

14653

No. _____

Supreme Court of Illinois

Henry

vs.

Eddy

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 176 - III

J. W. Madsen & Co., Stationers, 190 Lake St.

Harvey
vs.

Edley
1867

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable E. S. Williams 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 fourth Monday, (being the
fifteenth day) of February in the year
of our Lord One Thousand Eight Hundred and eighty and of the
Independence of the said United States the eighty eighth.

Present, Honorable E. S. Williams Judge of the 7th Judicial Circuit }
of the State of Illinois. }

Joseph Roy States Attorney.

W. S. Hammond Sheriff of Cook County.

Attest, Wm L Church Clerk.

1. As it is remembered that heretofore,
to-wit: on the 27th day of January 1884
Philander Caddy plaintiff by Samuel Ashton
his Attorney filed in the office of the Clerk of
the Court aforesaid his Certain plaint and
Affidavit in Replevin in the words and
figures following, to-wit:
State of Illinois

Seventh Circuit Court of Cook County
of February Term A. D. 1884
Cook County ss.

Philander Caddy plaintiff
in this suit by Ashton his Attorney by his
plaint comes and commences this action of
Replevin according to the form of the Statute
in such case made and provided against

David Henry defendant in this Suit, and
prays that the said defendant may be duly
Summoned to answer the said plaintiff in this
Suit of a plea wherefore he hath wrongfully
taken the property of the said plaintiff herein
after set forth and hath wrongfully detained
the same. And thereupon the said plaintiff by
his said Attorney complains that the said
defendant on the 27th day of January one
thousand eight hundred and sixty four at
the City of Chicago in said County and
within the jurisdiction of this Court took
and unjustly detained the goods and Chattels
to wit: A Certain promissory note for five
hundred & fifty dollars against Redmond
Spinderville, and payable to the order of the
said plaintiff, as follows, dated March 31st
A D 1863, payable three months after date
upon which has been paid three hundred dollars
leaving a balance due of two hundred & fifty dollars
and interest thereon, the property of the said
plaintiff of great value to wit of the value of
Two Hundred & fifty dollars to the damage
of the said plaintiff of Five hundred dollars
and thereof the said plaintiff brings Suit &c

And also for that whereas the said plaintiff
heretofore to wit on the day and year aforesaid
at the County and State aforesaid was law-
fully possessed as of his own property of Certain

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goods and Chattels and effects to wit. a Certain
promissory note for five hundred & fifty dollars
against Redmond Quinderville & payable to the order
of said plaintiff as follows. Dated March 31st 1863
payable three months after date upon which has
been paid three hundred dollars leaving a balance
due of two hundred & fifty dollars & interest there
on of great value to wit of the value of five
hundred dollars lawful money of the United
States of America. and being so possessed, he
the said plaintiff afterwards to wit: on the day
and year aforesaid at the County and State aforesaid
Said Casually lost the said goods & Chattels
and effects out of his possession and the same
afterwards to wit: on the day and year last
aforesaid at the County and State aforesaid.
Came to the possession of the said defendant
by finding Yet the said defendant well
knowing the said goods Chattels and effects, to
be the property of the said plaintiff and of right
to belong and appertain to him hath not
as yet delivered the said goods Chattels and
effects to the said plaintiff although often re-
quested so to do. but wholly refuses so
to do. and afterwards to wit on the day &
year last aforesaid at the County and State
aforesaid the said defendant converted and
disposed of the said goods and Chattels and

Effects to his own use to the damage of the
said plaintiff to wit at the County and State
aforesaid -

S. Ashton, Plaintiff's Attorney

State of Illinois
Cook County } ss.

Philander Eddy of said County
being duly sworn says that he the plaintiff within
named is the owner of and now lawfully entitled
to the possession of the property within described: that
the same has not been taken for any tax, assessment,
or fine levied by virtue of any law of the State
of Illinois, nor seized under any execution or
attachment against the goods and chattels of such
plaintiff (or either of them) liable to execution or
attachment

Sworn and Subscribed this 27 day of January
A. D. 1864 before me

Wm L Church
Clerk

Philander Eddy.

