

12625

No. _____

Supreme Court of Illinois

Reeves.

vs.

^L
Edridge.

110

George Reeves
vs

Freeman Eldridge

~~110~~

12625

1858

X

Prepared

110 = 30

George Reeves

24

Thomas Eldridge

Points & brief for
Appellants

Lundy & friend

Filed May 4. 1858.

Shelton
clerk

Be it Remembered that on the Eighteenth
day of August A.D. 1886, W Simmons issued
out of the office of the Clerk of the Circuit Court
of Hannu County, ^{Mo} which is in the Words & figures
as follows to Wit,

State of Illinois } ss
Hannu County, } The people of the State
of Illinois to the Sheriff of Hannu County,
Greeting

We Command you to Summon George
Reeves if to be found in your County person-
ally to be and appear before the Circuit
Court of the County of Hannu on the first
day of the next term thereof to be holden at
the Court House in Hannu on the
third Monday in the Month of September
next to answer the Complaint of Truman
Eldridge of a plea of trespass on the Case
on premises to his damage the Sum of
Eighteen hundred dollars & 32 cents as he says
and have you then and there this Writ and
make return thereon in what manner you
execute the same

Witness William Billings Clerk of our
Said Circuit Court at Hannu this
18th day of August, in the year of our
Lord one thousand eight hundred and
eighty six Wm Billings Clerk

Wm Billings

And on the Back of the foregoing Summons
is the following return made by the Sheriff
of Warren County,

I have served the Within Summons by reading
the same to the Within named person

August 25th 1887 James M. Coy Sheriff

By D. B. Eilenburger Dep

Filed Sept 11th 1886

Billings etc.

Copy of Declaration filed March 31st 1886
State of Illinois ss Warren County Circuit
Warren County Court to April Term AD 1886

Samuel Eldridge by Plaintiff
his attys complain of George Reeves who has
been summoned to answer to an action of
Trespass on the Case upon premises,

For that whereas the said Defendant
heretofore to wit, On the first day of August
AD 1884 at Warren County by a certain agree-
ment then and there made by and between the
said Plaintiff and the said Defendant, it was
agreed that the said Defendant should build
a certain messuage or dwelling house for
the the said Plaintiff agreeable to certain
plans thereof then in the possession of the
said defendant, and according to the partic-
ulars, and in manner following, that is
to say, That the said defendant should

build a house for said Plaintiff for a front
to the part then occupied by one Arnold
Eldred; and which agreement was in the
following words and figures to Wit; "This
agreement made this 1st day of Aug 1854 By
and between George Reeves and Truman
Eldred both of Warren County N.Hs. Witnesseth
that the said Reeves doth agree to furnish
materials except rock for the cellar wall,
and build a house for said Eldred for a
front, to the part now occupied by Arnold
Eldred of the following description and in
the following manner to Wit; The cellar
wall to be 25 by 36 ft 7 ft high and 1 1/2 ft
thick with outside doorway well up on
each side all laid in good mortar from
the foundation up, with good plank stairs
and double doors outside & single door at the
foot of the stairs. The house to be 25 by 36
ft with 20 ft Posts, Studding 2 by 6 inches lower
joist 2 by 7, Chamber joist 2 by 8, and garret
joist 2 by 7 inches. Studds and joist not to
exceed 16 inches apart from centers. Cross
Sills well supported by posts set on flat
rocks in the cellar and the long joist when
necessary supported by bridge work. The
rafters to be two ft apart & supported by
collar beams. The house to be inclosed with

