

No. 14335

# Supreme Court of Illinois

Cecil Bank of Maryland

---

vs.

Kelly.

---

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 208

14335

*Kelly*  
*vs*  
*Bante*

*1886*

*Referred*

No 208 -

Edward Kelly &  
Hugh Maher } Appellant

vs

Cecil Bank of Maryland } Appellee.

And now comes the  
said appellee and enters his  
motion herein & moves the  
Court to strike from the  
Record herein filed, the  
paper writing purporting  
to be a bill of exceptions.

Harvey Anthony & Co.  
Attys for Appellee.

Points & suggestions in  
and of said motion.

Case commenced Oct 9, 1860 -

Oct 26, 1860 - Non filed

Oct 29, 1860 - Gen issue & notice of reply filed.

Oct 8, 1861 - Petition to change venue -

It was overruled & new trial &  
a verdict entered for plaintiff.

Oct 26, 1861 - Motion made to set aside  
& vacate judgment & to change  
venue - which was overruled  
appeal prayed, which was allowed  
on filing bond in penalty of \$4000.  
to be filed by 1st day of Nov term next  
which was the 4th of Nov - "Bill of  
Exceptions to be filed within 8  
Days from this date"

Page 12 of Record

Page 13 of Record - Shows that the Bill of Exceptions  
was <sup>not</sup> filed <sup>till</sup> Nov 14, 1861 - which  
was at the Nov term Dec 9th Wheaton 657-8

Nov 7th a number of days after the

Page 14 of Record

time for filing the bill of Exceptions  
had expired. as the bill of Exceptions  
shows - the counsel applied to the  
court for leave to file the bill  
of exceptions which the court  
granted (subject to the rights  
of the plaintiffs) see page  
19 of Record. - fixing the time  
Monday next - the 11th day of Nov

11th Nov 1861 - The counsel applied for  
~~leave~~ leave for time to file

Page 192  
207 Record

The bond ~~is~~ but no mention  
is again made of the bill  
of exceptions - the time for  
filing ~~the~~ <sup>the bill & exceptions</sup>, by said last  
leave of the court, it will  
be seen (which was quite  
subject to the rights of the  
plaintiff) - had expired  
and no mention is made  
of it again whatever -

Now the record  
shows that the time for  
filing both the bond &  
bill of exceptions had  
expired - the time for  
filing the bill of exceptions  
had most certainly expired  
by a number of days -

For these reasons  
we humbly submit that  
the bill of exceptions forms  
no part whatever of the  
record & should be struck  
out -

see 9th Wharton  
21 Missouri  
" " 15-7  
" " 1869-

Henry, Alley, & Galt  
Attys for Appellee



Prere J. This case is in <sup>principle</sup> ~~all~~ -  
~~principle~~ identical with the case of  
Kelly et al as shown decided at  
this term. As in that case, so in  
this the judgment is affirmed.

~~128~~ — 2  
208 — 128

Kelly et al.  
vs  
Civil Bank of  
Maryland  
—  
opinion by  
P. Reese J.

Compared  
Revised 738

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 twentieth day of October in the year of our Lord One Thousand Eight Hundred and Sixty seven 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. }

Van H. Higgins }  
and Grant Goodrich } Judges.

Carlos Haren Prosecuting Attorney.

Anthony C. Hering Sheriff of Cook County.

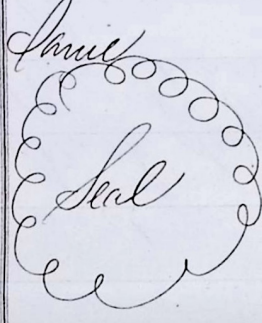
Attest, Walter Kimball Clerk.

