

No. 13584

Supreme Court of Illinois

Carpenter

vs.

Chicago Marine & Fire Ins.Co.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 167

Carpenter
vs

Chicago & M
W H & Co.

1862

13584

Adm. Pen.

Superior Court of Ill.

Chicago In & L. Box Co

- 24.

Paulo Carpentier

April Term 1862

In error to Superior

Court of Chicago

It is here agreed and stipulated that in the Bill of Exceptions filed in the above entitled Cause is contained all the evidence given introduced on both sides of Defendant, as well as Plaintiff and that the Bill of Exceptions was made & intended to preserve all such evidence of record.

Wm. H. Haynes for deft

Plff in error

W. B. Remy for,

Supreme Court

Chas. & M. F. Mills.

167. 24.

Philo carpenter

Stipulation.

that Bill of Receipts

contains all

the evidence

Filed May 6, 1862
L. Kel and
Clk.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

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 Second day of December in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the United States of America the Eighty Sixth.

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

Van H. Higgins }
And Grant Goodrich } Judges.

Charles Warren Prosecuting Attorney.

Anthony L. Henry Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that herefor to wit on the
fourteenth day of July in the Year of our Lord one
thousand eight hundred and Sixty one there issued
out of the office of the Clerk of the Superior Court of
Chicago the People's Writ of Summons which said
Writ with the Sheriff's return thereon endorsed is in
words and figures as follows to wit

State of Illinois }
County of Cook } SS

The People of the State
of Illinois to the Sheriff of said County Greeting:
We Command You that You Summon
Chicago Marine and Fire Insurance Company
if it shall be found in Your County, personally to be

1
And appear before the Superior Court of Chicago
of said Cook County on the first day of the next
Term thereof, to be holden at the Court house in
Chicago, in said Cook County, on the first Monday
of August next to answer unto Philo Compunter
in a Plea of Trespass on the Case upon promises, to
the damage of the said Plaintiff as is said, in the sum
of Three Thousand Dollars

And I am You there this writ with an
endorsement thereon in what manner you
shall have executed the same,

Seal
Witness, Walter Kimball Clerk
of our said Court and the Seal thereof
at Chicago aforesaid this 13th day of
July A D 1861
Walter Kimball

Seal
Served this writ on the within named Company
by reading and delivering a true Copy thereof to
J. V. Lammere President of said Company this
25th day of July 1861

A. C. Keeling Sheriff
By Chas S. Perry Deputy

And afterwards to wit on the twenty fifth day
of July and Year aforesaid, Philo Compunter
by E. H. Remy and his attorney filed in the office of
the Clerk of said Court his certain declaration in

Words and figures following to wit

In the Superior Court of Chicago
Of the August Term A.D. 1861

State of Illinois?
County of Cook D.S.

Philo Carpenter plaintiff in this
Suit by E. H. Ryerson his Attorney Complainant
of the The Chicago Marine and Fire Insurance
Company who have been summoned &c of a plea
of trespass on the Case upon promises

For that whereas heretofore to wit on the
Tenth day of July in the Year of our Lord One
Thousand Eight hundred and Sixty one to wit at
Cook County aforesaid the said defendants were
indebted to the said Plaintiff in the sum of Three
Thousand dollars of lawful money of the United
States of America for so much money by the said
Plaintiff before that time lent and advanced to the
said defendants at their special instance and request
and being so indebted they the said defendants in Con-
sideration thereof afterwards to wit, on the day and
Year aforesaid at Cook County aforesaid under-
took and then and there faithfully promised the
said Plaintiff to pay him the said last mentioned
sum of money when they the said defendants should
be thereto afterwards requested

And whereas also the said defendants afterwards
to wit on the day and Year last aforesaid at Cook
County aforesaid were indebted to the said Plaintiff

in the further sum of Three Thousand Dollars of like lawful money for so much money by the said plaintiff before that time paid laid out and expended to and for the use of the said defendants at this like instance and request, And being so indebted, they the said defendants in Consideration thereof afterwards to wit on the day and Year last aforesaid at Cook County aforesaid undertook and there and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money when they the said defendants should be therunto afterwards requested.

And whereas also the said defendants afterwards to wit, on the day and Year last aforesaid at Cook County aforesaid were indebted to the said plaintiff in the further sum of Three Thousand Dollars of like lawful money for so much money by the said defendants before that time had and received to and for the use of the said plaintiff, And being so indebted they the said defendants in Consideration thereof afterwards to wit, on the day and Year last aforesaid, at Cook County aforesaid undertook and there and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money when they the said defendants should be therunto afterwards requested.

And whereas also the said defendants afterwards to wit on the day and Year last aforesaid at Cook County aforesaid accounted with the said plaintiff of and concerning divers other sums

of money from the said defendants to the said Plaintiff before that time due and owing and then in Arrear, and unpaid and upon such accounting the said defendants were then and there found to be in Arrear and indebted to the said Plaintiff in the further sum of Two Thousand and Eighty nine ⁹⁹/₁₀₀ dollars of like lawful money and being so found in Arrear and indebted they the said defendants undertook and then and there faithfully promised the said Plaintiff to pay him the said last mentioned sum of money when they the said defendants should be thereunto afterwards requested.

