

No. 14444

Supreme Court of Illinois

Briggs

vs.

Adams

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 198

Briggs

vs
Adams

14444

1863

~~By~~ Court:
Mr. Chief Justice Caton delivered the opinion of the
~~the court.~~

~~In~~ In ~~an~~ ~~action~~ actions
not sounding in tort, when two or more
are sued, judgment must be rendered against
all who are served, or, if that cannot be, then
against none. There are some exceptions
to this rule where the defence is personal
as infamey or bankruptcy, which are the
most familiar cases. This principle ^{also} applies
as well to actions commenced before justices
of the ~~peace~~ ^{peace} as in courts of Record. When
one of the defendants has been dismissed from
the cause it is not proper to proceed
and render judgment against the others,
either in the justice's, or the circuit
court.

It is unnecessary to consider the other
errors assigned
The judgment is reversed
Judgment reversed.

1148-30-1
Briggs
2

Adams

Opinion
- Eaton

OK

Recorded Book 12
p 80,
Compton

STATE OF ILLINOIS, ss. } IN THE SUPREME COURT, THIRD GRAND DI-
VISION. APRIL TERM, A. D. 18 83.

SILAS BRIGGS,
Impleaded etc, Appellnat,
vs.
GEORGE ADAMS,
Appellee. } *Appeal from Cook.*

RECORD,

ABSTRACT OF THE RECORD.

Page

- 1 Transcript from Luchtemeyer, J. P. Change of venue to Rexford, J. P.
- 2 Transcript from Rexford, J. P. Joel Briggs, one of the Defendants,
"dismissed from the prosecution," and judgment for Defendant, thirty-five
3 dollars, (\$38.)

AFFIDAVIT FILED BY JOEL BRIGGS.

GEO. ADAMS,
vs.
SILAS BRIGGS, J. BRIGGS, } ss. Joel Briggs being duly sworn
deposes and says, that he is one of the Defendants in the above entitled suit,
as such Defendant, he is not liable in said cause of action, as he was not the
owner, or had any interest in the property exchanged with the said Plaintiff,
to wit: a gray mare, at the time of the said exchange.

Sworn and subscribed before me
this 8th day of October, 1861.
H. S. REXFORD, J. P. }

JOEL BRIGGS:

- 4 Affidavit of Merits. Appeal Bond.
- 6 Circuit Court Summons.
- 7 Order dismissing appeal.
- 8 Entry of appearance of attorney for Plaintiff. Motion to reinstate cause.
- 9 Order of dismissal set aside, and judgment vacated.
- 10 Return to Circuit Court Summons.
- 11 Motion by defendant Silas, to dismiss suit for want of jurisdiction over
subject matter of suit.
Motion by defendant Silas, to dismiss suit, because defendant, Joel, was
improperly discharged before trial of the cause before the justice.
- 12 Order overruling first motion to dismiss; exception by Silas.
- 13 Trial by jury. Verdict for plaintiff of \$50.
- 16 Motion for new trial and reasons—verdict contrary to law, evidence and
instructions.
- 17 Motion argued, submitted and overruled. Exception allowed defendant

Page.

Silas, and twenty days given to file Bill of Exceptions. Judgment on the verdict against defendant impleaded etc. The final judgment entry is in these words:

George Adams *v.* Silas Briggs, impleaded with Joel Briggs. After reciting trial.

"Therefore, it is considered by the Court that said plaintiff do have and recover of the said defendant, impleaded as aforesaid, his damages of Fifty Dollars, in form aforesaid, by the jury aforesaid assessed, together with his costs and charges by him, about his suit in this behalf expended, and have execution therefor."

18 Appeal prayed by defendant to Supreme Court, which is granted upon condition of filing Bond, within twenty days, in \$250, with A. H. Dolton as surties.

Appeal Bond to Supreme Court.

EVIDENCE.

20 21 RODNEY N. DAY. "Know all the parties, know Joel Briggs. I was present at and heard a trade of horses between plaintiff and defendant. *They were talking about the trade when I went up.* Adams was afraid of the mare she was so poor. Asked if she was sound and well. Silas said she was sound and all right so far as he knew, that all that was the matter with her, she had been suckling a colt all summer, that the colt had just before been taken off, and she was put right on to a threshing machine, and worked down very poor. They talked about a threshing bill which Mr. Adams owed the Briggs. They traded, Adams to pay \$5.00 to boot. Horses were exchanged. One of the Briggs was in the wagon, I think Silas. When they talked about the mare they used the words 'we,' 'our,' and 'us' I supposed from the way they talked that the Briggs owned the mare, and that plaintiff traded with both of them. They talked about the threshing bill as 'our bill,' and talked about the mare the same way. Both seemed to act and take an interest in the trade. There was nothing said while I was there, that but one of the Briggs owned the mare. It was last of August or first of September. The mare was very poor. I observed nothing else wrong about her; I looked at her closely. They said they wanted to trade because the mare was too poor to work on the thrashing machine. About fifteen minutes after the trade was made, I hitched the mare up with another horse to drag my garden. It was light dragging. I drove her round the garden once or so. She seemed to be willing and free enough to go if she could, but she did not seem able to pull, and could not draw. Took her out and put her in the barn. Did not think she was fit to work, told Adams so. After that, she was kept in the barn and out in the pasture. Was not worked. Died three or four weeks after. Had she been well and sound would have been worth \$75 or \$80.

22 23 *They were talking about trading when I got where they were. Presume there was conversation which I did not hear.* I had known the mare one or two weeks, perhaps a month. I think it was Silas that said she had sucked the colt Adams was to pay \$5.00 to boot. I advised Adams to make the trade. Told him I thought it a good trade if he could make it by paying \$5.00. The Briggs and Adams were talking about the boot money when I came up. Do not know which Briggs asked the boot. *Think now it was to be \$2.50.* A sure it was something. Saw the mare almost every day after the trade. I stated at the trial before the J. P. that the horse was not expressly warranted. *There was no express warranty.* One of them I think said he would not warrant her. I was attorney for Adams at the trial before the Justice."