Be it remembered that heretofore to wit, on the twentieth day of October in the Year of Our Lord One Thousand Eight Hundred and Sixty seven there issued out of the office of the Clerk of the Superior Court of Chicago, the Peoples Writ of Summons, which said Writ, with the Sheriff returned thereon, enclosed is in words and figures following to wit:-

State of Illinois  
County of Cook  
The People of the State of Illinois  
To the Sheriff of said County - Greeting:  
We Command You that You summon Edward Kelley and Hugh Maher if they shall be found in

in said County, personally to be 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 November next to answer unto The Cecil Bank of Maryland in a plea of Trespass on the Case upon promises, to the damage of the said Plaintiff as is said, in the sum of Five Thousand Dollars

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



Witness, Walter Kimball, Clerk  
 of said Court and the seal thereof at  
 Chicago aforesaid this 9th day of  
 October A.D. 1860

Walter Kimball Clerk

Served by reading to the Parties named Defendants this  
 10th of October 1860

John Gray Sheriff  
 By George Anderson Deputy

And afterwards to wit on the Twenty Sixth day  
 of October in the Year aforesaid, The Cecil Bank  
 of Maryland by Hervey Anthony & Galt its  
 Attorneys filed in the office of the Clerk of said Court  
 its Certain declaration in words and figures following  
 to wit:—

State of Illinois }  
 County of Cook }<sup>vs.</sup> The Superior Court of Chicago  
 Of the November term A.D. 1860.

The Cecil Bank of Maryland a corporation duly authorized constituted created and empowered under and by virtue of the laws of the State of Maryland one of the United States of America, Plaintiff in this suit, by Harvey Anthony Galt its Attorney complaining of Edward Kelly and Hugh Maher former copartners under the name style & description of Kelly & Co defendants who are summoned, &c, of a plea of trespass on the case on promises: For that whereas the said defendants as such copartners heretofore, to wit, on the eighth day of June in the year of our Lord one thousand eight hundred and sixty at Chicago to wit, at said county of Cook made their certain promissory note in writing bearing date the day and year aforesaid, and then and there delivered the same to one Hugh Maher in and by which said note said defendants by the name style and description of Kelly & Co promised as such copartners to pay the order of the said Hugh Maher, two months after date (which time has long since elapsed) twelve hundred and eighty two Dollars and ninety seven cents at The Bank America New York city, State of New York for value received, and the said Hugh Maher to whom or to whose order said note was payable, afterwards, to wit, on the day and year aforesaid at Chicago that is to say, at the county of Cook aforesaid, endorsed said note in writing, by which said indorsement the said Hugh Maher then and there ordered and appointed the said sum of money in said note mentioned, to be paid to said Plaintiff and then and there delivered said note, so indorsed, to the said Plaintiff, and the said Plaintiff avers that the difference

in Exchange between Chicago in the State of Illinois and the City of New York in the State of New York on the Eleventh of August A.D. 1860 the day of the maturity of said note was one per cent. -

And whereas also the said Defendants as such copartners heretofore, to wit, on the Eighth day of June in the year of our Lord one thousand eight hundred and sixty, at Chicago, to wit, at said County of Cook made their certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to one Hugh Maher in and by which said note said Defendants by the name, style & description of Kelly & Co promised as such copartners to pay the order of the said Hugh Maher Three months after date (which time has long since elapsed) Thirteen hundred and Two dollars and sixty one cents at Bank North America, New York City, State of New York - For value received -

And the said Hugh Maher to whom or to whose order said note was payable, afterwards, to wit, on the day and year aforesaid at Chicago, that is to say, at the County of Cook aforesaid, endorsed said note in writing, by which said indorsement the said Hugh Maher then and there ordered and appointed the said sum of money in said note mentioned, to be paid to said Plaintiff and then and there delivered said note, so indorsed, to the said Plaintiff - And the said Plaintiff avers that the difference in Exchange between Chicago, in the State of Illinois and the City of New York, in the State of New York on the Eleventh day of September A.D. 1860, the date of the Maturity of the said note was one half of one percent.

