

8703

No. _____

Supreme Court of Illinois

S. S. Candan

vs.

E. A. Phelps

Pleas before the Circuit Court, within and for the County of Union and State of Illinois, the Honorable William A. Henning Judge of the Third Judicial Circuit of the State aforesaid presiding on the twenty fifth day of September in the year of our Lord one thousand eight hundred and fifty one, at Jourdons in the State aforesaid

Be it remembered that heretofore, to wit, on the thirteenth day of August in the year of our Lord one thousand eight hundred and fifty one Sidney S. Condon filed in the Clerk's office of the Court aforesaid the following Appeal Bond, to wit,

" Know all men by these presents that we Sidney S. Condon and Daniel D. Cover are held and firmly bound unto Eros A. Phillips in the penal sum of fifty dollars lawful money of the United States, for the payment of which well and truly to be made we bind ourselves our heirs and administrators jointly severally and firmly by these presents, Witness our hands and seals this 30th day of August 1851.

" The condition of the above obligation is such that whereas the said Eros A. Phillips did on the 16th day of August 1851 before Thomas Hildeman County Judge for the County of Union recover a judgment against the above bounden Sidney S. Condon for the sum of ten dollars and costs of suit, from which judgment the said Sidney S. Condon has taken an appeal to the Circuit Court of the County of Union aforesaid and State of Illinois. Now if the said Sidney S. Condon shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismission or trial of said appeal, then the above obligation to be void otherwise to remain in full force and effect.

Sidney S. Condon (Seal)
Daniel D. Cover (Seal)

" Approved by me at my office this 30th day of August A.D. 1851

Thomas Hileman Clk

And afterwards, to wit, on the day aforesaid, to wit, on the
thirtieth day of August in the year of our Lord one thousand
eight hundred and fifty one, the said Sidney Soudon
sued out of the Clerk's office of the Court aforesaid the
following writ of Summons, to wit,

" State of Illinois } The people of the State of Illinois
" County of Union } To the Sheriff of said County
" Greeting

" We Command you to summon Enos A Phillips if
he shall be found in your County personally to be and appear
before the Circuit Court of said County on the first day
of the next Term thereof to be holden at the Court House
in Jonesboro on the fourth Monday in the month of
September next, to answer Sidney Soudon of an
appeal taken from the judgment Doctet of T. Hileman
County Judge in and for said County wherein Enos A
Phillips is Plaintiff and Sidney Soudon Defendant
And have you there and there this writ and make return
thereon in what manner you execute the same-

" Witness Thomas Hileman Clerk of our said Circuit
Court with the seal thereof hereunto affixed at office
in Jonesboro this 30th day of August AD 1851
Thomas Hileman Clk

And afterwards, to wit, on the twenty second day of September AD 1851
the said writ was returned to the Court aforesaid by Alexander
of Ainsworth Sheriff of said County enclosed as follows, to wit,

" Served the within by reading to Enos A Phillips this 22^d
day of September 1851 - Service 50 net 10—60

Alexr of Ainsworth Shff

And after the issuing of the said writ and before returning
the same to this office, to wit, on the sixteenth day of September
in the year of our Lord one thousand eight hundred and fifty one
the said Sidney Soudon deposited in the Clerk's office aforesaid

the original papers in said appealed cause then lately pending before Thomas Helmsaw County Judge within and for the said County of Union wherein the said Enos A Phillips ~~was~~ plaintiff and the said Sidney S Condon was defendant, together with a certified transcript of the journal entries and of the final judgment made and rendered in said cause by the said Justice aforesaid, and which original papers and transcript are in the words and figures following, to wit,

" State of Illinois } The people of the State of Illinois
" County of Union } To any Constable of said County
Greeting

" You are hereby Commaned to summon Sidney S Condon to appear before me at my office in Jonesboro, on the 16th day of August A D 1851 at one O'clock P M to answer the complaint of Enos A Phillips for a failure to pay him a certain demand not exceeding one hundred Dollars and thereof make due return as the law directs.

