

14393


No. _____

Supreme Court of Illinois

Pfierman~~nt~~ et al.

vs.

Zimmerman

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 90

14793

1862

Summer

Replevin

The order for suspension in this case
only takes effect by affidavit being
submitted showing the general name
of Dr. Bennett's claim to J. Clark will
insert the general name of the Dr in the
order

J. D. Eaton

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

JOHN P. PFIERMAN and
JOHN PFUND, Pl'ffs in Error,

vs.

EDWARD ZIMMERMAN Def't in Error.

BRIEF FOR PL'FFS IN ERROR.

The questions in this cause are novel. They are—

1st. Can a clerk who is guilty of embezzlement from his employer, recover his wages as per contract.

2d. Can a clerk who is hired for an indefinite period of time, and who continues in the employment of his master one year, and continues about four months on the second year, and who leaves the employment of his principal without notice of his intention so to do, and without the consent of the employer, and without any reasonable excuse for his departure, recover of his employer his *pro rata* wages? The first question is presented by instruction number *one* asked for by the appellant and refused by the court below. The second question arises upon the original and modified instruction number four asked by the appellant and modified and given by the court below.

We insist that a Clerk must perform the duty he undertakes, and act in good faith toward his employers. If he fails to perform his duty according to his express or implied contract between himself and employers, or if he *steals* or *embezzles* his employer's money or goods, he is not entitled to recover his wages, because of his non-performance and criminal conduct. We ask your Honors "what compensation is a thief entitled to, who, by a violation of the confidence which existed between him and his principal, injures, instead of benefits his employers. In this case the defendant in error stole from the pl'ffs in error, at least \$140. How much more is stolen, time alone can reveal. No excuse is shown by the defendant in error for his embezzlement. No, not even the meagre

excuse that his spending money was not paid promptly. 1st. The record shows that he received \$379 80 of spending money during his employment. 2d. No refusal is shown to give him the spending money. 3d. No default on the part of the appellants is shown, at the time the embezzlement took place. 4th. The plaintiff in error was cashier and book-keeper, as well as drummer and salesman. Now, under the circumstances, has an embezzling clerk a right to recover wages of his employers when actual stealings have been discovered, and there may be many embezzlements yet to be brought to light of his employers. If a thieving clerk has a right to recover his wages under the circumstances detailed in this record, then the said instruction asked by the plaintiffs in error numbered one, was properly refused. If on the contrary, honesty is recognized by that branch of jurisprudence which relates to the relation of master and servant, then the instruction ought to have been given, and its refusal prejudiced the rights of the plaintiffs in error. The *court below* in determining this question seems to have acted upon the principal, that in order to prevent a clerk from stealing, there should have been an *express* contract to that effect. We, however, take the broad ground laid down in the scriptures, and address it to the clerk—"Thou Shalt not Steal." Beside this the court will perceive, on examination of the record, that the contract between the employers and the employed was not an express contract of service. On the contrary, all must be taken by implication. 1st. As to the duration of the contract. 2d. As to the nature of the duties to be performed. Again, there was no written contract between the parties, and there is no evidence to show that there was an express oral contract between the parties. The existence of the contract is proved by an admission of the parties in error, as to the price to be paid and a portion of the duties to be performed. But the evidence is silent upon all the other questions involved in the cause, so far as def't in error was concerned.

On the 2d point which arises upon the modification of the 4th instruction asked by ptff's in error, our position is this—The time which the defendant in error agreed to serve the plaintiffs in error, is a matter of implication. No express contract upon this point having been established on the trial below. The service commenced January 18th, 1858. It ended, in point of fact, May 3d, 1859, making a service of about one year and 3½ months. The evidence shows that defendant in error left the service of plaintiffs in error without notice to them, without any excuse for his departure, and all the time concealing his embezzlements. Now the question arises, can a servant under these circumstances recover his wages *pro tanto*. He did not contract to serve by the day, month or year. It is a question of implication therefore as to the nature of the contract, and the implication if it arises at all, must be based upon the facts of the case. What are the facts? The defendant in error actually served one year; he entered upon the second year and continued in the employ of plaintiffs in error for 3½ months of said second year. If the analogies of the law can be relied upon, the question is easy of solution.

1st. In contracts of service for an indefinite length of time, either party of the contract who desires to put an end to it, must give notice of a reasonable character to the opposite party.

2d. The rule of the law in reference to tenancies, express or implied, is that if a tenant holds over after the expiration of his express or implied term, he holds for another year, and from year to year upon the same terms fixed by the original express contract, or that contract which the law would necessarily imply under the circumstances of the case.

But we need not rely entirely upon argument in this case, for though a novel one, it is not without authority in our favor. In 1 Watts & Sergeant's Rep. 265, the court held that faithful service is a condition, precedent to the right of a servant to recover his wages, and if during the term of service, he commit a criminal offence, although not immediately injurious to the person or property of his master, such servant cannot be entitled to recover any part of his wages. Again in Chitty's General Practice, p. 81--2 Lord Tenterden is reported to have said in case of *Brown vs. Croft*, decided in 1828, where it was proved that the plaintiff embezzled some of his master's money, that the amount taken was immaterial and though the arrear of wages might greatly exceed the amount embezzled, the servant was not entitled to any part of his wages.

See also 4 Carrington and P. R. 208.

The court also erred in modifying appellants instruction number four. We insist that the instruction as originally asked was correct. The court erred in adding to it the following point, "If no new contract was made." There was not a particle of evidence as to any new promise or contract, or tending even to prove any such thing, and such modified instruction was therefore directly calculated to mislead the Jury, and to create the impression upon the mind of the Jury, the fact that a or and second contract was actually made.

We also claim that the remainder of instruction number four, as amended by the court and given to the Jury was manifestly erroneous.

In *Burton vs. Collyer* 4 Bingham Rep. 309, the court distinctly held the doctrine that where there is no evidence to the contrary, a general hiring of a clerk will be deemed a yearly hiring.

We think it apparent that there was but one contract of hiring in this case, and that was at \$1,000 a year. Now is it not certain that upon the authority last cited that such a hiring as is claimed here is a *yearly hiring* by implication and that the defendant in error was bound to serve, or prove that he was ready and willing to serve, and was prevented from so doing by one or both of plaintiffs in error, the remainder of the second year, before he was entitled to any wages for the second year. The authorities upon this point are overwhelming.

See *Stark vs. Parker*, 2 Pickering's R. 257.
3d Adol & Ellis, 171.
2d Mass. 147.
3 Tauntons, 52,
12 Johnson 165.
19 " 387.