24 25 HORACE BRIGGS. "Know Silas and Joel Briggs. They are my sons. Knew the mare in question for two years before this trade. She had been

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kept at my place; she had a colt in 1860. Suckled it that summer. She had no colt in 1861—was worked on the farm in the spring of 1861. Was then turned out to the lot with some colts. She nearly held her own as to flesh. Horse taken off grain and put on grass never hold his own. We took her up in fore part of July. Fed her then as we did other horses. Always feed our horses grain when we work them. Never gave her any medicine. After she began to thrash she lost flesh. Worked side of a large heavy horse and she was very free.

CROSS EXAMINATION.

I sold the mare to Silas Briggs, from two to three weeks before this trade. I know that Silas Briggs and Joel Briggs each owned three horses which they worked on the mashine. This mare was one of the three that Silas owned. She appeared healthy when I sold her. Had no reason to think that she was diseased up to the time of the trade with Adams. After we commenced to work her she rather shrank in flesh. She worked very hard, and being light and free, and taken up suddenly, she lost flesh.

JOHN G. KELLY. "Saw a dead grey mare in Adams' yard or garden along the latter part of last September. Was the first time I ever saw her."

R. M. DAY. "Adams had no other grey mare than the one in question.

- 26 KELLY. "My business is housejoiner. Know something about diseases of horses. Have only a slight, not a professional knowledge. I assisted in the dissection of this mare. The lungs were a l right. Heart seemed enlarged. As far as I can tell, the horse died of enlargement of the heart. Do not know whether the disease is of long or short continuance."

CROSS EXAMINATION.

"When we cut the horse open from half to three-fourths of a pail of fluid came out. Heart was not bursted. *If the disease is of long duration horse shows dumpishness.* Did not open the horse any further."

- 27 MARTIN REXFORD. "Mr. Briggs thrashed for us last summer. Had the mare traded to Mr. Adams. Think Mr. Adams got her from middle of Aug. to first of Sept. Saw her work when thrashing—she worked well. Heard Adams say 'he thought he had made a good trade if he could get her up in order—she was rather poor.' *He was then riding the mare.* This was about a week after the trade. Thought the mare looked well enough. She was poor."
- 28 HENRY WADDELLS. "Heard Adams talking about the mare in question. He said 'he would be all right when he got a coat of flesh on her, he would not like to trade back now.' This was after I heard he had traded—was ast of August.

- JOSEPH HUNT. "Saw the mare in question Saturday before the trade. Went in company with the Briggs part of the way from Chicago to Blue Island. The mare went well enough. Always help Mr. Briggs doctor his horses when they are sick. Never knew of this mare being sick. He always sent for me. Saw the mare work drawing stone three or four weeks before the trade—she worked well. They drew load of corn to Chicago for me about the same time. Should have been likely to have know if she had been sick."

CROSS EXAMINATION.

"Think they had no load unless it was a rack when going from Chicago to Blue Island. The mare worked just as well as the horse she was with

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when they drew the corn for me. Think she was not in quite as good flesh when I saw her the Saturday before the trade as when they drew the stones."

DIRECT EXAMINATION RESUMED.

'The change of condition was no more than I would naturally expect in a horse taken up from grass and put on to grain, with hard work.

30 JOEL BRIGGS. (Objected to by Plaintiff, objection overruled and exception allowed.)

'I was present at the trade of this mare. Conversation between my brother and Adams, commenced in a store at Blue Island. My brother said to Adams, 'you have said so much about trading horses, now make me an offer.' Adams owed the thrashing bill to us both. Silas asked \$5.00 to boot. We drove to Adam's place. The talking was done by Adams and Silas. Mr. Day came with Adams' horse. I hurried them up and said 'lets
31 go on if you ain't going to trade.' *I got into the wagon.* Adams offered to trade even. As we were going to drive off, he offered to split the difference. Silas said he would trade— we had travelled nine miles that day. The trade was made the 21st day of August. *I had no interest in the mare. My brother told Adams that he would not warrant the mare, that he never did warrant a
32 horse.* I told Mr. Adams about a week before that 'if he wanted to trade for the mare he must talk with Silas, that the mare belonged to Silas, not to me.' The mare never manifested any disease.

CROSS EXAMINATION.

'I told Mr. Adams that the mare had had colts, in answer to his question 'whether the mare would breed.' Silas said the mare was sound so far as he knew.

33

PLAINTIFF'S INSTRUCTIONS.

1st. That if Silas Briggs and Joel Briggs traded the mare as joint owners they are estopped from setting up a different title.

34 2nd. That if Silas Briggs and Joel Briggs warranted the mare sound and all right, and the mare was sick and diseased then, from which she died, plaintiff is entitled to recover her value, taking her to be as warranted.

rd. Particular words not necessary to prove warranty. Enough if *defendants*, by words and representations, induced plaintiff to trade for the mare as sound and healthy, and she was at the time diseased, and it is no defense that the warranty was fraudulently made.

4th. If Silas and Joel Briggs made the contract of sale to plaintiff in their own right, and warranted the horse as sound, plaintiff is entitled to recover on that contract against the defendant here defending the suit on the merits, and in such case evidence of the witness Briggs should be disregarded on ground of interest.

35

DEFENDANT'S INSTRUCTIONS.

1st. Plaintiff must show that defendant represented the mare as sound *with an intention to warrant her such*, and induce plaintiff to trade; that he was induced thereby to make the trade—that the mare was so diseased as to

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injure her immediate or future use—that she died afterwards of such disease.

2nd. Bare affirmation not intended as a warranty will not make the vendor liable. Language used as mere expression of opinion or belief is not a warranty unless intended as such.

3rd. Express warranty must be proved by words spoken with intention so to warrant.

4th. Joint liabilities of both Silas and Joel Briggs upon the contract must be proved.

Verdict.

Motion for new trial, vide page of abstract.

ASSIGNMENT OF ERRORS.

1st. Refusal to dismiss for want of jurisdiction of Justice of the Peace of the subject matter of the suit.

2nd. Dismissing the action against one of the two defendants, and proceeding to final judgment against the other.

3rd. Refusal of said Circuit Court to dismiss said cause for irregular discharge of one of the defendants by the Justice of the Peace.

