

No. 14698

Supreme Court of Illinois

Reed

vs.

Curry

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 213

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

Case

75

1862

Curry

Brady

5091

JOHN W. DEAN, PRINTER, 148 LAKE ST., CHICAGO.

SUPREME COURT OF ILLINOIS,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

JOHN S. REED,

Appellant,

VS.

PETER CURRY,

Appellee.

*Appeal from Superior Court
of Chicago.*

RECORD
PAGE.

ABSTRACT OF RECORD.

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The appeal herein taken to the Supreme Court was thereupon prayed and allowed on giving bond with H. Witbeck security in the sum of \$600; and leave was granted for bond and bill of exceptions to be filed within thirty days from that day.

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The appeal bond was afterwards duly filed within the time as ordered, and also afterwards the Bill of Exceptions herein within the prescribed time.

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From the bill of exceptions filed as aforesaid, it appears that on the 28th Oct., 1863, (during said October term, at which judgment was rendered as aforesaid), the motion of appellant filed herein Oct. 9, 1863, came on to be heard by the said Superior Court of Chicago—both parties being represented by their attorneys. Said motion is as follows, viz.:

21

SUPERIOR COURT OF CHICAGO—*October Term, 1863.*

PETER CURRY,

vs.

JOHN S. REED.

Now comes the said defendant, by the undersigned, his attorney, and enters his motion to set aside the default entered in this case, and for leave to defend the same upon affidavits filed, and also

2. Because said default was illegally entered.

3. The Court had no authority to render judgment at the time, nor for the amount at which judgment herein was rendered.

Oct. 9th, 1863.

E. M. HAINES, Def'ts Atty.

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And thereupon the counsel for appellant read to the court as evidence in favor of said motion the affidavit of Allan C. Story, Esq., filed in this case at the same time with said motion, which is as follows, viz.:

13-15

STATE OF ILLINOIS—SUPERIOR COURT OF CHICAGO.

Of the October Term, 1864.

PETER CURRY,

vs.

JOHN S. REED.

Cook County, ss. Allan C. Story being duly sworn deposes and says, That he is one of the firm of Haines & Story, attorneys for the defendant in the above entitled cause. That this

affiant with his law partner, Mr. Haines, has been engaged since September 28th, 1863, at the Lake County Circuit Court, in the trial and disposition of cases in which they were engaged as attorneys. That said term closed on the 8th day of October instant, and that neither this affiant, or his partner have been able to be absent from said Court a sufficient length of time to prepare and file the proper pleas in this cause, or procure the extension of time for that purpose, therein from this court. That both this affiant and his said partner expected when they went to Waukegan to attend said court, to return in time to attend upon the present term of this court on the 5th inst., and accordingly left word to that effect with Chas. Gregory Esq., who is employed in their office, and have been expecting daily until the final adjournment of said Lake County Circuit Court to be able to return and attend to business in Chicago. That they were actually engaged in the trial of cases in said Court until noon of the eighth inst.—too late for any train by which to reach Chicago before the adjournment of this court for that day. That for these reasons it has been impossible to prepare the proper papers for this motion before this (Friday) the 9th inst. That this affiant with his said partner have acted as the general attorneys and counsel for the firm of Cutler, Witbeck & Co., of which the defendant herein is a member, as well as for said Reed in his individual matters for nearly two years past, and affiant's partner, said Haines, has been such attorney for a still longer period. That said firm of Haines & Story was first informed of the existence of this suit, and that judgment was rendered therein on Wednesday, Oct. 8th, 1863, but neither affiant nor his said partner could leave the business they were then engaged in, in said court to prepare the papers to move to open said judgment until this (Friday) day. That on examining the record of this case on Friday, affiant found no summons or proof of service thereof filed in this case, and deponent knows the fact that no summons was filed therein up to twelve o'clock of to-day, and that from the statement of the defendant, deponent believes he has a good defence upon the merits in this case.

ALLAN C. STORY.

Sworn to before me this 9th October, {
A. D. 1863. }

THOMAS B. CARTER, Clerk.



And also the affidavit of the appellant and the exhibit thereto attached, filed herein at the same time, which is as follows, viz.:

15-20 STATE OF ILLINOIS—SUPERIOR COURT OF CHICAGO.
Of the October Term, 1863.

PETER CURRY,

vs.

JOHN S. REED. }

16 *Cook County, City of Chicago, ss.* John S. Reed being duly sworn doth depose and say, that he is the defendant named in the above entitled cause. That Peter Curry, who is named therein as plaintiff, is an old gentleman of about sixty years of age, a sailor by occupation, and frequently absent from the city two or three years at a time. That during the last ten years it has been his custom to keep his money on deposit with this affiant for safe keeping, to prevent the same being squandered by himself when intoxicated—which was frequently the case when on shore, after his return from his usual cruise—and also to prevent the same being stolen or unlawfully obtained from him in his absence, as he frequently informed this affiant. That immediately on his return from a cruise at sea he has been in the practice of first calling upon this affiant and depositing his earnings, except sufficient for his actual expenses. That said Curry has frequently stated to this affiant (who also knows of the fact), that his (said Curry's) wife was living with another man in open adultery. That her paramour had assaulted, cut and wounded him, said Curry, and that this affiant must not on any consideration pay over any of said money except to him, said Peter Curry, in person, as he desired
17 no part thereof to come to her hands. That he considered this affiant his particular friend, and the only one in Chicago with whom he could safely deposit his funds, and wished him to hold the same until so demanded by him. That it was also agreed between this affiant and said Curry at their last interview as aforesaid, that he said Curry, would give this affiant notice before he should want the money, in order to save him any trouble in the premises. That this affiant has never been asked to pay said money by any person authorized to demand the same by said Curry. That said Curry has not been seen or heard from since about the date of the receipt on file in