By means whereof, and by force of the Statute in such case made and provided, the said Defendants as such copartners

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became liable to pay said plaintiff said sums of money mentioned in said notes, according to the tenor and effect of the said note, and of the indorsements so thereon made as aforesaid, and being so liable, the said defendant in consideration thereof, then and there as such copartners undertook and promised to pay the same to the said plaintiff according to the tenor and effects of the said notes, and of the indorsements aforesaid, to wit, at the place aforesaid.

And Whereas, also, the said defendants afterwards, to wit, on the First day of October in the year of our Lord one thousand eight hundred and sixty, to wit, at said county, as such copartners became and were indebted to the plaintiff in a large sum of money, to wit: the sum of Five thousand dollars, for money before that time lent and advanced to said defendants as such copartners by said plaintiff at said defendants request, and also in the like sum, for money before that time paid laid out and expended for said defendants as such copartners by the said plaintiff at the like special request of said defendants; and in the like sum for money before that time had and received by said defendants as such copartners to and for the use of said plaintiff; and also, in the like sum for goods, wares and merchandise before that time sold and delivered by said plaintiff to said defendants as such copartners, at their like special instance and request; and also in the like sum for the labor, care and diligence of the said plaintiff before that time done and performed by said plaintiff for said defendants as such copartners and at the like instance and request of said defendants; and being so indebted, said defendants in consideration thereof, then and there as such copartners undertook and promised to pay said plaintiff said several sums of money above mentioned, when thereunto afterwards requested.

And Whereas, also, the said defendants afterwards, to wit, on the same day and year last aforesaid, and

at the place aforesaid, as such copartners accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiff and then and there being in arrears and unpaid; and upon such accounting, the said defendants as such copartners were found to be in arrear and indebted to said plaintiff in the further sum of Five thousand dollars. And being so found in arrear, and indebted to said plaintiff, the said defendants in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid as such copartners undertook and then and there faithfully promised the said plaintiff to pay unto the said plaintiff the said sum of money last above mentioned, when they the said defendants should be thereunto afterwards requested.

Yet the said defendants, not regarding their said promises and undertakings, but contriving, &c., although often requested so to do, have not paid said plaintiff either of said sums of money above mentioned, or any part thereof, but so to do have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiff of Five thousand dollars, and therefore it bring this suit, &c.

Hervey Anthony & Galt  
Plaintiff's Attorneys.

Copy of Instrument sued on.

\$1282.74

Chicago June 5th 1860.

Two months after date the promise to pay to the order of Hugh Maher Esq. Twelve hundred eighty Two & 74 Dollars at Bank America, N.Y. value received.  
Enclosed Hugh Maher. (signed) Kelly & Co.

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\$1302<sup>01</sup> Chicago June 8th 1860  
 Three months after date are promised  
 to pay to the order of Hugh Mahor Esq  
 Thirty Hundred Two & 1/2 Dollars at Bank  
 for the America N.Y. Value Received  
 Endorsed (Signed) Kelly & Co  
 Hugh Mahor

Kelly & Co  
 To Cash Paid of Maryland Dr  
 To Money lent and advanced \$5000 ✓  
 To Money paid, laid out and expended \$5000 ✓  
 To Money had and received for share of said Plaintiff \$5000 ✓  
 To Goods, wares, and Merchandise sold and delivered \$5000 ✓  
 To labor and services \$500 ✓  
 To balance due on account stated \$5000 ✓

And afterwards to wit on the Fifth day of  
 November in the Year aforesaid Edward Kelly  
 and Hugh Mahor, by W. W. Drummond their  
 Attorney, filed herein their Certificate and  
 Affidavit of Merits in words and figures following  
 to wit:—