Nevertheless the said defendants (not regarding their said several promises and undertakings but Contriving and fraudulently intending Craftily and Subtly to deceive and defraud the said Plaintiff in this behalf have not as yet paid the said several sums of money or any or either of them or any part thereof to the said Plaintiff (although often requested so to do) but the said defendants to do the same have hitherto wholly neglected and refused and still do neglect and refuse to the damage of the said Plaintiff of Three Thousand dollars and therefore he brings his Suit &c

E H Ramsey
Plaintiff's Atty

Copy of Account Served on

Chicago Marine and Fire Insurance Co in a/c with Philo Carpenter

1888	Nov	9	To Crj	1000	1024 50
"	"	15	Dis	1432 1350	1000
Dec	"	3 ^d	Crj	235	143 25
"	"	14		140 88	501 75
"	"	15		348 65	300
"	"	23		4504	1766 18
"	"	30	Crj	1312 50	1105 64
"	"	"	Dis	506	33 60
"	"	"	"	314 64	
1889	Jan	4	"	304	9204 32
"	"	19		168 08	3040 29
"	"	"		2000	
				<u>12,244 61</u>	<u>12244 61</u>

Sal Card down
8 Cks out

Jan	19	To Balance	3040 29	
Feb	1		500	
"	25		233 08	
Mar	3 ^d		129 65	
"	19		431 94	
				<u>4335 01</u>
				<u>4335 01</u>
Mar	22	Dis	500	260 28
Apr	2		625	235 57
"	6		124	500
"	9		800 93	974 39
"	9		90	205 69
May	31		200	225
"	12		102 09	574 85
				543 02
				1108 52
				846 98
				500
				144 54
				<u>6158 78</u>
				By Bal @ down
				12 Cks
				<u>6158 78</u>

May	12	To Balance	144 54		30
	25		400		50
	31		483 71		25
June	3	Hunelle	75		25
	30		108 45		700
			457 64		20 40
July		Howard	1669 04	Howard	850 40
July	14		715	1 Ky Ck	2310
		P. Williams	400		100
	20	Dis	3000		2400
	"	Cash	62 50	Balance Car & down	
				9 Cks. retai	166 74
			<u>5847.14</u>		<u>5847 14</u>

1859					
July	22	To Balance	166 74		411 98
Aug	2		43		40
"	"		205		200
"	20		205		502 16
Sept	5	Dis	502 16		205
	6		876		200
			100		
	10		245		
"	"	E. Ewing	57 67		
	21		100		
	24		130		
	26		1966 67	By Balford	2147 43
			<u>3706 48</u>	Cks. sold	<u>3706 48</u>
Sept	26	To Balance	2147 43		502 16
		E. Williams	133		100
Oct	10	Dis	1732 04		207 30
			3031		50 62
	22		233		202 50
	24		207 30		1567 08
Nov	24		130		40
"	8		100		

		<u>4652 46</u>
Nov 8/9	To Bal	322 60
" 23		120
Dec 23		75
1860 Jan 3		200
" 28		1550
" 24		331

2598 60

February 2/60	To Bal	304 09
" 13	Dis 200 ⁸⁶	199 14
"	Cash	100
22		3461 20
24		350

4114 43

March 2/60	To Balance	673 95
May 8		315
June 4	Dis 1200 ²⁴	1176
"		433 04
26		322 17
		<u>2920 16</u>

By Bal down
Chs returned

732 15	1135 93	1350 61
161 48	50	31
50	20	90
50	20	100
50	25	723 50
92	99 08	

By Bal brot down
Chs returned

304 09	2598 60
28 23	25
223 37	25
25	25
25	45

1997 71	600
200	304
100	

By Balance
Chs returned

673 95	4114 43
202 50	304 50
1391	30
25	38 75
500	

By Bal ford
Ch rd

428 41	2920 16
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June 6 1860	To Balance	428 41
July 24	To doct ²⁰⁰	199
Aug 11	244	152
23		400

200
18
30 23
200
115 85
58 31
400

By Balance

160 02
1179 41

1179 41

Sept 10	To Balance	160 02
11		110
Oct 1	To doct ¹³³²⁵	131 12
6	213	98 45
11	20	500
21		500
15		32 90

240 02
111 50
1157 24

1532 49

Nov 21	To Balance	1157 24
Dec 4		120 15
" 14	Chadman's Est	1464 96
" 21		500
" 21		135
" 24		265
" 31		230
Jan 7 1861		315

over

1532 49

33 50

140 68

4

1386 79

988 22

By Balance

932 19

5 Checks returned

4187 38

Nov 7	By Balance	932 19
" 12		186 60
Dec 23		359 20
" 25		1500
" 26		500
March 8		833 52
" 12		226 99
" 14		162 20
" 15		100

82

345

155

125

4

50

80

58

110 38

Forward 4720 70

Forward

1405 38

1861		Pmt over	4720 40	Pmt over	1405 38
Mar "	18	To	187		50 02
				By Balance	3416 30
			<u>4901 70</u>		<u>4901 70</u>
Mar	18	To Balance	3416 30		1257 77
"	"		115 90	681 68	75
"	20		130	291 57	2
	23		130	42 67	11 88
	26		105 25 1		140 75
	25	Dands	106 23	15 75	196
	18	D	115 90 1		190 38
"	29	L. B.	378 95	125	2
April	3		388 70	150	141
"	4		23 7 1		28 70
"	10		145 31	<u>145 76</u>	1
"	11		300		110 38
"	12		175		1
			<u>5628 64</u>	By Balance	2382 58
1861				Dr chs ret	<u>5628 64</u>
April	13	To Balance	2382 58		3672 42
"	16	Ills	366 2	2	31 86
"	17		128	15 150	377
"	18		72 14	30 70 45 24	166 75
	20		63 49 1	33 73	141 34
	22		108 "	150 250	126 68
	23		346 92 40	24 53	42 18
	26	Utility BOP	57 12	104 22 125	38 29
				25 28	235 87

