois, on application of the
said Auditor, one William Thomas was ap-
pointed Receiver, to receive and take into
his possession the assets of the said Bank
under the General Banking Law; and that
ever since the last mentioned time, to wit, at
the county and State at large, all the assets
of said Bank have been and still are in
the hands of the said Auditor and Receiver;
~~And that the Defendant is ready to prove.~~
~~Therefore he prays judgment, for~~

~~R. E. Williams, Atty. for Stockholders.~~

and that the assets of the said Bank in the
hands of the said Auditor and Receiver are abund-
antly sufficient to pay and satisfy all the
debts and liabilities of the said Bank, and

this he is ready to verify. Wherefore he
forays judgment, &c.

R. E. Williams Atty for Stockton.

And for a further plea in this behalf,
Defendant says, actio non, because he says
that the said Lafayette Bank is a corporation,
chartered under the General banking
law of the state of Illinois on the 15th day
of February 1861, and that the said Bank was
chartered on the 15th day of July 1856,
and that on the 15th day of July 1861 the
said Bank was put into liquidation by the
Auditor of the State of Illinois; and that
on the 15th day of July 1861, the Hon. the
Judge of the Circuit Court of Sangamon
County, State of Illinois, on application of
the said Auditor, one William Thomas was
appointed Receiver to receive and take
into his possession the assets of the said Bank
under the General banking law; and that
ever since the last mentioned time, to-wit, at
the County of McLean and State aforesaid
all the assets of said Bank have been
and still are in the hands of the said
Auditor and Receiver; and that no writ of
Hien facias or execution has been issued
against said Bank and returned unsatisfied,
in whole or in part; and thus the Defendant
is ready to verify.

Wherefore he prays judgment, &c.

R. E. Williams, Atty. for Stockton.

And for a further plea in this behalf Defendant says action non because he says that the said Lafayette Bank is a corporation chartered under the General banking law of the State of Illinois, passed by the General Assembly of the State of Illinois on the 15th day of February 1851, and that said Bank was chartered on the 15th day of February 1856, and that on the 15th day of July 1861 said bank was put into liquidation by the Auditor of the State of Illinois and on the 15th day of July 1861, on the application of the said Auditor, one William Thomas was by the Hon. the Judge of the 10th circuit in and for the said State of Illinois appointed Receiver, to receive and take into his possession the assets of the said bank and the General banking law, and that said bank has not yet been run up by the said Auditor and Receiver; and this the Defendant is ready to verify. Whereupon he prays judgment, &c.

R. E. Williams, Atty. for Stockton.

And afterwards, to wit, on the 31st. day of December, A.D. 1863, came said Plaintiff and filed his Demurrer to said Defendant's

Pleas, which demurres was in words and figures as follows, to wit:

The Lafayette Bank	} Assumpsit
vs.	
Thomas P. Bryan	

And the said Plaintiff by J. H. Tipton his attorney says that all of said pleas in this cause on behalf of Richard T. Stockton, and all of said pleas on behalf of John R. Smith, except the first plea filed by said Stockton, and the first plea filed by the said Smith, and each of them, with said two exceptions, are insufficient in law, &c.

J. H. Tipton, Pltff's Attorney.

And thereupon at the regular December term of said Court, to-wit, on the 31st day of December, A. D. 1843, this cause came on for hearing:

Present: Hon John H. Scott, Presiding Judge
Edward R. Roe Clerk,
Norval Dixon Sheriff.

and final judgment was rendered against said John R. Smith & Richard T. Stockton, as follows, to-wit:

Thomas P. Bryan vs	} In Assumpsit.
The Lafayette Bank of John R. Smith	
and Richard T. Stockton, Stockholders in said Bank	

And now at this day comes the said Plaintiff
by Tipton, his Attorney, and also come
the said John R. Smith and Richard T. Stockton
by Williams their Attorney; and the said Plaintiff
having filed his demurrer to all the pleas
of the said Stockton & Smith in this cause ex-
cept their first pleas, and said Demurrer now
coming on to be heard before the Court, is
argued by counsel. And the Court having
heard said demurrer, and being fully
advised in the premises, doth consider that
the same be sustained. And this cause now
coming on for trial, by consent of the parties
the issue joined on the first pleas of the said
Richard T. Stockton and John R. Smith, is
submitted to the Court for trial without
the intervention of a jury. And the Court
having heard the evidence produced, and
being fully advised in the premises, doth
find that said Richard T. Stockton and John
R. Smith are each of them stockholders in
the said Lafayette Bank, to a larger
amount than the amount of the judgments
hereinbefore rendered in favor of the said
Plaintiff and against the said Lafayette Bank.
It is therefore considered by the Court that
said Plaintiff recover ^{and from} of the said John R.
Smith, and of and from the said Richard T.
Stockton, the sum of One Hundred and thirty-one

dollars and Forty-eight cents, the amount of the judgment hereinbefore against the said Lafayette Bank; and also his costs in this behalf expended; and that he have execution against the said John R. Smith and against the said Richard T. Stockton, for said judgment.

State of Illinois,
 McLean County } I, Edward R. Rae,
 Clerk of the Circuit Court, in and for the said
 county, do hereby certify that the foregoing
 is a true and complete Transcript of the
 Records and files of my office, pertaining to
 a certain cause, wherein Thomas B. Bryan
 is Plaintiff, and the Lafayette Bank, John
 R. Smith and Richard T. Stockton, are Defendants.

In testimony whereof I have
 hereunto set my hand and Of-
 ficial Seal, This 25th day of
 March, A.D. 1864.

E. R. Rae, Clerk

McLean Co. Ill. County

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John R. Smith and

R. I. Stockton

vs,

Thomas P. Bryan,

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Filed Apr. 20. 1864  
L. Leland  
Clk.

Trans. 5.20, Paid by

Erwin

L.R.R.