good square edged $\frac{3}{4}$ inch oak shunting all
 over with clear pine siding, Window casings
 six inches wide capped, gutters freezing &
 proportioned to the house similar to John
 Reeves house, and the roof of first quality
 pine shingles, and all of the pine lumber
 in said house to be first quality, the house
 to be divided lower story 7 ft clear A. Room
 16 ft square A. R. 16 by 9 with clothes press by
 the side of the door which enters from the hall
 the hall 8 by 25 ft with stairs finished with
 banisters & railing south room 12 by 25 with
 cupboard occupying 8 ft width of the West
 end, and door opening into the kitchen and
 one into the hall, the upper story to be
 divided the same as below except then
 south of the hall, divided into two equal
 rooms, the door & window casings to be 6
 inches wide, & base boards 10 inches, the
 lower floor double, upper floor single
 no gambrel floor, the house to be well secu-
 red & fastened to the kitchen where Eliza
 lives, three doors from the kitchen, one
 into the hall, one into the cellar stairs &
 one into the south or dining room, To build
 a Portico over front door 4 columns in front
 2 do in rear 5 by 7 ft with balustrade on
 the roof and lattice work below, a row

of 10 by 14 glass on each side and over front
 door. Seven windows in front & in each end
 besides suitable garret windows, all 12
 light windows, the lower ones 10 by 14 inch
 upper 10 by 12 in glass, all doors 2 panels
 each and fastened with Karob lock - suit-
 -able tin conductors from gutters & Windows
 to lower and raised with suitable stops &
 Springs, also good lattice blinds to window
 & front door - 4 three light Windows in the
 Cellar 10 by 12, one Chimney Tunnel at each
 end commencing in the lower room with
 all necessary arrangements for stove pipes,
 all the partitions 3 by 4 inch studding, and
 the walls finished with two coats of Plaster
 -ing & all over head an extra coat hard
 finished, house to be painted three good coats
 outside and in throughout all of which
 the said Reeves binds himself firmly by
 this present to have completed in one year
 from the date hereof for the consideration
 hereafter mentioned, and the said Eldridge
 agrees to remove the house in which he res-
 -ides out of the way by the first day of April
 next, if the Weather in March will admit of
 it, and remove the earth for the cellar wall
 and finish the rock without delay on the
 premises and pay said Reeves, eleven hundred

and Eleven ^{Two} Dollars-Viz, to furnish necessary funds, to purchase building materials as needed, to furnish any part of the hewed timber which he has now on hand at six cents per foot and the remainder of hewing timber standing at three cents per foot running measure, and to pay said Reeves Fifty Dollars in cash for S.D. work on the first day of March next and the balance which shall remain due and unpaid, when the job is fully completed and delivered into the possession of said Eldridge." And although the said Plaintiff hath always complied with every requirement of said Contracts in removing the earth for the cellar wall, and in removing the house, and furnishing the timber and Money as specified in said Contracts, and has furnished divers other large sums of Money to the said Defendants, yet the said Plaintiff in fact saith that the said Defendant continuing and wrongfully and unjustly intending to injure the said Plaintiff, did not nor would perform the said agreement, nor his said promises and undertakings, but thereby craftily and subtly deceived the Plaintiff in this, to wit, That the said Defendant wholly neglected and omitted to do and perform

the work which was requisite and necessary
 to be done and performed under and by
 virtue of the said agreement, and according to
 the tenor and effect, true intent, and meaning
 thereof that is to say, to finish said house
 and deliver it into the possession of said
 Plaintiff, according to the intent and meaning
 of said agreement. And thereby said Plaintiff
 considered said contract rescinded on the part
 of said defendants. To the damage of said
 Plaintiff of Eighteen hundred & 00 Dollars,
 And whereas also, heretofore to Wit, on the
 day and year aforesaid, at Wacona County
 aforesaid, in consideration that the said Plain-
 tiff at the special instance and request of
 the said defendants had then and there retain-
 ed and employed the said defendant to erect
 and build a certain other Messuage or dwel-
 ling house, with the appurtenances, to Wit,
 and other Messuage or dwelling house, with
 the appurtenances in lieu thereof for the said
 plaintiff agreeable to certain plans and partic-
 ulars then and there made and agreed upon
 by and between the said plaintiff and defend-
 ants for certain reasonable reward to the
 said defendants in that behalf, by the said
 defendant undertook and then and there
 faithfully promised the said Plaintiff to