It cannot be presumed in the absence of all proof to the contrary that there was fault upon the part of the plaintiffs in error, by reason of which defendant in error left their service, the rule of law being inflexible, that when a party fails to perform his portion of a contract, that to excuse himself for the non-performance of it he must show affirmatively that he was prevented from doing so by the party with whom he contracted.

There is no evidence in this case showing or tending to prove any cause or reason to authorize the defendant in error to leave the service of plaintiffs in error at the time he did.

Is it too much to say if the 1st instruction is not law, then a man who hires a thief for one year, is bound at all hazards to himself and family, to keep him in his employment, and can only discharge him at his peril. If the said instruction contain the _____ then the commission of a crime is good cause for the discharge of a servant, and if good cause for discharge, is there any more right of action than though the employee, without cause, refused to fulfill his contract. In other words, good cause for discharge, is the same as a refusal to perform without cause.

GRAY, AVERY & BUSHNELL,
For Pl'fs in Error.

55 No 90

John P. Pierman &
John P. Funch
vs
Edward C. Zimmerman

Bill of Partitions
in error

Filed May 13, 1872

J. Leach
clerk

J. A. B.

Know all Men by these Presents, That we, John P. Poirman
John Poirman and
John B Bush Marshall & M. Breusel

of the County of Cook and State of Illinois,
are held and firmly bound unto Edward Zimmerman
also of the same County and State,

in the penal sum of Fifteen 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 20th day of June A. D. 1861

The Condition of the above Obligation is such, That whereas, the said

Edward Zimmerman
did, on the 20th day of December A. D. 1859 in the Superior
Court, in and for the County of Cook, and State aforesaid, and of the December
Term thereof, A. D. 1859 recover a judgment against the above bounden John P. Poirman
and John Poirman

for the sum of Three hundred and forty four dollars
and forty seven cents, besides costs of suit; ^{to render} from which said judgment of the said
Circuit Court, the said John P. Poirman John Poirman
have said that said Superior Court of the State of Illinois is a Court of error and the Court of error has been made a Superior
have prayed for, and obtained an appeal to the Supreme Court of said State.

Now, Therefore, if the said John P. Poirman John Poirman
shall duly prosecute their said appeal with 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, this _____ day
of _____ A. D. 18 _____
CLERK.

John P. Poirman SEAL
John Poirman SEAL
John B Bush SEAL
W Bushnell SEAL
M. Breusel

Please fill up the blanks in the
foregoing I have not at present time
to print out the dates (erroneously)

53

90

G. D. No. _____

~~CIRCUIT COURT OF COOK COUNTY.~~

H. Peerman. v. Lumb

vs.

Edward. Zimmerman

supd
APPEAL BOND.

Filed this *21st* day of *June*

A. D. 18 *61*

L. Leland

CLERK.

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Superior Court ^{of Chicago} ~~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 Edward Zimmerman

plaintiff, and John Lund and John P. Pfirman

defendants; it is said manifest error hath intervened, to the injury of the aforesaid defendants

as we are informed by their complainants 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 judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the pleas 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 21st day of June in the Year of Our Lord One Thousand Eight Hundred and Sixty-one

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

John P. Hunt et al

No.

Edward Zimmerman

WRIT OF ERROR.

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

L. Leland

Clerk.

J. B. Rice Deputy

FILED

June 29th

A. D. 1867

Clerk.



State of Illinois } Supreme Court
3rd Circuit Division

John Sprind & John P. Herrman }

as

Edmund Zimmerman }

W. Bushnell being
first duly sworn says, that he
has been informed & believes that
said appellants are worth over
and above all indebtedness fifty
thousand dollars, that this affiant
is worth at least twenty thousand
& that ~~Max~~ Bremer is worth at
least five thousand dollars.

W. Bushnell

Subscribed & Sworn

before me this

17th of June 1861

C. G. Miller J.P. @

557
90

Printed at

1870

Zimmerman

Applicant - H

Hon J. S. Cotton
I order myself & Dr Linwood
as Securities, H

Yours &
W. B. Wood

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

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JOHN PFUND, Pl'ffs in Error,
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2d. Can a clerk who is hired for an indefinite period of time, and who continues in the employment of his master one year, and continues about four months on the second year, and who leaves the employment of his principal without notice of his intention so to do, and without the consent of the employer, and without any reasonable excuse for his departure, recover of his employer his *pro rata* wages? The first question is presented by instruction number *one* asked for by the appellant and refused by the court below. The second question arises upon the original and modified instruction number four asked by the appellant and modified and given by the court below.

We insist that a Clerk must perform the duty he undertakes, and act in good faith toward his employers. If he fails to perform his duty according to his express or implied contract between himself and employers, or if he *steals* or *embezzles* his employer's money or goods, he is not entitled to recover his wages, because of his non-performance and criminal conduct. We ask your Honors "what compensation is a thief entitled to, who, by a violation of the confidence which existed between him and his principal, injures, instead of benefits his employers. In this case the defendant in error stole from the pl'ffs in error, at least \$140. How much more is stolen, time alone can reveal. No excuse is shown by the defendant in error for his embezzlement. No, not even the meagre

excuse that his spending money was not paid promptly. 1st. The record shows that he received \$379 80 of spending money during his employment. 2d. No refusal is shown to give him the spending money. 3d. No default on the part of the appellants is shown, at the time the embezzlement took place. 4th. The plaintiff in error was cashier and book-keeper, as well as drummer and salesman. Now, under the circumstances, has an embezzling clerk a right to recover wages of his employers when actual stealings have been discovered, and there may be many embezzlements yet to be brought to light of his employers. If a theiving clerk has a right to recover his wages under the circumstances detailed in this record, then the said instruction asked by the plaintiffs in error numbered one, was properly refused. If on the contrary, honesty is recognized by that branch of jurisprudence which relates to the relation of master and servant, then the instruction ought to have been given, and its refusal prejudiced the rights of the plaintiffs in error. The *court below* in determining this question seems to have acted upon the principal, that in order to prevent a clerk from stealing, there should have been an *express* contract to that effect. We, however, take the broad ground laid down in the scriptures, and address it to the clerk—"Thou Shalt not Steal." Beside this the court will perceive, on examination of the record, that the contract between the employers and the employed was not an express contract of service. On the contrary, all must be taken by implication. 1st. As to the duration of the contract. 2d. As to the nature of the duties to be performed. Again, there was no written contract between the parties, and there is no evidence to show that there was an express oral contract between the parties. The existence of the contract is proved by an admission of the parties in error, as to the price to be paid and a portion of the duties to be performed. But the evidence is silent upon all the other questions involved in the cause, so far as def't in error was concerned.