25 Cents
Revenue Stamp

And thereupon on the day and Year last aforesaid
there issued out of the office of the Clerk
of said Court and under the Seal thereof the
people's writ of Replevin, directed to the
Sheriff of said County to execute, and clothed
in the words and figures following to-wit
State of Illinois

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Cook County. Ill.

The people of the State of Illinois to the Sheriff of said County, Greeting.

Whereas Philander Caddy plaintiff complains that David Henry defendant unlawfully and wrongfully has taken and does detain the following described goods and Chattels to wit: a Certain promissory Note for Five Hundred fifty dollars against Redmond Spinderville and payable to the order of the said plaintiff as follows: Dated March 31st A D 1863. payable three months after date upon which has been paid Three hundred dollars leaving a balance due of Two Hundred and fifty dollars thereon. of the value of Two Hundred and fifty dollars.

5.
Therefore we command you that if the said plaintiff shall give you bond with good and sufficient security in double the value of the said goods and Chattels. as required by law to prosecute his Suit in this behalf to effect. and without delay and to make return of the said goods and Chattels if return thereof shall be awarded. and to save and keep you harmless in replevying said goods and Chattels. you cause the said goods & Chattels to be replevied and delivered to the said plaintiff without delay. and also that you summon the said defendant 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 the City of Chicago in said County on the third Monday of February next to answer said plaintiff in the premises, And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same together with the bond which you shall have taken from the said plaintiff as before commanded before executing this writ.

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Seal Witness William L. Church Clerk of
our said Court and the Seal thereof
at Chicago in said County the 27th
day of January 1864.
Wm L Church
Clerk.

And afterwards, to wit: on the same day and year last aforesaid said Sheriff returned said writ into the Court aforesaid endorsed as follows, to wit:

The plaintiff having given bond as heretofore annexed, I have demanded of the defendant David Henry the within described note, but refused to surrender the same. I also served this writ by reading to David Henry this 27th day of January A.D. 1864.

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David S Hammond Sheriff
Esq & 2. 25 by J. Fisher Depty

And afterwards to wit. on the 27th day of February in the year last aforesaid said defendant by Hogue Ayer & Horton his Attorneys filed in the Court aforesaid in said Cause his certain plea to said plaintiffs Declaration in the words and figures following. to wit:

Circuit Court of East B. County
February Term 1844.

7 David Henry
ads.
Philander Eddy

And the said defendant by Hogue & Ayer his Attorneys comes and defends the wrong and injury when &c. and says that he is not guilty of the said supposed grievances above laid to his charge or any or either of them, or any part thereof in manner and form as the said Plaintiff hath above thereof complained against him, and of this the said defendant puts himself upon the Country

Hogue & Ayer. Defts Attorneys

And the said plaintiff comes & doth the like
J. Ashton, Plffs. atty

And afterwards to wit on the 18th day of February A D 1864 at the term aforesaid of said Court the following proceedings were had in said Cause and entered of record to wit.

Philander Eddy }
v. } Replevin
David Henry }

9 On motion of Saml. Ashton of Counsel no objection being made thereto it is ordered that Plaintiff have leave to file an additional Count in Grover to his declaration filed in said Cause.

And afterwards, to wit: on the 11th day of March in the year last aforesaid and at the term aforesaid the following proceedings ~~proceedings~~ were had in said Court in said Cause and entered of record to wit.

Philander Eddy }
v. } Replevin
David Henry }

This day comes the said Plaintiff by Saml. Ashton his Attorney and said Defendant by his Attorney also comes 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. Peter Black

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C D Miller J B Cunningham W W Coleman W.
Braubens W R Downes S Brintnell B Pown
Frederick Mattern Saml Millard John Ludwig
and George Lynn who being duly Elect
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 the Evidence and arguments of
Counsel adduced by the said parties and instruc-
tions from the Court, Retire to Consider of
their Verdict and afterwards return into
Court and say: We the Jury find the Defend-
ant guilty in manner and form as charged
in the plaintiffs declaration and assess the
plaintiffs damages by reason of the premises
to the sum of Two Hundred and Fifty Seven
Dollars and fifty Cents.

