

No. 13618

# Supreme Court of Illinois

Chicago Marine & Fire Ins.Co.

---

vs.

Stanford

---

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 120.

*Chas Mann*  
*ms*

~~1862~~

1862

*18618*

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

---

THE CHICAGO MARINE AND FIRE INSU-  
RANCE COMPANY  
*vs.*  
GEORGE W. STANFORD, who sues to use of  
JASPER D. WARD.

} *Error from Superi-  
or Court of Chi-  
cago.*

---

## ABSTRACT OF THE RECORD.

This action was commenced before a Justice of the Peace by Stanford against the plaintiff in error.

On the trial before the Justice the plaintiff obtained judgment, and the defendant appealed to the Superior Court of Chicago, where the case was tried by the Court without the intervention of a jury, and Stanford again had judgment against the plaintiff in error, which brought the case here for review.

The whole case appears in the bill of exceptions.

12 On the trial, the plaintiff (Stanford) offered in evidence the following check :

‘CHICAGO, June 20, 1861.

“ Chicago Marine and Fire Insurance Company, pay to J. D. Ward or  
bearer ninety-five dollars. (\$95.)  
G. W. STANFORD.”

13 And proved by D. J. Avery that, on the 24th June, 1861, he presented that check for payment to the defendant, which was refused, save in Illinois bank notes that were then uncurrent, worth 60 or 70 cents on the \$1.00, which he refused to receive, but demanded par funds in payment of it.

Plaintiff then called for the Bank Ledger of defendant, which was produced, and showed a balance of \$165 due plaintiff from defendant

for money deposited with it by plaintiff, and which sum stood to the credit of plaintiff at the time the check was drawn and presented for payment, and also at the commencement of this suit.

It was then admitted by the parties that defendant (plaintiff in error,) did a banking business at Chicago;—

That plaintiff had for several months kept an account with it as a depositor, in the usual course of dealing between Banks and their depositors;—

That the check offered in evidence was drawn for a part of the sum due from defendant to plaintiff for money deposited.

14 The plaintiff then admitted that, June 21, 1861, he drew another check, in favor of E. F. Runyon, for \$60, part of the same account, for money deposited with defendant by plaintiff, at which time there was a credit to plaintiff of \$165 for money deposited, which check was presented for payment to defendant on the 22d June, 1861, and payment of it was refused, except in Illinois bank notes worth 65 cents on the \$1.00, which were refused by plaintiff.

That on the same day plaintiff brought suit against defendant in his own name, to the use of said E. F. Runyon, to recover the amount due upon said check before a Justice of the Peace in Chicago, and recovered judgment in that case on the 27th June, 1861, for the amount of the check, \$60, and costs.

15 It was also admitted that defendant (plaintiff in error) appealed from that judgment to the Superior Court of Chicago, and that case came on for trial at the same term of Court with the present case, and was tried, and a judgment rendered in favor of the plaintiff for the amount of the check and costs.

That said check and judgment being for a part of the same account for which this action is brought, and which judgment was entered before the present cause was brought on for trial.

The plaintiff rested here.

The defendant then offered in evidence the record and proceedings in the cause of George W. Stanford to the use of E. F. Runyon against the defendant, being the same proceedings hereinbefore referred to, as evidence of a former suit and recovery of a part of the same account for the recovery of which this suit is brought, as a bar to the maintenance of this action to recover the residue of said account.

This record is set out in the bill of exceptions, but under the admissions and statements already made above, need not again be recited here.

24 Defendant then insisted that its indebtedness to plaintiff for money

deposited, could not be split up or divided into several suits, each for a part of the same account, and that the record and proceedings in the case of Stanford to use of Runyon against the defendant, being admitted to be for a part of the same account, for the residue of which this suit was brought, was a bar to the present action.

Which the Court refused to hold, and rendered judgment for the plaintiff for the amount of said check, and interest, being for the balance of said account.

To all which rulings of the Court the Defendant then and there excepted.

10 Motion for new trial by defendant overruled and exception.

---

ERRORS ASSIGNED.

26 1. That the Court erred in refusing to hold that the indebtedness of plaintiff in error to defendant in error could not be split up into several suits each, for a part of the same account.

2d. That the Court erred in not holding the record and proceedings in the case of Stanford to use of Runyon against the Chicago Marine and Fire Insurance Company, a bar to the maintenance of this action.

3d. That the Court erred in rendering judgment for the plaintiff below.

4. That the Court erred in not rendering judgment for the defendant below.

April 21, 1862.

THOMAS HOYNE,  
McCAGG & FULLER,  
*For Plaintiff in Error.*

120-70  
Ch. M. & F. Co.

7  
Stanford & Ward

Abstract

Filed April 24, 1867  
Ireland  
CR

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

---

THE CHICAGO MARINE AND FIRE INSURANCE COMPANY

*vs.*

GEORGE W. STANFORD, who sues to use of JASPER D. WARD.

} *Error from Superior Court of Chicago.*

---

The case presents this single question for the decision of the Court:

Can a depositor with a Bank "split" his deposit account into as many sums as he sees fit, and maintain a separate action for each sum, in his own name against the Bank?

The plaintiff in error insists that he ought not to be allowed to do this; that the indebtedness from the Bank for such deposit is entire; that, although the Bank may be liable to pay it in parcels to the holders of checks drawn by depositor, as the latter may direct, yet when the latter brings an action in his own name to recover the deposit, he ought not to be allowed to divide it into separate suits, as the whole sum can be recovered in one, and all the rights of the parties completely settled without in any way limiting or affecting any rights which the holder of a check, drawn by a depositor upon a Bank, may have secured to him by the principles established in the case of *Munn et al. vs. Burch et al.*, 25 Illinois, 35.