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1st. In contracts of service for an indefinite length of time, either party of the contract who desires to put an end to it, must give notice of a reasonable character to the opposite party.

2d. The rule of the law in reference to tenancies, express or implied, is that if a tenant holds over after the expiration of his express or implied term, he holds for another year, and from year to year upon the same terms fixed by the original express contract, or that contract which the law would necessarily imply under the circumstances of the case.

But we need not rely entirely upon argument in this case, for though a novel one, it is not without authority in our favor. In 1 Watts & Sergeant's Rep. 265, the court held that faithful service is a condition, precedent to the right of a servant to recover his wages, and if during the term of service, he commit a criminal offence, although not immediately injurious to the person or property of his master, such servant cannot be entitled to recover any part of his wages. Again in Chitty's General Practice, p. 81--2 Lord Tenterden is reported to have said in case of *Brown vs. Croft*, decided in 1828, where it was proved that the plaintiff embezzled some of his master's money, that the amount taken was immaterial and though the arrear of wages might greatly exceed the amount embezzled, the servant was not entitled to any part of his wages.

See also 4 Carrington and P. R. 208.

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We think it apparent that there was but one contract of hiring in this case, and that was at \$1,000 a year. Now is it not certain that upon the authority last cited that such a hiring as is claimed here is a *yearly hiring* by implication and that the defendant in error was bound to serve, or prove that he was ready and willing to serve, and was prevented from so doing by one or both of plaintiffs in error, the remainder of the second year, before he was entitled to any wages for the second year. The authorities upon this point are overwhelming.

See *Stark vs. Parker*, 2 Pickering's R. 257.
 3d Adol & Ellis, 171.
 2d Mass. 147.
 3 Tauntons, 52,
 12 Johnson 165.
 19 " 387.

no 80

John T. Spierman +
John T. Fund

vs
Edward Zimmerman

Brief for Afft in
Error

Filed May 13. 1842

L. L. L. L.

C. R.

G. A. B.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

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GRAY, AVERY & BUSHNELL,
For Pl'ffs in Error.

No 90

John P. Piesman &
John P. Fund

Edward Zimmerman

Brief for Plaintiff
in Error

Filed May 13, 1862

J. L. Linn
clerk

J. A. B

United States of America
State of Illinois Cook County

Present before the Honorable the
Judges of the Superior Court of Chicago within
and for the County of Cook and State of Illinois
at a regular term of said Superior Court of
Chicago begun and holden at the Court House
in the City of Chicago in said County and State
on the first Monday being the fifth day
of December in the year of Our Lord eighteen
hundred and fifty nine and of the Inde-
pendence of the United States of America the
eighty fourth

Present the Honorable John M. Wilson
Chief Justice of Superior Court of Chicago
Wm H. Higgins and Grant Goodrich Judges
Charles Wagon Prosecuting Attorney
John Gray Sheriff of Cook County
Attest. Walter Kimball Clerk

Be it Remembered, that heretofore
to wit on the twenty fourth day of August
Eighteen hundred fifty nine Edward
Zimmermann plaintiff by Charles Kemm
his attorney filed in the office of the clerk
of the Superior Court of Chicago his declaration
of a plea of trespass on the case on premises against
John Hunt and John P. Spinnemann defendants
which said declaration is as follows to
wit,

State of Illinois }
Cook County } ss

Of the September Term
of the Superior Court of
Chicago A.D. 1859.

Edward Zimmermann the plaintiff
in this suit by Charles Klemm his
attorney complains of John Pfund and
John P. Pfirman, partners doing
business under the name, title and firm
of Pfirman & Pfund and the defendants
heir, who were summoned and of
a plea of Trespass on the case on promises,
to wit;

1 That heretofore to wit, on the eighteenth
Day of January in the year one Thousand
eight hundred and fifty eight - at the
County aforesaid by a certain agreement
then and there made by and between
the said plaintiff and the said defend-
ants, it was agreed that the said
defendants should employ the said
plaintiff as salesman in their said
business commencing to wit on the
eighteenth day of January One Thousand
eight Hundred and fifty eight, to wit,
at a salary of One Thousand Dollars per
year with the additional allowance of
one dollar and fifty cents per day to be

paid by the said defendants to the said plaintiff for and during the time of service aforesaid and that for the salary and allowance aforesaid to be paid by the said defendants to the said plaintiff he, the said plaintiff should work and labor for the said defendants in their said business in the capacity aforesaid.

And the said agreement being so made as aforesaid afterwards to wit on the eighteenth day of January A. D. 1858 at the County aforesaid in consideration thereof and that the said plaintiff at the special request of the said defendants had then and there undertaken and faithfully promised the said defendants to perform and fulfill the said agreement in all things on his part and behalf to be performed and fulfilled; they the said defendants undertook and then and there faithfully promised the said plaintiff to perform and fulfill the said agreement in all things on their part and behalf to be performed and fulfilled. And also the said plaintiff has always faithfully worked and labored for

The said defendants as Salesman in their said business from the 18th day of January A. D. 1858. for during and until the first day of May A. D. 1859, that is to say for the space of one year, three months and thirteen days, yet the said Plaintiff in fact says, that the said defendants did not nor would perform the said agreement nor their said promise and undertaking in this behalf, that they wholly neglected and refused and still do neglect and refuse to pay the said Plaintiff his said salary according to the tenor and effect, true, intent and meaning of the said agreement at the rate of one thousand Dollars per year and the allowance aforesaid, or any part thereof, although the time for the payment of the same has long since elapsed, to wit on the day and year aforesaid, at the County aforesaid.