Whereupon the said Defendant by his
Counsel moves the Court for a new trial
of said Cause

And afterwards, to wit: on the 19th day
of March in the Year last aforesaid and
at the same Term of said Court, the follow-
ing proceedings were had in said Cause and
Entered of record. to wit:

Phelanter Eddy
P.

David Henry, Replevin

10 This day again came the said parties by their Attorneys, and Counsel having been heard as well in support of the Motion of the defendant heretofore entered for a new trial of said Cause as in opposition thereto And the Court being now fully advised of and concerning 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 of said Cause the defendant by his Counsel now here excepts, and on his Motion defendant is allowed until Friday Morning next to prepare and file his Bill of Exceptions in said Cause

Whereupon it is considered by the Court that said Plaintiff do have and recover of the said defendant his damages of Two Hundred fifty seven Dollars and fifty Cents 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 to the ruling and judgment of the Court in said Cause and prays an appeal therefrom to the Supreme Court of the State of Illinois which is granted.

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by the Court upon Condition that the Defendant
shall by Friday Morning next Execute and
file with Clerk of this Court his Appeal Bond
herein in the penal Sum of four hundred
dollars Conditioned according to law with
good and sufficient Surety thereto to be ap-
proved by the Court.

1
Circuit Court of Loos County,
State of Illinois } February Term A.D. 1864.
Loos County } Ss.

Philander Eddy }
vs } Bill of Exceptions.
David Henry }

13. Be it remembered that
on the trial of this Cause at the February Term
A.D. 1864 of the said Circuit Court, the said
plaintiff, to maintain the issue on his part,
Examined as witnesses Morgan L Keith Redman
Spinderville and Gustavus Fisher who testified
before the jury in substance as follows:

Morgan L Keith Examined. Show the
parties to the suit. Had a note for about \$500.
in my possession last fall signed by Mr. -
Spinderville payable to the plaintiff Eddy.
I can't tell the date of the note. I got the note
from defendant at the request of Eddy. Henry
gave it to me so I could get some money
on it for Eddy - Eddy wanted me to get the
note and get some money on it for him from
Spinderville. Eddy requested me to ask Henry
for the note to enable me to get some money
on it for Plaintiff. I don't recollect the amount
of the note. I think it was about five hundred
dollars. I got the money on it for Eddy and

gave the note back to Henry -

Cross Examination

14. Last Summer or fall Eddy requested me to go to Henry and get the note from him as he wanted to get some money on it from Spinderville. I think he wanted to get \$250. or 300. dollars. Eddy claimed it as his note. I told Eddy to ask Henry for it himself: he said he had, and Henry would not let him have it. I told Eddy Henry would not let ^{me} have the note unless I would give it back to him good for \$200 or 250. Eddy consented, I should return the note to Henry, if he could get it to get some money on it as he wanted some money. I asked Henry if he was willing to let me have the note to get some money on it for Eddy, which I understood Spinderville was ready to pay. Henry said if I would return the note to him good for \$200 or 250. I don't recollect the exact amount, he would let me have it. I promised to return the note to Henry good for that amount and Henry let me have it he did not state what claim he had on the note. I got \$250. or 300. of Spinderville and it was endorsed on the note. I returned the note to Henry as I promised to do with a balance due on it of \$200. or 250. I do not recollect which amount I did

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Not know how Henry got the note. I paid
the money received of Spinderville on the note,
to Eddy.

Re direct Ex. Eddy used to keep his papers
in Combs Store and Safe. Henry was a clerk
in Combs Store. He said the note was in
the Safe among other papers.

15 Re Cross Ex. Some time last winter Eddy
requested me to ask Henry if he would give
up the note. Told Eddy to ask him himself.
He said he had and Henry would not give it up.
I asked Henry if he had any objections to giving
up the note as Eddy claimed it as his. He said
he had and would not give it up.