4th. Proceeding to trial and judgment against one of two joint defendants ex contractu.

5th. Verdict against evidence.

6th. Verdict contrary to the instructions of the Court.

7th. Verdict contrary to the law of the land.

8th. Other errors.

CLAFLIN & FAY,
Attorneys for Appellant.

CHARLES C. BONNEY, *of Counsel.*

34 198

Supreme Court at Ottawa

Silas Briggs *implet vs*

George Adams

Abstract

Filed April 29, 1863

L. L. and C. M.

Charles C. Bouney
Clapin & Fay

OFFICE OF THE CLERK OF THE SUPREME COURT

1863 APR 29 11 11 AM

[Faint, mostly illegible text from the reverse side of the page, appearing as bleed-through or ghosting.]

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Third Monday, (being the Sixteenth day) of June in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the said United States the Eighty

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.)

Joseph Rury States Attorney.

Anthony C. Hering Sheriff of Cook County.

Attest, William S. Church Clerk.

Be it remembered, that heretofore, to wit, on the fifteenth day of November in the year of our Lord One Thousand Eight Hundred and Sixty One, there were filed in the Court aforesaid two certain Transcripts, an affidavit, affidavit of merits and an appeal bond, which are respectively in the words and figures following to wit:

Transcript

Geo. Adams

Demand \$ 100⁰⁰

vs.

Cost 95^{cts}

Sib. Briggs & S. Briggs } In Action of Assumpsit.
October 2^d 1861 Summons and Subpoena issued, returnable the 8 instant at 10 o'clock A.M. and given to said plaintiff Oct 2^d 1861. Papers returned and served by reading to the persons R. Fox Constable. Fees 2⁰⁰/₁₀₀ October 8th 1861.

One more subpoena issued on part of plaintiff, one more on part of defendant. Defendant called for change Venue, sworn, granted and sent to the nearest Justice.

Geo. Luchtemeyer, Justice.

State of Illinois }
Cook County } J. J. Geo. Luchtemeyer, a
Justice of the Peace in and for the said County
do hereby certify, that the foregoing is a true copy
of the proceedings in the cause therein entitled
had before me and that herewith enclosed are
all the papers and documents belonging to the
said suit.

Witness my hand this 8 day of October 1861.
Justice fees \$1.95
Constable R Fox

Geo. Luchtemeyer
Justice of the Peace

Fees \$ 3.87 1/2

Transcript

Geo. Adams

vs

Silas & Joel Briggs

Plea in Abumpsit
} J. Change of Venue
} from Esq. Luchtemeyer.

Summons issued Oct the 2^d

1861 returnable the 8th at 10 A.M. Summons
returned, served by R Fox, Const. fees at
Luchtemeyer

1.95

Luchtemeyer's fees

3.87

Oct. 8th 1861 Parties appeared. Defendant
Joel Briggs asked to be dismissed from the
prosecution. Granted.

Witness for Plaintiff

N. Briggs

M H Ticknor and R A Day.

Witness for Defendant:

Henry Tickman, J. Briggs, Wesley Briggs

Joseph Hunt.

Judgment for Defendant for

Thirty five Dollars

\$ 38.00

My costs

\$ 1.62

I hereby certify the above to be a true copy of proceedings as had before me in the above entitled and herewith are annexed all papers pertaining thereto.

Worth Nov. the 10th 1861.

A. S. Rexford (read)

Affidavit

Geo. Adams

or

Silas Briggs

J Briggs

} Jp.

Soel Briggs, being duly sworn, deposes and says, that he is one of the Defendants in the above entitled suit, as such Defendant he is not liable in said cause of action as he was not the owner or had any interest in the property exchanged with the said

plaintiff to wit, a gray mare at the time of the
said exchange.

Sworn and subscribed

before me this 8th day
of Oct 1861.

N. S. Rexford J. P.

Sol Briggs

Affidavit of merits

Geo. Adams

^{vs}
Silas Briggs

Silas Briggs being duly
sworn, deposes and says, that he is the defendant
and Appellant in the above entitled cause and
that he has a good and meritorious defence in
said above entitled cause.

Sworn and subscribed

before me this 19th day
of Oct. 1861

N. S. Rexford J. P.

Silas W. Briggs

Appeal Bond

4 Know all men by these presents, that we Silas
Briggs and Andrew N. Dolton of the County of
Cook in the State of Illinois, are held and
firmly bound unto George Adams in the penal

sum of Eighty 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 19th day of October A D 1861.

The condition of the above obligation is such, that whereas the said George Adams did on the 8th day of October A D 1861 before H. S. Rexford a Justice of the Peace for said County of Cook, recover a judgment against the above bounden Silas Briggs for the sum of Thirty Five dollars and costs amounting to \$42.97 from which judgment the said Silas Briggs has taken appeal to the Circuit Court of the County of Cook aforesaid and State of Illinois Now if the said Silas Briggs shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Approved by me at my
Office this 19 day of October 1861
H. S. Rexford
Justice of the Peace

Silas Briggs (seal)
Andrew H. Dolton (seal)

And thereupon, to wit, on the fourteenth

day of November A D 1861 there was issued out of said Court and under the seal thereof the Peoples writ of summons, directed to the Sheriff of Cook County to execute, in the words and figures following to wit:

State of Illinois }
Cook County } } The People of the
State of Illinois to the Sheriff of said County
Greeting.

We command you, that you summon George Adams, if he shall be found in your County, personally to be and appear before the Circuit Court of Cook County on the first day of the next term thereof, to be holden at the Court House in Chicago in said County on the first Monday of January next, to answer unto Elias Briggs, impleaded with Joel Briggs on an appeal from the judgment of W. F. Rexford Esquire, a justice of the Peace within said County.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

6 Witness William L Church, Clerk of our said Court and the seal thereof at Chicago aforesaid this Fourteenth day of November A D 1861.

(L.S.)

Wm. L Church
Clerk

4

And afterwards to wit, at the November Term
of said Court, to wit: on the twenty fifth day
of November A D One thousand eight hundred
and sixty one, the following among other
proceedings were had in said Court and
entered of record to wit:

George Adams

^{vs.}
Silas Briggs impleaded
with Joel Briggs

} Appeal.