The principle or rule which we contend for may be fully established without any prejudice to the rights of the holder of a check upon a Bank, although, if it should be shown that a depositor fraudulently, for the mere purpose of bringing different actions, should draw checks in favor of different parties to enable them to sue in their own names for the amount of their respective checks, the real interest all the while being in the depositor, it would be consistent with well settled principles, both of law and equity, to compel a consolidation of the suits upon motion at law or by bill in equity, to restrain the bringing of vexatious suits.

But this is not that case. Stamford had \$155 on deposit with the plaintiff in error. The latter was doing a banking business, and had received that sum and more in the usual course of dealing between a depositor and his banker.

He drew a check for \$65, being for part of the balance due him, and not being able to obtain payment of it in the kind of funds he demanded, brought suit against the plaintiff in error, and recovered a judgment for that sum, before a Justice of the Peace.

About the time he drew the first check, he drew another for the balance of his account, after paying the first check, and the last one not being paid, brought a suit against plaintiff in error, and recovered a judgment for the sum.

Both suits were brought in the name of Stamford, (the depositor,) for parts of the same deposit account. It will not do to say that Ward became the legal owner of the sums for which the check was drawn, for this would defeat entirely Stamford's right of action; and if the legal title to the whole passed to Ward, by the drawing and delivery to him of the check, he then would have been the legal holder, by assignment, of the entire deposit account.

But it is plain that the drawing of two checks in this case, was a contrivance to give jurisdiction to a Justice of the Peace, and enable the depositor to sue in that forum rather than in the Superior Courts, the legal and equitable interests in the fund being all the while in the same persons.

We have not found any case precisely in point, but we submit that there are well settled analogous principles of law which ought to decide this question in favor of the plaintiff in error.

"It is a well settled rule of law, that an entire contract cannot be divided so as to compel a party to perform it in parcels, either to different persons or at different times."

25 Illinois, 24—*Stone vs. Pratt et al.*

This is a legal truism; the only difficulty is in regard to the application of it to the facts of each case in which the question is made.

A deposit account kept with a Bank is held to be divisible from principles of commercial policy, applied in favor of the holder of checks drawn upon that account.

It is for his benefit that this Court held, in the case of *Munn et al. vs. Burch et al.*, 25 Ills. 35, that drawing a check upon a bank and delivery of it to a holder, gave him a legal and equitable right to the sum for which the check was drawn, in the hands of the banker.

So far, the relations of the parties are governed by principles of commercial policy and convenience.

But, when disputes arise between the depositor and banker, which are the subject of litigation by suit at law, the relations of the parties are affected by other considerations; and the question is then presented, whether as between the depositor and banker the former can "split up" his deposit account into as many parts as his caprice may suggest, and compel the banker to litigate in an unlimited number of suits, what questions could and ought to be adjudicated in one.

In this case every right and question litigated between the parties could have been determined in one suit in a Court of general jurisdiction.

The depositor all the time was the owner of the money sought to be recovered. The suits were brought in his name, although to the use of another party.

We insist that the facts of the case warrant the statement, that two suits instead of one were brought merely to give jurisdiction to a Justice of the Peace in favor of one who had a larger sum due him than was within that jurisdiction.

"The institution of several suits, when all the ends of justice might have been attained by one, is considered oppressive."

*"Gould's Pleading, chap. 4, page 103.*

The case may be new in the instance, but is not in the principle.

Courts have never allowed multiplicity of actions, where one would suffice all the ends of justice. In holding that a depositor shall not bring an indefinite number of suits, when one would suffice, the Court will give effect to this sound principle of legal policy, without at all interfering with the just rights of the holders or payers of checks on bankers.

Any other rule would enable the depositor to harrass the banker with as many suits as he may choose to bring, whether for one dollar, or more or less, merely for the sake of giving the inferior court jurisdiction, which has never been held a sufficient reason for violating either the policy or principles of the law.

The case of *Planters' and Mechanics' Bank of Columbus v. Chiply*, part 1, Georgia Decisions, 50, seems to have been a very similar case to the present, although the facts are not very fully reported. See *Chitty on Pleading*, 199, and note,

6 Sergeant and Rawle, 58, *Hess, Executor v. Huble*, where the principles involved are fully stated and enforced.

2 Hallington, (Del.) 50, *Melleck v. Dawson*, where a horse having been sold for \$50, the creditor brought two suits merely to give a justice jurisdiction, which the Court decided he should not do.

But the books are full of cases of similar import.

21 Illinois, 255—*Camp v. Morgan*.  
 15 Illinois, 420—*Dalton v. Beatty*.  
 15 Johnson, 228-432—*Smith v. Jones*.  
 1 Wendell, 487—*Miller v. Covert*.  
 16 New York, 548—*Sears v. Sturgis*.  
 5 Metcalf, 452—*Clark v. Baker*.  
 12 Metcalf, 286—*Davis v. Maxwell*.  
 22 Pickering, 459—*Clark v. Baker*.

And, as before remarked, the only question in this case is, whether the long settled and salutary principles of law, stated in the cases cited, shall be applied or not to the facts of the present case.

The action having been brought before a justice, the former recovery of a part of the plaintiff's demand against the defendant below was properly in evidence, and with like effect as if pleaded.

22 Ill. 248, *Comstock vs. Ward*.

And thus being thus given in evidence, is as conclusive as if specially pleaded.

15 Ill. 460, *Gray et al. vs. Gillilan et al.*  
 21 Ill. 255, *Camp vs. Morgan*.

Which enforces the doctrine, that one suit only can be maintained upon an entire demand, in a very stringent manner.

We think the judgment should be reversed, for the reasons stated above.

April 22, 1862.

THOMAS HOYNE,  
 McCAGG & FULLER,  
*For Plaintiff in Error.*

120-70

The Chi. M. & G. Co

vs

Stanford at vs

Plf vs. Def + profit

Filed Apr. 25. 1862

J. Lelane

clerk

STATE OF ILLINOIS,  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Superior of Chicago Court for the County of Cook - Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments, of a plea which was in the Superior Courts of Chicago, Cook County, before the Judge thereof, between George W. Stanford vs the vs et al.