Three notes (referred to in Mr. Hortons testi-
mony) were presented to witness and he said he
thought the signatures were Eddy's, but could
not say certain. Had not seen him write much
for one or two years. Had seen him sign his
name a great many times. Have no doubt
the signature is Eddy's.

Redmond Spinderville. testified as follows:

I know the plaintiff. Have seen the Defendant.
I heard Mr. Keiths testimony in this case. The
note in question, he spoke of. I gave to Eddy
the amount of the note was \$550. I have paid
\$300. on it. I think it came due last September.

I paid \$300. on it which was endorsed on the
the ^{note} Mr. Keith had the note at that time, and
I gave him my Check for the money paid, on
the 27th ~~December~~ day of January A.D. 1884, I called
at the Store of Defendant, at the request of
Eddy and demanded the note from Henry. He
(Henry) declined to deliver the note, saying
"the note has been put in my hands by cer-
tain parties as collateral security and I will
be liable if I give it up." he said he had no
other interest in it. He (Henry) requested me
not to pay it. I presented to Henry a written
order from Eddy for the note.

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Gustavus Fisher Examined

I know the Defendant. I went to his place
of business with the Replevin Writ in this suit
and demanded the note. He (Henry) said he
had no interest in it but would not give
up the note until he had seen his Counsel
He stated in another conversation that he
had no interest in the note but would not
give it up until he had seen his Counsel,
Cross Examination. He Henry said the
note had been left with him by some person
by the name of Coombs or Combs, or some
such name. I cannot recollect exactly the
name. That if his Counsel would advise
him to give up the note he would do it

that he himself, had no interest in the note, I think this was on the 27th or 28th of January 1864.

17 And the said defendant to maintain the issue on his part examined as a witness Oliver H. Horton who testified as follows I drew the plea in this Case. Am in partnership with Hogue & Ayer the defendants Attorneys - think my name is not signed to the plea - It was probably omitted because I expected to testify in the Case, we are the Attorneys of the Estate of Andrew Combs deceased. Have no interest in this Suit except as Attorney. I know the parties to this Suit. About four or five months since the plaintiff Eddy called at the Office of Hogue Miller & Lewis to see about some business connected with the Combs Estate. At that time he spoke of Mr. Henry's holding a note for about \$350.* which had been made by Mr. Spinderville and running to him - He said that Henry held the note as security for what he owed the Estate of Andrew Combs - I showed him the three notes which I now have in my hand, one for \$100²⁵ one for \$60* and one for \$25* and an account for \$2* and at the same time spoke to him about an order for \$70* which he had drawn on Andrew Combs

in favor of John Pfund. I did not have the order there at the time but I had the books of Mr. ~~Combs~~ there and turned to the account of John Pfund and showed him that the amount of the order was credited to Pfund on said account. Mr. Eddy said that these three notes were made by him but that he did not owe them. that there never was any consideration for them. He said he did owe Combs the amount of the order and the account and that the note against Spinderville which David Henry held was good for all he owed the estate.

I was Clerk in the office of Hogue Miller Lewis at that time and they were Attorneys for Mr. Combs who was administrator of the estate of Andrew Combs.

The defendant further offered in evidence the three notes, Order and account referred to in the testimony of Oliver H. Horton, copies of which are as follows:

\$100 ²⁵/₁₀₀

Chicago July 14th 1862.

Sixty days after date I promise to pay to the Order of Andrew Combs One Hundred ²⁵/₁₀₀ Dollars, at with Interest, Value received, with Exchange on New York, \$4, J. Eddy.

No. Our

\$60 ~

Chicago July 24th 1862.