This day comes the
said Plaintiff by his Attorney and the said
Defendant impleaded as aforesaid being now
three times solemnly called in open Court
comes not nor does any person for him, but
herein he fails to prosecute his suit in this
behalf. Wherefore on motion of said Plaintiffs
Counsel it is ordered, that the appeal herein
be and the same hereby is dismissed out of
this Court at Defendants cost for want of
prosecution and that a Proceidendo issue to
the Court below.

Therefore it is considered that said Plaintiff
do have and recover of the said Defendant
his costs and charges by him about his suit
in this behalf expended and have execution
therefor.

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And afterwards to wit, on the 27th day
of November in the year aforesaid A. Garrison
filed a certain appearance in said Court in
the words and figures following to wit:

Cook County Circuit Court

George Adams

^{vs}
Briggs

Enter my appearance for
George Adams the Appellee in this cause
Nov. 26. 1861. A. Garrison. Atty

And afterwards to wit, on the same day and
year last aforesaid A. Garrison filed in said
Court a certain Motion in the words and figures
following to wit:

Cook County Circuit Court

George Adams

^{vs}
Briggs

The Appellee by his Attorney
A. Garrison moves that this cause be reinstated
because the appellee had never been served with
8 process &c.

Nov. 26. 1861.

A. Garrison

5
And afterwards to wit, at the November Term of said Court, to wit; on the second day of December in the year A.D. 1861 the following among other proceedings were had in said Court and entered of record, to wit:

George Adams
vs
Silas Briggs impleaded
with Joel Briggs } Motion &c

On motion of said Defendants Counsel and for cause shown, it is ordered that the order of dismissal and judgment heretofore entered in said cause, to wit: on the 25th day of November last past be and they each are hereby set aside vacated and for naught esteemed.

And afterwards to wit: on the second day of December in the year aforesaid, the Defendant filed in said Court a certain Motion in the words and figures following to wit:

Silas Briggs
Joel Briggs
ads } Cook County Circuit Court
Geo. Adams

The appellant in the above entitled cause by his attorney Andrew H. Dotson moves,

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that this cause be reinstated, because there was no service of process and no appearance on the part of the appellee as is required by this Court and that said case should not have been placed upon this Term Docket.

Dec. 2^d 1861

Andrew Mc Dolton
Def. Atty.

And afterwards to wit, on the fifteenth day of January in the year of our Lord One Thousand Eight Hundred and Sixty Two the said Sheriff returned into said Court the writ of summons heretofore issued endorsed as follows to wit:

The within named Def. George Adams not found in my County — day of January 1862

Fees Return — 10c

A C Nising Sheriff
W Lochbihler Deputy

10 And afterwards to wit: at the April Term of said Court to wit: on the fourteenth day of April in the year last aforesaid the following among other proceedings were had in said Court and entered of record, to wit:

George Adams

vs.
Silas Briggs impleaded
with Joel Briggs

} Appeal

This day comes the said Defendant by Dolton and Claflin his Attorneys and moves the Court to dismiss said suit out of this Court upon the ground, that the Court below had no jurisdiction over the subject matter contained therein.

And afterwards to wit: on the twenty first day of April in the year last aforesaid the said Defendant filed in said Court his certain Motion to dismiss in the words and figures following to wit:

State of Illinois }
Cook County } P.

Circuit Court
Of the April Term
A D 1862.

George Adams

vs.
Silas Briggs impleaded
with Joel Briggs

} Defts Motion to
Dismiss

And now comes the said Defendant above named by Claflin and Day his Attorneys and petitions of the Honorable Court, that in as much as the instrument filed in said cause as a plea in abatement at the trial of

this cause before the Justice of the Peace was sustained, (as more fully appears from the Transcript of said Justice filed in this cause) and the judgment of said Justice should have been "that the suit be quashed" this cause may be dismissed at Plaintiffs cost.

By Claffin & Fay
Defendants Attorneys }

Chicago April 14th 1862.

And afterwards to wit: on the twenty first day of April in the year last aforesaid, being one of the days of the April Term of said Court, the following among other proceedings were had in said Court and entered of record, to wit:

George Adams

^{vs}
Silas Briggs impleaded } Appeal
with Joel Briggs

This cause coming on this day to be heard upon the motion of the Defendant heretofore entered, to dismiss said suit out of this Court upon the ground, that the Court below had no jurisdiction of the subject matter therein and Counsel having been heard as well in support of said motion as in opposition thereto and the Court being now

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fully advised in the premises doth order that
said motion be and the same hereby is over-
ruled, to which ruling of the Court in overruling
said motion the Defendant by his counsel
now here excepts.

And afterwards to wit: at the April Term
of said Court, to wit; on the 12th day of
May A D One thousand eight hundred
and sixty two the following among other
proceedings were had in said Court and
entered of record to wit:

George Adams

vs

Silas Briggs impleaded
with Joel Briggs

} Appeal

This day comes
the said Plaintiff by his Attorney and the said
Defendant by Dolton & Claflin his Attorneys
also come and issue being joined herein it is
ordered that a jury come, whereupon come the
jurors of a jury of good and lawful men to
wit: Patrick O'Hane, James Michie, J. Shadman
J. Cunningham, S. Mander, A. Loyd, A. B. Thompson
Job Campbell, D. Mullens, C. Mheaden, E. Adcock
and William Yvorton, who being duly elected, tried
and sworn, well and truly to try the issue joined

aforesaid and a true verdict render according to law and the evidence and after hearing a part of the evidence, the hour of adjournment having arrived by consent of said parties said jury is allowed to separate to meet the Court at nine o'clock tomorrow Morning.

And afterwards to wit: at the same Term of Court last aforesaid, to wit: on the 13th day of May A D 1862 the following among other proceedings were had in said Court and entered of record, to wit:

George Adams

^{vs}
Silas Briggs impleaded } Appeal
with Joel Briggs

This day again come the said parties by their Attorneys and the jurors of the jury aforesaid also come and having now heard all the evidence offered in said cause and the arguments of Counsel as well on the part of the Plaintiff as of the Defendant and instructions from the Court, retire to consider of their verdict, with the further instruction given by consent of said parties to sign and seal up their verdict, when they shall have agreed upon the same and return it into Court at Nine o'clock tomorrow morning.