2. And for this also that afterwards to wit on the eighteenth day of January A. D. 1858 aforesaid at the County aforesaid by a certain other agreement then and there made by and between the said Plaintiff and the said defendants should employ the said Plaintiff in

their said business commencing Novit
on the 18th day of January A.D. 1858 and
for his services to pay him the said plain-
tiff at the rate of one thousand dollars per
year with the additional allowance of
of one dollar and fifty cents per day to be
paid by the said defendants to the said
plaintiff for and during the time of
service aforesaid, and that for this said
sum of one thousand dollars per year and
allowance aforesaid during the time of said
service to be paid by the said defendants
be the said plaintiff should work and
labor for the said defendants in their
said business for and during the time
of service aforesaid. And the said
agreements being so made as aforesaid
afterwards, on the 18th day of January in
the year A.D. 1858 at the County aforesaid
in consideration thereof and that the
said plaintiff at the special instance
and request of the said defendants had
then and there undertaken and
faithfully promised the said defendants
to perform and fulfill the said agree-
ment in all things on his part and
behalf to be performed and fulfilled,
they the said defendants anelect to be

and then and there faithfully promised the said Plaintiff to perform and fulfill the said agreement in all things on their part and behalf to be performed and fulfilled. And also the said Plaintiff has always faithfully worked and labored for the said defendants in their said business for and during the time of service aforesaid yet the said Plaintiff in fact says that the said defendants did not nor would perform the said agreement, nor their said promise and undertaking in this behalf, that the said defendants wholly neglected and omitted to do and perform certain matters and things which were requisite and necessary to be done and performed under and by virtue of the said agreement and according to the tenor and effect true intent and meaning thereof, that is to say to pay unto said Plaintiff for his services aforesaid at the rate of one thousand dollars per year with the additional allowance of one dollar and fifty cents per day for and during the time of service aforesaid, also the time for the payment of the same has long since elapsed, to wit on the day and year aforesaid at the County aforesaid.

3. And for this also that afterwards to wit on the first day of May A.D. 1859 aforesaid the said Defendants were indebted to the said

plaintiff in the sum of one thousand dollars for the
work and labor, care and diligence of the said
plaintiff by him before that time done, per-
formed and bestowed in and about the
business of the said defendants and for them and
at their special instance and request, and also
for divers sums of money, to wit the sum of five
thousand dollars divers materials and other nec-
essary things by the said plaintiff laid out, ex-
pended, found, provided, used and applied in
and about that work and at the special instance
and request of the said defendants, and being so
indebted to the said plaintiff, the said defendants
in consideration thereof afterwards to wit on the
same day and year and at the place aforesaid
undertook and then and there faithfully promised
the said plaintiff well and truly to pay unto
him, the said sum of one thousand dollars
when the said defendants should be thereunto
24 requested: and for this also, that afterwards
to wit on the day and year aforesaid at the
County aforesaid in consideration that the
said plaintiff had before that time at the
like special instance and request of the said
defendants done, performed and bestowed
divers other work and labor, care and diligence
in and about the business of the said defendants
and for them and had before that time

found provided, used and applied divers other
sums of money and other necessary things in
and about that business the said defendants
then and there understood and faithfully prom-
ised the said plaintiff that they would
well and truly pay unto him so much
money as the said plaintiff reasonably
deserved to have of the said defendants for
the same when they should be therunto after-
wards requested, and the said plaintiff aver-
eth that he reasonably deserved to have of the said
defendants the further sum of one thousand
dollars to wit at the County aforesaid, wherof
the said defendants afterwards to wit on the
day and year aforesaid at the place aforesaid
5 had notice: And for this also that afterwards
to wit on the day and year aforesaid at the
County aforesaid the said defendants
were indebted to the said plaintiff in the
further sum of one thousand dollars for so
much money before that time lent and
advanced by the said plaintiff to the said
defendants at their special instance and
request, and for other money by the said plain-
tiff before that time paid, said out and ex-
pended for the said defendants at their like
instance and request and for other money
by the said defendants before that time had

and received to and for the use of the said
Plaintiff, and being so indebted the said
defendants in consideration thereof afterwards
to wit on the day and year aforesaid at the
place aforesaid undertook and then and
there faithfully promised the said Plaintiff
to pay unto him the said several sums of
money when the said defendants should
be thereunto afterwards requested: And
6 for this also that afterwards to wit on the
day and year aforesaid at the County aforesaid
to wit on the 1st Day of May A.D. 1859 at Cook
County the said defendants accounted to-
gether 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 arrear and unpaid and upon such
accounting the said defendants then and
there found to be in arrear and indebted to
the said Plaintiff in the further sum of
one thousand dollars and being so found
in arrear and indebted to the said Plaintiff the
said defendants in consideration thereof, afterwar
to wit on the same day and year and at the place
aforesaid undertook and then and there faithfully
promised the said Plaintiff well and truly
to pay unto him the said sum of money last

mentioned, when the said defendants should be thereunto afterwards requested.

Yet the said defendants, not regarding their agreement, promises and undertakings in this behalf (also often requested so to do) did not nor would pay unto the said plaintiff for his said services the said sum of one thousand dollars with the ^{said} additional allowance aforesaid, although the time for the payment of the same has ever since elapsed, and the said defendants (although often requested) have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff, but the same to pay or any part thereof to the said plaintiff the said defendants have hitherto altogether refused and still do refuse to the damage of the said plaintiff of one thousand dollars, and therefore he brings his suit.

Charles E. Kern
Plff's Atty.

Copy of account sued on

Pfirmann & Pfund

Dr.

to Edward Zimmermann.

Wages from the 18th day of January 1858
to the first day of May 1859 at

The rate of \$1000. per year	\$1286.00
Expenses allowed as by agreement	
at the rate of \$1 ⁵⁰ / ₁₀₀ per day	<u>\$ 702.00</u>
	\$1988.00
Received on account	<u>\$ 1280.32</u>
Balance due and unpaid	\$ 707.68

And afterwards to wit on the sixth day of September, Eighteen hundred & fifty nine the said Defendants John Pfund and John P. Pfismann by R. S. Blackwell their attorney filed in the office of the Clerk of said Court their Pleas account of Setoff and affidavits of merits, in words and figures as follows to wit

Edward Zimmerman
 vs
 John Pfund and
 John P. Pfismann

In the Superior Court
 of Chicago of the Term
 of September 4. D. 1859.

And the said John Pfund and John P. Pfismann by R. S. Blackwell their attorney come and defend the wrong and injury when &c and say that they did not undertake or promise in manner and form as the said Edward Zimmerman

both above thereof in the said several courts
of the declaration aforesaid complained
against them and of this they put them-
selves upon the country &c

R. S. Blackwell for D

2. Plea

2 And for a further plea in this behalf the
said John Pfund & John P. Pfirrmann, by leave
of the court here, for the purpose first had
and obtained according to the form of the
statute in such case made and provided
say, actio non, because they say that
the said Edward Gainsmann before
and at the time of the commencement
of this suit to wit, at &c, aforesaid was,
and still is indebted to them the said
John Pfund & John P. Pfirrmann in a large
sum of money to wit the sum of fifteen
hundred dollars lawful money of the
United States for money before that time
had and received by the said plaintiff for the
use of the said defendants which said sum
of money so due and owing from the said
Edward Gainsmann to the said John
Pfund and John P. Pfirrmann as aforesaid
equal the damages sustained by the said
Edward Gainsmann by reason of the
non performance by them the said

defendants of the said several supposed
promises and undertakings in the
declaration mentioned, and out of which
said sum of money, so due and owing
from the said plaintiff to the said defendants
they the said defendants are ready and
willing and thereby offer to set off and allow
to the said plaintiff the full amount of the
said damages according to the form of the
statute in such case made and provided.
And this they the defendants are ready to
verify; wherefore they pray judgment
the said plaintiff ought to have or maintain
his aforesaid action thereof against them &
R. S. Blackwell pr d

Copy of account which upon in the said
second plea.