" Given under my hand and seal this 11th day of August

" A D 1851 Thomas Helmsaw County Judge (and

which writ was endorsed as follows, to wit,

" Enos A Phillips

" "

" Sidney S Condon

" Summons

" Damages \$ 30.00

And was executed and endorsed as follows, to wit,

" Served the within by reading to the defendant Sidney S Condon on the 12th day of August 1851

" Seal 25-

Attest of Minimo Const,

Dictation

" In Justice Court before Thomas Helmsaw of P

" Enos A Phillips }

" " }

" Sidney S Condon }

} Affumpsit

For that whereas the said plaintiff complains of the said
defendant for neglect as bailee

First Count for slight neglect in the custody of a horse
borrowed of the plaintiff for use without compensation
therefor,

Second Count, for ordinary neglect in the custody of
a horse hired, for a reasonable compensation for his
services, to his the said plaintiffs damage of \$30.00 wherefore
he sues etc.

C. G. Simons Atty for Plff.

venire facis

State of Illinois }
County of Union } To any Constable of said County
Greeting

We command you to summon six lawful men of your
County to appear before me nextster who are not of
kin to E. A. Phillips plaintiff or J. S. C. and on defendant
to make a jury between said parties in a plea of *assumpsit*
the cause as well the said plaintiff as the said defendant
have put themselves upon the County for trial and
shere you then there the names of the jurors and this
writ - Witness my hand and seal this 10th day of
August 1857 J. H. Edmunds County Judge (and)

Endorsement thereon as follows, to wit,

Served the within by summoning, James Lewis, Benjamin
Nauvil, Abraham Dellow, Joseph M. Spence, James Ellis &
Wiley of Davidson this 10th day of August. 1857

Very so, attending jury 25. Attest My Const.

Verdict

We the jury find for the plaintiff \$10.00

of M. Spence, Wiley of
Davidson, James Lewis, Jackson Beys, Abraham
Dellow, James Ellis -

Transcript

| | | |
|--------------------------|-----------------------------------|--|
| "Enos A Phillips | | "Demand for damages done to |
| " " | " | "Horse \$30.00 summons issued |
| "Sidney J Wendon | " | "returnable on the 16 th day of |
| "Justice Costs | | "August AD 1851 at one o'clock P.M. |
| "Jury Sum & 4 Spas | 93 ² | "placed in the hands of A. Kemms |
| "Jury pay warrant | 25 | "Court this 11 th day of August 1851 |
| "Docty suit | 12 ¹ / ₂ | "summons returned executed, |
| "Swearing 12 units | 75 | "And now on this the 16 th day of August 1851 |
| "Swearing jury | 37 ¹ / ₂ | "Came the plaintiff by G. S. Semons his attorney |
| "jury verdict | 12 ¹ / ₂ | "as well as the Defendant by D. G. Brooks his |
| "jury of a jury | 25 | "attorney whereupon the plaintiff demanded a |
| "jury appeal | 25 | "jury, then upon came a jury, to wit, James |
| "Transcript & cert. fees | 50 | "Lewis, Abraham Dillow, Joseph M. Spence |
| "of Kemms costs | 43.50 ¹ / ₂ | "James Ellis, Wiley of Davidson & Jackson |
| "Jury Sum | 25 | "Begg six good and lawful men, who |
| "Jury Spas & mchop | 1.75 | "upon their oath do say, we the jury |
| "Jury warrant | 50 | "found for the plaintiff ten dollars. Therefore |
| "attending jury | 25 | "it is considered that the said Enos A. Phill |
| "Metropes fees | 2.75 | "ips recover a judgment against the said |
| "D. A. Reinhart 14 day | 50 | "Sid Wendon for the said sum of ten |
| "Jury Fee | 1.50 | "dollars the damages aforesaid assessed |
| | | "and also costs of suit. |

J. Hileman County Judge

State of Illinois
County of Union

I hereby certify that the foregoing
transcript and papers herewith contains a
full and perfect statement of the proceedings before me in the
above entitled cause. Given under my hand and seal
this 16th day of September AD 1851

The Hileman County Judge

And afterwards, to wit, on the twenty fourth day of September
in the year last aforesaid the following instructions, ^{and verdict of the jury,} were filed
in said cause - to wit,

" Phillips }
" " } Appeal
" Condou }
" " }
" " }

The Plaintiff asks the Court to instruct the jury that the damages in this case, as well as the injury to the horse may be proven by circumstances as well as otherwise, if sufficient to satisfy the jury
" Given "

" E. A. Phillips }
" " } Appeal
" S Condou }
" " }
" " }

The defendant asks the Court to instruct the jury that if they believe from the evidence that the horse was let by Plaintiff to Defendant for his use and that then unless the jury believe that plaintiff has proved that defendant was guilty of ordinary neglect that they will find for the Defendant
" Refused "