- 17 this case by deponent, and deponent believes that this proceeding is commenced without his knowledge or direction, and against the often expressed wish of said Curry, and in violation of his agreement with affiant. That this suit is brought on behalf of one Maurice Clifford, who has unlawfully obtained possession of said papers by some means unknown to said Curry, and is endeavoring to obtain the money thereon, as affiant is informed and believes, to defraud said Curry thereof. That said Clifford applied to this affiant for payment of the note and receipt, and affiant offered to pay the same if
- 18 he, said Clifford, would show himself to be lawfully authorized to receive the same, and had come honestly in possession of the said papers. That said Clifford then produced a paper of which deponent subjoins a copy marked "A," but on examination, this affiant at once, from his knowledge of said Curry's hand-writing, pronounced it insufficient for any such purpose, and not signed by said Curry unless while intoxicated. And deponent now believes the same to be a forgery or a fraud upon said Curry. That affiant is informed, and believes that said Curry has not been in Chicago since the date of said receipt, and that the attorneys who appear for said Curry, have been employed by said Clifford, and not by said Curry; and that no other authority for commencing this suit than the paper attached to this affidavit exists, either from said Curry or from any one having his authority. That affiant previous to the commencement of this suit, offered both to said Clifford, and also afterwards to Mr. Hosmer, one of the plaintiff's attorneys, to submit the matter to any Judge of any Court in this city, or any respectable lawyer, whether said paper (assuming it to be genuine) was sufficient to authorize said Clifford to receive the money due upon said papers to said Curry, and if such Judge or Attorney should so decide, then deponent offered to
- 19 pay the same without suit, and said parties declined to accept of the same. That affiant has always had said amount so due to said Peter Curry ready at his office where said note is payable, to pay to him personally when demanded, pursuant to the agreement existing between him and this affiant, and is now ready to pay the same to any person authorized to receive it. That deponent has employed Messrs. Haines & Story as his attorneys during the past eighteen months or more, and

19 deponent called at their office on Monday, Tuesday and Wednesday of the present week, and several times during the past week, to have them prepare for the proper defence of this case, but failed to see either of them in consequence of their absence in Court at Waukegan, but this affiant was informed each time that they were expected back that day or the next: that immediately on ascertaining there was a judgment therein, this affiant caused word to be sent to them at Waukegan on the 8th inst., and affiant employed no other attorney, as he was anxious that said firm should have the management of this case for him in connection with his other business: that on being informed by persons in the office of said attorneys, that they were expected to return every hour, this
20 affiant left word there to attend to this case, and supposed that the same would be attended to by them until informed that judgment had been rendered therein, on the 8th inst. That deponent verily believes that the existing facts related by him, will enable him to make a valid defence to this action upon the merits, and this proceeding is made in good faith, and not for delay.

JOHN S. REED.

Subscribed and sworn to this 9th October,
A. D. 1863, before me.

ALLAN C. STORY,

Notary Public, in and for City of Chicago.



20 "A." CHICAGO, Dec. 16th, 1860.

I authorize Maurice Clifford, 222 North Market street, with full power to draw the contract between Peter Curry and Wm. S. Johnston, and to sign my name to same. And transact my business for me, and in my name.

(Signed)

PETER CURRY.

21 And thereupon the counsel for the appellee proposed to read in evidence upon said motion, the affidavit of Maurice Clifford, filed herein, Oct. 26th, 1863.

25 Whereupon the counsel for the appellant objected to the reading of said affidavit for the reasons:

1st. That counter affidavits are not admissible upon a motion to open a default.

2d. The jurat to said affidavit does not bear the appropriate Government stamp of five cents. But the court overruled the

21 said objections, and permitted the said affidavit to be read in evidence; to each of which decisions the appellant by his counsel excepted. Said affidavit is as follows:

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

SUPERIOR COURT OF CHICAGO—*To the October Term, 1863.*

PETER CURRY }
vs. }
JOHN S. REED. }

22 Maurice Clifford being duly sworn, deposeth and saith, that he has read the affidavit of John S. Reed, the said defendant, which has been filed in this case. That this affiant is the person referred to in said affidavit. That he is well acquainted with the said plaintiff, who is a sailor by occupation, and has been his friend and acquaintance for many years. That said Curry left this city in the latter part of the year 1860, for the city of New Orleans, and there shipped on board of the ship Martin Luther. That frequently before leaving this city, the said defendant called upon this affiant and requested his aid in transacting his business, and taking care of his affairs. That said Curry frequently deposited money with this affiant and drew it from him again as he required it; but that before leaving the city this affiant paid said Curry all such monies. That a short time before leaving this city, said Curry purchased a lot of ground in this city from W. S. Johnson, for the sum of \$800, paying \$200 down, and agreeing to make payment of \$200 annually for 1, 2 and 3 years. That this affiant was always consulted by the said Curry about his said business matters, and particularly requested by him to take the entire management of his business in his absence, and to protect his interests by paying out whatever moneys should be necessary in his behalf for taxes, or for any other purpose. Fearing that a verbal authority would not be sufficient for these purposes, this affiant, at the request of said Curry, drew up the power of attorney, a copy of which is annexed to the said affidavit of Reed. That the said Curry executed with his own hand, the said power of attorney, and delivered it to this affiant. That said power of attorney was all written upon the same day, but at two different times, with two different pens; but that the

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23 whole of said power as it now appears, was fully written before the said Curry signed it; and at the same time that the said Curry delivered the said power, he also handed this affiant the said note and receipt, on which judgment was entered in this cause. That said Curry at the time said power was signed, and said power and notes were delivered to this affiant, was perfectly sober, and in all respects in his right mind, and entirely free from the influence of liquor. That said affiant has in good faith, since the said Curry's departure, endeavored to protect his interests, and has tried in every way to save the land which said Curry had bargained for, and has applied to said Reed to collect the said notes in order to be in a condition to carry out said contract.

24 But that said Reed has always refused to pay said moneys. That this affiant has been compelled to commence and prosecute a suit against said Johnson, in order to save the moneys which said Curry had already paid, and said affiant has been compelled to advance money on said Curry's account, and involve himself in liabilities for the purpose of protecting the interests of Curry. That this affiant has resided in this city for about sixteen years, and for the last four years has been engaged in keeping a family grocery store, and this affiant avers that he is worth the sum of seven thousand dollars, and owns that amount of real estate in this city, free and clear of all incumbrances and debts. That he is the sole agent of the said Curry in this city, and is entitled to the custody and control of the money and property belonging to him, and is amply responsible for its proper application; and that the said Curry is now indebted to him for liabilities incurred on his behalf, and that it will be impossible for this affiant to properly execute his duty as agent for the said Curry, unless he is allowed to have and exercise his proper legal control over his property. And this affiant further states that he has employee Messrs. Hosmer & Peck to prosecute this suit for the benefit of said Curry, and that this affiant has no interest whatever in the result of this suit except as agent for the said Curry, and that

25 he has no pecuniary interest whatever in such result.

MAURICE CLIFFORD.

Subscribed and sworn to before me, this 16th day of October, A. D. 1863.

T. B. CARTER, Clerk.

Which was all the evidence offered upon said motion, and thereupon the said court, after considering the evidence, overruled and denied the said motion, and refused to open said judgment; to which said decisions, and each of them, the said appellant by his counsel did then and there duly except and prayed the court then and there to sign and seal this his bill of exceptions, and make the same a part of the record in this case, which is done.

GRANT GOODRICH. [SEAL.]

STATE OF ILLINOIS, }
THIRD GRAND DIVISION. } ss.