Plaintiff, and

The Chicago Marine Fire Insurance  
Company

defendant, it is said manifest error hath intervened, to the injury of the aforesaid Defendant

as we are informed by its

complainant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plea aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof at Ottawa, this 22<sup>d</sup> day of Feb. in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

L. Island  
Clerk of the Supreme Court.

70  
120  

---

*Chicago M. & F. Co.,*

---

No.

vs.

*Geo. W. Stanford Jr. &c.,*

---

**WRIT OF ERROR.**

*This Writ of Error is made a  
Supersedeas, and as such is to be  
obeyed by all concerned.*

*S. Seland*

*Clerk.*

FILED

*Feb. 22* A. D. 1862

*S. Seland*

*Clerk.*

---





- 5. Writ of Summons from Superior Court.
- 6. Sheriff's return thereon.
- 7. Affidavit of Merits.
- 8. Appearance by deft in Error in Superior Court.
- 9. Order of the Court - Cause submitted to the Court & taken under advisement.

10. Order of the Court - funds issued for the Plaintiff - Motion for New Trial by Defendant (Dft in Error) - Same overruled - Exceptions thereto - Judgment for Plaintiff (dft in Error) for \$95.

Thirty days allowed deft (Dft in Error) to file Bill of Exceptions.

12. Bill of Exceptions. filed <sup>January</sup> ~~Dec~~ 23<sup>rd</sup> 1867.  
 States. That on trial of said Cause the Dft therein offered in evidence a check of which the following is a Copy  
 "No Chicago June 20<sup>th</sup> 1861.  
 "Chicago Marine and Fire Insurance Company  
 "Pay to J. D. Ware or Bearer Ninety five  
 dollars -  
 "\$95<sup>00</sup> - L. W. Stanford"

and proved the presentment for payment to the Defendant therein, which was refused, same in uncurrent Bank Notes of Illinois - Defendants tender producing such funds, which was refused.

13. Plaintiff then called for, and Defendant then produced its Bank Ledger showing a balance

Record page of One hundred and fifty five dollars (\$155.)  
13. due from Defendant, therein to the Plaintiff (deft  
in error) for money deposited in the usual  
course of Banking business - and which sum  
stood to the Plaintiff's credit at the time said  
check was presented, and at the time of  
the commencement of said suit, it was then

Admitted that the Defendant, therein, did a  
Banking business at Chicago, - and that Plaintiff  
therein, had for several months kept an account  
at its Bank in the usual course of Banking  
dealing, between Banks & their depositors, -

" 14 That the check offered in evidence was drawn  
for so part of the sum due from Defendant  
to Plaintiff as aforesaid.

Plaintiff (deft in error) then admitted that  
on the twenty first of June 1861, he drew a  
check in favor of E. J. Ruyon for Sixty  
dollars (\$60.) part of the same account, which  
Plaintiff kept with Defendant, for monies  
deposited, at which time there was a credit  
to the Plaintiff on Books of said Bank of One  
hundred & fifty five dollars for money deposited,  
which last mentioned check was presented for  
payment to said Bank on the twenty second  
day of June 1861, and payment refused, except  
in Illinois Bank Notes then worth 65 cents  
on the dollar, which was refused

" 15 That on the same day Plaintiff, therein, brought  
suit against Defendant, therein, in his own name  
to the use of said E. J. Ruyon to recover the  
amount of said last named check, before a  
Justice of the Peace in Chicago, and on the  
twenty seventh of said month of June recovered

15. a judgment against Defendant, therein, for the amount of said check & costs.

That defendant therein appeared to Superior Court of Chicago, - that the trial thereon was had at the same term of Court as this present cause, & judgment rendered in favor of Plaintiff therein, for the amount of said check & costs - Said check & judgment being for so part of the same account for which this present action is brought & which judgment was returned before this present case was tried.

Plaintiff having rested.

Defendant, therein, offered in evidence the record & proceedings in last named case, as a bar to this present action.

17.

18. 19. 20. 21. 22. 23.

Record & proceedings in the suit of George W. Stanford vs of E. F. Rungas against The Chicago Marine & Fire Insurance Company,

24. Bill of Exceptions Continuing, States.

That Defendant, therein, there insisted that its indebtedness to Plaintiff, therein, for money deposited, could not be divided or split up into several suits, & that the record and proceedings last named, being admitted to be for a part of the same account, for the residue of which this present suit was brought, was a bar thereto, but the Court refused so to hold & rendered judgment for the amount of said check - Exceptions taken thereto.

70 State of Illinois 120  
Cook County.

Chicago Marine & Fire  
Insurance Co

Deb in Error

vs

George W. Stanford  
use of Ward

Deb in Error

Abstract of Record.

Filed Feby. 22. 1862  
L. Seland  
Clk.