Edward Zimmermann

To John Pfund and
John P. Pfimann Dr.

Aug 9 1859 To money had and received to the use
of the said Pfund & Pfimann \$1500.00

R. S. Blackwell

Atty for defts.

State of Illinois }
Cook County } ²⁵

In the Superior Court
of Chicago. Of the Term
of Sept. A.D. 1859

Edward Gimmusman
vs
John Pfand &
John P. Pfirman }

John P. Pfirman (one of
the defendants in the above entitled cause)
being first duly sworn upon his oath deposes
and says, that he is one of the defendants in
the above entitled cause, and that he is advised
by counsel and verily believes that he and his
said co-defendant have a good defence upon
the merits to said suit and further deponent
saith not.

Sworn and Subscribed to
before me this 6th day
of September A.D. 1859.
Walter Kimball
Clerk.

John P. Pfirman.

And afterwards to wit on the thirtieth day of
October Eighteen hundred & fifty nine the
said plaintiff filed his Replication to said
defendants pleas, which said Replication
is as follows to wit,

Superior Court of Chicago
of the September Term. A.D. 1859.

Edward Zimmermann
vs
John Pfund &
John P. Pfirman

And the said plaintiff as to the
plea of the said defendants by them first
above pleaded and whereof they have put
themselves upon the country doth the like.

Charles Helmer
Pfund's Atty.

2. And as to the said plea of the said defend-
ants by them secondly and lastly above pleaded
the said plaintiff saith that he by reason
of anything by the said defendants in that
plea above alledged ought not to be barred.

from having and maintaining his said
action thereof against them. Because he
saith that he was not nor is indebted to the
said defendants in manner and form as the
said defendants have in their said second
and last plea above alleged, and that the
said plaintiff also prays may be inquired
of by the country &c

Charles H. Lemon
Plffs Atty.

And the said defendants
do likewise.

R. S. Blackwell for d.

And afterwards to wit on the twenty second
day of October Eighteen Hundred and Fifty nine
the said defendants by their said attorney
filed in said court their demurrer to said
plaintiff's Replication, which said demurrer
is as follows to wit,

Edward Zimmermann
vs
John Pfund &
John P. Pfirrmann

On the Superior Court
of Chicago. Of the October
Term A. D. 1859.

And the said defendants
as to the replication of the said plaintiff
to the second plea of the said defendants
above pleaded whereof he the said plaintiff
prays that it may ~~be~~ inquired of by the
Country, the said defendants doth the
like.

R. S. Blackwell Jd

And afterwards to wit on the Nineteenth
day of December Eighteen Hundred Fifty nine
said day being one of the days of the December
term of said Court in the year aforesaid the
following proceedings were had in said
Cause and entered of Record to wit,

Edward Zimmermann
vs
John Pfund and John P. Pfirrmann

Appearance

This day comes the said
plaintiff by Charles Nelson & Shibley his attorney

and said defendants by Blackwell Dennis
their attorneys also came, and issue being
joined herein it is Ordered that a jury come
whenever you come a jury of good well lawful
men to wit R. D. Bullis Geo French, Edward
Milliston John L Smith George H Cole Lawrence
Loneragan C. W. Osier W. C. Van Brunt, Anthony
Bieber W. S. Patterson George Smith and W
J Woodson, who being duly elected tried and
sworn to try the issue joined aforesaid, after
hearing the testimony, and the hour of
adjournment having arrived, upon agree-
ment of parties it is Ordered that the jury
separate and meet the Court tomorrow
morning,

And afterwards to wit on the
twentieth day of December in the year
last aforesaid said day being a part of the
December term of said Court the following
further proceedings were had in said
cause and extent of record to wit

Edward Zimmerman

John Hunt & John P. Firman

apl.

And now again come
the parties to this cause by their respective

and said defendants by Blackwell Dennis
their attorneys also came, and issue being
joined herein it is Ordered that a jury come
whenever you come a jury of good well lawful
men to wit R. D. Bullis Geo French, Edward
Milliston John L Smith George H Cole Lawrence
Loneragan C. W. Osier W. C. Van Brunt, Anthony
Bieber W. S. Patterson George Smith and W
J Woodson, who being duly elected tried and
sworn to try the issue joined aforesaid, after
hearing the testimony, and the hour of
adjournment having arrived, upon agree-
ment of parties it is Ordered that the jury
separate and meet the Court tomorrow
morning,

And afterwards to wit on the
twentieth day of December in the year
last aforesaid said day being a part of the
December term of said Court the following
further proceedings were had in said
cause and entered of record to wit

Edward Zimmerman

John Hunt & John P. Firman

apl.

And now again come
the parties to this cause by their respective

attorneys as aforesaid, and the jury empan-
nelled herein for the trial of this cause on yesterday
also come, and after hearing arguments of
counsel and instructions of the Court retire
to consider of their verdict, and the hour of
adjournment having arrived, upon agree-
ment of the parties it is ordered that when the
jury shall have agreed upon a verdict they
shall reduce the same to writing sign and seal
the same and afterwards separate and meet
the Court tomorrow morning,

And afterwards to wit on the twentieth
first day of December as yet of the said
December term of said Court, the following
proceedings were had in said cause and
entered of Record to wit

Edward Zimmerman
vs
John Howard & John P. Firman Appendants

And now again
come the parties to this cause by their respective
attorneys as aforesaid and the jury empannelled
in this cause also come and submit their
verdict, and say on the jury find the
issues for said plaintiff and assess his
damages herein to the sum of three hundred

and forty four dollars and forty seven cents,
And whereupon said defendants submit
their motion herein for a new trial in
this cause,

And afterwards to wit on the twentieth
fourth day of December Eighteen hundred
and fifty nine, said day being as yet of the second
term of said Court the following further
proceedings were had in said cause and
entire of record to wit

Edward Zimmerman

John Spauld & John P. Hinman

Attorneys

And now again come the
parties to this cause by their respective attorneys
aforesaid, and the motion heretofore submitted
herin for a new trial by said defendants
being argued by counsel, and the Court being
fully advised in the premises overrules
defendants said motion for a new trial,
whereupon said plaintiff ought now to have
judgment entered on the verdict of the
jury rendered herein,

Therefore it is awarded said plaintiff
to have and receive of said defendants his
damages of Three hundred and forty four

Dollars and forty seven Cents in favor
aforesaid by the Jury here found and
awarded, and also his costs and charges in
this behalf expended and have execution
therefor.