8 Erect and build the said last mentioned
messuage or dwelling house with the appur-
tenances agreeable to the said last mentioned
plans and particulars, with good and proper
materials and in a sound substantial, and
workmanlike manner. Yet the said defendant
~~not goodly~~ ^{by} ~~the said last mentioned promise~~
and undertaking, but contriving and intending
to deceive and defraud the said Plaintiff in
this behalf, did not nor would erect or build
the last mentioned messuage or dwelling house
with the appurtenances for the said Plaintiff
agreeable to the said last mentioned plans and
particulars with good and proper materials,
and in a sound substantial, and workman-
like manner, but wholly neglected and
refused so to do, contrary to the form and
effect of the said last mentioned promise
and undertaking, to Wit, at Warren County
aforesaid. Wherefore the said Plt^f saith that
he is damaged and hath sustained loss in
consequence of the reversion of said Contract,
and the non performance of said work by said
Defendants, to the amount of Eighteen hundred
500 Dollars. And whereas also, heretofore to Wit,
on the day and year aforesaid; in consideration
that the said Plaintiff, at the Special instance
and request of the said defendant hath then

And then retained and employed the said
 defendants to erect and build Dwell. & Wks.
 And other messuage or dwelling house with the
 appurtenances in Linc. thereof, for the said
 Plaintiff, agreeable to certain plans and partic-
 ulars then and there made and agreed upon by
 and between the said Plaintiff and defendants
 for certain reasonable reward to the said de-
 fendants in that behalf, he the said defendant
 undertook and then and there faithfully
 promised the said Plaintiff to erect and build
 the said last mentioned messuage or dwelling
 house, with the appurtenances agreeable to the
 said last mentioned plans and particulars,
 with good and proper materials, and in a
 sound, substantial and workmanlike man-
 ner; Yet the said defendant, not regarding his
 last mentioned promise and undertaking,
 but contriving and intending to deceive and
 defraud the said Plaintiff in this behalf, did
 not nor would erect or build the said last
 mentioned messuage or dwelling house with
 the appurtenances for the said plaintiff agreeable
 to the said last mentioned plans and particu-
 lars, but wholly neglected and refused so to do.
 Wherefore the said plaintiff saith that he has
 sustained damages to the amount of Eighteen
 hundred ⁵⁰/₁₀₀ Dollars, And Whereas also the

Defendant on the 10th of March
A.D. 1886 at Wana County was indebted to the
Plaintiff in Eighteen hundred ⁵⁰/₁₀₀ Dollars for money
then and there lent by the Plaintiff to the Defen-
dant at his request,

And in Eighteen hundred ⁵⁰/₁₀₀ Dollars for money
then and there paid by the Plaintiff for the use
of the said Defendant at his request,

And in Eighteen hundred ⁵⁰/₁₀₀ Dollars for money
then and there received by the Defendant for
the use of the Plaintiff. And in Eighteen
hundred ⁵⁰/₁₀₀ Dollars for money found to be
due from the Defendant to the Plaintiff on
account then and there stated between them.

And whereas the Defendant afterwards on
the day and year last mentioned was indeb-
ted to the said Plaintiff in Eighteen hundred
⁵⁰/₁₀₀ Dollars for the price and value of goods
and Materials then and there bargained
and sold by the Plaintiff to the Defendant
at his request. Nevertheless the said Defen-
dant not regarding his said ^{several} promises and
undertakings but contriving and fraudulently
intending craftily and subtly to deceive and
defraud the said Plaintiff in this behalf hath
not as yet paid the said several sums of
money, or any or either of them, or any
part thereof, to the said Plaintiff, or

furnished and completed the said house for the said Plaintiff (although often requested so to do) but the said Defendant to pay him or to do the work, the same hath he thereunto wholly neglected and refused, And still doth neglect and refuse. To the damage of the said Plaintiff of Eighteen hundred ^{and} no dollars and therefore he brings his suit &c,
 Peine V. Griffith
 Atty for Pltff

Copy of Acct sued upon
 State of Illinois }
 Hannu County } Hannu Circuit Court
 To April term 19 1887
 Truman Eldridge
 vs
 George Reeves

