

12222

No. _____

Supreme Court of Illinois

Eddy, et al

vs.

Brady

71641  7

Philauder Eddy et al
vs } from Grundy -
George Brady }

Abstract -

This was a suit by attachment
by Eddy et al vs Brady -

The defendant pleaded in
abatement - to the affidavit -
& pl^{ff} demurred - to the plea - & the
Court overruled the demurrer and
refused to permit plaintiffs to traverse
the said plea upon the ground that
the Court had no discretion so to do -

The plaintiffs in the Court below
bring the case here on two points
- 1st that the demurrer to ~~plaintiffs~~
defendants plea in abatement
ought to have been sustained -

- The writ of attachment dated Jan 17-1855 -
recites ~~that~~ affidavit ^{inter alia} "that George Brady has
" departed this state with the intention of having
" his effects removed from this state to the
" injury of his Creditors"

Plea in abatement - without craving oyer of
the writ - or affidavit - Says "that he was not,
at the time mentioned in the plaintiffs affidavit
on file in this cause or at any other time
departed from this state, with the intention

"of having his property, or effects removed from this state to the injury of said Creditors or of any Creditors" "as in said affidavit is alleged and if this he puts himself upon the Country &c"

The demurrer ought to have been sustained -
1st because it is double - in this it Attempts to traverse three material allegations - the traverse of any one of which would make a good plea - viz 1st the allegation that at the date of the writ - def^t - "had departed the state" - 2nd that his intention was to ~~remove his~~ to have his property & effects removed from this State -

3rd that such removal would have been to the injury of defendant's creditor -
2nd The plea does not meet the supposed allegations of the affidavit directly - "had departed" & "was departed" do not necessarily mean the same thing
3rd The plea is defective in not craving oyer & setting out the affidavit in the plea - (The affidavit is no part of the record - nor will the writ be examined on demurrer - (The declaration & plea are the only matters presented on the demurrer & the plea will not stand)
4th Plea is bad for uncertainty being in the alternative — and referring to other matters not before the Court to make it certain

The Court Error in adjudging that
the Court had no discretion in law to
permit the demurrer to be with-
drawn by plffs and an issue
to be made upon the plea

J. L. Dickey for
plffs in Error

The decisions of Supreme Court
on subject of withdrawing a demurrer
to plea in abatement. &c.

are 1 Stammon 320

+ Gil 385

11th Cir 69
2nd Cir

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Eddy & Watkins
vs

Brady —

Abstract &
points —

1 ch July 9, 1858
L. del and Clk.

State of Illinois
Grundy County

I was before
the Honorable S W Randall
Judge of the Eleventh Judicial
Circuit of the State of
Illinois and presiding
Judge of the Circuit Court
of Grundy County in the
State aforesaid, at a Circuit
Court begun and held at
the Court house in Morris
in said County on Monday
the Twenty Sixth day of
March in the year of our
Lord one thousand eight
hundred and fifty five and
of the independence of the
United States the Eightieth

Present

The Hon S W Randall Judge

S W Bowman States Attorney

John Galloway Sheriff

attest

Geo H Kristed Clerk

Be it Remembered that
heretofore to wit, on the
17th day of January A D 1855

a writ of attachment was
issued from the office of the
Clerk of the Circuit Court
of said County, which is
in the words and figures
following, to wit

" State of Illinois
Grundy County } The proper
of the State of Illinois to the
Sheriff of said County, Greeting

Whereas Andrew Combs
agent of Philander Eddy and
Elias Watkins, dealers under
the firm and style of Eddy
and Watkins, of Chicago
Illinois hath complained on
oath to George H. Kersted the
Clerk of the Circuit Court
of said County of Grundy,
that George Brady is justly
indebted to the said Eddy and
Watkins to the amount of
three hundred and sixteen
dollars and eighty eight cents
, and oath having also been