7		1000		3	3
"	29	345 50	225	110	38 3
"	30	262 97	20	60	17 40
Money	2	190	50	23	bal 2046 67
"	3	159	50	25	
"	4	539 50	2	1	
"	6	191 57	141	50	29
"	7	320 50	158	127	95
"	8	169 04	38 46	25	
"	9	To W B N notes 160	189 62	120	45
"	9	Toberg & Bros 100	69 52	20	
			50		

Forward 7/12 33
 Brought over 7/12 33

Forward 7/532 46
 Brought over 7/532 46

Money	11	W B N notes	114 1.3
"	11	Paid Rm	200
"	15	W B N	106

7532 46 49 chs int

7532 46

Money	17	To Balance	2046 67	By chks int	100
"	18	W B N	113 32		

5

The defendants will please take notice that the
Plaintiffs only Claims and will only take judgment
in this Suit for the Sum of \$2089.99 the Amount
shown to be due on the books

E H Remyam Plfts Atty

Chicago Marine & Fire Insurance Co
To Philo Carpenter Dr

To Money lent and advanced	\$3000.00
" Money paid laid out & expended	\$3000.00
" Money had and received	\$3000.00
" Balance due on account stated	\$2089.99
	\$3000.00

And afterwards to wit on the fifth day of August
in the Year aforesaid, The Chicago Marine & Fire
Insurance Company by Mc Cagg & Fuller
Attorneys, filed herein its Certain Plea and affida-
vit of merits in words and figures following to wit:

In the Superior Court of Chicago
of the August Term A D 1861

State of Illinois
Cook County Sd

The Chicago Marine & Fire
Insurance Company

vs
Philo Carpenter

} Assumpsit

And now Comes the Said Defendant by
McGaggy & Haller its attorney and defends the
Wrong and injury, when &c and says that it did
not undertake or promise in manner and form as
the said Plaintiff hath above thereof in his said
Declaration complained against it and of this
the said Defendant puts itself upon the Country &c
McGaggy & Haller
Defto Attys

And the said Plaintiff doth the like
E. H. Runyan
Plffs Atty

In the Superior Court of Chicago
of August Term A.D. 1861

Between

Phil Compton, Plaintiff

against

The Chicago Marine and Fire
Insurance Company

Defendant

State of Illinois

Cook County

I Young Scammon being duly
affirmed deposes and says that he is the President of
the Chicago Marine and Fire Insurance Company
the Defendant in the above entitled Cause, and
that he verily believes ^{that the} said Chicago Marine & Fire
Insurance Company has a good defence thereto upon
the merits, and that he makes this affidavit for

6
The Land Company and its President
J Young Scammon

Subscribed and affirmed to before me this
Second day of August A D 1861

Seal

John Hargrave

Notary Public

And afterwards to wit on the Sixteenth day of December
in the Year aforesaid being one of the days of the
December Term of said Court the following among
the proceedings was had in said Court and entered
of record to wit,

Philo Carpenter

Chicago Marine & Fire Insurance Company }
Assumpsit

This day comes said
Plaintiff by Eben H Penneyan his Attorney and
the said defendant by Mc Cagg & Haller its Attorneys
also comes and issues being joined herein it is ordered
that a jury come. When the jury of good and
lawful men to wit William E Gierther Henry Der King,
Jas P Kiefer George Strong, D S Hammond Charles A
Dorran Wm P Candlish, Hendrick Der King George Dendale
H R Wright, J D Rud and Alexander Lloyd who being
duly elected tried and sworn to try the issues joined
as aforesaid after hearing part of testimony and hear of
adjournment having arrived, it is ordered upon agreement
of the parties that the jury separate and meet the Court
tomorrow morning

9
And afterwards to wit: on the seventeenth day of
December of the Year aforesaid said day/this being
one of the days of the December Term of said Court
the following Among other proceedings was had in said
Court and entered of record to wit

Philo Carpenter
or
Chicago Marine and
Fire Insurance Company } Assumpsit

This day Again Comes said
Plaintiff by Eban H. Ringan his attorney and the said
defendant by Mc Cagg & Fuller its attorneys also Comes
and the jury empannelled herin on Yesterday for the trial
of said Cause also Comes and after hearing all the testimony
Arguments of Counsel and instructions of the Court retire
to Consider of their verdict and afterwards return into Court
submit their verdict And say. We the jury find in favor of
said Plaintiff and assess his damages herin against
said defendant to the sum of One thousand Nine hundred
and Twenty seven dollars and twenty five Cents and
thereupon said defendant submits its Motion herin for
a new trial in said Cause

And afterwards to wit on the twentieth
sixth day of December in the year
aforesaid said day being still one
of the days of the December Term
thereof the following among other
proceedings were had and entered
of Record in said Court. to wit:

Philo Carpenter
Chicago Marine & Fire Insurance Company. assumpsit

This day again
comes said plaintiff by Eben F. Runyon
his Attorney and the said defendant
by McCagg & Fuller its attorneys
also comes and this cause coming
on to be heard upon the
defendants Motion submitted at
present term for a new trial in
said cause and counsel being
heard on said Motion, and the
Court being fully advised in the
premises. overrules the defendants
said motion for a new trial. to
which ruling of the Court. defendants
excepts and thereupon enters his
Exceptions herein to the ruling of
the Court in overruling said Motion
Wherefore the said plaintiff ought
to have judgment entered upon the
verdict of the jury rendered herein
as aforesaid and for his damages

And afterwards to wit on the twentieth
sixth day of December in the year
aforesaid said day being still one
of the days of the December Term
thereof the following among other
proceedings were had and entered
of Record in said Court. to wit:

Philo Carpenter
Chicago Marine & Fire Insurance Company. assumpsit

This day again
comes said plaintiff by Eben F. Runyon
his Attorney and the said defendant
by McCagg & Fuller its attorneys
also comes and this cause coming
on to be heard upon the
defendants Motion submitted at
present term for a new trial in
said cause and counsel being
heard on said Motion, and the
Court being fully advised in the
premises. overrules the defendants
said motion for a new trial. to
which ruling of the Court. defendants
excepts and thereupon enters his
Exceptions herein to the ruling of
the Court in overruling said Motion
Wherefore the said plaintiff ought
to have judgment entered upon the
verdict of the jury rendered herein
as aforesaid and for his damages

assessed thereon.