Know all Men by these Presents, That we, The Chicago Marine and Fire Insurance Company (Principal) and J. Young Seaman and Ezra B. McLaugh (Securities) of the County of Cook and State of Illinois, are held and firmly bound unto George W. Stauffer who sues for the use of Jasper D. Ward also of the same County and State, in the penal sum of Five 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 Sixth day of February A. D. 1862

The Condition of the above Obligation is such, That whereas, the said George W. Stauffer for the use of Jasper D. Ward did, on the twenty eighth day of December A. D. 1861 in the Superior Court of Chicago, in and for the County of Cook, and State aforesaid, and of the December Term thereof, A. D. 1861 recover a judgment against the above bounden The Chicago Marine and Fire Insurance Company for the sum of Ninety five Dollars

and no cents, besides costs of suit; from which said judgment of the said Superior Court of Chicago, the said The Chicago Marine and Fire Insurance Company has <sup>applied to and obtained for</sup> prayed for, and obtained an appeal to the Supreme Court of said State, <sup>for</sup> a Writ of Error

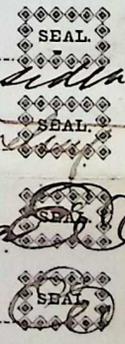
Now, Therefore, if the said The Chicago Marine and Fire Insurance Company shall duly prosecute <sup>Writ of Error</sup> said appeal with effect, and moreover, pay the amount of the judgment, costs, interest and damages rendered, and to be rendered, against it in case the said judgment shall be affirmed in said Supreme Court, then the above obligations to be void, otherwise

to remain in full force and virtue. In witness of its execution of this Bond the said The Chicago Marine and Fire Insurance Company has caused the signatures of its President and Secretary to be hereto subscribed and its corporate seal affixed, the day and year first above written.

Taken and entered into before me, at my office, in Chicago, this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 186

CLERK.

J. Young Seaman President  
Hamilton P. Deane Secretary  
J. Young Seaman  
E. B. McLaugh



State of Illinois }  
County of Cook } ss J. Young Scammon  
and Ezra B. McCagg being severally  
duly affirmed do each for himself  
depose and say that he is a citizen, a  
householder and a freeholder of the  
County of Cook in the State of Illinois  
that he signed the within Bond, and that  
he is worth the sum of four hundred  
dollars over and above all his  
debts and liabilities - J. Young Scammon.

Subscribed & affirmed to before  
me this 5th day of February }  
A. D. 1862 } E. B. McCagg.

*Eugene King*  
Notary Public

G. D. No. 120

SUPERIOR COURT OF CHICAGO.

Chicago Marine & Fire

Insurance Co. of New York

vs.

George W. Stanford use

of Ward Dept in Error

~~APPEAL~~ BOND.

Filed this 22<sup>d</sup> day of Feb

A. D. 1862

*L. W. Wood*  
CLERK.

Jameson & Morse, Printers, Chicago.

# SUPREME COURT OF ILLINOIS.

APRIL TERM, 1862.

THE CHICAGO MARINE AND FIRE  
INSURANCE COMPANY

vs.

GEORGE W. STANFORD, WHO SUES FOR  
USE OF JASPER D. WARD.

} *Points and Authorities of  
Defendant in Error.*

There is really but one question presented by the record in this case.

Can a depositor draw his check on his banker who has funds of depositor, in the ordinary course of business, and can the holder of such check maintain suit for his use against such banker?

The answer to this is well settled by the authorities in the affirmative.

*25 Ill., 35, Munn vs. Burch.*

The check of Stanford, made and delivered in the ordinary course of business to Ward, entitled him to the money it called for. It was "an absolute appropriation of so much money in the hands of the banker" to Ward.

*3d Kent's Com., 7th Ed., page 132, Note c.  
25 Ill., 35, Munn vs. Burch.*

## II.

When Stanford deposited his money with the plaintiff in error, it undertook to pay it out in such amounts, and to such parties as Stanford by his check might designate; for that is the nature of the contract between a banker and his customer.

*Chitty on Contracts, 18.*

*Chitty on Bills, 514.*

*Parsons' Mercantile Law, 130. + 91*

And for this reason all the argument of the plaintiff in error about "splitting up of contracts," does not apply.

The bank was not liable to pay any amount until demanded. After such demand was made, it was liable to pay just the amount demanded, to Ward, whom Stanford had, by his check, given in the ordinary way, designated as the person entitled to the same.

And Ward being the party in interest and to be benefitted by the check, may maintain suit, and Mr. Stanford himself could not prevent it.

*Story on Promissory Notes, Sec. 489.*

*Parsons' Mercantile Law, 100. 91*

### III.

The argument of plaintiff in error about multiplicity of suits, &c., does not apply, and ought not to, against Ward; nor against Stanford, for—

1. The plaintiff in error contracted to pay Stanford's checks as presented; and

2. If it had paid this check, no suit would have been brought, and Ward has nothing to do with suits brought by other parties, and for the benefit of other parties.

So far from the law being what the plaintiff in error contends, it would seem from the authorities already cited, that the depositor himself would have a separate cause of action against his banker for his own use upon each of his own checks, drawn and presented in the ordinary course of business, for the banker is not liable to pay even him until demand is made, and then only the amount demanded.

Perhaps, however, in such a case, after several suits had been brought, the doctrine of consolidation would apply, as the depositor would be the only party interested in the suits against his banker.

But it would be a strange rule which would compel the consolidation of a suit, in which Ward was the party to be benefitted, with the suits of all other persons to whom Stanford may have given checks.

IV.

It was not pretended in the Court below, is not the fact, and does not appear from the record, that the check given to Ward was given for the purpose of giving a justice of the peace jurisdiction, as pretended by plaintiffs in error *here*.

J. D. WARD,  
E. F. RUNYON,

Atty's for Def'ts in Error.

120 - 70

The Chi Murren & Fins Co

03

G. W. Stanford

---

Drift Points

Filed May 1. 1862  
L. Leland  
Clerk

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 M. Wilson Chief Justice of the }  
Superior Court of Chicago. }

Samuel H. Higgins }  
Judges. }

Grant Goddick }

Charles Haven Prosecuting Attorney.

Anthony C. Hering Sheriff of Cook County.

Attest, Thomas Baxter Clerk.

It is remembered that heretofore, to wit. On the twenty ninth day of June in the year of our Lord One thousand eight Hundred and sixty one, the Chicago Marine and Fire Insurance Company filed in the office of the Clerk of the Superior Court of Chicago a certain Bond and Transcript in the words and figures following, to wit.