Sixty days after date I promise to pay

to the order of Andrew Combs Sixty Dollars
at with Interest Value received
with Exchange on New York S. P. Eddy
No. Due

\$25.~ Chicago Sept 1st 1862

Sixty days after date I promise to pay
to the order of Andrew Combs Twenty five Dollars
at with Interest Value Received.

with Exchange on New York S. P. Eddy
No. Due

(Copy of Order) Sixty days after date pay
to Mr. John Fund Seventy dollars and Charge
to my Account

Mr. A. Combs Chicago 2 April 1863 S. P. Eddy

Copy of Scrip account.

Chicago May 21st 1863

Mr. P. Eddy Bought of Andrew Combs
1 Bottle Brandy gone to Taylor \$2.00

Plaintiff objected to all of
the foregoing testimony under the issue in said
Cause, which objection the Court overruled.
Which was all of the evidence offered by either of the
said parties.

The said Defendant then moved the Court
upon the evidence aforesaid, to instruct the
jury, that,

105 If the jury believe from the evidence that the
in suit was held by the said defendant at

the time of the Commencement of this action as a Collateral Security for the plaintiff's indebtedness to the Estate of Andrew Combs, and that the note was so held by the said defendant with the plaintiff's knowledge and consent then the plaintiff is not entitled to recover in this action, and the defendant should be found not guilty.

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2. If the Jury believe from the evidence that the plaintiff was indebted to the Estate of Andrew Combs at the time this suit was brought, and that the note in suit was held by the defendant as Collateral Security for the Plaintiff's indebtedness aforesaid to the Estate of said Combs and that said note was so held by said defendant with the plaintiff's knowledge and consent in that case the plaintiff cannot recover in this action. And it makes no difference as to the rights of the parties in this case whether the note in suit had been originally pledged by the plaintiff to Combs himself, for the purpose above mentioned, and that it passed from Combs possession to that of the defendant upon the same trust, or whether it was originally left with the defendant by the plaintiff himself as a Security for Combs' benefit, provided, the jury are satisfied from the evidence that the plaintiff has expressly recognised the right

of the defendant to hold the note for the purpose aforesaid.

The first of which instructions the Court gave to the jury, but which second instructions the Court refused to give the jury as moved by said defendant, but altered and modified said second instruction so that the same read as follows:

2d If the jury believe from the evidence that the plaintiff was indebted to the Estate of Andrew Combs at the time this suit was brought and that the note in suit was held by the defendant as collateral security for the plaintiff's indebtedness aforesaid to the Estate of said Combs, and that said note was so held by said defendant with the plaintiff's knowledge and consent, in that case the plaintiff cannot recover in this action

And it makes no difference as to the rights of the parties in this case whether the note in suit had been originally pledged by the plaintiff to Combs himself, for the purpose above mentioned and that it passed from Combs' possession to that of the defendant upon the same trust, or whether it was originally kept with the defendant by the plaintiff himself as a security for Combs' benefit provided the jury are satisfied from the evidence that

the plaintiff agreed and consented to the defendants retaining the said note as collateral security for an indebtedness of Plaintiff to Combs and has expressly recognised the right of the defendants to hold the note for the purpose aforesaid. And the Court gave the jury such second instruction so altered and modified, to which alteration & modification the defendant then and there excepted.

And the said plaintiff then moved the Court upon the evidence aforesaid, to instruct the jury that

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1st If the jury shall believe from the evidence that the note in controversy was owned by the plaintiff on the 27th day of January last, and that he was entitled to the possession of said note at that time and the plaintiff made a demand upon the defendant for the note when the plaintiff was entitled to the possession, and before the commencement of suit and that the defendant refused to give up the note when demanded then they will find for the plaintiff

2d If the jury ^{shall} believe from the evidence that the note in question was in possession of the defendant, and the plaintiff was the owner thereof and entitled to the possession at the time this suit was commenced and the same was demanded of the defendant before the com-

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movement of this Suit and he refused to give it up, then it is evidence of a Conversion by the defendant, and Conclusive against him if not rebutted or explained and the verdict should be for the plaintiff.

23 3. The jury are instructed that in order to constitute a Conversion, it is not necessary that the defendant should have the exclusive control, or actual possession of the note, and the jury shall believe from the evidence that the defendant intermeddled with or had dominion over the note, against the rights of the plaintiff, and there was a demand and refusal, then in law it was a Conversion and the plaintiff is entitled to recover.