George Reeves

DD

To Truman Eldridge

Aug 5 th 1884	To Cash	\$200.00
Oct 16 th "	" Do	60.00
Nov 1 st "	" Do	50.00
" 8 th "	" Do	50.00
July 7 th 1885	" Do	20.00
" 12 th "	" Do	50.00
March 1 st "	" Do	50.00
" 24 th "	" Do	70.00
1885-8		

April 7 th 1855	"	Do	75.00
" 11 th "	"	Do	50.00
" 21 st "	"	Do	49.00
May 26 th "	"	Do	50.00
July 27 th "	"	Do	70.00
Oct. 30 th "	"	Do	85.00

Materials &c furnished

	649 ft hewell timber	6 ¢	38.94
	160 ft for Posts (Scantling)	3	4.80
	1 day hauling logs with 4 horse team		3.00
	259 ft Scantling for braces		5.83
	304 " " " rafters		6.84
	23 lb flour for Mr. Halcom	4 3/4	1.09
Aug 3	95 3/4 " Do " Self		4.52
	38 ft boards for stairs		.99
	20 lights 8 by 10 Glass	4 ¢	.80
	1002 ft flooring	\$35.00	35.92
	64 ft for Window sash	4 ¢	2.56
	34 ft base boards	\$36.	1.22
Nov 9 th	24 1/2 Bus lime	23 ¢	5.39
	Hauling lime from Burlington		4.00
	Tavern bill & Ferriage		1.75
	Lime Strainer		1.00
Nov 13 th 1855	Forming mortar bed & Straining lime		2.00
" 18 " "	Hauling 900 Bricks		2.00
	" My team one load brick		.62
	" Making bit of Mortar		1.00
21 & 26	" My team 2 days hauling sand		1.75

Dec 6 th	Sending Mason 11 days	10.00
"	2 Stone Cylinders	.30
Nov 15 th	500 ft Pine Lumber @ 36. m	18.00
19	700 " " " "	25.20
"	89 " Scantling	2.13
"	Hauling Lumber from Northmouth	3.57
20.	20 lb Yellow Ochre	1.50
"	1 Keg Zinc	3.00
"	2 paint brushes	1.60
27	300 ft Siding	7.20
"	2200 Lath	11.00
"	100 ft Scantling	2.40
"	Hauling 1 load Lumber	2.00
"	5 lb Lath Nails	.45
"	110 ft Oak Scantling 2 1/4	2.47
"	2 Oak plank for cellar stairs	1.00
"	2 paper brads	.30
"	2 gross screws 35-45-	.80
"	6 Cupboard knobs	1.25
"	6 hand screws	.30
"	1 Doz Butts	.62
"	1 gal Turpentine	.90
Nov 8 th	White Pierce & Waterman's bill	
"	14 locks & latches 40° \$3.60	
"	1 Mortice Lock —	1.50
"	16 sets Window blind hangers 40	6.40
"	15 pr loose joint butts	1.88
"	1 gross screws 32 & 40 35	1.90

14	1 gross Sennos	.62	
	3 Doz Window Springs 6/2,25		
	Bills & Sennos	<u>55</u>	20.70
Nov 9	H. B. Reed Bill		
	5 Bus plastering hair 60 ^c		3.00
26	Thom & Johnson Bill		
	2500 Brick \$7.50 ft		17.50
	Oscar F. Day Bill		
	8 1/2 days joiner Work 1,37 1/2		11.69
Dec 4	Wm F. Smith Bill		
	100 lb lath nails \$8.	\$8.00	
	8 panes of glass cut	1.00	9.00
"	J. W. Collins Bill		
	60 ft conductors 15 ^c	\$9.00	
	3 tubes 12 ^c	37	
	3 steps 10 ^c	30	
	2 Ventilators 1.00	2.00	11.67
6 1/4 "	James D. Conklin Bill		
	Plastering 200 yds 2 coat finish 14.00		
	Laying Tunnel	2.00	16.00
7 1/4	Edward Joy Bill		
	16 doz Window Blinds		148.00
7 1/4	J. T. Tallant Bill		
	8 lb Paris Green 140	3.20	
	20 " Yellow Ochre	1.00	
	4 " Litharge	.50	
	2 Paint Brushes	1.65	6.35