Know all men by these presents, that we the Chicago Marine and Fire Insurance Company as principal and J. Young Scammon and Horatio G. Spooner as sureties of the County of Cook in the State of Illinois, are held, and firmly bound unto George W. Stanford for the use of Casper D. Ward in the penal sum of Two 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 twenty ninth day of June A.D. 1861.

The Condition of the above obligation is such that whereas the said George W. Stanford for the use of Casper D. Ward did on the twenty ninth day of June A.D. 1861 before N. D. Sturtevant a Justice of the Peace for the said County of Cook recover a judgment against the above bounden The Chicago Marine and Fire Insurance Company for the sum of Ninety five Dollars from which judgment the said

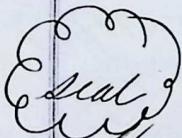
Chicago Marine and Fire Insurance Company, has taken appeal to the Superior Court of Chicago in the County of Cook aforesaid and State of Illinois:—

Now if the said Chicago Marine and Fire Insurance Company shall prosecute its appeal with effect and shall pay whatever judgment may be rendered by the Court upon denial or trial of said appeal then the above obligation to be void, otherwise to remain in full force and effect. Approved by me at my office this twenty ninth day of June 1861.

J. Young Scammon R

J. Young Scammon 

H. G. Koonis 

 Seal

New B. Box 509

W. D. Sturtevant  
Justice of the Peace.

4

In Justice Court  
Before N D Sturtevant J.P.  
George W Stanford  
who sues for the use of  
Jasper D Ward  
The Chicago Marine &  
Fire Insurance Company

assumpsit.  
Demand \$100.00

Summons  
issued June 24<sup>th</sup> 1861 returnable  
June 29<sup>th</sup> 1861. at 9 o'clock AM to  
M Fleming Constable. who returned  
the same served by reading and  
leaving a copy to J Young Scammon  
President of the within named Company  
the 25<sup>th</sup> day of June 1861. Suit called  
June 29<sup>th</sup> 1861. parties in Court. after  
hearing all the testimony in the case  
offered. Judgment is rendered against  
the Defendant in favor of the Plaintiff  
for the sum of Ninety five Dollars  
(\$95.00) and Costs of this suit taxed  
at \$2.95 N D Sturtevant J.P.

I hereby certify the above to be  
a true Transcript from my docket  
in the foregoing entitled Cause  
and herewith are all the papers  
in the case. dated West Chicago  
June 29<sup>th</sup> 1861 N D Sturtevant  
Justice of the Peace

(5)  
And afterwards, to wit, on the  
day and year aforesaid, there  
issued out of the Office of the  
Clerk aforesaid the Peoples  
writ of summons, which togeth-  
er with the Sheriffs return are  
in the words and figures fol-  
lowing, to wit:

State of Illinois  
County of Cook Es. The People of the  
State of Illinois, Of the Sheriff  
of said County, meeting: We  
Command you that you summon  
George W. Stanford, who sues for  
the use of Jasper Ward, 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 at the Court House  
in the City of Chicago on the  
first Monday of August next,  
to answer unto The Chicago  
Marine & Fire Insurance  
Company, in an appeal taken  
on a certain judgment ren-  
dered before A. D. Sturtevant Esq  
a justice of the peace in and

for said County,  
And have you seen and  
there this writ, with an en-  
dorsement thereon, in what  
manner you shall have Execu-  
ted the same

Witness Walter Kimball  
Clerk of our said Court,  
and the Seal thereof  
at the City of Chicago  
in said County, this  
29<sup>th</sup> day of June  
A.D. 1861.

Walter Kimball  
Clerk.

Served by reading to the  
within named George W. Staw-  
ford this 23<sup>rd</sup> day of July  
1861.

A. C. Hering Sheriff  
A. Kochbeler Deputy.

(b)

And afterwards to wit, on the  
second day of July in the year  
aforesaid. The Chicago Marine  
and Fire Insurance Company  
files in the office of the clerk  
aforesaid a certain affidavit  
of merits in the words and  
figures following, to wit.

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

Between  
George Stafford, who sues  
for the use of Casper & Hardy  
Plaintiff  
The Chicago Marine  
& Fire Insurance Company  
Defendant.

State of Illinois vs  
Cook County

I Young Scammon  
being duly affirmed says that he  
is the president of the Chicago  
Marine & Fire Insurance Company  
the above named defendant, and  
that as he verily believe said Chicago  
Marine & Fire Insurance Company  
has a good defence thereto upon  
the merits, and that he makes  
this affidavit for said Company  
and as the President

Subscribed & affirmed to before I Young Scammon  
Notary 2<sup>nd</sup> day of July A.D. 1861  
John Foley the Notary Public.



And afterwards, to wit, on the Eighteenth day of September in the year aforesaid, the plaintiff filed in the office of the Clerk aforesaid his appearance in the words & figures following, to wit.

Sup Ct of Chicago

George W Stanford for use of  
Joseph D Ward

Chicago Marine &  
Fire Insurance  
Company

appeal

And now comes the said plaintiff and enters his appearance & waives service of sum.

J D Ward,

And afterwards, to wit, on the Deputy fifth day of November in the year aforesaid, said day being one of the days of the November Term of said Court, the following among other proceedings was had, and entered of Record in said Court, to wit.

George W. Stanford  
vs of Jasper D Ward  
The Chicago Marine &  
Fire Insurance  
Company

Appeal,

This day comes  
the said Plaintiff who sues for the  
use of Jasper D Ward by Eber H.  
Kunyon his attorney, and the said  
defendant by McCagg & Fuller its  
attorney also come, and upon ar-  
gument of the parties made now  
here in open Court, the Cause is  
submitted to the Court for trial  
upon the issues joined therein with-  
out intervention of a jury, and the  
Court now here, after hearing evi-  
dence, and arguments of Counsel  
takes the matter under advisement

And afterwards, to wit, On the  
twenty eighth day of December in  
the year aforesaid, said day being  
one of the days of the December  
term thereof, the following among  
other proceedings was had, and  
entered of Record in said Court,  
to wit

(10)

George W. Stanford  
vs of Jasper D. Ward

The Chicago Marine &  
Fire Insurance  
Company.