Therefore it is considered that the said plaintiff do have and recover of and from the said defendant his damages of One thousand nine hundred and twenty seven dollars and twenty five cents; in form aforesaid by the jury here found and assessed, and also his costs and charges in this behalf expended and have execution therefor.

And thereupon said defendant having entered his exceptions herein, it is ordered that said defendant be allowed thirty days from this day in which to file Bill of Exceptions herein.

assessed thereon.

Therefore it is considered that the said plaintiff do have and recover of and from the said defendant his damages of One thousand nine hundred and twenty seven dollars and twenty five cents; in form aforesaid by the jury here found and assessed, and also his costs and charges in this behalf expended and have execution therefor.

And thereupon said defendant having entered his exceptions herein, it is ordered that said defendant be allowed thirty days from this day in which to file Bill of Exceptions herein.

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Superior Court of the City of Chicago
Of the December Term A.D. 1861

Philo Carpenter

The Chicago Marine and }
Fire Insurance Co } Assignee

Be it remembered that on
the 1st day of December A.D. 1861 being one of
the days of the December Term of said Court that on
the trial of the above entitled Cause the Plaintiff by
his Counsel offered in evidence a Bank book account
kept by said defendant with said Plaintiff of which
the following is a Copy

Marine and Fire Insurance Co in apc with Phil Carpenter			
1858	Jan 9	To Crj	1000 ~
	" 13	Dis	1732 1800 1718 50
	Dec 3 rd	leg	235
	" 14		140 88
	" 15		348 65
	" 23		4504
	" 30	Crj	1312 50
	" "	dis	506
	" "		314 64 317 311 60
1859	Jan 11		168 08
	" 19		2000
			<u>12 244 61</u>
Jan 19	To Balance		3,040 29
Feb 1			500
	25		233 08
Mar 3 rd			179 65
" 19			431 94
			<u>4835 01</u>
			<u>4335 01</u>
Mar 22	Dis	500 611	493 75
April 2			124
" 6			80 93
" 9			90
May 3 rd			200
" 12			102 09
			<u>6158 78</u>
			1027 50
			1000
			143 25
			501 75
			300
			1766 18
			1105 64
			3360
			9204 32
			3040 29
			<u>12 244 61</u>
			260 28
			235 57
			500
			974 39
			205 69
			225
			574 85
			543 02
			1108 52
			846 98
			500
			144 54
			6158 78
			By Bal @ done
			12 cks

May	12	To Balance	1441 54		30
	25		400		50
	31		483 71		25
June	3	Hummel	75		25
	31		108 75		700
July	1		457 64		20 40
1001		Hommed	1069 64	Hommed	850 40
July	14		715	1 1/2 ch	23 10
		P. Williams	400		100
	20	Des	3000		2420
	"	Cash	62 50	Balance Car'd new	166 74
1889			5847 14	9 Chs. ret'd	5847 14
July	22	To Balance	166 74		
Aug	2		43		411 98
"	"		205		40
"	20		205		200
Sept	5	Des ^{502 16}	846 493 40		582 16
	6		100		205
"	10	E. Ewing	245		200
"	"		57 67		
	21		100		
	24		130		
	26		1966 67	By Bal Ford	2147 43
			3706 48	Chs. ret'd	3706 48
Sept	26	To Balance	2147 43		582 16
		E. Williams	133		100
Oct	10	Des ^{1732 04}	30 31 1701 73		207 30
"	22		233		50 62
	24		207 30		202 50
"	24		130		1567 08
"	8		100		40

						1500
						45 20
						115
				By Bal down		322 60
				Chks outd		4652 46
		<u>4652 46</u>				
Nov 8/9	To Bal	322 60	732 15	1135.93		1350 11
" 25		120	161 78	50		31
Dec 23		75	50	20		90
1860 Jan 3		200	50	20		100
" 23		1550	50	25		723 50
" 24		331	92	99.08		
				By Bal bnd down		304 09
				Chks Retd		
		<u>2598 60</u>				<u>2598 60</u>
Feb 2/60	To Bal	304 09				28 23
" 13	Dr 200 16	199 14				25
" "	Cash	100				223 37
22		3461 20				25
24		350				25
						75
						1997 41
						620
						200
						306
						100
						115 14
				By Balance		673 95
				Chs outd		4114 43
		<u>4114 43</u>				
Mar 28/60	To Balance	673 95				202 50
May 8		315				304 50
June 4	Dec 1700 24	11 76				1391
	Sept	433 04				30
		322 17				25
						38 75
						500
				By Bal ford		428 41
				Ch ad		2920 16
		<u>2920 16</u>				

June 13 To Balance 428 41
 July 24 To doct 200 199
 Aug 11 24 152
 23 400

200
 18
 30 23
 200
 115 85
 55 31

By Balance 400
 160 02
1179 41

Sept 10 T Balance 160 02
 11 110
 Oct 1 To doct 183 21
 213 131 12
 " 6 20 98 75
 " 11 500
 " 21 500
 " 15 32 90