IN THE SUPREME COURT—*To the April Term A. D. 1864.*

JOHN S. REED,	}	Assignment of Errors.
<i>Appellant,</i>		
vs.		
PETER CURRY,		
<i>Appellee.</i>		

And now the said John S. Reed, appellant in said case, comes and says, that in the record and proceedings aforesaid, there is manifest error in this, to-wit :



213. 179

John S. Reed

as

Peter Barry

Abstract

Filed May 13. 1844

J. S. Reed

In the Supreme Court of
the State of Illinois
Third Grand Division

John S. Reed
appellant

To the April Term A.D. 1864

vs.
Peter Curry
appellee

Appeal from
Superior Court of Chicago

Cook County
City of Chicago: sp. Allan C. Story of said City of
Chicago having been first duly sworn doth
depose and say that he is of Counsel for the ap-
pellant in the above entitled Cause and con-
ducted the proceedings on his behalf in the
Court below.

That on the day following the one on which
judgment was rendered in said Court to-wit
on the 9th. day of October A.D. 1863. affiant ex-
amined the files of said Case in said Superior
Court of Chicago but no summons was filed
therein nor was there any summons with the papers
in said Cause

That affiant enquired of the Clerk who had charge
of the papers, and who officiated in the room where
said Cause was then pending; that said Clerk informed
affiant after examination, that he could not find any
summons in said Case.

Whereupon affiant went into the room of his honor Judge Higgins, and inquired of U. R. Hawley a deputy clerk of said Court employed in said last named room.

That said Hawley informed ~~that~~^{him} that he was not present in the room of Judge Goodrich where said default and judgment was taken, at the time of taking the same. But said Hawley thereupon made examination and stated to affiant, that he could find no summons therein.

That affiant thereupon prepared and filed the motion and affidavits appearing in the bill of exceptions in this case.

That on the next day affiant was shown by said Hawley the summons set forth in the record herein but affiant took particular notice and recollects distinctly that said summons was not "marked filed" and affiant called the attention of said Hawley to that fact at the same time requested him to say nothing to the attorney on the other side on the subject. That said Hawley claimed to have the right to mark said summons "filed" at any time, and affiant informed him that a motion was pending in which the absence of the summons was a material point and that he had no right to take any step, to prejudice the rights of the defendant in any way unless ordered by the Court. That after the argument and decision of the motion

to be aside the judgment in this case and on the twenty ninth day of October 1863 affiant saw said summons again and observed that said summons was not then marked "filed." But said Hawley informed affiant that he intended to mark the same "filed" of a day previous to the entry of said default and judgment.

That affiant again remonstrated with him & reminded him that such an act would prejudice the rights of the appellant upon the appeal which had been allowed to him therein.

That on the day affiant went to file the bill of exceptions in this case & on or about the 25th day of November 1863 said Hawley informed affiant that he had marked said summons "filed" since the decision of said motion, and on examination affiant saw that the words "Filed Oct 7th 1863 Thos B. Carter Clerk" had been added

to the said summons by endorsement, and the same appeared to be in the hand writing of said Hawley. That affiant then informed said Hawley that he should present the facts to the Supreme Court by affidavit if he copied said summons into the record in this case. And affiant further says that he is informed by the Clerk of said Court and verily believes that no order of the Court allowing said summons to be marked filed as of Oct 7th 1863 has ever been made in this case but that such Clerk acted therein of his own

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Supreme Court of Illinois
Third Grand Division

John S. Reed
appellant

vs.

Peter Curry
appellee

aff. on Mo. for Certiorari

Filed April 20. 1864
J. L. Lusk CMC

Haines & Stony
appellants attys



Antony Price Post Charging.

Horace Rud.

Notion.
I now & before me this
19th day of April A.D. 1864

Alfred C. Stony

In the Supreme Court
of the State of Illinois
Third Grand Division)

John S. Reed }
appellant }

April Term A.D. 1864.

vs
Peter Leung }
appellee }

Stipulation.

On the Seventh day of October 1863. when the default in this case was taken the plaintiffs attorney who moved for the default produced the Summons and read to the Court the return of the Sheriff thereon, such summons was then handed to the clerk of the Superior Court of Chicago. who placed the same among other papers, which were before him upon his desk, this being the same summons which appears on pages two and three of the record filed herein.

Judgment was entered the next day, Oct 8th by default as shown by said record for \$361.62 on the same day, the attorney for the defendant and appellant, with said clerk examined the files in this case, but were unable to, and did not find the said summons, and on the 9th day of October 1863 filed the affidavits and motion to set aside said

judgment as also is shown by said record.

Said motion was argued and overruled and appeal prayed and allowed October 28th 1863, during the same term as also appears by said record.

The said summons was found some days after said judgment was rendered, but was not marked find by the clerk until some time after the appeal herein was allowed. And about the twenty fifth day of November A.D. 1863. said clerk of his own motion endorsed thereon "Filed Oct. 7. 1863 Thos B. Carter clerk" which is the same summons and endorsement of filing appearing at page three of said record.

It is admitted by the appellant and appellee that the foregoing is a true statement of the facts in relation to the filing and marking of the summons in this case. and is to be taken and considered by the court as forming a part of the record in this case. and in lieu of a return to the writ of Certiorari heretofore allowed to the appellant herein. which is hereby waived as to any return thereto by the clerk.

Haines & Story

Appellants Attorneys

Kosmer & Beck

Attorneys for Appellee

²¹³
Supreme Court of Illinois
Third Grand Division

John A. Reed
appellant
vs.

Peter Cury appellee

Stipulation Certiorari

Filed May 3. 1864
J. Leonard Clerk

Haines & Story

Appellts attys

In the Supreme Court
of the State of Illinois

John S Reed
appellant
vs

Third Grand Division

Peter Lunny

appellee

April Term A.D. 1864

It is hereby stipulated and
agreed by and between the respective
parties to this cause represented by their
attorneys. That said cause may be
submitted to the Court upon written or
printed briefs and arguments to be
filed during the present term.

April 3rd 1864

Haines & Story

Appellants Attorneys

Koser & Beck -

Attorneys for Appellee

Supreme Court of Illinois
John S. Reed
appellant

vs

Peter Corny appellee

Stipulation

Filed May 3. 1864
J. Lewis clk

State of Illinois }
County of ~~Adams~~ ^{Peoria} } p.