In the Superior Court of Chicago  
 of November Term A D 1860

Petitioners }

The Cash Bank of Maryland  
 and  
 Edward Kelly and  
 Hugh Mahor Defts

Vs Hervey Anthony & Galt  
 Plaintiffs, Attys

Take notice that the above named  
 defendant on the trial of this cause will give in

evidence, and admit that the Promissory Note or Notes which are the Subject Matter and basis of the above entitled Suit were not assigned, transferred and endorsed over unto the said Plaintiff, nor became their property until after the time when by the terms thereof they became due and payable, and that the following equities attached to and were operative against the said Note or Notes in the hands of Cadwallader Pull the payee in said Note or Notes (mentioned to wit, that the said Pull was and still is indebted to these defendants in the sum of ten thousand dollars for breach of Contract in the furnishing and supplying of Coals to be sold for the joint benefit of the said Pull and said defendants under and according to the terms and Conditions of Certain Article of Agreement and Special Partnership entered into and in force between the said Pull and the said defendants, And also in the further sum of ten thousand dollars found to be due and owing and in arrears and unpaid by the said Pull to said defendants on an account stated between them.

And also in the further sum of ten thousand dollars for so much money by the said defendants before that time paid, laid out and expended to and for the use of the said Pull, and the said defendants Pull set off and alleged to the Plaintiff in the said trial so much of the said sum of ten thousand dollars due and owing from the said Pull to the said defendants, against any Promissory Note or Notes endorsed over to the hands of the said Plaintiff by Cadwallader Pull aforesaid to be proved to be proved on the said trial as will be sufficient to satisfy

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and discharge such demand according to the form  
of the Statute in such Case made and provided  
Yours &c

Oct 29 1860

W W Drummond  
Dfts Atty

State of Illinois  
County of Cook } ss

Superior Court of Chicago  
November Term AD 1860

The Cecil Bank of Maryland }  
as  
Edward Kelly & Hugh Mahan }

Defendants by Drummond their Attorney  
Come and defend the wrong and injury when  
and say that they did not undertake or promise  
in manner and form as the said Plaintiff hath  
above there complained against them and of this  
they put themselves upon the Country of

And the said Plaintiff  
doth the like

Drummond  
Atty for Dfts

Henry Anthony & Galt  
Atty for Plff

The Cecil Bank of Maryland }  
as  
Edward Kelly & Hugh Mahan }

In the Superior Court of Chicago  
To November Term AD 1860

State of Illinois  
County of Cook } ss

Edward Kelly and Hugh Maher being  
 first duly sworn. each on oath for himself  
 doth depose and say that they are defendants  
 in the above entitled suit, and that they  
 believe that they ran a good defence to the  
 said suit on the merits and further say not

Subscribed and sworn      Hugh Maher  
 to before me this fifth      Edward Kelly  
 day of November A.D. 1860  
 Seal      Samuel Strass  
    Notary Public

And afterwards to wit on the Eighth day of  
 October in the Year of our Lord One Thousand  
 Eight Hundred and Sixty one. Said day  
 being one of the days of the October Term of said  
 Court the following Among the proceedings was  
 had in said Court and entered of record to wit:

The Cecil Court of Maryland

Edward Kelly & Hugh Maher      A summons  
 vs      The day comes

the said plaintiff by its Attorneys, Henry Anthony  
 & Galt, and the said defendants by W. W. Drummond  
 their Attorney also comes and defendants submit their  
 motion or petition filed for a change of venue in this  
 Cause. Which application being considered by the  
 Court, is overruled, and issues being joined herein  
 it is ordered that a jury come. Whereupon comes  
 the jury of good and lawful men. to wit: George

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Wm Todd, George Lawson, Edward Vernon Sew  
 Clark, Jacob Millw, J O Wiley, A Otto, Charles  
 McDonald, J D Conkerton, Daniel Hitchcock  
 E G Emep and R L Chapman, who being duly  
 elected tried and sworn to try the issues joined  
 as aforesaid after hearing evidence Arguments of  
 Counsel and instructions of the Court retired  
 to Consider of their Verdict and afterwards sitting  
 into Court submit their Verdict and say: Be the  
 Jury find issues for the said Plaintiff and assess its  
 Damages hereon to the sum of two thousand seven  
 hundred and fifty dollars and four Cents.