Appeal.

This day again comes said Plaintiff who sues for the use of Jasper D. Ward by Jasper D. Ward in his own proper person as his attorney, and the said defendant by McCagg & Fuller its attorneys also come and this cause having been heretofore submitted to the Court for trial upon the issues joined therein and taken under advisement by the Court and the Court now there being fully advised in the premises finds issues for said plaintiff and assesses his damages herein against said defendant for the use aforesaid to the sum of Ninety five Dollars.

And thereupon said defendant submits its motion herein for a new trial in said cause which is overruled by the Court, and defendant excepts to the ruling of the Court and thereupon enters its exceptions herein to the ruling of the Court in overruling said motion.

Therefore it is considered that said plaintiff do have and recover

of and from the said defendant  
for the use and benefit of Jasper  
D Ward his damages of Ninety five  
dollars in form aforesaid by the  
Court here found and assessed,  
and also his Costs and Charges in  
this behalf expended in both Courts  
and have execution therefor,

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

And afterwards, to wit, on the twenty  
fifth day of January in the  
year A D 1862 the defendant by  
its attorneys filed in the office  
of the Clerk aforesaid a certain  
Bill of Exceptions in the words  
and figures following, to wit,

(12)  
State of Illinois  
Cook County, Ill.

In Superior Court of  
Chicago.

George W. Stafford who  
sued for the use of Jasper  
D. Ward

158.

The Chicago Marine &  
Fire Insurance  
Company

Bill of Exceptions

It is remembered  
that on the trial of this cause,  
the plaintiff offered in evidence  
the following check

"No. Chicago June 20<sup>th</sup> 1861,  
"Chicago Marine & Fire Insurance  
Company. Pay to J. D. Ward or bearer  
"Fifty five Dollars  
\$55.00  
G. W. Stafford

and proved by a witness named  
J. P. Avery, that on the twenty fourth  
day of June one thousand eight  
hundred and sixty one he pre-  
sented it for payment to the de-  
fendant, which defendant refused  
to pay. Saw in Illinois Bank Notes  
that were then in current, the  
teller of defendant showed funds  
funds that were then in current.

(13)

Scammion. President of the defendant said he would pay it in funds worth sixty or seventy cents on the dollar, which witness refused to receive in payment of the check, but demanded payment of the check in current funds, which was refused.

Plaintiff then called for, and defendant produced in evidence its Bank Ledger of defendant showing a balance of One Hundred and fifty five dollars, due from defendant to plaintiff for money deposited with defendant by plaintiff in the usual course of dealing between a Bank and its depositors, and which sum stood to the credit of plaintiff with defendant, at the time said check was drawn and presented for payment, and at the time of the commencement of this suit.

It was then admitted that defendant did a Banking business at Chicago, Illinois, and that plaintiff had for several months kept an account with defendant, as a depositor, in the usual course of dealing between Banks and their depositors, and that the check offered in evidence, was drawn for a part of the sum

(13)

Scammion. President of the defendant said he would pay it in funds worth sixty or seventy cents on the dollar, which witness refused to receive in payment of the check, but demanded payment of the check in current funds, which was refused.

Plaintiff then called for, and defendant produced in evidence its Bank Ledger of defendant showing a balance of One Hundred and fifty five dollars, due from defendant to plaintiff for money deposited with defendant by plaintiff in the usual course of dealing between a Bank and its depositors, and which sum stood to the credit of plaintiff with defendant, at the time said check was drawn and presented for payment, and at the time of the commencement of this suit.

It was then admitted that defendant did a Banking business at Chicago, Illinois, and that plaintiff had for several months kept an account with defendant, as a depositor, in the usual course of dealing between Banks and their depositors, and that the check offered in evidence, was drawn for a part of the sum

(14)

due from defendant to plaintiff,  
for money deposited by him with  
defendant.

Plaintiff then admitted that  
on the twenty first day of June  
one thousand eight hundred and  
sixty one he drew a check in favor  
of E. H. Runyon for sixty dollars,  
part of the same account which  
plaintiff kept with defendant for  
monies deposited at which time  
there was a credit to <sup>the</sup> plaintiff  
on defendant's books of one hun-  
dred and sixty five dollars for  
money deposited, which check  
was presented for payment to  
defendant on the twenty second  
day of June one thousand eight  
hundred and sixty one, and  
payment refused except in Illinois  
Bank Notes then worth sixty five  
cents on the dollar, which  
was refused.

That on the same day  
Plaintiff brought suit against  
defendant in his own name &  
the use of said E. H. Runyon to recover  
the amount due upon said  
check before a justice of the  
peace in Chicago Illinois, and  
on the twenty seventh day of  
June one thousand eight hundred

and sixty one <sup>(15)</sup> recovered a judgment against defendant for sixty dollars, the amount of said check besides the costs of suit.

That defendant appealed from said judgment to the Superior Court of Chicago, and that said Cause came on for trial, at the same term of court with the present case, and was tried, and a judgment rendered in favor of plaintiff for the amount of said check and costs, said check and judgment being for a part of the same account for which the present action is brought, and which judgment was entered before the present Cause was brought on for trial. Plaintiff here rested.

Defendant then offered in evidence the record and proceedings in the former Cause, of George W. Stanford to the use of C. F. Runyon against the defendant, being the same proceedings hereinbefore referred to as evidence of a former recovery of part of the same account for the recovery of which this suit is brought, as a bar to the maintenance of this action, to recover the residue of said account.