And afterwards to wit: at the Term last
aforesaid, to wit: on the 14th day of May
A D 1862 the following among other proceedings
were had in said Court and entered of record
to wit:

George Adams
vs
Silas Briggs impleaded
with Joel Briggs } Appeal

This day again
came the said parties by their Attorneys and
the jury aforesaid having agreed upon and
sealed their verdict, return into Court and
say: "We the Jury find the issues for the
Plaintiff and assess his damages to the
sum of Fifty Dollars" Whereupon the
Defendant by his Counsel moves the Court
for a new trial of said cause.

And afterwards to wit: on the fourteenth
day of May in the year last aforesaid
the said Defendant by his Attorneys filed
in said Court his certain Motion for a new
trial in the words and figures following to wit:

State of Illinois }
County of Cook } Circuit Court
Of the April Term A D 1862.

Titus Briggs implead
advs } Defts Motion for
George Adams. } a new trial.

Now comes the defendant in the above en,
titled action by Claflin & Fay his attorneys
and petitions the Honorable Court, that a
new trial may be granted in the said cause
for the following reasons to wit:

1st The verdict of the jury is against the
law and the evidence.

2^d The verdict of the jury is contrary to
the instructions of the Court.

By Claflin & Fay
Chicago May 14th 1862.

And afterwards to wit: at the June Term
of said Court, to wit: on the twelfth day
of July A D 1862 the following among
other proceedings were had in said Court
and entered of record to wit:

16 George Adams
vs } Appeal
Titus Briggs impleader }
with Joel Briggs } This day

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again come the said parties by their Attorneys and counsel having been heard as well in support of the motion of the Defendant here, tofore entered for a new trial of said cause as in opposition thereto and the Court being now fully advised in the premises doth order that said motion be and the same hereby is overruled to which ruling of the Court in overruling said motion for a new trial the Defendant by his counsel now here excepts and on his motion twenty days are allowed in which to file his Bill of Exceptions in said cause.

Therefore it is considered by the Court, that said Plaintiff do have and recover of the said Defendant impleaded as aforesaid his damages of Fifty dollars in form aforesaid by the jury aforesaid assessed together with his costs and charges by him about his suit in this behalf expended and have execution therefor.

Whereupon the said Defendant by his Counsel excepts and prays an appeal to the Supreme Court of the State of Illinois which is granted by the Court upon condition that the said Defendant shall within twenty days from this date execute and file with the Clerk of this Court his Appeal Bond

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herein in the penal sum of Two Hundred and Fifty Dollars conditioned according to law with A. N. Dotson as surety thereto.

And afterwards to wit: on the thirty first day of July in the year last aforesaid the said Defendant filed in said Court his certain Appeal Bond in the words and figures following to wit:

Know all men by these presents, that we Silas Briggs and Andrew H. Dotson of the County of Cook and State of Illinois are held and firmly bound unto George Adams also of the same County and State in the penal sum of ^{Two} Hundred and Fifty (\$250⁰⁰) Dollars lawful money of the United States for the payment of which, well and truly to be made we bind ourselves our heirs executors and administrators, jointly, severally and firmly by these presents.

Witness our hands and seals this Twenty fifth day of July A D 1862.

18 The condition of the above obligation is such that whereas the said George Adams did on the twelfth day of July A D 1862 in the Circuit Court in and for the County of Cook and State aforesaid and of the June Term thereof A D 1862 recover a judgment against the above bounden

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Silas Briggs for the sum of Fifty Dollars
(\$50 ⁰⁰/₁₀₀) besides costs of suit, from which, said
judgment of the said Circuit Court, the said
Silas Briggs has prayed for and obtained
an appeal to the Supreme Court of said State.
Now therefore, if the said Silas Briggs shall
duly prosecute his said appeal with effect and
moreover pay the amount of the judgment, costs
interest and damages rendered and to be rendered
against him 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

Silas W Briggs. (seal)
Andrew H Dolton (seal)

And afterwards, to wit: on the second day
of August in the year last aforesaid, there was
filed in said Court a certain Bill of
Exceptions in the words and figures following
to wit:

State of Illinois }
Cook County } p. In the Circuit Court
In vacation after the July
Term A D 1862.

George Adams

vs
Silas Briggs impleaded &c

} Defts Bill of Exception
Be it remembered

that on the twelfth day of May A D 1862 this cause on to be tried by the said Circuit Court and a jury therein called to try the same. And thereupon the Plaintiff by his Counsel called Rodney N Day as a witness who being duly sworn testified as follows:

" I live at Blue Island, know the Plaintiff,
" he resides at Blue Island. He is a farmer. I know
" the Defendant, know Joel Briggs. They live near
" Thornton Station, are brothers. They were thrashing
" last summer. Were taking jobs of farmers.
" I was present at and heard a trade of horses between
" Plaintiff and Defendant. The plaintiff traded
" a mare for a horse. It was at Blue Island
" in the morning of the day. I was using Mr. Adams'
" horse to drag my garden. I had him hitched
" up dragging with an other horse, when the plaintiff
" came down to my house for his horse to make the
" trade. I went up where they was. They were talking
" about the trade when I went up. They were
" asking the plaintiff five dollars to boot.
" Mr. Adams was afraid of the mare, she was
" so poor and he wanted to know if she was
" sound and well and why she was so poor.
" One of them, I think Silas, said that the mare
" was sound and all right so far as he knew
" and that all that was the matter with her, she
" had been suckling a colt all summer and

"that the colt had just before been taken off and she
"was put right on to a thrashing machine and
"worked down very poor. There was something
"said about a thrashing bill which Mr. Adams
"owed the Briggs. Mr. Adams thought they
"ought to throw in the thrashing bill, but they
"would not do it. They then traded and I think
"Mr. Adams was to pay \$5.00 to boot. I
"saw the horses ~~and~~ exchanged. One of the
"Briggs was in the wagon. I think it was
"Silas, but do not remember which it was.