John S. Reed appellant
vs

Peter Cury appellee -

Supreme Court of Illinois -

3^d Grand Division -

April term 1863 -

Charles F. Peck being duly sworn
deposes and saith that he
was the attorney for the appellee
and plaintiff in the court below
and personally conducted all the
proceedings in his behalf -

That upon the day when the
default in this case was taken
in the court below he appeared
before the Honorable Grant
Goodrich one of the judges
of the Superior Court of Chicago
and moved for a default in
said case and then presented
the summons which is copied
into the record and made the
return of the Sheriff on said
summons to the court - And this
deponent saith that immediately
and within two minutes thereafter

he handed each writ of summons
to the clerk of the court who
was at that time in charge of
the papers and records in the
court and that he saw the
said clerk then place the
said writ among the files of
the said court.

That he has no personal
knowledge as to whether the
file mark was then placed
upon said writ by the clerk
but he has been informed
that the file mark was in
fact put on at a later day.

And this deponent further
saith that the Superior Court
of Chicago in which the said
default was taken has been
in session and open for any
business to be brought before it
for at least twenty days in every
month since the said default
was taken and that no steps
have been taken by said Appellant
or his attorney to amend the record
or any part thereof in said court
so far as this affiant is advised
and believes - And further

this affiant with not.
Charles F. Beck.

Subscribed & sworn
before me this 22. 1884
L. Leland Bell
by J. B. Rice Deputy

No. 213-

Curry-
vs
Reed -

Filed Apr. 22, 1964
L. Seland
Clk.

Supreme Court
of the State of Illinois
Third Grand Division

John S. Reed
appellant

vs
Peter Leary
appellee

April Term A.D. 1864

And now comes the said John S. Reed appellant in this case and moves the Court upon the record and affidavit filed herein to strike from said record the purported summons and endorsements thereon and statements concerning the same, appearing at pages two and three of said record, or that a writ of certiorari issue from this Court directed to said clerk of said Superior Court of Chicago commanding him to certify a true record to this Court of said case, and particularly when the said summons was actually marked "filed", or for such other or further rule, or order, as to the Court shall seem just, for the reasons.

II

The said record, from the words commencing "and afterwards to wit" &c. on page 2 thereof, extending to similar words, at the bottom of the third page thereof, is an interpretation

made by the said clerk, without any order of Court, and against the wish of the appellant herein, and no such paper was ever filed in said cause, until long after the judgment therein was entered, Motion to set aside the same denied. And this appeal taken, and after said Superior Court of Chicago had adjourned for said October Term.

II II

The said Clerk of said Court, had no authority to mark said paper filed, at the time he did so mark it, and had no authority to embody the same, in the record herein, and such act of said Clerk, is an interpretation of the record in this case.

Harries & Story
Appellants Attorneys

In Supreme Court
Third Grand Division

John S. Reed
appellant

v.s.

Peter Curry
appellee

Mo. for Certiorari

Filed April 20. 1864
J. L. Leland CM

Haines & Stone
attys for Appellant

In the Supreme Court
of the State of Illinois

John S. Reed

appellant

vs.

Peter Curry

appellee

Third Grand Division

To the April Term A.D. 1864

Suggestions upon motion for Certiorari

This Court in *Holmes vs. Parker et al* (1 Scam. Rep. 567) held that "in case the Clerk of the Court below copies into the transcripts papers not filed, a Certiorari is the proper remedy on affidavit filed by the party aggrieved pointing out the interpolation.

1 Scam. 567.

In that case the bill of exceptions & appeal bond though actually left with & approved by the Clerk in time were not marked filed & the Court decided that they formed no part of the record.

In the present case the Clerk of the Superior Court of Chicago illegally marked the summons filed (as of Oct. 7, the day the default was taken) some six or eight weeks afterwards, & after the Court had adjourned for the term (all affidavits on file) and after this appeal was taken as if to evade the rule laid down above and deprive the appellant of his remedy after he had taken his appeal. We submit that such con

act of the Clerk is a contempt of this Court.
That the appellant is not at the mercy of any
Clerk or deputy. That the Clerk is not at liberty
to file any paper he chooses of his own motion or
exercise any control over the files except to keep them safe.
That the summons so manipulated by him
and then incorporated into the record, was never
legally marked filed and therefore it forms no part
of the record and the Court cannot notice it.

Hatch v Potter et ux 2 Gilw. 725

Founders v McCallins 4 Scam 419

3 Gilw. 366. 11 Id. 586 12 Id. 379. 13 do 78. 572

14 Id. 58. 25 Id. 392. 28 Id. 68. 314 —

This principle is too clearly settled to require
authority.

If such discretion and authority is
recognised as vested in the Clerk there is no
limit to his interpolations, and the records and
files of a Court would be subject to change
at his mere caprice. A Clerk acts ministerially
& cannot decide whether a paper was or was not filed
in a case. Particularly, he cannot proceed to do so
ex parte as in this case.

Unless this writ is granted the ap-
pellant is without remedy. This Court can
not decide whether the writ was or was not
presented to the Court below, at time of en-
tering the default. That is a question for the
Court below not the Clerk and the party.

should have applied to the Court below for leave to
file the writ.

The illegal action of the Clerk cannot cure
his omission

Respectfully Submitted
James H. Stony
attys at l.

213
In Supreme Court
Third Grand Division

John S. Reed
appet.

vs.

Peter Lang appellee

Suggestions on Mo.

Filed April 20. 1864
J. Leland W. M.

Haines & Story
appet. atty.

1,
Jno S Reed Appellant } Supreme Court
vs
Peter Curry Appellee } 3^d Grand Division
April term 1863.

The affidavit and motion
in this case are made for
the purpose of correcting
the record - The affidavit
shows that when the record
was made up and certified to
this Court the summons appeared
to be marked filed and the clerk
transcribed the record exactly
as it was - If the record of
the Court below has been
tampered with or mistakes
have crept into it, the appellant
should have taken steps to have
the Superior Court of Chicago
correct its own records, this
Court cannot do it -

As appears by the affidavit,
the clerk would be compelled
to send up another record
exactly like the one now before
this Court -

The amendment which the appellant seeks is immaterial and frivolous - Being merely this, that it should appear that when the default was taken the summons was not marked 'filed' by the clerk -

The summons is a part of the record, it emanates from the court ~~for~~ in the first instance and is always in the custody of the court or of some its officers. ~~At~~ What necessity can there be for filing the summons or for marking it 'filed'?

It will be noticed that the affidavit filed by the Appellant does not deny that the writ was ^{not} among the files when the default was taken - The record shows that the Appellant, the defendant below, employed no attorney until after the default was taken & judgment entered, so that he cannot claim the absence of the summons as any excuse for not pleading. Besides the summons was on file

No 213-

Curry
vs
Reed

Brief for
appellee -

Filed Sept. 22, 1864
L. Deland
clerk.

Kasner & Reed
for appellee

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Record 12 page 469

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Fifth day of October in the year of our Lord One Thousand Eight Hundred and Sixty Three and of the Independence of the United States of America the Eighth Eighth

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Van H. Higgins }
Grant Goodrich } Judges.