United States of America  
State of Illinois, Cook County, ss

Plas 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 the said Superior  
Court of Chicago begun and holden at the Court Room  
in the City of Chicago in said County and State on  
the first Monday being the Fourth day of November  
in the year of our Lord Eighteen hundred and sixty  
One and of the Independence of the United States of  
America the Eighty seventh

Present The Honorable John M. Wilson Chief  
Justice of the Superior Court of Chicago  
Wm H. Higgins and Grant Goodrich Judges  
Carlo Haver Prosecuting Attorney

Attest  
Attorney C. Heping Sheriff of Cook County  
Thomas B. Clark Clerk,

Be it Remembered That Heretofore to wit on the  
Sixth day of July in the year of our Lord One  
thousand eight hundred and sixty one was  
filed in the Office of the Clerk of said Superior  
Court of Chicago the certain Appeal Bond, Trans-  
cript and affidavit of merits of the Chicago Marine  
and Fire Insurance Company, <sup>its Corporation</sup> which said Bond  
Transcript and affidavit of merits are in the words  
and figures following to wit,

Know all men by these presents That the  
Chicago Marine and Fire Insurance Company  
as principal and of Young Scammon and Horatio  
G. Loomis as Sureties of the County of Cook in the

State of Illinois, and held and formally bound  
 unto George W. Stauffer for the use of Eben F. Keyser  
 in the special sum of One hundred and twenty dollars  
 lawful money of the United States for the payment of  
 which well and truly to be made we bind our-  
 selves our heirs executors and administrators jointly  
 severally and firmly by these presents Witness  
 Our hands and seals this first day of July  
 A.D. 1861

The condition of the above obligation is such  
 that whereas the said George W. Stauffer for the  
 use of Eben F. Keyser did on the twenty seventh  
 day of June A.D. 1861 before Calvin D. Wolf Justice  
 of the Peace for said County of Cook, recover a judge-  
 ment against the above bounden Chicago Marine  
 and Fire Insurance Company for the sum of  
 sixty dollars from which judgment the said  
 Chicago Marine and Fire Insurance Company  
 has taken an appeal to the Superior Court of Chicago  
 in the County of Cook of said and State of Illinois

Now if the said Chicago Marine and Fire  
 Insurance Company shall prosecute its appeal  
 with effect, and shall pay whatever judgment  
 may be rendered by the Court upon the appeal or  
 trial of said appeal then the above obligation to be  
 void otherwise to remain in full force and effect  
 Approved by me at my office this first day of July  
 1861.

*see* *Ham B. Cox* Secy  
*C. D. Wolf*  
 Justice of the Peace

*J. Young* *Stammon* *St. George*  
*J. Young* *Stammon* *St. George*  
*St. George*

And the Transcript of Calvin D. Wolf Justice  
 of the Peace as follows:

19658

George W. Stauffer  
use of Ester H. Runyon

Debit  
Drs 20  
Sum 25  
Order 25  
Copy 25  
Sub 25  
Mer 5  
Duty 25  
Laf 10  
Catts 5  
By 25  
Int appeal 25

of Demand of \$100.00  
The Chicago Marine and  
Fire Insurance Company  
June 22/61 Secured funds  
to Bridges Cash ret on June 27/61 as such ret  
secured by reading and leaving a Copy with J. J.  
Stammon President of said Co June 22/61  
June 27/61 Card called parties present with two  
after hearing the evidence judgement rendered in  
favor of plff and against the defts for the amount  
of - Judgement \$100.00 & costs.

2/15  
Df Avery  
appeal filed  
Cash Bridges

June 29/61 On oath of plff by ifund to Bridges  
Cash, July 2/61 Ex recalled Defts appealed to  
Superior Court and filed bond with J. Young  
Stammon vs H. Loomis as Sec

75  
50  
50

State of Illinois  
Cook County ss

I Certify the foregoing is a true  
transcript of all other proceedings before me  
in the above entitled Cause from my docket  
and the papers herewith transmitted to said  
Court contain a full and perfect statement  
of all the proceedings before me  
Witness my hand and seal this 2<sup>d</sup> day of July  
1861

Calvin D. Hoff (Seal)  
Justice of the Peace

And the affidavits of merits filed by said  
Appellant, as follows:

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

Between

George W. Stanford  
wid of Eber H. Runyon  
Plaintiff

against

Appeal from  
Justice Wolf

The Chicago Marine &  
Fire Insurance Company  
Defendant

State of Illinois  
Cook County

I Young Scammon being duly  
affirmed deposed and says that he is President  
of the Chicago Marine and Fire Insurance Company  
the defendant in the above entitled cause and  
that he verily believes that said Chicago Marine  
& Fire Insurance Company has a good defence  
thereto upon the merits, and that he makes this  
affidavit for said Company and as its President  
subscribed and

I Young Scammon  
affirmed to before me  
this 2<sup>nd</sup> day of July A.D. 1861

(Not Seal)

John H. Smythe

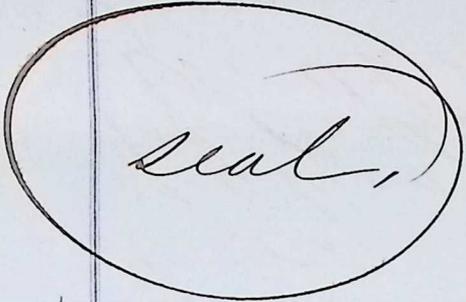
Notary Public

and afterwards to wit. on the  
day and year aforesaid there  
issued out of and under the  
seal of said Court. the Peoples  
Writ, of Summons, which together  
with the Sheriffs return en-  
dorsed thereon are in the words  
and figures following to wit.