And thereupon said defendants
pray an appeal herein to the Supreme Court
which is allowed to them upon filing bonds
in six hundred Dollars to be approved by
a Judge of this Court, said bond and Bill
of Exceptions to be filed in twenty days,

And afterwards to wit on the thirteenth
day of January Eighteen hundred and Sixty
the said defendants filed in the office
of the Clerk of said Court, their appeal
bond in said case, which said bond
is in words and figures as follows to wit,

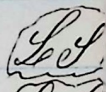
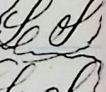
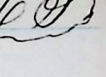
Know all men by these presents, That we
John P. Pfimann, John Pfund and John B.
Bausch of the City of Chicago in the County of
Cook and State of Illinois are held and
firmly bound unto Edward Zimmerman
in the sum of six hundred dollars lawful
money of the United States to be paid to
the said Edward Zimmerman his executors
administrators or assigns, for which payment
to be well & truly to be made we bind our-
selves, our heirs, executors and administrators
jointly and severally firmly by these presents.

Sealed with our seals. Dated
the _____ day of January at Chicago in
the year of our Lord one thousand eight
hundred and sixty.

The condition of the above
obligation is such that whereas the said
obligee did on the twenty fourth day of
December ¹⁸⁵⁹ A.D. by the consideration and
judgment of the "Superior Court of
Chicago" Illinois, recover in judgment against
the said obligors Pfimann and Pfund
in the sum of three hundred and forty-
four dollars and forty seven cents in
a certain action there pending in said
Court, wherein the said Edward Gim-

merman was plaintiff, and the said
Pfimmann and Pfund were defendants.
And whereas the said Pfimmann and
Pfund have prayed for and obtained an
appeal from the said judgment of the
said Court to the Supreme Court of the
State of Illinois held in the third grand
Grand Division. Now if the said Pfi-
mann and Pfund shall present this
said appeal with effect and without
delay and shall moreover pay the said judg-
ment, interest, damages, and costs in
case the said judgment shall be affirmed
by the said Supreme Court, then and
in that event this obligation shall be
void else to remain in full force
and effect.

Signed and sealed
in presence of
S. W. Downing.

John P. Pfimmann 
John Pfund 
John B. Baych 

Approved Jan'y 13th 1860
Grant Goodrich.
Judge &c.

And afterwards to wit on the thirteenth day of January A D Eighteen hundred and sixty, said day being one of the days of the January Term of said Court in the year aforesaid the following proceedings were had in said case and extent of Record to wit:

Edward Zimmerman

John Reed & John P. Penman Applicant

On motion of Defendants this day made it is ordered that the time to file bond & file of exceptions herein be extended five days from this day.

And afterwards to wit on the eighteenth day of January in the year aforesaid at the of the January term of said Court the following further proceedings were had in said case and extent of Record to wit:

Edward Zimmerman

John Reed & John P. Penman Applicant

On motion of Defendants the time to file their bill of exceptions herein

is hereby further extended five days from
this day,

And afterwards to wit on the twenty third
day of January in the Year aforesaid
said day being a part of the January term
of said Court the following further proceedings
were had in said case & contents of record
to wit,

Edward Zimmerman

vs
John P. Hunt & John P. Plummer

Apr
This day again came the parties
to this cause, and upon agreement made
now here in open Court, leave for Defendants
to file bill of exceptions herein is extended
until Thursday next twenty sixth instant,

And afterwards to wit on the twenty
sixth day of January Eighteen hundred
& thirty, the said Defendants filed in the
office of the Clerk of said Court their bill
of exceptions in said cause, which said
bill of exceptions is in words & figures as
follows to wit,

Edward Zimmerman }
as }
John Pfund and }
John P. Pfirrmann } Assumpsit for work and
Labor done.
In the Superior Court of Chicago
of the term of December A.D.
1859.

Be it remembered that on the trial of this cause the plaintiff in order to maintain the issue on his part introduced as witnesses in his behalf John Ambbs, Charles Muecke A. Fiese and P. Fiescher who gave evidence in said cause proved the following facts, that is to say:

1. That the said plaintiff was in the employment of the said defendants as book keeper, cashier and salesman from the 18th day of January 1858 until the 3^d day of May A.D. 1859.

2. That in the month of June A.D. 1859 in a conversation with John Pfund one of the said defendants in front of their store in Chicago respecting the employment and compensation of the said plaintiff to said Pfund then and there stated and admitted to the said Fiese that they had employed the said plaintiff at a salary at the rate of one thousand dollars per

year with the additional allowance of one dollar and a half per day for spending money, that he was satisfied with the plaintiff's services, that ^{he could find} the only fault of the plaintiff was that he had not looked some of the goods sold, yet there would have been no difficulty about that but for his partner and that said Zimmerman left their employment of his own accord and without their knowledge.

3. John Amber one of the said witnesses further gave in evidence that he knew the plaintiff, knew his capacity, knew what his services were worth, that they were worth fifteen hundred dollars a year including spending money.

4. R. Fischer one of the said witnesses further gave in evidence that John P. Pfirman one of the said defendants stated and admitted sometime in June A.D. 1859 that they allowed the said plaintiff besides his salary the sum of one dollar and a half per day for spending money.

Cross Examination the first above named witness stated that it was a

custom amongst liquor dealers to allow their drummers or salesmen money per diem to treat customers with, and that ^{the} said defendants were wholesale liquor dealers in the City of Chicago Illinois, and that the said plaintiff was faithful and competent for the purpose of his said employment except that he sometimes drank too much.

The plaintiff having thus proven their cause of action, rested, and this was all of the evidence offered by ^{the} said plaintiff.

And there upon the said defendants to maintain the issue on their part proved by Charles Muecke, Frederick Metzger, Gustavus Meyer, Adam Bauerle, Albert Melmes, Lewis Coss, Peter Pischer, Hortenger Ferdinand and Earnsh Muller and Albert Shatzberg that they had paid to the said plaintiff during the time he was in the employ of the said defendants as aforesaid for liquors purchased of the said defendants divers sums of money

amounting in all to two hundred and sixty dollars (\$260.00)

The defendants then proved by Alphens Wiser the present book-keeper of said defendants that some of the said payments were not upon the books of the said defendants in the handwriting of the said plaintiff or otherwise.