Made that the said George
Brady has departed this State
with the intention of having
his effects removed from this
State to the injury of his said
creditors, and the said Eddy
& Watkins' plaintiffs having
given bond and security ac-
cording to the directions of
the act in such case made
and provided, We therefore
command you that you
attach so much of the Estate
Real and personal of the
said George Brady, to be found
in your County, as shall be
of value sufficient to satisfy
the said debt and costs, ac-
cording to the Complaint,
And such Estate so attached
in your hands to secure,
or so to provide that the same
may be liable to further pro-
ceedings thereon according to
law, at a Court to be holden
at the Court house in Morris
in said Grand County on

the 4th Monday in the Month
of March 1855, so as
to compel the said George
Brady to appear and answer
the Complaint of the said Philan-
dre Eddy and Elias S Watkins
— And have you then and there
this writ with an endorsement
thereon as to the manner in which
you have executed the same

 Witness my hand and
of the Circuit Court of said
County, and the Seal thereof
at Morris this 17th day of
January 1855
Geo W Kinsted
Clerk

Which said writ of attach-
ment was returned to said
Clerk's office on the 26th day of
March 1855 endorsed
as follows, to wit

"I have Executed
the within attachment by attaching
the store of the within named
George Brady, containing dry
goods, groceries &c &c

Shoes, Ready Made Clothing,
liquors, bottles, barrels &c
&c, also the furniture in his
dwelling, beds and bedding,
stoves, chairs, carpeting &c
Jan 17th 1855
John Galloway Sheriff

And afterwards to wit
on the 20th day of March
A D 1855 The following dec-
laration was filed in said
Court, as follows, to wit,

"State of Illinois Grand County
Circuit Court

Of the Term of
March in the Year of our Lord
one thousand eight hundred and
fifty five

Grand County to wit;
George J Brady was summoned
to answer Philander Eddy &
Elias J Watkins, partners
trading under the name
style & firm of Eddy & Watkins
of a plea of Verdict on the Case

and thereupon the said Eddy
& Watkins partners as
aforesaid, by Reading & Hopkins
their Attorney complaining,
for that whereas the said George
Brady as aforesaid, on the
25th day of November in the
year of our Lord one thousand
eight hundred and fifty four
at Morris in the County of
Grundy and within the juris-
diction of this Court made
his certain promissory note
in writing, bearing date the
day and year aforesaid, and
thereby then and then promised
to pay in thirty days after
date to the order of (the said)
Eddy & Watkins the sum of
Three hundred eighty eight
dollars for Value received
By means whereof the said
George Brady as aforesaid then
and there became liable to pay
the said Eddy & Watkins
as aforesaid the said sum of
Money in the said Note
Specified according to the Tenor

And effect of the said Note
, and being so liable he the
said George S Brady as afore-
said in consideration thereof
afterwards to wit on the
same day and year aforesaid
at Morris in the County and
within the jurisdiction aforesaid
undertook and then
and there faithfully promised
the said Eddy & Watkins
partners as aforesaid to pay
them the said sum of money
in the said Note speci-
fied according to the tenor and
effect of the said Note yet
the said George S Brady as
aforesaid has not as yet paid
the said sum of money or
any part thereof, to the said
Eddy & Watkins partners
as aforesaid (although often
requested &c), but the said
George S Brady as aforesaid
to pay them the same has hith-
erto wholly neglected and refused
and still does neglect and

Refuse, Whereupon the Said
Eddy & Watkins partners as
aforesaid that they are
injured and have sustained
damage to the value of five
hundred dollars and there-
fore they bring Suit &c
Reading & Hoskins
Attys for Plff.