"I think the mare was not harnessed. When they
"talked about the mare they used the words
"we" "our" and "us" I supposed from the way they
"talked that the Briggs owned the mare and that
"plaintiff traded with both of them. They talked
"about the thrashing bill, that Adams owed as
"being "our bill" and they talked about the mare
"the same way. They both seemed to act and
"take an interest in the trade. There was nothing
"said while I was there that but one of the Briggs
"owned the mare. It was the last of August or first
"of September, that the trade was made. I think
"they said the mare was eight-years old. She was
"a grey mare. They did not say where they got
"her. She was very poor. I observed nothing wrong
"about her, except her being poor. I looked at
"the mare closely. They (the Briggs) said they wanted

to trade because the mare was too poor to work
on the thrashing machine. I took the mare
after the trade was over to my house. I hitched
her with another horse to a drag, to drag the
garden. It was about fifteen minutes after
the trade was made, that I hitched her up.
It was light dragging. I drove her around
the garden once or so, and tried to drag with
her. She seemed to me to be willing and free
enough to go if she could, but she did not
seem able to pull. She could not draw. She
was so bad, I took her out and put her up in
the barn. I told Mr. Adams, that I did not
think she was fit to work. She was kept
up in the barn and out in the pasture after
that, she was not worked. She did not get
any better. Kept getting worse and she died
three or four weeks after. Mr. Adams lives
close by me. Had the mare been well and
sound she would have been worth \$75⁰⁰ or
\$80⁰⁰.

On the cross examination by Deft's counsel
the witness testified:

They were talking about trading when I
got where they were. Presume there was some
conversation which I did not hear. I had
known the mare from one to two weeks. It

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" might have been a month. I had seen her work
" in the thrashing machine. I think it was Silas
" Briggs that said she had suckled the colt but
" cannot swear positively that it was. The Briggs
" were passing through the place. Do not know
" where they were going. Never heard any conversation
" before between the parties about this trade as I
" recollect Mr. Adams was to pay \$5.00 to boot.
" At this time I advised Adams to make the
" trade. Told him I thought it a good trade
" if he could make it by paying \$5⁰⁰. I rode
" once after the mare after the trade was made -
" never before that I remember. I advised him
" to trade, because I thought this was a younger
" horse and would be better when in flesh.
" The Briggs and Adams were talking, when
" I came up, about the boot money. I do not
" know which Briggs asked the boot. I saw the
" mare almost every day after the trade. She
" was pastured in my Lot. I am not sure,
" whether the boot was to be \$5⁰⁰ or \$2⁵⁰
" I think now, that it was \$2⁵⁰. I am sure
" it was something. When the case was tried
" before the Justice I presume I said that
" Mr. Briggs said the horse was sound.
" I stated then, that the horse was not expressly
" warranted. There was no express warranty.
" One of them I think said, he would not

"warrant her. I was acting as a sort of
"attorney for Mr. Adams at the trial before the
"justice.

The Plaintiff by his counsel then called as a
witness Horace Briggs, who being duly sworn
testified as follows:

"I know Silas Briggs
"and Joel Briggs. They are my sons. I
"knew the mare in question. Knew her for two
"years. She had been kept at my place for
"nearly two years till a short time previous
"to the time of this trade. The mare had a
"colt in 1860, in April I think. She suckled
"it during the summer. She had not colt in
"1861, she was worked on the farm in the
"spring of 1861. We turned her out in the
"lot with some colts that we had. She
"nearly held her own as to flesh after she
"was turned out. A horse taken off of grain
"and put on to grass never holds his own.
"We took her up again the forepart of July.
"We then fed her as we did the other horses.
"We always feed our horses grain, when we work
"them. We never gave her any medicine. After
"the snow commenced to thrash she lost flesh.
"She worked side of a large heavy horse. She
"was very free and worked very hard.

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Crop Examination by Defts. Counsel.

" I sold the mare to Silas Briggs the defendant
" should think I sold her to him from two to
" four weeks before this trade. I sold the mare
" to Silas Briggs, They (Silas and Joel) went
" round thrashing but brought the mare to my
" stable every week. I know that Joel Briggs
" and Silas Briggs each owned three horses
" which they worked on the machine. This mare
" was one of the three, that Silas owned. I never
" heard anything about Joel's owning her. I
" do not think he had the least interest in her.
" She appeared perfectly healthy, when I sold her.
" I saw her often after she was sold. I had no
" reason to think that she was diseased up to the
" time of the trade with Adams. After we commenced
" to work her she rather shrank in flesh. She
" worked very hard and being light and free
" and taken up suddenly she lost flesh."

The Plaintiff by his counsel then called as a
witness John G Kelly who being duly sworn
testified:

" I live at Blue Island. I did not
" know the mare in question. I saw a dead
" grey mare in Adams' yard or garden four or
" five rods from the stable along the latter

"part of last Sept. That was the first time
"I ever saw her"

R. M. Day was here recalled by Plaintiffs
counsel and testified:

"Adams had no other grey mare than the
"one in question.

The witness Kelly then resumed testifying:
"My business is a horse joiner. I know
"something about the diseases of horses. Have
"only a slight, not a professional knowledge.
"I assisted in the dissection of this mare.
"When we cut the mare open, the lungs were
"all right. The heart seemed to be enlarged.
"As far as I can tell the horse died of
"enlargement of the heart. I do not know
"whether the disease is of long or short
"continuance. That is for experimental
"practitioners to answer.

On cross examination by Defts.

Counsel the witness testified.

"When we cut the horse open from one half
"to three fourths of a pail full of fluid came
"out. The heart was not busted. If
"heart disease is of long duration the horse
"shows dumpishness. I did not open the

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"horse any further. The fluid was yellowish, not
"quite as yellow as kerosene oil. A person not
"acquainted with horses could not tell the heart
"disease in a horse".

The Defendant by his counsel then called
as a witness Martin Rexford who being duly
sworn testified as follows:

"Mr. Briggs thrashed for us last summer.

"We had the same mare he traded to Mr. Adams

"Should think it was about the first of last

"August. Think Mr. Adams got the mare
"about the first of Sept. It was sometime
"from the middle of August to the first of Sept.