The said defendants also proved the hand-writing of the said plaintiff in the books of the said defendants and said books were produced in evidence before the jury, and shown them and the following is the amount of charges or payments made to the said plaintiff by the said witnesses ~~witnesses~~ who were customers of the said defendants and entered upon the books of the said defendants in the hand writing of the said plaintiff amounting to the sum of one hundred and twenty dollars and that there was no account given for the remaining one hundred and forty dollars by said Zimmerman either to the said Pfirman & Pfund or upon their books.

And the said defendants for the further maintenance of the issue on their part further proved by the said

Wise that the said plaintiff had charged himself upon the books of the said company in his own hand writing with the following items of expense money which he had drawn from said firm during his said employment, which said items are in the words and figures following, to wit:

1855 Jan'y 20	Spending money	\$ 5 ⁰⁰ ..
" February 1-28.	do.	" 16 ⁰⁰ ..
" March 1-31.	do.	" 24 ⁰⁰ ..
" April 1-30.	do.	" 32 ⁰⁰ ..
" May 1-31.	do.	" 25 ¹⁵ ..
" June 1-30.	do.	" 34 ⁷⁵ ..
" July 1-31	do.	" 21 ⁰⁰ ..
" Aug't 1-31	do.	" 37 ⁰⁰ ..
" Sept'r 1-31	do.	" 38 ⁰⁰ ..
" Oct'r 1-31	do.	" 31 ⁵⁰ ..
" Nov'r 1-30	do.	" 41 ²⁵ ..
" Dec 1-31	do.	" 33 ²⁵ ..
1859 Jan'y 1-31	do.	" 42 ⁰⁰ ..
		<hr/>
		\$ 379 ⁵⁰ ..

And the said defendants for the further maintenance of the issue aforesaid proved from said books the following general charges made by the said plaintiff against him-

self during his employment aforesaid
upon books tenit:

1858	January	20	To Cash	\$ 35.00
"	February	6	" do.	" 5.00
"	"	12	" do.	" 2.50
"	"	13	" do.	" 10.00
"	"	20	" Merchandise	" 1.00
"	"	19	" Cash	" 10.00
"	"	22	" do.	" 5.00
"	"	27	" do.	" 20.00
"	March	5	" do.	" 5.00
"	"	6	" do.	" 15.00
"	"	13	" do.	" 15.00
"	"	20	" do.	" 15.00
"	"	26	" do.	" 3.00
"	"	27	" do.	" 12.00
"	"	31	" do.	" 6.00
"	April	5	" do.	" 8.90
"	"	8	" do.	" 2.00
"	"	10	" do.	" 5.00
"	"	14	" do.	" 14.00
"	"	17	" do.	" 13.00
"	"	2	" do.	" 1.50
"	March	19	" Merchandise	" 1.55
			Amount over	\$ 215.75

		Amount first Page	\$
			205.45
53	March 27	To Merchandise	2.00
"	Apr 9, 14	" do	1.37
"	" "	" Cash	12.25
"	" 1	" do	10.00
"	" 24	" do	15.00
"	May 1	" do	16.00
"	" "	" Merchandise	5.50
"	" 8	" Cash	18.00
"	" 14	" Merchandise	1.15
"	" 15	" Cash	15.00
"	" 18	" Merchandise	4.50
"	" 22	" Cash	20.00
"	" 29	" do	10.00
"	June 5	" do	8.00
"	" 8	" do	3.00
"	" 12	" do	11.00
"	" 11	" Merchandise	2.00
"	" 19	" Cash	10.62
"	" 20	" Merchandise	57
"	" 23	" do	1.50
"	" "	" Cash	1.50
		Amount over	\$ 375.34

Amount over from see Page. \$ 279.94

1858	June 26	To	Cash	"	20.00
"	July 8	"	Merchandise	"	2.63
"	" 17	"	do	"	1.50
"	" 24	"	do	"	2.50
"	" 27-30	"	do	"	3.62
"	" 12	"	Cash	"	2.00
"	" 13	"	do	"	10.00
"	" 18	"	do	"	10.00
"	" 20	"	do	"	3.00
"	" 24	"	do	"	10.00
"	" 31	"	do	"	10.00
"	Aug 6	"	do	"	3.00
"	" 7	"	do	"	10.00
"	" 6	"	Merchandise	"	1.37
"	" 14	"	Cash	"	20.00
"	" "	"	Merchandise	"	.37
"	" 20	"	Cash	"	5.00
"	" 21	"	do	"	6.00
"	" 19	"	Merchandise	"	1.25
"	" 1	"	Cash	"	10.00
"	" 27	"	do	"	10.00
"	" 24	"	do	"	10.00
"	" 11	"	do	"	10.00
"	" 15	"	do	"	1.25

Amount over \$ 536.83

			Amount rec.	
58	Sept. 2-22	Go, Merchandise		\$ 536.53
"	16	" Cash		2.57
"	17	" do.		2.00
"	18	" do.		5.00
"	25	" do.		10.00
"	Oct. 2	" do.		10.00
"	" 9	" do.		10.00
"	" 15	" do.		11.00
"	" 16	" do.		5.00
"	" 16	" do.		11.00
"	" 25	" Merchandise		1.00
"	" 2	" do		- 75
"	" 23	" Cash		10.00
"	" 24	" do		8.00
"	" 28	" do		5.00
"	Nov 6	" do		20.00
"	" 13	" do		10.00
"	" "	" Merchandise		1.50
"	" 20	" Cash		12.00
"	" 26	" do		16.00
"	Dec. 2	" do		2.00
"	" 3	" do		3.00
"	" 4	" do		17.00
"	" 11	" do		11.00
"	" 18	" do		10.00
			Amount rec.	\$ 722.65

		Amount Forward	\$ 722.65
1858	Dec 24	To, Cash & Merch	" 20.00
"	" "	do	" 12.00
"	" 31	do	" 1.00
"	" 31	do	" 10.00
"	" "	Merchandise	" 2.50
"	" "	Cash from Trucking out Aug 27 th	" 8.50
"	" "	do " " " July 24	" 4.50
1859	Jan'y 3-29	Cash	" 39.00
"	" 5	do	" 4.00
"	" 27	Merchandise	" 1.50
"	" 31	do	" 1.75
"	Febr. 8	do	" 5.00
"	" 3-28	Cash	" 69.00
"	March 17	Merchandise	" 4.00
"	" 22	do	" 2.50
"	" "	Cash	" 3.00
"	" 9	do	" 17.00
"	" 11	do	" 2.50
"	" 12	do	" 4.50
"	" 18	do	" 0.00
"	" 21	do	" 6.00
"	" 24	do	" 1.50
"	" 27-30	do	" 4.00
"	" 31	do	" 5.00
"	" "	do	" 12.00
Amount over			\$ 966.90