~~Feb. 28~~
Copy of Note

\$316.⁰⁰
Memor Nov 25th 1854

Thirty days after date I promise
to pay to the Order of Eddy &
Watkins Three hundred Six-
ty & 00⁰⁰ dollars for Value
Received

Geo V Brady "

And afterwards to wit,
on the 28th day of March
AD 1855 the following
plea was filed in Said
Court, as follows, to wit;

Philander Eddy
Elias T. Watkins
vs
George Brady

State of Illinois Grundy
County and Circuit
Court thereof of the
March Term in the
year of our Lord Eighteen
Hundred and Fifty five

Now comes the said defendant George
Brady and prays judgment of the Court of
attachment issued in this cause and that
the same may be quashed because he saith
that he was not at the time mentioned in the
plaintiffs affidavit on file in this cause
or at any time departed from this State with
the intention of having his property or effects
removed from this State to the injury of
said Creditors or of any Creditors as in said
affidavit is alleged and of this he puts
himself upon the Country whereof he
prays judgment of said Court of attachm-
ent and that the same may be quashed
George Brady

State of Illinois
Grundy County & George Brady being duly
sworn saith on oath that the above plea
is true in substance and in fact

Subscribed & sworn to
before me this 28 day
of March 1855
Geo H Kierstedt } Geo Brady

And the said plaintiffs Come and dem-
ur to said plea and alleges that the same
is not sufficient &c

Dickey p 9 -
or doth doth the like
Sely & Cook
Jed

And afterwards to wit: On the 21st March
1855, the following proceedings were had
before said Court to wit:

Philander Eddy &
Elias J Watkins
dealers under the firm
of Style of Eddy & Watkins
vs
George Brady } Attachment

This day came the plaintiffs by Reading
& Hopkins and Dickey their Attorneys
and the said defendant by Sely his
Attorney also Comes and the said defend-

ent moves the Court to dismiss this
suit for the want of a sufficient Bond
and thereupon the said plaintiffs enter
their Cross motion for leave to amend
their Bond which motion is granted

And afterwards To Wit: On the 28th
day of March 1855 the following further
proceedings were had in said Cause
To Wit:

And now the said defendant
files his plea in abatement praying
the judgment of the Court upon the
issue that the same may be granted
for the reasons in said plea set forth
and the said plaintiffs filed their
reply to the plea in abatement
of the said defendant demurring thereto
to which demurrer having been heard
by the Court, it is ~~Overruled~~ ruled.
And after

And afterwards To Wit: On the 29th
day of March 1855 the following
proceedings were had in said Cause
To Wit:

And now Comes the parties
as aforesaid, and the said plaintiffs

by their said Attorneys move the Court
for leave to answer over to the said plea
in abatement of the said Defendant—
which motion having been heard by the
Court is denied

And afterwards to Wit; On the 31st
day of March 1855, the following pro-
ceedings were had in said Cause To Wit;

And now Come the parties hereto, and
upon motion of the said Counsel of the
said defendants it is ordered & adjudged
that the plaintiffs writ be quashed
and that they take nothing thereby, and
that the Costs be taxed against the
plaintiffs. And thereupon the said
plaintiffs move the Court for an appeal
herein to the supreme Court, upon
which is granted, upon Condition that
the said plaintiffs give bond within forty
day from the rising of this Court
in the sum of fifty Dollars, with
James A Reading & William T. Hopkins as
security

State of Illinois,
Grundy County,

I George H Keirstead
Clerk of the Circuit Court within
and for said County and State Do hereby
Certify the foregoing to be a full true
and Correct Copy of the Writ of attach-
ment, declaration, plea, demurrer,
and Orders of the Court in the above
entitled Cause

In Witness whereof I have hereunto
set my hand and Official seal at Morris
this Thirtieth Day of June A.D. 1855

Geo H Keirstead
Clerk

And now comes the said Eddy et al and say
that said judgment ought to be reversed &
held for naught - and assigns the following
reasons -

1st The Court below erred in overruling
the demurrer to said plea in abate-
ment -

2nd The Court erred in deciding that plain-
tiff could not be permitted plead over

3rd The Court erred in rendering judgment
against the plaintiffs below
J. L. Dickey for
plffs the error

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Philander Eddy et al.
George Brady
Record

1855

Filed June 13. 1855.
J. L. Dickey et al.

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