"I saw her work on the machine when thrashing.

"She worked well. I heard Mr. Adams say
"something about his trade. He said, he

"thought he had made a good trade, if
"he could get her up in order. Said she

"was rather poor. He was then riding the
"mare. Should think this was about a week

"after the trade. He was driving his cow,

"I think, when I saw him with her. Should
"think he rode about 1/2 a mile. I don't

"remember whether he said anything about
"how she travelled. I thought the mare

"looked well enough. She was poor."

On cross examination by Plaintiff's Counsel the witness said:

" I do not know what kind of a
" pasture Adams kept her in "

Here the Court adjourned for the day
May 13th aD 1862 Hearing resumed.

Defendant by Counsel then called as a witness
Henry Maddell, who being duly sworn testified:

" I heard Adams talking with others about
" the mare in question. He said: he would be all
" right, when he got a coat of flesh on her " said
" he wouldn't like to trade back now " This was
" after I heard that he had traded. Cannot say
" how long after. Should think this was the last
" of August "

The Defendants counsel then called as a
witness on his behalf Joseph Hunt who being
sworn testified:

" I saw the mare in question
" the Saturday before the trade. I went in company
" with the Briggs a part of the way home from
" Chicago to Blue Island. The mare went
" well enough. They passed me about a mile
" from the tavern after we left the Town and as
" they went faster than I did, finally left me.
" I have used this mare. Have doctored horses.

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" Have helped Mr. Briggs doctor his horses. Never
" knew of this mare being sick. He always sent
" for me when his horses were sick. I saw the
" mare work three or four weeks before the trade.
" Saw her work drawing stones. She worked well.
" Should have been likely to have known, if the
" mare had been sick. They drew a load of
" corn to Chicago for me about the time they
" were drawing the stones".

On cross examination by Plaintiffs counsel
the witness testified:

" When the Briggses
" passed me going home, it was beyond
" Blue Island. The team I speak of was at
" Blue Island. I think they had no load unless
" it was a pack. I never knew them to have but
" one grey mare or not for several years. The mare
" worked just as well as the other horse she was with,
" when they drew the corn for me. Think she was
" not in quite as good flesh when I saw her
" the Saturday before the trade as when they drew
" the stones.

Direct examination by Plaintiffs Counsel
resumed.

" The change of condition was no more
" than I would naturally expect in a horse taken

"up from grass and put on to grain with hard work"

The Defendant by his counsel then called as a witness Joel Briggs.

Plaintiff by his counsel objected to his being allowed to testify on the ground that he was a party to the record of the suit.

The Court overruled the objection, to which the Plaintiff by his counsel duly excepted.

The witness was then duly sworn and testified as follows:

"I was present at the trade of this mare.

"The conversation between my brother and Adams

"commenced in a store in Blue Island. My brother went into the store. I was outside.

"Heard Adams speak to my brother about trading horses. My brother says: "You have said so much about trading horses, now make

"me an offer" Adams owed us for a job of thrashing. \$3.36 was the amount I think. He owed it to my brother and myself.

"Mr. Adams said they could just about afford to trade if my brother would throw in the thrashing bill. I think he said "trade even

"and square the books" Silas said he could not trade that way. He asked \$5⁰⁰ to boot.

"Some words passed and I said "let's get

16-

"in and drive on" Mr Adams lives $\frac{1}{2}$ mile
'from the store. We drove to his place. The
'talking was done by Adams and Silas.
'When we were against Adams' barn, he went
'for his horse out in the lot. He said Mr.
'Day had the horse. He soon came back
'with Mr. Day and the horse. There was
'some talk, I hurried them up. I said:
'"If you aint going to trade, let's go on"
'I got into the wagon. Before this Mr.
'Adams had offered to trade even. Silas
'asked \$5⁰⁰ to boot. As we got into the
'wagon to drive off Mr. Adams offered to
'split the difference. My brother said, he would
'trade, so we got out. The horses were em-
'pitched and exchanged. We had travelled,
'I think about nine miles that day. I
'had known the mare for two years.
'Mr. Adams rode after her that day or rather
'before her, as she was hitched to the wagon
'behind. We were going to thrashing that day.
'We had used the mare that week and before
'in thrashing. The trade was made about
'the middle or 20th of August. Upon thinking
'I am sure it was the 21st day of August.
'I had no interest in the mare. My brother
'told Adams, that he would not want
'the mare, that he never did want a horse.

'I had told Mr. Adams about a week before
' that if he wanted to trade for the mare, he
' must talk with Silas, that the mare belonged
' to Silas not to me. Do not remember that
' I told him the day of the trade, that the
' mare was not mine. I hurried up the parties
' because we had work laid out for that day.
' The mare never manifested any disease."

Upon cross examination by counsel for
Plaintiff the witness testified.
"Silas and I owned three horses each and
"the machine we owned together. We came
"from the South towards Blue Island that
"morning. We went in a North Westerly direction.
"When we left Adams place we did not go
"out of our way to see Adams. It was the
"nearest ~~place~~ way to the place we were going.
"My brother has given me no release and
"made no agreement with me respecting this
"suit. I have not talked with or engaged
"attorneys in respect to it, except that I
"think, that I engaged an Attorney to attend
"to the suit before the justice. I told them
"if they were going to trade, to hurry up.
"Mr. Adams said he was doubtful about
"her having a colt. I think I told him,
"that she had had colts several years. I

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told him about the mare having worked hard.
"I think I said something about the mare's
age. Silas said, that the mare was sound
so far as he knew. In answer to the question
of Mr. Adams "whether she would breed"
I said, that she had had colts. Nobody
told me that the mare was sick prior to
the time of the trade."

And this was all the evidence produced and
given in the case. After agreement by the
counsel for the parties respectively, the Plaintiff
by his counsel asked the Court to instruct
the jury as follows.

1st Jffs Inst.

Given.
If the jury believe from the evidence, that the
Defendant Silas Briggs and Joel Briggs
traded the mare in question to the Plaintiff as the
joint owners thereof, they or either of them are
stopped from setting up a different title and
the jury must find for the Plaintiff on that
question.

Jff Inst.