Joseph Knox Prosecuting Attorney.

David S. Hammon Sheriff of Cook County.

Attest, Thomas B. Coaster Clerk.

Be it remembered that heretofore to wit: on the Twenty-fourth day of September in the year of our Lord one thousand eight hundred and sixty three, C. P. Peck, attorney for the plaintiff in this suit filed in the office of the Clerk of said Superior Court of Chicago his certain Security for Costs, which is in the words and figures as follows to wit: —

Superior Court of Chicago
to the October Term 1863

Peter Lowry
vs
John S. Reed

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or caused to be paid all costs which may accrue in this action either to the opposite party, or to any of the officers of this Court, in pursuance of the laws of this State.

Dated this 23rd day of September 1863
C. P. Peck

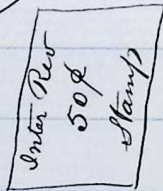
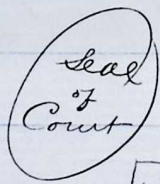
And afterwards, to wit, on the day and year aforesaid, there issued out of the office of the Clerk of said Court, the Peoples Writ of Summons, which is in the words and figures to wit: —

State of Illinois
County of Cook

The People of the State of Illinois
to the Sheriff of said County, Greeting:—

We Command you that you summon John S. Reed if he shall be found in your County personally to be and appear before the Superior Court of Chicago, of said Cook County, on the first day of the term thereof to be holden.

1
Ct.
at the Courthouse in Chicago, in said Cook County
on the first Monday of October next, to answer unto
Peter Curry in a plea of trespass on the case upon
promises, to the damage of the said plaintiff as is
said in the sum of Six hundred dollars. And
have you there this writ with an endorsement thereon
in what manner you shall have executed the same.



Witness Thomas B. Carter, Clerk of our
said Court and the Seal thereof at
Chicago aforesaid this 24th day of
September A.D. 1863.

Thomas B. Carter, Clerk.

— (Sheriff's Return) —

Served this Writ by reading to the within named
defendant this 25th day of September 1863.

David S. Hammond, Sheriff
by Wm Wayman Deputy

Filed Oct. 7. 1863.

Thos. B. Carter, Clerk

And afterwards to wit on the Twenty-fifth day of
September in the year aforesaid, said plaintiff Peter
Curry, by his Attorneys Hosmer & Peck filed in the Office
of the Clerk of said Court his certain declaration which
is in the words and figures as follows to wit —

Superior Court of Chicago
of the October Term A.D. 1863

State of Illinois }
Cook County } ss

Peter Curry, plaintiff in this suit
by Hosmer & Peck his attorneys, complains of John
S. Reed ^{defendant} who has been summoned &c in a plea of
trespass on the case on promises:

For that whereas heretofore, to wit, on the tenth
day of October in the year of our Lord one thousand
eight hundred and sixty at Chicago, to wit, at said
County of Cook, the said defendant made his cer-
tain promissory note in writing, bearing date the
day and year aforesaid, and then and there delivered
the said note to the said plaintiff, in and by which
said note, said defendant promised to pay to the
order of the plaintiff, two hundred eighty nine
& $\frac{51}{100}$ dollars on demand after the date of said note
at the office of said defendant in Chicago, with
interest, and being for value received.

By means whereof and by force of the Statute
in such case made and provided the said defend-
ant became liable to pay the said plaintiff said
sum of money mentioned in said note according
to the tenor and effect of the said note. and being
so liable, the said defendant in consideration
thereof then and there undertook and promised
to pay the same to the said plaintiff according

to the tenor and effect of the said Note as aforesaid to wit, at the place aforesaid.

And whereas also the said defendant on the first day of September in the year of our Lord one thousand eight hundred and sixty three at Chicago to wit, in said County of Cook became and was indebted to the said plaintiff in the sum of Six hundred dollars of lawful money of the United States of America, for divers goods, wares and merchandise, by the said plaintiff before that time sold and delivered to the said defendant, at the special instance and request of the said defendant, and being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the ^{plaintiff} said, well and truly to pay unto the said plaintiff, the sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

And whereas also, the said defendant, afterwards to wit on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, sold & delivered to the said defendant, divers other goods wares and merchandise of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff, that the said defendant

would well and truly pay to the said plaintiff, so much ~~&~~ money as the last aforesaid goods wares and merchandises at the time of the sale and delivery thereof, were reasonably worth, when the said defendant should be thereunto afterwards requested; and the said plaintiff avers that the said goods, wares and merchandise last mentioned, at the time of the sale and delivery thereof were reasonably worth the further sum of six hundred dollars of like lawful money as aforesaid, to wit, at the place aforesaid, whereof the said defendant afterwards, on the same day and year, and at the place aforesaid had notice. And whereas, also, the said defendant, afterwards, to wit, on the same day and year, and at the place aforesaid, was indebted to the said plaintiff in the further sum of six hundred dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to ~~to~~ the said defendant and at the like request of the said defendant. And in the like sum for other money by the said plaintiff before that time paid, laid out and expended for the said defendant, and at the like request of the said defendant. And in the like sum for other money by the said defendant before that time had and received, to and for the use of the said plaintiff. And in the like sum for other money before that time had and received to and for the use of the said plaintiff. And

in the like sum for other money before that time and then due and owing the said plaintiff for interest upon and for the forbearance of divers other sums of money before that time then due and owing from said defendant to said plaintiff. And in the like sum for the price and value of work then done and material for the same provided by the plaintiff for the defendant, and at the like request of the defendant. And being so indebted, the said defendant, in consideration thereof, afterwards to wit, on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the several sums of money in this Count mentioned, when the said defendant should be thereunto afterwards requested. And whereas also, the said defendant, afterwards, to wit, on the same day and year, and at the place aforesaid accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of six hundred dollars, of like lawful money as aforesaid. And being so found in arrear and indebted to the said

plaintiff, the said defendant, in consideration thereof, afterwards to wit, on the same day and year, and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested;

Nevertheless the said defendant (although often requested &c) has not yet paid the several sums of money above mentioned or any or either of them, or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant, has hitherto altogether refused and still do refuse, to the damage of the said plaintiff of six hundred dollars, and therefore the said plaintiff brings suit &c.

Hoerner & Peck
Plaintiff's Attorney

Copy of instruments and account sued on
\$ 289⁵¹ October 10th 1860.

On demand after date I promise to pay to the order of Peter Curry, two hundred eighty nine ⁵¹/₁₀₀ dollars at my office in Chicago. Value received with interest.