26

George Hooford Bill

Hauling Bicks with Team	2,00	
One day Eldridge " "	.75	
" " with	2,00	
2 Hauling said with team	3,75	
1 3/4 days of Hauling	1,50	
1 3/4 days with Hoods	1,37	
Trip to Bennington	3,00	14,37

Jan'y 18, 1886

Pugh & Brothers Bill

1 Aull Post	1,25	
70 Banisters 10	7,00	8,25

Feb'y 23,

Davis & Reed Bill

10 days Joiner Work		20,00
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23

C. W. Foster Bill

19 1/4 days Joiner Work ^{15th} to 17 th Feb'y	28,87	
1 1/4 " " ^{1st} to 23 Feb'y	17,81	
14 " Board	1,33	48,01

23,

Achemiah Foster Bill

24 3/4 days Joiner Work	30,94	
6 1/4 " Board	1,83	32,77

"

Davis & Reed's Contract

18 panes 10 by 16 glass	1,80	
20 lbs Nails 6 1/2	1,30	
Two planks for Cellar Stairs	1,00	
1 flat Brush	.40	
Service of Horse to 2 men ^{\$4,00} in 1884	8,00	
" " Bull & Cows in 1888	2,00	
16 Weeks board of Joiner & Masons	28,00	
	1800,52	

Pleas before the Honorable John S. Thompson Judge of the tenth judicial circuit, of the State of Illinois, At a circuit Court began and held at the Court house in the City of Altonmouth within and for the County of Warran and State of Illinois On the third Monday in the Month of September, In the year of our Lord One thousand eight hundred and fifty six

Present Hon John S. Thompson Judge
A. M. Craig States attorney
William Billings Clerk
James McCoy Sheriff

43 Imman Eldridge }
vs } Assumpsit
George Reeves }

And afterwards to wit on the 15th day of Sept A D 1856 the following appears of record in the above entitled cause

43 Imman Eldridge }
vs } Assumpsit
George Reeves }

On motion and by agreement of Parties it is ordered by the Court this cause be referred to Thompson Brooks, A. S. Smith, and William Ward, as arbitrators

for their adjudication, And when they shall have made up their award. They shall seal the same up and file it in this Court on or before the first day of the next term thereof until which time this Cause is Continued.

Pleas before the Honorable John S. Thompson Judge of the tenth Judicial Circuit of the State of Illinois. At a Special term of the Court began and held at the Court house in Marmouth, Within and for the County of Warren and State of Illinois, On the fourth Monday of November in the Year of our Lord One thousand eight hundred and fifty six, It being the 24th day of said Month.

Present Hon John S Thompson Judge
 James H Stewart State Attorney
 William Billings Clerk
 James McCoy Sheriff
 Truman Eldridge }
 20 } Assessors
 George Reeves }

And afterwards to this on the Second day of December A D 1856 the following record was made in the above entitled Cause,

18

Truman Eldridge }
 vs } Assumpsit
 George Reeves }

This day came the Plaintiff
 by his attorneys, and moves the Court for
 judgment on the award of Arbitrators
 appointed herein, and motion withdrawn

Pleas before the Honorable John S
 Thompson Judge of the tenth judicial circuit
 of the State of Illinois, At a circuit Court,
 began and held at the Court house in
 Monmouth within and for the County of
 Warren and State of Illinois on the third
 Monday in the Month of March, In the
 year of our Lord One thousand eight
 hundred and fifty seven, It being the
 sixteenth day of said month,

Present Hon John S Thompson Judge
 James H Stewart States Attorney
 Wm Laferty Clerk
 Charles M Mills Sheriff