If the jury believe from the evidence that the
Defendants Silas Briggs and Joel Briggs
at the time of the trade warranted the mare

Evans

in question to be sound and all right, only that she was poor, caused by having had a colic and if they further find from the evidence that the mare was sick or diseased at the time of such trade, from which sickness she died, then the plaintiff is intitled to recover the value of said mare, taking her to be as warranted

3.

Evans

No particular words are necessary to prove a warranty. It is enough if the jury believe from the evidence, that the Defendants by words and representations induced the plaintiff to trade for the mare as sound and healthy. Then if they further find she at the time was unsound and diseased, then the law is for the plaintiff and he is entitled to your verdict and it is no defence to the plaintiffs right of recovery, if the jury would also believe from the evidence, that the warranty on the part of defendant was fraudulently made.

Plaintiff's Instⁿ

Chicago May 13. 1862.

4
34

If the jury find from the evidence, that Silas and Joel Briggs made the contract of sale to Plaintiff as in their own right and warranted the horse as sound, then the Plaintiff is entitled to recover on that contract against the defendant

Evans

who is here defending this suit on the merits.
 And in such case the jury should disregard
 the evidence of the witness Briggs on the ground
 of interest

Which were duly given.
 And the Defendant by his counsel asked
 the Court to give the jury the following
 instructions:

Defendants Instⁿ

The jury are instructed, that unless the Plaintiff
 shows to the satisfaction of the jury, that at the
 time of the trade the Defendant represented
 the mare as sound with an intention to warrant
her such and thereby to induce the Plaintiff
 to make the trade: that the Plaintiff was thereby
 induced to make the exchange: that at that
 time the mare was so diseased as to injure
 her immediate or future use and that she after-
 wards died of the disease she then had and
 not of any contracted after the trade was made,
 there can be no recovery upon a warranty
 either express or implied and verdict
 must be for defendant.

2^d

The jury are further instructed, that a bare affirmation not intended as a warranty will not make the vendor liable. Language used as a mere expression of opinion or belief does not amount to a warranty unless the parties clearly intended it, to have that effect.

House v. Fort 4 Blackf 296

Ender v. Scott 11 M. 35.

3^d

Gavin

If Plaintiff claims upon an express warranty unless he has proved an express warranty by words spoken by the Deft. with the intention so to warrant, the verdict must be for the Defendant.

4th

Gavin

Plaintiff must prove the joint liability of both Joel and Silas Briggs upon the contract or the verdict must be for Deft.

Which was done. While the jury were in retirement for consultation the Court adjourned for the day.

Upon the opening of the Court the next morning May 14th 1862 the verdict of the jury was duly rendered. Whereupon Defendant by his Counsel moved the Court

by his Counsel duly excepted. And for as much
as all the said matters and things herein contained
do not appear of record, the defendant by
his counsel presents this his Bill of Exceptions
and prays that the same may be signed
and sealed by the Hon. Court and by him
made a part of the Record in this cause,
which is accordingly done.

George Maniere (seal)
Judge of 7th Judicial
Circuit Illinois.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of The papers and proceedings in a certain cause pending in said Court, on the Common Law side thereof, wherein George Adams was plaintiff and Silas Briggs Et al Defendants

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this Seventeenth day of April A. D. 1863



Wm L Church Clerk.

for Record \$10.00.

State of Illinois vs
In The Supreme Court
Third Grand Division
April Term - AD 1863

Silas Briggs Impleaded to
Appellant
George Adams
Appellee

Appeal from
Circuit
Court.

And now here comes the said Silas Briggs
the Appellant and says that in the aforesaid
record and proceedings of the said Circuit
Court and also in the rendition of the
Judgment aforesaid there are numerous
and manifest errors and assigns for er-
ror.

1st The Refusal of the said Circuit Court
to dismiss the suit for want of juris-
diction of the Justice of the Peace of the
subject matter of the suit. The suit was
on an alleged claim for unliquidated
damages for breach of express warranties
of a horse. The action is properly case
and not assumpsit.

2^d In dismissing the action against one
of the two joint defendants and proceed-

into final judgment against the other defendant.

3^d Refusal of the said Circuit Court to dismiss said suit for the irregular discharge of one of the defendants therein by the Justice of the Peace. The defendant Joel Briggs filed with the J.P. an instrument in the nature of a plea in abatement upon which he was dismissed from the cause by the Justice.

The jurisdiction of the Justice could not then continue as to Silas Briggs nor is the error in such case cured by the appeal to the Circuit Court.

4th The Court erred in proceeding to trial and judgement against one defendant upon the ^{assumed} joint liability of two in an action by contract.

5th The verdict is against the evidence. The weight of the evidence is most manifestly in favor of the defendant and the verdict clearly does great injustice to him.

6th The verdict is contrary to the law of

The land

7th The verdict is clearly contrary to the instructions of the Court. The evidence nowhere shows such unanimity as the Court instructed the jury in the 1st and 3^d instructions asked by Defendant must be shown to make the Defendant liable

8th The Court erred in overruling the motion for a New Trial by Def. for the reasons stated in said motion - and in other respects -

Wherefore the said Silas Briggs appellant prays that for the errors aforesaid and for other apparent errors, the said judgment of the said Circuit Court may be reversed, annulled set aside and held for nothing and all costs and expenses occasioned to him thereby be restored -

Clafin & Day
Attorneys for Appellant

Charles C. Borne
of Counsel -

Supreme Court

George Adams

vs Appellee

Ida Briggs

Appellant

Of Apr Term 1863

And now comes the said George Adams
Appellee by A Garrison his Attorney
and says that in said record and
proceedings and in the rendition of the
judgment in said Circuit Court there is not
error but that said judgment ought
in all things to be affirmed the same
dismissed with his costs & expenses in
this behalf sustained

April 23, 1863

A Garrison
Atty for
Appellee

6034/98

Silas Briggs
impleaded vs.

v

George Adams

Manuscript.

Filed April 22, 1863

L. Deland
Clerk

Bonney

314 198
Supreme Court at Ottawa

Silas Briggs vs
George Adams
Appellants brief

Filed May 7. 1863
S. Leland Clerk

Charles C. Bouney
Clerk & Day