John S. Reed

\$20⁰⁰ Received of Peter Curry twenty dollars
to return when called for. Chicago July 8th 1860
Jno. S. Reed

John S. Reed

To Peter Curry D^r

1863.

Sep 1 st	To Money lent and advanced	\$ 600 ⁰⁰
" "	To Money paid laid out and expended	\$ 600 ⁰⁰
" "	To Money had and received to and for the use of Peter Curry	\$ 600 ⁰⁰
" "	To Goods wares and Merchandise sold and delivered	\$ 600 ⁰⁰
" "	To Labor and Services	\$ 600 ⁰⁰
" "	To Balance due on account stated	\$ 600 ⁰⁰

And afterwards to wit, on the seventh day of
October in the year aforesaid, said day being one of
the days of the October Term of said Court - the following
among other proceedings was had and entered of record
in said Court to wit

Peter Curry }
vs } Asst.
John S. Reed }

860

11, 17th

Record 1st page 488

This day comes said plaintiff
by Hosmer & Pock his Attorneys, and due personal
service of process of Summons issued in said
cause having been had on said defendant, and
he being three times solemnly called in open

Court comes not, nor does any person for him, but herein he makes default, which is on motion ordered to be taken, and is hereby entered of herein of record, wherefore said plaintiff ought to have and recover of and from said defendant his damages sustained herein by reason of the premises.

And thereupon reference is had to the Court to assess damages herein hereafter.

And afterwards to wit, on the Eighth day of October in the year aforesaid, said day being still of the October term of said Court the following among other proceedings was had and entered of record in said Court to wit.

860
11, 173

Peter Curry	}	Assumpsit
John S. Reed		

v.s

Record 12 page 495
This day again comes the plaintiff by Horner & Peck his attorneys, and default of said defendant having been heretofore taken and entered herein of record against him (to wit, on the seventh day of October instant) the Court now here after hearing the allegations and proofs submitted by said plaintiff, and being fully advised in the premises, assesses his damages herein against

Said defendant to the sum of three hundred and
Sixty one dollars and ~~forty five~~ ^{sixty two} Cents.

Therefore it is considered that said plain-
tiff do have and recover of and from said defend-
-ant his damages of three hundred & sixty one
dollars and sixty two, Cents in form aforesaid, as-
-sessed, and also his costs and charges in this
behalf expended and have execution therefor.

And afterwards to wit, on the twenty eighth day
of October in the year aforesaid, said day being
still of the October term of said Court the follow-
-ing among other proceedings was had and
entered of record in said Court to wit-

Peter Curry

v.s

John S. Reed

Motion to set aside judgt. & Default

860

11, 173

Record 17 page 540

And now come said parties
to this cause by their attorneys, and said defend-
-ant having filed his motion supported by affidavit
to set aside the default entered in this cause, and
for leave to defend the same upon the merits, and
the Court upon reading of the affidavit filed by
said defendant in support of his said motion as
well the counter affidavit filed by said plaintiff

is of the opinion that the affidavit filed by said defendant in support of his said motion is not sufficient, and that said motion to set aside the default in said case should be overruled, to which ruling, of the Court in overruling his said motion to set aside the default herein the said defendant then and there excepted and entered his exceptions and prays an appeal herein to the Supreme Court of this State from the judgment and decision of this Court, which is allowed to him on filing bond in the penalty of six hundred dollars with H. Witbeck as security to be filed with his bill of exceptions within thirty days from this day).

And afterwards, to wit, on the twentyfifth day of November in the year aforesaid, said defendant John S. Reed by his attorneys filed in the office of the Clerk of said Court his certain Bill of Exceptions which is in the words and figures as follows to wit:

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Superior Court of Chicago

Of the October Term A.D. 1863

Peter Curry

vs

John S. Reed }

Be it remembered that afterwards, to wit on the Ninth day of November A.D. 1863, the same being one of the judicial days of the said October term of said Court came the said defendant John S. Reed and filed the affidavit of Allan C. Story Esq. which was in the following words and figures Viz:-

State of Illinois —
Superior Court of Chicago }

Of the October Term 1863

Peter Curry

vs

John S. Reed }

Cook County, ss.

Allan C. Story being duly sworn deposes and says that he is one of the firm of Haines & Story, attorneys for the defendant in the above entitled cause. That this affiant with his law partner, Mc Haines has been engaged since September 28th 1863 at the Lake County Circuit Court in the trial and disposition of cases in which they were engaged as Attorneys. That said term closed on the 8th day of October instant, and that neither

this affiant, or his partner have been able to be absent from said Court, a sufficient length of time, to prepare and file the proper pleas in this cause, or procure the extension of time for that purpose, therein from this Court. That both this affiant and his said partner expected when they went to Waukegan to attend said Court, to return in time to attend upon the present term of this Court on the 5th inst. and accordingly left word to that effect with Chas. Gregory Esq. who is employed in their office and have been expecting daily until the final adjournment of said Lake Co. Circuit Court to be able to return and attend to business in Chicago. That they were actually engaged in the trial of cases in said Court until noon of the eighth inst. - too late for any train by which to reach Chicago before the adjournment of this Court for that day. That for these reasons it has been impossible to prepare the proper papers for this motion before this (Friday) the 9th inst. That this affiant with his said partner have acted as the general attorneys & Counsel for the firm of Butler Witbeck & Co. of which the defendant herein is a member as well as for said Reed in his individual matters for nearly two years past, and affiant's partner said Haines has been such attorney for a still longer period. That said firm of Haines & Story

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was first informed of the existence of this suit,
and that judgment was rendered therein on
Wednesday Oct 8th 1863, but neither affiant
nor his said partner could leave the business
they were then engaged in, in said Court to
prepare the papers to move to open said judgment
until this (Friday) day. That on examin-
ing the record of this Case on Friday, affiant
found no summons or proof of service thereof
filed in this case, and deponent knows the
fact that no summons was filed therein up
to twelve o'clock of today, and that from the state-
ment of the defendant, deponent believes he
has a good defence upon the merits in this
case.

Sworn to before me } Allan C. Story
this 9th October A.D. 1863 }
Thomas B. Carter, Clerk

And also his own affidavit in the words and
figures following Viz:—

State of Illinois }
Superior Court of Chicago } Of the October Term 1863
Peter Curry }
vs }
John S. Reed }

Cook County }
City of Chicago } John S. Reed being duly sworn

Ex. S
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Hawth
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doth depose and say that he is the defendant named in the above entitled cause, That Peter Curry who is named therein as plaintiff, is an old Gentleman of about sixty years of age, a sailor by occupation, and frequently absent from the City two or three years at a time. That during the last ten years it has been his custom to keep his money on deposit with this affiant for safe keeping, to prevent the same being squandered by himself when intoxicated, which was frequently the case when on shore, after his return from his usual cruise - and also to prevent the same being stolen or unlawfully obtained from him in his absence, as he frequently informed this affiant. That immediately on his return from a cruise at sea he has been in the practice of first calling upon this affiant and depositing his earnings except sufficient for his actual expenses. That said Curry has frequently stated to this affiant (who also knows of the fact) that his (said Curry's) wife was living with another man in open adultery. That her paramour had assaulted, cut and wounded him said Curry and that this affiant must not on any consideration pay over any of said money except to him said Peter Curry in person, as he desired no part thereof to come to her hands.