State of Illinois  
Cook County <sup>ss</sup>  
The People of the  
State of Illinois. To the Sheriff  
of said County. Greeting  
We Command you that  
you summon George W. Stafford  
and Eben F. Remson if he  
shall be found in your County  
personally to be and appear  
before the Superior Court of Chi-  
cago, of said Cook County,  
on the first day of the next  
term thereof to be holden at  
the Court House in the city  
of Chicago on the first Monday  
of August next. to answer unto  
the Chicago Marine & Fire  
Insurance Company in an appeal  
taken on a certain judgment  
rendered before O. D. Wolf Esq  
a justice of the peace in and  
for said County.

And have you then and

Sheno his writ, with an en-  
dorsement thereon, in what  
manner you shall have executed  
the same.



Witness Walter Kimball  
Clerk of our said Court,  
and the Seal thereof,  
at the City of Chicago  
in said County, this  
6<sup>th</sup> day of July 1861.  
Walter Kimball clerk



And afterwards took on the twenty Fifth  
day of November in the year aforesaid said day being  
the last day of the November Term of the said  
Superior Court of Chicago the following among other  
proceedings read and entered of record in said  
Court in the words and figures following to wit,

George W. Stanford  
vs of Ebert H. Lyon on  
Appeal  
The Chicago Marine and  
Fire Insurance Company

This day comes the said  
Plaintiff who sued for the use of Ebert H. Lyon  
by Ebert H. Lyon his attorney and the said Defendant  
by M. Cagg Fuller its attorney also comes and  
upon agreement of the parties made now herein  
open Court this cause is submitted to the Court for  
trial upon the issues joined therein without inter-  
vention of a jury, and the Court now here after

\* The within name of G W  
Stanford not been found in my  
County August 6-1861.  
A. C. Meising Sheriff  
H. Lockbiller Deputy

7329

Having evidence and arguments of Counsel and  
being fully advised in the premises find & give  
for said Plaintiff and Defendant to have and yet  
herein find and affirm against said Defendant  
to the sum of sixty one dollar and fifty cents  
Therefore it was deemed that the said Plaintiff  
do stand and receive of and from the said Defendant  
for the use and benefit of Eben H. Mayors his damages  
of sixty one dollar and fifty cents in firm of said  
found and ascertained by the Court and also his  
Costs and Charges with the usual expenses & there  
execution thereof,

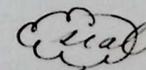
61-50

This was all the evidence in the case.

Defendant then insisted that the indebtedness of defendant to plaintiff for money deposited could not be split up or divided into several suits, each for a part of the same account and that the record and proceedings in the case of George W. Stanford to use of E. F. Runyon against the Chicago Marine and Fire Insurance Company, offered in evidence by defendant, being admitted to be for a part of the same account, for the residue of which this suit was brought was a bar to the present action.

But the Court refused so to hold and rendered judgment for the plaintiff for the amount of the check sued on and interest, being for the balance of said account.

To which ruling and judgment of the Court the defendant by its Counsel, then and there excepted, and prayed that this its Bill of Exceptions may be signed and sealed, which is done

Van H. Higgins   
Judge Sup Ct of Chicago

24

State of Illinois ss.  
County of Cook

I Thomas B  
Carter clerk of the Superior Court  
of Chicago within and for said  
County and State, aforesaid, do  
hereby Certify the foregoing to be a  
full true, and complete transcript  
of all the pleadings on file in my  
office proceedings of court entered  
of record together with the Bill  
of Exceptions in a certain case  
wherein George W Stanford use of  
Casper D Ward was plaintiff  
The Chicago Marine & Fire  
Insurance Company defendant

In testimony whereof I  
hereunto set my hand  
and affix the seal of  
said Court, at the  
City of Chicago, in said  
County this 16<sup>th</sup> day of  
February A D 1862  
Thomas Carter CLK



Let a supersedeas issue. Bond \$500  
of J. Spry Seaman in & B. Mc Coy  
Sunder

J. D. Eaton

And now comes the said plaintiff in Error by McCagg & Fuller its Attorneys, and says that in the record and proceedings aforesaid, and also in the judgement aforesaid, there is manifest error, and assigns the following causes of error, to wit;

1<sup>st</sup> The Court erred in refusing to hold that the indebtedness of plaintiff in error (defendant below) to defendant in error (plaintiff below) could not be split-up or divided into several suits, each for a part of the same account.

2<sup>nd</sup> The Court erred in holding that the indebtedness of plaintiff in error (defendant below) to defendant in error (plaintiff below) could be split-up or divided into several suits, each for a part of the same account.

3<sup>rd</sup> The Court erred in holding that the indebtedness of plaintiff in error to defendant in error could be divided up by defendant in error into several amounts, and a separate suit be maintained by defendant in error, or in his name, for each of said amounts.

4<sup>th</sup> The Court erred in refusing to hold that the record and proceedings in the case of George W. Stanford vs. use of E. F. Runyan against the Chicago Marine & Fire Insurance Company (plaintiff in error) offered in evidence by plaintiff in error, and admitted to be for a part of the same account, for the residue of which this suit was brought, was a bar to said suit.

5<sup>th</sup> That the Court erred in holding that the record and proceedings in the case of George W. Stanford for use of E. F. Runyan against the Chicago Marine & Fire Insurance Company (plaintiff in error) offered in evidence by plaintiff in error, and admitted to be for a part of the same account for the residue of which this suit was brought, was not a bar to this action -

6<sup>th</sup> The Court erred in rendering judgment for plaintiff.

7<sup>th</sup> The Court erred in not rendering judgment for defendant.

Judges in McLagg & Fuller  
E. F. Runyan Attys for Plt in Error  
for Defendant  
134 W. W. H.  
H. Payne

120  
Superior Court of  
Chicago  
Geo W Stanford vs  
The Chicago Marine  
and Fire Insurance  
Company

Transcript.

Filed Feb 22, 1862.  
L. Deland  
Clk.

Fee of \$5.00 Paid  
T. B. Linton  
Clk.