" 5- That the plaintiff must fail in this case, unless the Plaintiff has shown neglect in the defendant
" Refused "

" That in cases of Bailments, where the bailment is of mutual benefit to the Bailee & Bailor as in the case of hiring a horse the bailee is only required by law to use ordinary care of the property so bailed and it devolves on the bailor in such case to show ordinary neglect before he can recover for an injury to the property
" Given
in lieu of 1st

" That the statements of Dr Condou when drawn out by the plaintiff in this case when they are in his favor are to be taken at together as well those which make for him as those which make against him
" Given "

Verdict
" The jury find for the plaintiff, damages of twenty dollars
" off Henry foreman "

And afterwards, to wit, on the day and year first aforesaid
to wit, on the twenty fifth day of September in the year of our
Lord one thousand eight hundred and fifty one, the following
orders and final judgment were made and entered of record in
said Court, to wit,

Ernos A Phillips
" " }
Sidney S Condou } Appeal.

Now on this day came the said plaintiff
by Simons his attorney, as also the said Defendant by J Dougherty
& D G Brooks his counsel and upon issue being joined came
a jury, to wit, A B Pague, R Henson, M G Pratt, J S Goler,
J H Reming, B Wiggs, S Hargrave, J Hutton, J D Lerner
& J S Rendleman, A L Penninger and Henry Cooper twelve
good and lawful men who being elected tried and sworn well
and truly to try the issue joined upon their oaths do say we
the jury find for the plaintiff twenty dollars damages
Whereupon the Defendant enters his motion for a new trial
which was after ~~an~~ argument heard and being fully
advised in the premises overruled, and thereupon
considered by the Court that the said plaintiff recover a
judgment against the said Defendant for the sum of
twenty dollars his damages aforesaid specified, and also his
costs and charges in this behalf expended and that he may
have execution therefor. Whereupon the Defendant prayed
an appeal to the Supreme Court which is allowed if
the said Defendant enters into bond in the sum of one
hundred and twenty Dollars with John Dougherty Esq as his
Security within thirty days.

And whereupon the following Bill of exceptions
was filed by the said Defendant, to wit,

Ernos A Phillips
" " }
Sidney S Condou } Appeal.

" Be it remembered that on the trial of this cause the
" following evidence was given on the part and behalf of
" the plaintiff to the jury in this cause impaneled and
" sworn to suit. George W. Williams a witness introduced
" and sworn on behalf of the plaintiff deposed as follows,
" to wit, Witness is acquainted with a certain clay bank horse
" Witness Father owned him from a colt until he was seven years
" old and traded the horse to plaintiff, Witness saw defendant
" in possession of this horse a few days after the horse was
" so traded to plaintiff. Witness Father sold the horse to
" Plaintiff for forty five dollars, he believes that the horse was
" worth that sum, the horse was traded to plaintiff in June
" last. Witness Father had carried the mail to Marion on
" him for about two years and he stood that service better
" than any other horse his Father had, a mule died in the
" same service, he witness believed that the mule died
" from an over heat, The distance ~~from~~^{to} Marion from
" Jonesboro is about thirty five miles Witness saw this
" horse in possession of defendant the day W. Freeman died
"

Being cross examined Witness states
" that the mail was carried by himself sometimes and
" sometimes by his younger brother ~~than~~ a boy, that he
" witness weighed about 140 pounds at that - that his
" brother was at that time much smaller than he was, this
" service consisted of carrying the mail to Marion ~~and~~
" from Jonesboro once a week and back again to Jonesboro
" 35 miles that this horse was water foundered during
" said service, that Witness Father quit carrying the mail
" about a year ago, that since that time and until the horse
" was traded to plaintiff the horse was not used much
" he was sometimes ridden by the family and had been
" shined a few times and generally hauled a barrel of
" water each day, the horse for the last year had except
" when so used ran in the commons about Jonesboro.

in the day time, at night he always came up and was fed she believed that the horse was sound when he was sold to Phillips he was a raw boned horse, but never got very fat, that on the day Dr Freeman died the horse looked as well as ever he did witness does not recollect the exact day on which Dr Freeman died, witness did not see this horse for two or three weeks after the doctors death when witness did see him he appeared stiff.

