

HENRY FARR *et al.*

v.

ISAAC SCOTT.

NEW TRIAL—*verdict against the evidence.* When the finding of the court below is supported by the evidence, it will not be disturbed.

APPEAL from the Circuit Court of St. Clair county; the Hon. J. GILLESPIE, Judge, presiding.

The opinion states the case.

Mr. WM. H. UNDERWOOD, for the appellant.

Mr. MARSHALL W. WEIR, for the appellee.

Mr. JUSTICE LAWRENCE delivered the opinion of the Court:

This record presents only a question of evidence. Did or did not the payee of the note promise the security to release him, if he, the security, would release the mortgage held by him against the principal, or was the principal to execute a new mortgage, on another lot, to the payee, before the security was to be released? The parties themselves are the only witnesses whose testimony is important, and they swear to a different understanding of the agreement. The court gave credit to the evidence of the plaintiff, probably because the agreement as stated by him was more in consonance with the ordinary mode of making such an arrangement, and we see no reason for saying the court erred in this. It does not appear that the payee had any interest in the release of the mortgage made by the principal to his security, and why should he have promised to release the security before the new mortgage to himself should be executed?

There is no ground for reversing the judgment.

*Judgment affirmed.*