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17

That he considered this affiant his particular friend, and the only one in Chicago with whom he could safely deposit his funds, and wished him to hold the same until so demanded by him. That it was also agreed between this affiant and said Curry at their last interview as aforesaid, that he said Curry would give this affiant notice, before he should want the money in order to save him any trouble in the premises, That this affiant has never been asked to pay said money by any person, authorized to demand the same by said Curry. That said Curry has not been seen or heard from, since about the date of the receipt on file in this case by deponent and deponent believes that this proceeding is commenced without his knowledge or direction and against the often expressed wish of said Curry and in violation of his agreement with affiant. That this suit is brought on behalf of one Maurice Clifford who has unlawfully obtained possession of said papers by some means unknown to said Curry and is endeavoring to obtain the money thereon, as affiant is informed and believes, to defraud said Curry thereof. That said Clifford applied to this affiant for payment of the note & receipt, and affiant offered to pay the same, if he, said

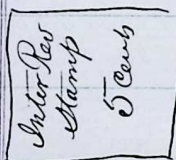
Clifford would show himself to be lawfully
 authorized to receive the same, and had come
 honestly in possession of the said papers. That
 said Clifford then produced a paper of which
 deponent subjoins a copy marked "A" but
 on examination this affiant at once from his
 knowledge of said Curry's handwriting pronounced
 it insufficient for any such purpose and not
 signed by said Curry unless while intoxicated.
 And deponent now believes the same to be
 a forgery or a fraud upon said Curry. That affiant
 is informed and believes that said Curry has not been
 in Chicago since the date of said receipt & that
 the attorneys who appear for said Curry have
 been employed by said Clifford and not by said
 Curry and that no other authority for commencing
 this suit than the paper attached to this affida-
 -vit exists either from said Curry or from any
 one having his authority. That affiant previous
 to the commencement of this suit offered both to
 said Clifford, and also afterwards to M^r. Hosmer
 one of the Plff's attorneys to submit the matter to
 any judge of any court in this city, or any respect-
 able lawyer whether said paper (assuming it to
 be genuine) was sufficient to authorize said Clifford
 to receive the money due upon said papers to said
 Curry. And if such judge or Attorney should
 so decide then deponent offered to pay the same

without suit, and said parties declined to accept of the same. That affiant has always had said amount so due to said Peter Courry ready at his office where said note is payable to pay to him personally when demanded pursuant to the agreement existing between him and this affiant, and is now ready to pay the same to any person authorized to receive it. That deponent has employed Mess^{rs} Haines & Story as his Attorneys during the past Eighteen Months or more, and deponent called at their office on Monday, Tuesday and Wednesday of the present week, and several times during the past week to have them prepare for the proper defence of this case, but failed to see either of them in consequence of their absence in Court at Waukegon, but this affiant was informed each time that they were expected back that day, or the next, that immediately on ascertaining there was a judgment therein this affiant caused word to be sent to them at Waukegon on the 8th inst and affiant employed no other attorney, as he was anxious that said firm should have the management of this case for him in connection with his other business, that on being informed by persons in the office of said Attorneys, that they were expected to return every hour, this affiant left word there to attend to this case and

Supposed that the same would be attended to by them until informed that judgment had been rendered therein, on the 8th inst. That deponent verily believes that the existing facts related by him, will enable him to make a valid defense to this action upon the merits, and this proceeding is made in good faith and not for delay.

John S. Reed

Subscribed and sworn to
this 9th October A.D. 1863
before me



Allan C. Story

Notary public

in and for City of Chicago

"A"

Chicago Dec 16th 1860.

I authorize Maurice Clifford 222 North Market Street, with full power to draw the Contract between Peter Curry and Mrs. Johnston, and to sign my name to same. And transact my business for me and in my name.

Signed Peter Curry

And also at the same time filed his motion to open and set aside the said judgment, and for leave to defend the said action, which motion was in the following words and figures viz:—

Superior Court of Chicago

October Term 1863.

Peter Curry

vs

John S. Reed

Now Comes the said Defendant, by the Undersigned his Attorney and enters his Motion to set aside the default entered in this case, and for leave to defend the same upon affidavits filed, and also

2. Because said default was illegally entered.

3. The Court had no authority to render judgment at the time, nor for the amount at which judgment herein was rendered.

E. M. Haines

Oct 7th 1863.

Defts. Atty.

And afterwards to wit, on the 26th day of October A.D. 1863 the said Plaintiff Came and filed the affidavit of Maurice Cliford which was in the following words and figures viz:—

State of Illinois }
County of Cook }

Superior Court of Chicago
At the October Term 1863.

Peter Curry

vs

John S. Reed

Maurice Clifford being duly sworn
 deposes and saith, that, he has read the affid-
 avit of John S. Reed, the said defendant, which
 has been filed in this case. That this affiant
 is the person referred to in said affidavit. That
 that he is well acquainted with the said plaintiff
 who is a sailor by occupation and has been his
 friend and acquaintance for many years. That
 said Curry left this city in the latter part of the
 year 1860, for the city of New Orleans and there
 shipped on board of the ship Martin Luther.
 That frequently before leaving this city the said
 defendant called upon this affiant and requested
 his aid in transacting his business, and taking
 care of his affairs. That said Curry frequently
 deposited money with this affiant and drew it
 from again as he required it - but that before
 leaving the city, this affiant paid said Curry
 all such monies. That a short time before
 leaving this city, said Curry purchased a lot
 of ground in this city, from W. S. Johnson for the
 sum of \$800⁰⁰, - paying \$200⁰⁰ down, and
 agreeing to make payment of \$200⁰⁰ annually
 for 1, 2, & 3 years. That this affiant was always
 consulted by the said Curry about his said busi-
 ness matters, and particularly requested by him
 to take the entire management of his business
 in his absence, and to protect his interests by pay-

-ing out whatever moneys should be necessary
 in his behalf for taxes, or for any other purpose.
 Fearing that a verbal authority would not be
 sufficient for these purposes, this affiant at
 the request of said Curry drew up the power of
 Attorney, a copy of which is annexed to the
 said affidavit of Reed. That the said Curry
 executed with his own hand the said power of
 Attorney and delivered it to this affiant. That
 said power of Attorney was all written upon
 the same day, but at two different times, with
 two different pens, but that the whole of said
 power as it now appears was fully written
 before the said Curry signed it, and at the same
 time that the said Curry delivered the said power,
 he also handed this affiant the said note and
 receipt, on which judgment was entered in this
 cause. That said Curry at the time said
 power was signed, and said power & notes
 were delivered to this affiant was perfectly
 sober, and in all respects in his right mind,
 and entirely free from the influence of liquor.
 That said affiant has in good faith since the
 said Currys departure endeavored to protect his
 interests and has tried in every way to save the
 land which said Curry had bargained for
 and has applied to said Reed to collect the said
 notes in order to be in a condition to carry out

Said Contract.