		Amount Forward	\$ 966.90
59 April 2	To	Merchandise.	1.60
" " 15	"	Groceries Mathi.	5.34
" " 11	"	Merchandise	1.80
" " 28	"	do	2.28
" " 26	"	Cash	6.00
" " "	"	do sub 1 st	5.00
" " "	"	do " 2 nd	6.00
" " 5-11	"	do	13.50
" " 13	"	do	2.00
" " 14	"	do	5.00
" " 22	"	do	12.00
" " 25	"	do	5.00
" " 27-30	"	do	1.50
" " 30	"	do	6.00
			\$ 1039.92

And thereupon the said defendants rested.
The foregoing is all of the evidence in this cause.

And thereupon the said defendants
asked the Court to instruct the jury upon
said as follows Court:

1 If the jury believe from the evidence
that the plaintiff Zimmerman embezzled or
appropriated during the period in which
he was employed by the defendants Pfimann
& Pfund moneys belonging to them he is not
entitled to any wages whatever.

Given

2. If the jury believe from the evidence that the plaintiff during his employment embezzled or appropriated more money belonging to the defendants, than the defendants agreed to pay him they will find a verdict for the defendants.

Given

3. That if the jury believe from the evidence that the defendants have paid the plaintiff and that the plaintiff embezzled or appropriated of their moneys during the course of his employment more money than his salary amounted to according to the contract price, they will find for the defendants.

4. That if the jury believe from the evidence that the plaintiff agreed to serve the defendants by the year and that he left prior to the expiration of the second year without notice to his employers without a discharge from them and without their consent then and in that event the plaintiff cannot recover for more than the first years salary.

Which said instruction numbered one the court refused to give, to which refusal the said defendants counsel

then and there accepted. And which said instruction numbered four was not given as asked but modified so as to read as follows to wit:

That if the jury believe from the evidence that the plaintiff agreed to serve the defendants by the year and that he left prior to the expiration of the second year without reasonable notice to his employers without a discharge from them and without their consent, then and in that event the plaintiff cannot recover for more than the first year's salary, if no new contract was made. But if the jury shall believe from the evidence that the contract was, that plaintiff was to serve at the rate of \$1000 per year then he will be entitled to recover for all the time he served at such rate as you from the evidence believe he is entitled to recover.

To which opinion of the court in so modifying said instructions numbered

year & modified

found the said defendants by their said
counsel there and there excepted.

The jury thereupon rendered a
verdict for the said plaintiff and assessed
the damages at the said sum of three
hundred and forty four dollars and forty
seven cents; and thereupon the said defendants
moved for a new trial herein for the
reasons following, to wit:

Zimmerman } In the Superior Court
vs } of Chicago
Quid et al } December Term 1859.

And now come the defendants
by Crinis & Blackwell their Attorneys and
move the Court for a new trial herein
for the reasons following that is to say:

1. The said verdict is against the evidence.
2. Said verdict is contrary to the law.
3. The said Court erred in refusing
instructions to the defendants which
were legal and proper.
4. The Court erred in modifying
the instructions asked by the said
defendants

Crinis & Blackwell
Defts Attys.

Dec 21. 1859

But the Court overruled said motion
to which ruling of the Court the said
defendants then and there excepted
whereupon the judgment aforesaid was
entered up by the Court aforesaid upon
the judgment aforesaid. And inasmuch
as the matters of exceptions aforesaid do not
appear of record or upon the files of said
cause the said defendants by their counsel
aforesaid pray that this their bill of ex-
ceptions may be signed and sealed by
this Court here and made a part of
the record herein which is done accordingly.

Grant Goodrich }
One of the associate
Judges of the Superior
Court of the City of
Chicago Illinois }
Chicago January 13th 1860.

State of Illinois
County of Cook

Walter Kimball

Clerk of the Superior Court of Chicago within
and for the County and State aforesaid
do hereby Certify that the foregoing
is a full true and correct transcript of
all the pleadings, Appeal Bond bill of
exceptions, and orders entered of record
as the same appear on file in my
office in the case of Edward Zimmerman
Plaintiff and John Ferns & John
Pfirman Defendants.

In Testimony whereof I hereunto
set my hand and the Seal of said
Court at Chicago in said County
this 23^d day of March A.D. 1860
Walter Kimball
Clerk

Let supersedeas issue in this case
Bond \$7000 Washington Bushnell and
Dr Max Krumm Jurors

J. H. Eaton

See note on affidavit.

ca

John Grand and
John P. Hornum
vs
Edward Zimmerman

In the Supreme Court
of the State of Illinois
Third Grand Division
Of the term of
April 20 1860.

Appeal from the Superior
Court of ~~the~~ Chicago.

And on this day comes the said
appellants by A. M. Mackwell, their
attorney and say that in the
record of the proceedings aforesaid
and in the recitation of the
judgment aforesaid, Manifest
error hath intervened to their
prejudice, in this to wit, + that

1. That it appears by the said
record, that the said Superior
Court erred in refusing to give
the said appellants instruction
numbered one.

2. That it appears by the said
record that the said Superior Court
erred in refusing the said
appellants instruction numbered

from and in modify the
same.

3. That it appears by the said
record that the said Superior
Court erred in overruling
the motion of the said appellants
for a new trial herein, and

4. It appears by the record
aforesaid that the said
Superior Court erred in
rendering a judgment for
the said appellee when
by the law of the land the
said judgment ought to
have been rendered for the
said appellants. And this
they are ready to verify &c

Wherefore and for other reasons
appearing upon the face of the
record aforesaid &c the said
appellants pray that the said
judgment may be reversed,
set aside, annulled and for
nothing esteemed and that
the said appellants may be
restored to all things they have

lost by occasion thereof &c

W M Maxwell
attorney for
applicants

In nullo est erratum

Seates M Allister & Jewett
for defendants

Thos J. J. -
Parks
W. H. H. H. H.
C. H. H.

40890
G. H. H.

By W. H. H. H.

W. H. H. H.

Record of Court

Filed May 21. 1860
L. H. H. H.
C. H. H.

Refiled June 26 1860
L. H. H. H.
C. H. H.