72460.04

Therefore it is Considered that the said Plaintiff  
 do have and recover of and from the said defend-  
 ants its Damages of two thousand seven hundred and  
 fifty dollars and four Cents in form aforesaid  
 found and asessed by the jury and also its Costs  
 and Charges in this behalf expended and shall  
 execute therefor

And afterwards do writ on the Twenty fifth  
 day of October in the Year last aforesaid  
 said day being one of the days of the October Term  
 of said Court. The following among other proceedings  
 was had in said Court, and entered of record to wit

The Cecil Parish of Maryland

Edward Kelly & Hugh Mahor <sup>Assumpsit</sup>

the said Plaintiff by Henry Anthony & Co its  
 Attorneys, and the said defendants by W W Drummond  
 their Attorneys are come, and the Cause coming on  
 to be heard upon the motion of the said defendant to  
 This day again comes

Vacate the judgment heretofore entered at this term of the Court against them and also for a change of Venue in said Cause and Council being heard and the Court being fully advised in the premises overrule the motions to vacate the judgment and also overrule the motion for a change of venue to which ruling of the Court the said defendants except and enter this exception herein to the ruling and decision of the Court in overruling said motions, and thereupon pray an appeal herein to the Supreme Court of this State from the judgment of this Court which is allowed to them on filing bond in penalty of four thousand dollars with security to be approved by a Judge of this Court, and to be filed by fifty days of the November Term next ensuing of this Court with bill of exceptions to be filed within eight days from this date.

And afterwards to wit on Fourth day of November in the Year last aforesaid said day being one of the days of the November Term of said Court the following among other proceedings was had in said Court and entered of record to wit:

The Cecil Board of Maryland  
 vs  
 Edward Kelly and Hugh Mahan Assumpsit  
 This day again  
 Came the said Plaintiff by Henry Ashmore & Co  
 its attorneys, and the said Defendants by W. W.  
 Drummond their Attorney, also Come, and on  
 his motion, it is ordered that time for defendant

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To file appeal bond herein on appeal to Supreme Court be and is hereby extended from this day to coming in the Court on Friday Morning next And the undersigned Plaintiffs Attorney enter exceptions to the ruling of the Court in allowing extension of time to file appeal bond herein

And afterwards do wit on the <sup>Fourth</sup> ~~Third~~ day of November in the Year last aforesaid, Edward Kelly and Hugh Maher by their Attorneys aforesaid, filed in the office of the Clerk aforesaid ~~the~~ their Certain Bill of Exceptions in words and figures following to wit:—

In the Superior Court of Chicago  
Of the October Term A.D. 1861  
The Cecil Bank of Maryland }  
Edward Kelly & Hugh Maher } Bill of Exception

Be it remembered that heretofore do wit, on the 8th day of October A.D. 1861 The following proceedings were had do wit after issue joined the defendants by their Attorneys filed in said Court their petition for a Change of Venue in the words and figures following viz—

State of Illinois  
County of Cook }  
Superior Court of Chicago  
October Term A.D. 1861  
The Cecil Bank of Maryland }  
Edward Kelly & Hugh Maher }

Edward Kelly being first duly sworn on oath doth depose and say that he is one of the defendants in the above entitled suit, and that he fears that he will not receive a fair trial in the Court in which the action is pending on account that the inhabitants of the County of Cook are prejudiced against this affair, so that he cannot expect a fair trial in the said County of Cook on the trial of said Cause this affair for the faith that the Cause of such prejudice had arisen and come to the knowledge of this affair within less than ten days last past, and this application for a change of venue is made with the consent of his Codefendant Mather he therefore prays for a change of venue in said Cause to some County where the said Causes Complainants do not exist, and further saith not