But that said Reed has always refused to pay said moneys. That this affiant has been compelled to commence and prosecute a suit against said Johnston in order to save the moneys which said Curry had already paid and said affiant has been compelled to advance money on said Curry's account and involve himself in liabilities for the purpose of protecting the interests of said Curry. That this affiant has resided in this city for about sixteen years and for the last four years has been engaged in keeping a family grocery store. and this affiant avers that he is worth the sum of seven thousand dollars and owns that amount of real estate in this city free and clear of all incumbrances and debts. That he is the sole agent of the said Curry in this city and is entitled to the custody and control of the money and property belonging to him, and is amply responsible for its proper application; and that the said Curry is now indebted to him for liabilities incurred on his behalf, and that it will be impossible for this affiant to properly execute his duty as agent for the said Curry unless he is allowed have & exercise his proper and legal control over his property. And this affiant further states that he has employed Messrs Hasmer & Peck to prosecute this suit for the benefit of said Curry and that this affiant has no interest whatever in the result of this suit except as agent

for the said Curry, and that he has no pecuniary interest whatever in such result.

Subscribed and sworn to
before me this 16th day of October
A.D. 1863.

Maurice Clifford

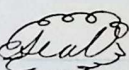
J. B. Carter, Clerk

And afterwards, to wit, on the twenty eighth day of October A.D. 1863, the same being one of the judicial days of said October Term of ^{said} Court, at which said default and judgment was entered in this action as aforesaid, came the said parties by their respective attorneys, and thereupon the said motion of the said defendant came on to be heard by the Court then sitting.

And thereupon the attorney for the defendant read in evidence the affidavits filed by the said defendant herein as aforesaid.

And thereupon the attorney for the plaintiff proposed to read in evidence the affidavit of Maurice Clifford filed in this case by the plaintiff as aforesaid which was objected to by the Counsel for the defendant for the reasons - first, That Counter affidavits are inadmissible upon this motion. Second That the jurat to the said affidavit does not bear the appropriate government stamp of five cents. But the Court over-ruled the said objections and permitted the said affidavit to be read in evidence.

to each of which decisions, the said attorney for the said defendant, did then and there duly except. Which was all the evidence offered upon said motion, and thereupon the Court after considering the evidence, over-ruled and denied the said Motion, and refused to open said judgment, to which said decisions and each of them the said defendant by his attorney, did then and there duly except, and prayed the Court then and there to sign and seal this his bill of exceptions, and make the same a part of the record in this case which is done.

Grant Goodrich 

And on the Twenty third day of November in the year aforesaid, said said defendant by his attorneys filed in the office of the Clerk of said Court, his appeal bond which is in the words and figures as follows to wit

Know all men by these presents that we John S. Reed as principal and H. W. Wick as security of the County of Cook and State of Illinois are held and firmly bound unto Peter Curry also of the same County and State in the penal sum of Six hundred 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 firmly, by these presents.

Witness our hands and seals this 28th day of October A.D. 1863.

The condition of the above obligation is such, that whereas the said Peter Curry did, on the 8th day of October A.D. 1863 in the Superior Court of Chicago in and for the County of Cook, and State aforesaid and of the October Term thereof A.D. 1863 recover a judgment against the above bounden John S. Reed for the sum of three hundred sixty one dollars and sixty two Cents besides Costs of suit; from which said judgment of the said Superior Court of Chicago, the said John S. Reed has prayed for and obtained an appeal to the Supreme Court of said State.

Now therefore, if the said John S. Reed shall duly prosecute his said appeal with effect, and moreover, pay the amount of the judgment, costs, interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue.

John S. Reed (Seal)
H. Wetbrook (Seal)

State of Illinois }
 County of Cook } ss.

I, Thomas B. Carter, Clerk
 of the Superior Court of Chicago, within and for the
 County and State aforesaid, do hereby certify the
 above and foregoing to be a full, true and complete
 transcript of all the papers on file in my office,
 and all orders and judgments entered of record in
 said Court, ^{together with Bill of Exceptions and Appeal Bonds} in a certain Cause lately pending
 therein, on the Law side thereof wherein Peter Curry
 was plaintiff and John S. Reed was defendant.

In witness whereof I have here-
 unto set my hand and affixed
 the Seal of said Court at Chicago
 this 17th day of March A.D. 1864.
 Thomas B. Carter Clerk



State of Illinois
Third Grand Division

} vs.

In the Supreme Court

John S. Reed

To the April Term A.D. 1864

appellant

vs.

Assignment of Errors

Peter Curry

appellee

And now the said John S. Reed appellant in this case comes and says, that in the record and proceedings aforesaid there is manifest error in this to wit

I The said Superior Court of Chicago erred in entering the default of the appellant.

II The said Court erred in rendering judgment for the appellee for \$361.62.

III The said Court erred in not dismissing the said suit.

IV The said Court erred in not rendering judgment in favor of the appellant.

V The said Court erred in not permitting the appellant to make his defence to said suit.

VI The said Court erred in admitting the affidavit filed by the appellee, to be read in evidence on the motion to set aside said judgment.

VII The said Court erred in overruling the objections made by the appellant, to the reading of the affidavit of Clifford.

VIII The said Court erred in overruling the motion of appellant to set aside the said judgment.

IX The said Court had no jurisdiction of the action.

- X. The said action was improperly brought.
- XI The said action was brought without authority from the appellee and should have been dismissed.
- XII The said finding of said Court and the judgment entered thereon is contrary to law and evidence.
- XIII For other material errors in the record of this case.

Naines & Story
Appellants Attorneys and of Counsel

For under in Error -

Kosmer & Beck attys for appellee

16.55

— 213 — 179

Supreme Court of Illinois

Third Grand Division

John S. Reed
Appellant

vs.

Peter Curry
appellee

Record

Filed Oct. 20, 1864

L. Iceland
Ck.

Haines & Stony

Appellants Attys

\$11.00 Ck.