Adam Cross a witness also introduced and sworn on the part and in behalf of the said plaintiff being duly sworn deposes, witness was acquainted with the horse of plaintiff he was a common ordinary horse, a few days after Plaintiff got the horse Dr Gordon the defendant got the horse to ride as he Deft stated for his opud Defendant told witness^{to} that a few days after Dr Freeman died the horse was brought to witness' shop and appeared sick the hair of his mane and tail fluffed witness tried it, he could pull out the hair easily of his mane and tail, the horse was stiff like a horse foundered a few days after plaintiff got him back from defendant at which time witness saw him again.

Isaac N Albright being also introduced and sworn on the part, and in behalf of the Plaintiff deposes and says that he was not acquainted with Plaintiffs horse except so far as he became so by seeing him running about the commons near Jonesboro' while Mr Williams owned him, witness saw defendant riding the horse a few days before it was said he Defendant rode him to Monocess supposing Defendant rode the horse to Monocess which I do not know, except from hearsay, I saw the horse the same day that the horse was returned to plaintiff this was on the same evening that Dr Freeman was buried Plaintiff came after me to go and doctor the horse, I do not pretend to say that I am a regular horse doctor

but Wetup had doctored horses and is in some degree acquainted with their diseases. At Phillips the horse seemed to pant very bad but he was not at that time in any wise stiff that wetup could see but seemed very mopey and when wetup slapped him he did not seem to notice it much. Wetup gave directions to plaintiff what to do for the horse. he was cooled down by bleeding and a dose of salts and bandages around his legs, and the presumption was with me that the horse would get over his disease. The next day the horses main and tail slipped, fresh. The second day when I saw him I forget whether I did any thing for him or not. The third day I saw him in Mr. Nail's clover patch, the horse was then very stiff, I never believed that the horse was foundered I do not know what ailed the horse, I have no recollection of ever seeing the hair of a horse slip from over heats, at the time plaintiff sent for me to see the horse. I would not have given more than fifteen or twenty dollars for the horse, I cannot place a proper estimate on the worth of the medical services of Plaintiff about the curing of his horse.

Upon cross examination by defendant wetup stated that when a horse has once been badly foundered he never intirely recovers. That a bad founder will reduce the worth of a horse from one third to one half of his former value, though the horse after being badly foundered may be made to look pretty well yet he is never as good as he was before the founder.

Thomas J. Finley a witness introduced and sworn on the part and in behalf of the plaintiff deposed that he was acquainted with plaintiffs horse Mr. Williams carried the mail with the horse, he was a good horse when he carried the mail as good or a better horse than the other horses that Williams carried the mail with, Wetup saw Dr. Brooks on the horse the

evening Dr Freeman died. The horse had been found and while Williams owned him, the horse was worth at that time forty five or fifty dollars if nothing was the matter with him. A few weeks ago Defendant and Plaintiff were talking together Defendant said to Plaintiff take and doctor your horse yourself witness was walking they did not hear all the conversation Plaintiff asked witness what ails this horse, witness asked Plaintiff is he sick, whereupon Plaintiff replied to him you are no judge of a horse or you could tell that yourself, witness saw the horse about a month ago he then had a wrinkle on his huff about one inch below the hair of his feet.

David Love a witness being introduced and sworn on the part and in behalf of the Plaintiff deposed that he was acquainted with the horse of Plaintiff, the horse witness believes to be a good kind of a horse worth forty dollars witness offered Mr Williams that for him which he believed to be his full value, witness saw Defendant ride the horse about one week before the death of Dr Freeman, the horse looked better in the possession of Defendant than he did before that time, witness never heard Defendant say that he ever rode the horse any where, that Dr Freeman died about 7 or 8 o'clock in the morning, witness saw Defendant that morning about one half of an hour or perhaps one hour before the death of Dr Freeman in harness going towards his own house.

David Powers a witness introduced and sworn on behalf of the Plaintiff deposed that he witness heard the defendant say that he rode the horse to Maness's, that he defendant started between seven and eight o'clock in the morning, that defendant got to Maness's about one or two o'clock in the