Subscribed and sworn to before me this 7th day of October A.D. 1861 Edward Kelly

Henry C. Morey  
Notary Public

And also the following notice with said petition

Recd Bank of Maryland

Assumpst

Hugh Mather & Edward Kelly

In the Superior Court of Chicago  
Of the October Term 1861

To Messrs Henry C. Morey & Gust

Plaintiff's Attorneys in the above entitled suit  
Please take notice that on the opening of the Court on the morning of the 9th inst or as soon thereafter as Counsel can be heard we shall move the Court for a change of the venue

in said Cause for the reasons set forth in the  
affidavit on file, a Copy of which You can see with  
Served with this motion

Yours Respectfully  
October 8 1861  
Chicago Illinois  
Dominion & Ford  
Defendants Attys

I hereby Consent to a Change of the Venue in the  
above entitled Suit  
Chicago Illinois October 8 1861  
Hugh Mahon

The Court on examination of the petition  
for a Change of Venue decided that it was insuffi-  
cient & refused to Change the Venue

The Case having been reached for trial  
in its regular order was called & a jury empannelled  
and the issues tried & a verdict for the Plaintiff  
was rendered for the sum of \$2460.04 Twenty  
four thousand Sixty <sup>04</sup> Dollars besides Costs

It is also remembered that afterwards  
to wit on the 26<sup>th</sup> day of October 1861 the said  
defendants came & filed the following affidavit

State of Illinois  
Cook County Sd  
Superior Court of Chicago  
October Term A D 1861

Cecil Bane of Maryland  
vs  
Edward Kelly & Hugh Mahon  
Assumpsit  
Edward Kelly on  
oath doth depose and say that he is one of the  
Defendants in the above entitled Suit, that the  
proceedings at law in said Suit were enjoined by

a writ of Injunction which issued out of the Court  
 on or about the day of July last past that  
 the said injunction was dissolved on the 17<sup>th</sup> day  
 of this month, and on the first day of this term  
 of the Court, this affiant saith further that he  
 directed his attorneys as soon as he heard of the  
 dissolution of the injunction in said writ to give  
 the necessary notice to the Plaintiffs Attys, for and  
 to take steps at once to change the venue of said  
 Cause from the County of Cork, that the first  
 information that this affiant had of the dissolution  
 of the injunction in said Cause was after five  
 o'clock in the afternoon of the 7<sup>th</sup> inst that he  
 immediately went to see his Co-defendant Mearns,  
 but did not find him until the morning of the 8<sup>th</sup>  
 inst, that this affiant made and caused to be filed  
 in this Court an affidavit for a change of the  
 venue of the said Cause from Cork County, as  
 aforesaid, that he caused notice of the said appli-  
 cation to be filed in said Cause and served on the  
 Plaintiffs Attys, on the morning of the 8<sup>th</sup> inst  
 and immediately after he consulted with his  
 Co-defendant Mearns and at which time his Co-defen-  
 dant Mearns consented to a change of the venue of  
 the said Cause and desired the same to be changed,  
 that all the steps necessary in the premises were  
 taken at the earliest possible notice after the affiant  
 learned that the said injunction was dissolved,  
 that he is informed and believes that a judgment  
 was rendered against this affiant and his Co-defendant  
 Mearns, in this Court for the sum of £ in the  
 evening of the 8<sup>th</sup> day of this month and before  
 the time set for hearing this affiant's application

for a Change of Venue, that this Affiant gave under the rule of this Court as he understands it, one days notice of his intended Application for a Change of Venue, that the time was set by said notice for a hearing on the morning of the 9th inst, that judgment was rendered in the afternoon of the 8th inst and before the days notice had expired, that said affiant could not give longer notice than he did for the reasons above set forth, This affiant therefore asks that this Court will vacate the said judgment and enter an order for a Change of the Venue as prayed for in this affiant's Affidavit now on file in the said Cause in this Court, And further

Subscribed to & Sworn before  
 On this 25th day of  
 October A.D. 1861  
 E. P. E. H. Runyan  
 Notary Public

Edward Kelly

And Notice

State of Illinois  
 County of Cook  
 Superior Court of Chicago  
 October Term A.D. 1861  
 Cecil Bank of Maryland  
 Hugh McKee and Edward Kelly  
 To Messrs. Henry Anthony & Galt  
 Plaintiffs Atty