240 02
 111 50
 1157 24

1860 1532 79

1532 79

Dec 21 To Balance 1157 24
 120 15
 Dec 7 By William's Int 1464 96
 " 21 500
 " 24 135
 " 24 265
 " 31 230
 Jan 7 1861 315

over

83 58
 140 68
 7
 1386 79
 988 22

By Balance 932 14

4181 38

5 checks returned 4181 38

Jan 7 By Balance 932 14
 11 12 106 60
 Feb 23 354 20
 " 25 1500
 " 26 500
 March 8 833 52
 " 12 226 99
 " 14 162 20
 " 15 100

82
 345
 158
 125
 4
 50
 80
 58

Remand 4720 70

Remand 1405 38

1861	Porter	4420 70	Porter	1405 38
Mar 18	To	181		80 02
		<u>4401 70</u>	By Balance	<u>3416 30</u>
Mar 18	To Balance	3416 30		<u>4401 70</u>
" 1		115 90		1757 77
" 20		130	687 68	75
" 23		130	291 57	2
" 26		105 25 1	426 7	11 88
" 25	Drinks	106 23	15 75	140 45
" 18	B	115 40 1		196
" 29	L M	378 95		190 38
April 3		388 70	125	2
" 4		237 1	150	141
" 10		145 31		28 70
" 11		300	145 16	1
" 12		<u>175</u>		110 38
1861		<u>5628 64</u>	By Balance	<u>2382 58</u>
April 13	To Balance	2382 58	22 checks	<u>5628 64</u>
" 16	M	366 2	1856 52	3678 42
" 17		128		31 86
" 18		72 14	15 150	374
" 20		63 49 1	30 70	45 24
" 22		108		166 45
" 23		346 92	33 73	141 34
" 26	Hilly B & P	57 12	150	250
			40	126 68
			245 3	42 18
			104 22	125
			25	28
				235 87

14		1000		3	3
"					
"	29	375 50	225	110 38	3
	30	262 97	20	60	17 40
May	2	190	50	23	Bal 2046 67
	3	189	50	25	
	4	539 50	2	1	
"	6	191 57	111	50 29	
"	7	320 50	158	124 95	
	8	169 04	38 46	25	
	9 To Ill B/Ws	160	189 62	120 75	
	9 To Berg & Bro	100	69 52	20	
			50		

Forward 7112 33

Forward 7532 46

Brought over 7112 33

Brought over 7532 46

May	11	Ill B/Ws	114 13
	11	Ran Riv	200
	15	Ill B/W	100

7532 46 49 ch. ret

7532 46

May	17	To Balance.	2046 67	By check ret	100
	18	Ill B/E	113 32		

2189 99
100 00
2089 99

8
And further the plaintiff then called on Daniel
J. Arroy who being duly sworn testified as follows,
I know the Bank Book in question, I went to the
Merwin Bank with Mr Carpenter on the 10th of July
last, Mr Carpenter inquired for Mr Loomis one of the
Directors of the Bank and asked Mr Loomis if he
could settle up with him, Mr Loomis took the Book
& went in and looked at the ledger & came back and
said he could pay him in currency, The funds he said
he could pay him in worth something about 60¢ on the
dollar, I'll currency Mr Carpenter replied or
said he could take any current funds worth par
Mr Loomis said he could not pay it, Mr Carpenter
then offered to compromise with him, @ 80¢ on 100
They did not compromise and did not settle the
matter.

Upon Cross Examination

Witness further testified as follows
I think Mr Carpenter had a list of bills graded
down to 80¢ which he offered to take, There was no
particular bill named when offered, Now when shown
Mr Carpenter stated he had that amount of currency on
the book since February, that he had deposited very
little since then, Had a list of Banks in his hands,
I think it was the Rail Road list and Mr L said he
could take the notes on No 1 & 2 on the list & Mr
Loomis offered to pay in Bill graded on the list @ 60¢
Rail Road list here shown

Mr Carpenter said he could take bill current, did
not say worth 100¢ Loomis offered to pay in bill
worth 60¢

Here plaintiff rested his case

Defense

The defendant first introduced in evidence an agreement signed by the Plffs whose signature was admitted & the agreement acknowledged by Plffs Counsel, which agreement signed by Plaintiff is as follows to wit:

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We the Undersigned, Citizens and Business Men
 of Chicago, Agree to receive and pay out as Currency,
 in payment of debts and general transactions of business,
 during the present war, the Notes of all the Banks
 of this State at present listed by the following named
 Banks and Bankers of this City, provided the
 Banks named below agree to do the same
 Chicago Marine & Fire Insurance Company
 Western Marine & Fire Insurance Company
 P H Carr & Co Hoffman & Gelpcke
 F Gough Adams Edward J Tinkham & Co
 H H Tucker & Co

Second
 Philo Carpenter Isaac P Day Secy
 for the Chicago Marine & Fire
 Insurance Company

D. Copy "
 We the Undersigned Citizens and Business Men
 of Chicago, Agree to receive and pay out as Currency,
 in payment of debts and general transactions of business,
 during the present war, the Notes of all the Banks
 of this State at present listed by the following named
 Banks and Bankers of this City, provided the Banks
 named below agree to do the same
 Chicago Marine & Fire Insurance Company

Warton Marine & Fire Insurance Company
 J H Laurer & Co Hoffman & Gelpcke
 H Granger Adams Edward S Tinkham & Co
 W A Tucker & Co

In accordance with the above we the Undersigned
 Banks do hereby ratify and confirm the
 agreement therein expressed.