evening that day was a tolerable warm day, that the horse appeared sick when they got to Manesse's & when defendant had him brought out to start back home, that in coming back to the Springs towards home the horse sweated very much from his main to his hoofs and that defendant got off the horse and walked a part of the way, to the Springs some ten miles on this side of Manesse's, and left the horse at the Springs and got another to ride home, that the defendant procured the horse to be brought into Jonesboro by a boy soon the next day and delivered to plaintiff, defendant said that he did all that he could to shield the horse from injury but did not give the horse any medicine or doctor him, witness understood from the defendant that she did not ride this horse herself to Manesse's, but that she rode the horse of young Manesse who came after him and that young Manesse rode plaintiff's horse, that the horse of Manesse had been by him ridden from home that morning to Jonesboro a distance of 22 miles the way that defendant traveled and that the two horses were ridden back to Manesse's together the same day and that Manesse's horse did not even sweat on the road, that they only travelled at the rate of three miles an hour, that the defendant had taken the precaution to tell young Manesse when riding with him not to let the horse drink too much water and as it was warm weather when he arrived at old man Manesse's not to feed the horse until he cooled, The defendant in answer to a question put to him by the plaintiff at Parson Atkinson's house whether the horse might not ^{have} been foundered in the morning before defendant started to Manesse's, said that he might think that it was not at all probable, that his name might have been Beelzebub but that it was not.

William Mitchell a witness introduced an sworn on the part and in behalf of the plaintiff, deposed that he had seen the horse twice before plaintiff bought him of Williams, he saw the horse frequently while defendant was keeping the horse, when he first saw the horse he believed that the horse was a good horse, he witness rode the horse from Marion the evening before Dr Freeman died, Dr Brooks galloped the horse through town, the horse was at that time worth forty five dollars, The day that the horse was given back to Plaintiff witness saw the horse, witness is some what acquainted with the diseases of horses, but not the remedies. Witness thought that the horse had been fatigued over heat and foundered and from what witness has seen since that time he knows that he was foundered. The next morning the man and tail of the horse slipped, plaintiff has never doctored the horse for the yellow water plaintiff bled the horse and gave him salts and bandaged the horses legs with wet cloths and kept them wet for that day, when the horse brought back he was worth nothing, That plaintiffs trouble and doctoring the horse was worth ten dollars, That up to the time of the trial of this cause before the justice of the peace plaintiff was wholly deprived of the service of the horse, but has used him some since that time. Witness never noticed the urine of the horse.

Upon cross examination witness deposed that plaintiff had given ~~the horse~~ three doses of salts, bled him once, bandaged his legs with wet cloths once and kept them wet for about twenty four hours, witness could not state what the bleeding was worth nor the salts, nor could he tell what the bandages were worth, That the horse had to be watered by carrying him water for the three first days the worth of which he could not tell, but that he believed that all together they were worth ten dollars

W B Shearer a witness introduced on the part of and
in behalf of the plaintiff and Sworn deposed that he
witness was acquainted with the horse at the time plaintiff
bought and he witness believed that the horse was then
worth fifty dollars. Witness saw the horse some weeks after
plaintiff got him back from defendant. That the horse
then looked very much ~~worse~~ worse. That witness never
saw a horse with the yellow water, but witness's father had
an old mare that had the yellow water and her urine
was yellow andropy.

Upon cross examination by defendant
witness deposed that he had himself purchased this horse
from plaintiff and was to pay him thirty dollars in
trade for him, and that witness now owned the horse.

Moses Fite a witness introduced and
sworn on the part and in behalf of the plaintiff deposed that
the witness had seen horses overheated, but that it had but
very little effect upon these horses that he saw that he
never knew the main and tail to slip from an over heat.

Upon cross examination by the defendant
witness deposed that he had never known the main and
tail ^{of horses} to slip from a founder, although he witness had
seen many horses founder, that he had seen horses with
the disease called the yellow water, that all the horses he
ever saw with this disease - slipped easily the hair of their
main and tail that this disease called the yellow water
was a lingering disease and might be affected with it
for years and that just not readily discerned by a casual
observer but that they would not fatten as well with
that disease on them as without it, they never looked as
well with as without the disease, that whenever a horse
had the disease of the yellow water and was used so as
to become heated, the horse would become sick and stiff
in his limbs until he became rested and that a sure

" indication of that decrease was the slipping of the main
, and tail.

" The foregoing was all the evidence introduced
, in this cause.