The first and second of which instructions the Court gave the jury and the third instruction the Court refused to give the jury, and the following instruction was given the jury by the Court upon its own motion.

The rule of damages in this case if the jury should believe from the evidence that the defendant has been guilty of a Conversion of the note, will be the value of the note at the time of the alleged Conversion and interest from that date to the present time at 6 per Cent. And thereupon the said jury returned their verdict in favor of the plaintiff & assessed the

Plaintiff damages at the Sum of \$ 257⁵⁰

Whereupon the Counsel for said Defendant moved the Court for a new trial upon the ground that the Verdict of said jury was contrary to law and evidence and that the Court erred in altering and modifying the Defendants said second instruction, but the Court overruled the said motion, and gave judgment upon the said Verdict of the said jury against the defendant, to which the said Defendant then and there excepted, and inasmuch as the matters aforesaid do not appear of record, the Counsel for the Defendant presents this Bill of Exceptions, and prays that the same may be signed and sealed by the Court and made part of the record in said Cause, and it is done accordingly

Orastus S Williams Seal
Judge of 7th Judicial
Circuit Ills.

And afterwards to wit: at the term aforesaid to wit: on the 25 day of March A.D. 1864 the said defendant filed in said Cause a Certain Appeal Bond in the words and figures following to wit:

Know all men by these presents, That we David Henry and Isaac J. Combs of the County of Cook and State of Illinois are held & firmly bound unto Philander Eddy also of the same County and State in the penal Sum of Four 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 & Seals this twenty fourth day of March A.D. 1864.

The Condition of the above Obligation is such that whereas the said Philander Eddy did on the twentieth day of March A.D. 1864 in the Circuit Court of Cook County and State aforesaid, and of the February Term thereof A.D. 1864 recover a judgment against the above bounden David Henry for the Sum of Two Hundred fifty Seven Dollars and fifty cents besides Costs of Suit, from which said judgment of the said Circuit Court of Cook County the said David Henry has prayed for and obtained an appeal to the Supreme Court

of said State. — Now therefore if the said David Henry 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 obligations to be void, otherwise to remain in full force and virtue.

GIVEN and entered into
before me, at my office
in Chicago this — day
of — A.D. 186 —

Amos Lomb
David Henry

Christ
Approved Mch 25 1864
E. S. Williams
Judge &c.

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 all pleadings proceedings of record Bill exceptions appeal and in a certain cause lately pending in said Court, and the Common side thereof, wherein

Philander Eddy was plaintiff and
David Henry was Defendant

In Witness Whereof, I have hereunto set my hand,
and affixed the Seal of said Court, at Chicago, this
13th day of April
A. D. 1864.

Wm L Church Clerk.



State of Illinois }
Third Grand Division } ss.

In Supreme Court.

April Term A. D. 1864.

David Henry, }
Appellant, }
vs. } Appeal from Cook
Philander Eddy, } County Circuit
Appellee. } Court.

And now the said appellant, David Henry, comes and says, that in the record and proceedings aforesaid, there is manifest error in this, to wit:

First. The circuit court erred in modifying the defendant's second instruction and in refusing to give said instruction as requested by the defendant.

Second. The said verdict of the jury is manifestly against the evidence in the case.

Third. The Court erred in overruling said motion for a new trial.

By reason whereof the plaintiff
prays that said judgment may
be reversed.

By Hoynes & Heyer
Attorneys for Appellant.

And the said Appellee comes and
joins in Error to the above and
pregoing errors assigned by the
Appellant.

Dated April 20th 1864

S. C. Whitow,

Atty for Appellee.

Supreme Court of
the State of Illinois
Third Grand Division
April Term 1864

David Henry
Appellant
vs

Philander Eddy
Appellee

Record

Filed April 12. 1864
L. Leland
Clerk

Hayne & Ayer
for Appellant