Signed

J Young Scummers President C. M. & F. I. Company
 W A Tucker & Co
 H G Adams
 J H Laurer & Co
 Hoffman & Gelpcke
 E S Tinkham & Co
 J W Woodworth Pt

It was thus stipulated by the Plaintiff Counsel that defendants could not prove or introduce in evidence the agreement showing that the Bankers named in said agreement signed by Plffs had also agreed to do the same as stipulated in the agreement of said Plaintiffs, but that the same should be considered as having been done subject to any legal exception but no exception to be taken by plaintiffs on account of the absence or non production of said agreement signed by the Bankers named.

The defendants then called William B. Duf a witness for said defendant who being duly sworn testified as follows.

I am acquainted with the plaintiffs, I have seen the agreement signed by him, I don't know the day it was signed, but I think on the 27th day of April 1861. The word Currency used in the plaintiffs account was made up of Illinois Bank Bill & had a fluctuating value. It was always fluctuating. Its value in Coin after the 27th of April was nominal only, the nominal rate was 10 per Cent discount in Coin, no Coin could be had at that rate. They called it worth in Coin at that & because it was deemed advisable to have a rate. Coin nominally was 10 to 10 1/2 per cent in Currency. The real value of Coin was 15 to 20 per cent more in Currency. This state of things continued till the 18th of May. After that it was hard to tell what was Currency. The number of Banks having a Circulation at this time was 74. The different Banks had different values. There was no uniform value to this Circulation. There was some \$60,000 in the whole Circulation of

\$6,000,000 Six millions at par or near that, the rest was all depreciated; I made an estimate in July of the Average Value of the entire Circulation and found its Intrinsic Value including the whole to be some 70 Cents on 100 ¢ or Seventy per Cent, After May 18th the lower Class of these Bills principally in Circulation, I know the Bonds which had a Circulation when the agreement was signed by Plaintiff, and I speak of the Average Value of the Circulation of these Bills at that time; There had been Bonds discredited in November & March but my estimate is made of what was in Circulation in April & May; The list of the Bonds having a Circulation & received at that time as Currency I hold in my hand It is printed;

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Rail Road List of Illinois Currency

Corrected May 22 1861

List No 1 at Par

Bank of America	Chicago	Exchange Bank	Chicago
Bank of Northern Illinois	Van Buren	Kane County Bank	Geneseo
Chicago Bank	Chicago	Marion Bank	Chicago

List No 2 at 90 Cents

Alton Bank	Alton	International Bank (H & D Co)	Raleigh
American Bank	Vinona	McAlpine Bank	Marion
Bank of America	St. Louis	McLean County Bank	Bloomington
Bank of Bloomington	Bloomington	Mechanics Bank	Wadine
Bank of Indemnity	Galatin	Merchant Bank	Leamie
Cumberland County Bank	Greenup	Pottsville Bank	Pottsville
E. J. Tinkham's & Co's Bank	McLeanboro	Rapier Bank	Rapier
Highland Bank	Pottsville	Union Bank	Benton

List No 3 at 80 Cents

Bank of Brooklyn	Brooklyn	Illinois State Security Bank	Equality
Bank of Commerce	Vinona	Illinois Central Bank	Benton
Bank of Illinois	St. Louis	Lake Michigan Bank	Harrisburg
Bank of Jackson County	Carbondale	Ohio River Bank	Goldens
Bank of Sparta	Sparta	Parrot Bank	Griggsville
Bond County Bank	Grinnell	Patriotic Bank	Hartsville
Columbian Bank	Elizabethtown	State Stock Bank	St. Johns
City Bank of Ottawa		United State Stock Bank	Sparta
W. L. Allen Bank	Vermont	Whit Grown Bank	Anna
Illinois River Bank	Wadine		

List No 4 at 70 Cents

Bank of Galena	Galena	Kranzlin Bank	Greenville
Bank of Geneseo	Geneseo	Kanaka Bank	Kanaka
Bulls Head Bank	Greenville	Marshall County Bank	Lacon
Central Bank	Peria	Toulon Bank	Toulon
Cayle Bank	Thibet	Olympic Bank	Metropolis

List No 5 at 60 Cents

Agricultural Bank	Marion	Commercial Bank	Calistone
Alzama Bank	Salina	Kaskaskia Bank	Salina
Bank of Alton	Alton	Princeton Bank of Illinois	Savana
Bank of Metropolis	New Market	Warren County Bank	Monmouth
Bank of Elgin	Elgin		

List No 6 at 50 Cents

Bank of Benton	Benton	Young County Bank	Jonesville
Bank of Arkland	Arkland	Lancaster Bank	Lancaster
Bank of Naperville	Naperville	Safayette Bank	Sherrington
Douglas Bank	Metropolis	Noraganset Bank	Vienna
Garden State Bank	Matamoras	Flowers Bank	Taylorville
Hampden Bank	McLeansboro	Rods Bank	Galzburg
Humboldt Bank	Naperville	Rock Island Bank	Rock Island

List of Illinois Banks

Received on Deposit by the Chicago Marine and Fire Insurance Company, O. H. Carver & Co. Hoffmann & Gelpcke, Western Marine and Fire Insurance Co. F. G. Adams, W. A. Tucker & Co. E. J. Timpane & Co. Under the agreement made with the Merchants on & after the date