" The Court gave the jury the following
instructions on behalf of the plaintiff, to wit,

" Phillips }
" " } Appeal
" Condon }

" The plaintiff asks the Court to instruct
the jury - That the damages in this cause as well as
the injury to the horse may be proven by circumstances
as well as otherwise if sufficient to satisfy the jury
" Given "

" The Court also gave the jury the following
instructions on behalf of the defendant, to wit,

" E A Phillips }
" " } Appeal
" S S Condon }

" The defendant asks the Court to instruct
the jury that in cases of Bailments where the bailment is
of mutual benefit to the Bailee & Bailor as in the case of
hiring a horse the bailee is only required by law to use ordinary
diligence care of the property so bailed and it devolves on
the bailor in such case to show ordinary neglect before
she can recover for an injury to the property
" Given "

" That the statements of Dr Condon when drawn out by
the plaintiff in this cause where they are in his favor
are to be taken altogether as well those which make for
him as those which makes against him
" Given "

" The jury having retired returned into Court the following
Verdict, to wit, we the jury find for the plaintiff the sum

of \$20.

Thereupon the defendant entered his motion for a new trial for the following reasons, 1st because the Verdict of the jury is against law, 2nd because the Verdict of the jury is against the evidence in this cause, and 3rd is against the instructions of the Court, Which motion for a new trial the Court overruled and gave judgment against the defendant for the sum of \$20, and the costs of suit. To overruling of the defendants motion for a new trial in this cause and the rendition of said judgment against the defendant and in behalf of the plaintiff, the defendant by his attorney excepts and prays that this his bill of exceptions may be signed sealed and made a part of the record in this cause, all of which is accordingly done &c.

W. A. Denning Seal

And on the twenty first day of October AD 1857 the said defendant Sidney J. Condon filed the following bond in the Clerks office of the Court aforesaid, to wit,

Knows all men by these presents, that we Sidney J. Condon and John Dougherty of Jonesboro' Illinois are held and firmly bound unto Enos A. Phillips of the same place in the penal sum of one hundred & twenty dollars for the payment, whereof well and truly to be made, we bind ourselves our heirs Executors and administrators jointly & severally firmly by these presents In testimony whereof we have hereunto set our hands and seals this the 18th day of October AD 1857.

The condition of the above obligation is such that whereas Enos A. Phillips did on the 24th day of September 1857 at Jonesborough in Union County State of Illinois before the Hon. Wm. A. Denning Judge of the 3rd judicial Circuit

of the State of Illinois the said Court judicially sitting
at the September Term thereof 1851 recover a judgment in
said Court for the sum of \$20. and the costs of suit against
the above bounden Sidney S Condon on an appeal
from a justice of the Peace in apumpsit, and which
the said Sidney S Condon hath prayed an Appeal
to the Supreme Court, of the State of Illinois.

Now if the said Sidney S Condon shall well and
truly pay the judgment, costs, interest and damages in
case the said judgment, shall be affirmed in the Supreme
Court and shall duly prosecute his said appeal,
then the above obligation to be void, otherwise to
be & remain in full force and virtue

Sidney S Condon Seal

J. Daugherty Seal

Taken and entered into before me at my office in Jonesboro
this 21st day of October AD 1851

Thomas Helman Clk

Union County Circuit Court

State of Illinois }
County of Union } I hereby certify that the foregoing is
a full and perfect transcript of the said
cause, taken and copied from the Records ^{files} and Proceedings
of the Circuit Court within and for the said County of
Union and as the same remains of record in my Office

In testimony whereof I have hereunto set
my hand and affixed the seal of said
Court at office in Jonesboro this 5th day
of November AD 1851

Thomas Helman Clk

Sidney A Candan } *not in error*
 vs }
 Erno A Phelps } *not in error*

And the said Sidney A Candan
 plaintiff in error by J. S. [unclear] his
 attorney carries into Court and says
 That in the record and proceedings
 aforesaid and also in the rendition
 of the judgment aforesaid there
 is manifest error in this to wit:

1 That the declaration aforesaid, and the matter
 therein contained is not sufficient
 in law to maintain the action of the said
 Erno A Phelps against the said
 Sidney A Candan and therefore
 that there is manifest error

2 There is also error in this. That the
 Court erred in refusing ~~to~~ give
 to the jury instructions numbered 2, 3
 as asked by the defendant and in
 this there is manifest error.

3 There is also manifest error in this that
 the Court refused to grant a
 new trial in this case as asked
 by the defendant and his motion
 aforesaid and in rendering judgment against
 the defendant in the case ^{between} J. S. [unclear] & Erno A Phelps
 found in error. ^{G. H. [unclear]} Atty for [unclear] in error

J. Standen }
vs }
E. A. Phelps }

Filed the 12th day
of November 1857
Anney D. Huston
clerk

Prepared

8703