Plains - Notice  
 that on the opening of the Court on Saturday morning the 26th inst we shall move the Court to vacate the judgment heretofore rendered in the

Above entitled Cause at this Term of the said Court and again during the Court for and insist upon a change of the Venue in the above entitled Cause upon the petition and affidavit heretofore filed in the said Cause

Yours Respectfully  
 Chicago Illinois  
 October 25<sup>th</sup> 1861  
 Drummond & Ford &  
 E. H. Brackett Esq. Atty

And moved the Court to vacate the judgment heretofore entered in said Cause and to change the Venue which motion came on to be heard and upon the argument of said motion the Attorneys for the defendants claimed that this branch of the Court should take notice of the orders & proceedings of the Chancery branch of said Superior Court, that this said Cause had been enjoined by Judge John McWilson one of the judges of this Court sitting in Chancery in a separate room, and that said injunction had been dissolved by the said Judge John McWilson on the 7<sup>th</sup> day of October 1861.

High Mahon and Edward Kelly  
 vs  
 The Cecil Park of Maryland  
 File for Dry

The above Cause having this seventh day of October 1861, been brought on to be heard on motion to dissolve the injunction heretofore filed by the defendant, and the Court having heard Harvey Anthony & Galt Solicitors for defendant and Brackett & Drummond Solicitors for the complainants it is hereby ordered, adjudged and decreed that the injunction in the above Cause be dissolved, and the bill dismissed, therefore it is considered that the

Said defendant do have and recover of and from the said Complainant the Costs in this behalf expended and have execution therefor

The Court after hearing the Arguments of Counsel upon both Sides overruled the Motion & decided that it would not look beyond the matters contained in the petition for a change of Venue itself and that it was irregular to file supplementary affidavits to cure defects in the original petition for a change of Venue to which decision of the Court in so overruling said Motion the said defendants then and there assented

The said defendants then prayed an appeal to the Supreme Court which the Court granted upon the defendants filing a bond in the sum of (\$4000) four thousand Dollars to be filed & approved by the Court by the 1<sup>st</sup> day of the next term, and the bill of exceptions to be made and filed in eight days from said date

On the 4<sup>th</sup> day of November A.D. 1861 the defendants came and moved the Court to extend the time for filing the bond until Monday next to which the Plaintiff objected, the Court extended the time to Monday next to which decision of the Court the Plaintiff then & there assented

On the 7<sup>th</sup> day of November A.D. 1861 on motion of the Attorneys for the defendants the Court extended the time to file the bond & bill of exceptions (subject to the rights of the Plaintiff) to Monday next

On the 11<sup>th</sup> day of November the Court on motion of the Attorneys for defendants extended the time to file the bond to Thursday next

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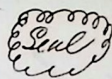
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On the 11<sup>th</sup> day of November the Court on Motion of the Attorneys for Defendants extended the time to file the bond to Thursday next

On the 13<sup>th</sup> day of November A.D. 1861 the Court on motion of the defendants attorneys afforded the time to file bond to Saturday morning next, on the 15<sup>th</sup> day of November, the Court approved the bond presented by the defendants

And the said defendants then pray the Court to sign & seal this the said defendants bill of exceptions which is accordingly done

Saml W Higgins



Judge Sub Ct of Chicago

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

The Cecil Bank of Maryland

vs  
Edward Kelly and Hugh Meacham

Appt

This day again comes the said defendants by W W Draymond their attorney and on his motion it is ordered that time for defendants to file bill of exceptions and appeal bond herein be and is hereby further afforded to coming in of the Court on Monday next the eleventh day of November instant

And afterwards to wit on the eleventh day of November in the year last aforesaid - said day being one of the days of the November Term of said Court the following among other proceedings was had in said Court and entered of record to wit:

The Cecil Court of Maryland

vs  
Edward Kelly and Hugh Mahan

Assumpsit

On Motion W W Drummond

Attorney for said defendants. it is ordered that time for said defendants to file their appeal bond herein be and is hereby further extended to Thursday Morning next.