Chicago, 29th April 1861

Alexandria Bank	Alexandria	Highland Bank	Pittsfield
Agricultural Bank	Marion	Humboldt Bank	Naperville
Ancon Bank	Vienna	International Bank	Raleigh
Altura Bank	Altura	Illinois State Bank	New Haven
Bank of Ashland	Colconda	Illinois State Security Bank	Equality
Bank of America	Chicago	Illinois Central Bank	Newton
Bank of Alton	Alton	Illinois River Bank	Hardin
Bank of America	McComb	Jersey County Bank	Jerseyville
Bank of Benton	Benton	Kankakee Bank	Kankakee
Bank of Bloomington	Bloomington	Kankakee Bank	Sullivan
Bank of Brooklyn	Brooklyn	Kane County Bank	Geneva
Bank of Commerce	Vienna	Safayette Bank	Bloomington
Bank of Elgin	Elgin	Lawrence Bank	Lawrence
Bank of Galena	Galena	Lake Michigan Bank	Humboldt
Bank of Geneseo	Geneseo	McKain Bank	Marion
Bank of Illinois	New Haven	Marion Bank of Chicago	Chicago
Bank of Indemnity	Gallatin	Marshall County Bank	Lacon
Bank of Jackson County	Cambridge	McLean County Bank	Bloomington
Bank of Metropolis	New Market	Mechanics Bank	Hardin
Bank of Naperville	Naperville	Merchant Bank	Carroll

San th of Anthony Illinois	Waukegan	Narragansett Bank	Vermont
Bank of Sparta	Sparta	Ohio River Bank	Yolconda
Bank County Bank	Granville	Olympic Bank	Metropolis
Belle Mead Bank	St. Marie	Parrot Bank	Triggsville
Central Bank	Pecora	Catholic Bank	Hutsonville
City Bank	Ottawa	Pittsfield Bank	Pittsfield
Chicago Bank	Chicago	Plowman's Bank	Taylorville
Commercial Bank	Palatine	Rapport Bank	Winfield
Glennville Bank	Elizabethtown	Rudi's Bank	Galesburg
Cumberland County Bank	Granville	Rock Island Bank	Rock Island
Douglas Bank	Metropolis	State Street Bank	St. Johns
Eagle Bank of Illinois	Thebes	Talton Bank	Talton
E. J. Pinkham & Co's Bank	McLeansboro	United States Street Bank	Sparta
Exchange Bank of Ill. & Ind.	Chicago	Union Bank	Peoria
Franklin Bank	Granville	Warren County Bank	McMinnville
Haltom Bank	Vermont	What Grows Bank	Anna
Garden State Bank	Hutsonville	Watson Bank of Mines	Swanwick
Hampton Bank	McLeansboro		

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Cross Examination of H. P. Dorf

I do not know when Mr. Carpenter signed the agreement
I think he signed it on the 29th of April 1861 as that
is the date of the first deposit in the account book
after the agreement was drawn up or circulated as
after that time we instructed the Tellers to notify all
persons that unless they signed agreement we could
take no more deposits of them. After the 18th of
May we only took currency on special deposit
The war is not yet ended. When money was deposited
it was received in one common fund. This was the
Common Fund. I don't think we asserted a great deal
the best money from the present from the 29th of April
until the 18th of May I don't think it was with
asserting.

Mr. Leammur acted as President of the
Insurance Co. The legitimate business of the Company
was bonding & insuring. They did no insurance while
I was there. I do not know of my own knowledge what
kind of money was placed in by Mr. Carpenter the 18th
The currency in July was Indiana Ohio &
Eastern Bank notes, altho a dispute existed among
the Directors as to what constituted currency in July
Illinois Bank Notes were not called currency at that
time.

Re direct Examination by direct Counsel

The currency named in the list taken before
18th of May did not pass afterwards. In payment of
debts due the Bank or Company (def't) it would have
been taken. Checks on the Institution were received after
that time in payment of debts due themselves. They did
not receive currency on deposit afterwards except on
special deposit. All the Institutions who signed the agreement

Continued to receive it in payment of their own debts after the 18th of May. Our Tellers were instructed not to receive any deposits after the 29th of April until the depositors signed the Agreement to take and receive the Currency during the war. The 1st deposit of Plaintiff after this was on the 29th of April when I think he signed the Agreement. We could not have received a deposit after the 29th of April unless the depositor signed it. All the Banks on the list shown me were taken after the 29th of April by the defendants as Currency up to the 18th of May.

If a deposit were made in any thing else except what constituted Currency such as Gold or "Eastern" funds it was drawn in like funds by Special demand as such on face of Check, that is, the Check called for it as Gold or Eastern, or if the party preferred it when he deposited Gold, Special, or other funds he received the Premium in Illinois Currency. If it was deposited as Currency. By reference to the Account I find that Plaintiff deposited \$2612.74 after the 29th of April 1861. After the 18th of May the Bank did not receive Illinois Currency on deposit.

And therefore at the request of Said Plaintiff the Court gave the following Instructions:

Plffs Instruction

Whenever money is specially deposited in a bank for safe keeping it is at the risk of the depositor. If the same is stolen, lost or destroyed, without any fault on the part of the officers of the bank, he must sustain the loss. Not so with the general depositor. The money, Checks or bills which he deposits become the property of the Bank and he becomes a Creditor. If they are

plotted lost or destroyed or become of no value the
bank sustains the loss, and he is still a creditor

Unw
The officers may use them as they please for the
General purposes of the institution, and he is to all
intent a General Creditor of the bank, And if the
jury believe from the evidence in this case that the
Plaintiff was a General Depositor then they will find
that he was a General Creditor of the bank and he
is entitled to recover what the jury may find from
the evidence to be his due, (This is so in the ab-
sence of any special agreement, but if the jury believe
from the evidence that the Plaintiff agreed to
receive for his deposit "as Currency" the bill of any
particular Bank generally or on any condition and
that such condition was performed once on demand
of payment defendants offered to pay the bills rec'd
and such agreement in the bill of the Banks to
agree to be received as Currency then the Plaintiff
is entitled to recover therefor only the difference between
Currency that is bill of specie paying Banks
in lieu or stead of gold & silver — & gold & silver

But if such agreement was broken and refused
to be performed by the defendant before or at the time
of the demand of payment by Plaintiff of defendant
then the Plaintiff should recover the amount shown
by the evidence to have been due from deft to
Plaintiff at the time of the demand

To the giving of which said instruction by the Court
on the part of said plff the defendants by their Counsel
then and then requested & pray that said instruction
may be signed & sealed made of record

And therefore defendants by their Counsel asked that the Court give the following instructions

Defendants Instructions

1 If the Jury believe from the evidence that the Plff signed an agreement with the defendants to receive in payment of his account or indebtedness the notes of all the Banks of this state then Constituting a part of the Circulation of the State, then the law in this case is that he was bound to accept the notes of such Banks in payment of his balance due from the defendants and in case the notes of such Banks were tendered in payment on demand to Plff he cannot recover in this action

Refused

2^d If the Jury believe from the evidence that defendants refused or failed to tender Bank Notes in payment of the balance due Plff upon demand therefor, then the damages to be found is the value of the nominal amount of the balance claimed by Plff in Illinois Bank notes at the time of demand on the 10th of July last with interest since that time

Refused

3 In this action the Plff is only entitled to recover of the Defendant such sum of money as the jury shall believe from the evidence was the average value in coin on the 10th day of July 1861 of the nominal amount due the Plff from the Defendant payable in the notes of the Banks referred to in the agreement between the parties signed by the deft on the 29th day of April 1861 and if the jury believe from the evidence that the average value of all those notes was 60 cents on the dollar & that the nominal amount due from

Refused

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The defendant to the Pff was \$2089.99. They will
find for the Pff such sum of money or by as will
appear due the Pff in that Calculation

4 If the Jury believe from the evidence in the case that
an agreement existed between the pff & defendant to
receive in payment of indebtedness notes of all Illinois
Banks then constituting a part of the Circulation - and
that upon demand made by Pff for the balance of an
acc due from defendant and that such balance of account
arose out of the dealings between the parties after said
agreement was made and signed; and that the balance
claimed is a balance of definite account arising out
of the deposits of Illinois Bank Notes with defendant
as Banks then the law is, - that the defendant is
only bound for the payment of such balance in Illinois
Bank Notes or in case of a refusal to pay such Illinois
Bank Notes - then the value of such notes at the time
of demand made in July 1861

Which the Court refused to give, and to the refusal of the
Court to give said instructions as asked the defendant by
their Counsel then and then excepted & saying that these
exceptions may be made a matter of record in the case

And the Jury having retired to consider of this verdict
returned into Court with the following verdict

Refused

22 Pre the jurors find for the plaintiffs and assess the
 2089.94 damage at Nineteen hundred & twenty seven dollars
 1927.25 and twenty five Cents \$1927.25
 162.74 D. S. Hammond

Therefore defendants Counsel moved for a new trial
 and therefore the Council of defendants filed this
 motion therefor, which motion of defendants is over-
 ruled by the Court and the defendants by this Council there
 and there excepted to the decision of said Court in over-
 ruling the said motion of defendants for a new trial in
 said Cause and pray that this this exception may
 be made a matter of record

All which several
 rulings and decisions of said Court and the exceptions
 thereto - the defendants pray may be made record &
 sealed and made a matter of record in this Cause and
 then several manifest errors be received on Error
 in the Supreme Court of this State all which is done
 Grant Goodrich Seal

It is hereby stipulated that Counsel for defts & Plffs
 agree to the foregoing being a true bill of the exceptions
 taken in above case

July 24 1864

Worren & Waller for defts
 E. H. Ransom
 Plffs Atty

State of Illinois
Cook County 3 ss.

I Thomas B
Carter Clerk of the Superior Court
of Chicago within and for said
County, and State aforesaid, do
hereby Certify, that the foregoing
is a full true and Complete
Transcript of all the pleadings
on file in my Office, together
with all the orders ^{or judgments} entered of Record,
and the Bill of Exceptions in the
case wherein Philo Carpenter is
plaintiff and The Chicago Marine
and Fire Insurance Company
defendant.



In testimony whereof I
hereunto set my hand and
affix the seal of said Superior
Court of Chicago at the City
of Chicago in said County
this 6th day of March
A D 1862.

Thomas B Carter
Clerk

money" as contradistinguished from its nominal value. Had there been such account, it is obvious, from the finding of the jury, that they would have been governed in their verdict by the real value of the currency, instead of its pretended or numerical value, as counted by its face, and that the verdict would have been for a much smaller sum.

7th The Court admitted improper testimony under the money count.

8th The whole finding is based upon a misconception of the principles of law, with regard to money as a standard of value in courts, and also the principles applicable to banks and bankers.

9th The Court in his instructions, discussed abstract principles of law, and gives them an erroneous application in the case.

10th This is no contract of bailment that is sued upon, but a balance of account between depositor and banker: and the question whether that balance being payable in Illinois bank bills, instead of money, can be discharged by a tender in such bills, or in case of refusal, whether it can be sued for the same as money - presents a different question from the case made out the instructions of the Court; and we insist on defendant's part, that, in any event, only the real value of this currency can be recovered, for which the plaintiff has not laid a proper foundation, by the averments of his declaration.

11th And for many other reasons;

Fuller & McLeary.

Thomas Hayne.

Counsel for the Plaintiff.

I hereby join in error upon the above arguments & reasons.

E. H. Hargrave
for the Defendant in Error.

Sup. Ct. 167
Carpenter
Chas. M. & J. D. Co

Transcript

Filed April 12. 1862

L. Leland
clerk

Fee
\$10.00