And afterwards to wit on the thirteenth day of November in the Year last aforesaid said day being one of the days of the November Term of said Court the following among other proceedings was had in said Court and entered of record to wit:—

The Cecil Court of Maryland

vs  
Edward Kelly and Hugh Mahan

Assumpsit

On Motion W W Drummond

Attorney for said defendant it is ordered that time to file bond on appeal herein to the Supreme Court be and is hereby further extended to coming in of the Court on Saturday Morning next

And afterwards to wit on the Fifteenth day of November in the Year last aforesaid Edward Kelly and Hugh Mahan filed herein their Appeal Bond in words and figures following to wit:—

Know all Men by these presents that we Edward Kelly and Hugh Mahan and Isaac Cook of the County of Cook and State of Illinois an hold and finally bound unto the Civil Bank of Maryland of the State of Maryland in the penal sum of four thousand dollars (\$4000.00) lawful money of the United States for the payment of which will and truly to be made. We bind ourselves, our heirs, executors and administrators, jointly, severally & firmly by these presents, Put us our hands and seals the 13<sup>th</sup> day of November A D 1861.

The Condition of the above obligation is such that (whereas the said Civil Bank of Maryland did on the 5<sup>th</sup> day of October A D 1861 recover a judgment against the above bounden Edward Kelly and Hugh Mahan for the sum of Twenty Seven hundred and Fifty dollars & four cents (2760.04) besides costs of suit from which judgment of the said Superior Court the said Edward Kelly and Hugh Mahan have prayed for and obtained an appeal to the Supreme Court of said State of Illinois. Now therefore if the said Edward Kelly & Hugh Mahan shall duly prosecute said appeal into effect and moreover pay the amount of the judgment, costs interest and damages rendered and to be rendered against them in case the said judgment shall be affirmed in said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue

Taken and entered into  
before me at my office  
in Chicago Ill the 13<sup>th</sup>  
day of Nov 1861  
Wm H Higgins

Edward Kelly  
Hugh Mahan  
Isaac Cook



State of Illinois }  
 County of Cook } S.S.

I, Thomas B. Carter, Clerk of the Superior Court of Chicago, in and for the County and State aforesaid do hereby certify that the above and foregoing is a full, true and complete transcript of all the pleadings on file in my office, and of the orders and judgment entered of record in said Court in a certain suit wherein The Cecil Bank of Maryland is plaintiff, Edward Kelly and Hugh Maher Defendants, with Bill of Exceptions & Appeal Bond.

In testimony whereof I haveunto subscribed my name, and affix the seal of said Court, at the City of Chicago, in said County, this 11<sup>th</sup> day of April AD 1862. Thomas B. Carter Clerk.



State of Illinois 3<sup>rd</sup> Grand Division

Edward Kelley &

Hugh Maher

v

The Cecil Bank of

Maryland.

Supreme Court April Term 1862

} Appeal from  
the Superior Court  
of Chicago

And now comes the said  
Appellants & say that manifest  
error hath intervened in the  
proceedings whereof the foregoing  
is a record & they offer the  
following to-wit

1. The Superior Court  
of Chicago erred in re-  
fusing a change of venue

2. The said Court erred  
in refusing to vacate  
the judgment & grant  
a change of venue

3. The said Court erred  
in rendering judgment  
against appellants.

Wherefore they pray

W. W. Drummond  
for Appellants

and the said Appellee comes &  
says that there is no error in the  
record & proceedings in this case  
& therefore asks that the said  
judgment be affirmed

Henry Anthony Galt  
attys for Appellee

208  
Orvil Parite  
of Maryland  
vs.  
Kelly et al.

Filed Apr. 22, 1862

L. S. Lowell  
clerk

Fees

\$6.50. paid by H. Meade  
J. B. Spaulding Clerk