Truman Eldridge }
 vs } Assumpsit
 George Reeves }

And afterwards to wit on
 the 20th day of March A.D. 1857 the following

Record was made in the above entitled
Cause,

Truman Eldridge }
20 AS } Assumpsit
George Reeves }

This day came the Plaintiff
by his counsel, and enters his motion, for
a judgment on the award of the arbitrators
appointed herein, at the last term of this
Court, and proof of the service of the notice
on defendant, having been made,

And afterwards to wit on 24th day of
March AD 1887, the following record was
made in the above entitled Cause

Truman Eldridge }
20 AS } Assumpsit
George Reeves }

This day came the Defendant
by his counsel, and enters his cross motion to
set aside the award made herein, After
argument had thereon by their respective
counsel, the said defendant by his attorney,
withdraws his cross motion to set aside the
award, And now at this time comes the
Plaintiff by his attorney, and enters his
motion for a judgment on the award filed
herein. Which said motion was heard and

allowed. Thereupon it was ordered by the
 Court that judgment be entered against
 the said Defendant for the sum of Five
 hundred and Twenty six dollars and
 Seventy cents. Therefore it is considered
 by the Court, that the said Plaintiff have
 and recover of and from the said Defen-
 dant, the sum of Five hundred and
 Twenty six dollars and seventy cents,
 Together with his cost by him in this
 cause expended and may have execu-
 tion therefor. Then came the Defendant
 by his attorney, and prays an appeal
 to the Supreme Court which is allowed
 on the condition that the said Defendant
 file his bond in the sum of eight hun-
 dred dollars with security to be appor-
 -tioned of by the Clerk within Sixty days
 from the date hereof. Bill of exceptions
 signed and sealed,

State of Illinois, County of Hancock
 Truman Eldridge } Circuit Court
 vs. } March Term AD 1887
 George Reeves }

Be it remembered that the Plaintiff on the second day of this term entered his motion for a judgment on and award to the allowance of which the defendant by his counsel objected and the motion being made on the 8th day of the Term, the Plaintiff offered in support thereof an order of the clerk, dated 16th September 1886 directed to Thompson Brooks, A. S. Smith & Wm. H. Ward, which reads as follows to wit

State of Illinois / Sept term AD
 Hancock County / Circuit Court 1886

Truman Eldridge }
 vs. } Assumpsit.
 George Reeves }

To Thompson Brooks A. S.
 Smith and William Ward Esqs.

Gentlemen — at this term of the Court you were chosen arbitrators in the above entitled cause, by the parties in said cause, and thereupon the Court upon motion ordered that you act as such Arbitrators and that you hear and determine at such time as you may deem proper upon all

Matters and Hearings between said parties
but particularly the cause of action between
the said parties pending in said Court, and
an Award made upon such matters and
return said award into this Court.

LSB

Given under my hand and the
seal of said Court at Monmouth
this 16th day of September A.D. 1886

Wm Billings Clerk

Filed Sept 27th 1886

Billings Clerk

The Plaintiff further offered an Oath and
award, which reads as follows, to wit,

State of Illinois

Warren County } Personally appeared before
me Thompson Brooks, A. S. Smith and
William Ward Esqrs each whom took an
Oath to faithfully and impartially tri-
bute upon all matters and differences
between Truman Eldridge and George Reeves
and more particularly concerning a contract
to build a dwelling house by said Reeves
for said Eldridge and an Award make
therein to the best of their understanding
and ability

Thompson Brooks

Subscribed and sworn

Wm W Ward

to this 17th day of September

A S Smith

A.D. 1886

Abram Brissey J.P.

State of Illinois }
Warren County }

The undersigned arbitrators
in the cause of Truman Eldridge vs George
Reeves, having been duly sworn and having
as required by their oaths determined the
cause submitted, do hereby award and
decide herein as follows, We find for
the Plaintiff Truman Eldridge Five hundred
and twenty six Dollars and Seventy
cents, and we having delivered to each
party a copy hereof ask to be discharged
herein with our cost.

Given under our hands and Seals
this the 17th Day of Sept A D 1886

A. S. Smith {L.S.}

Thompson Brooks

Wm H Ward

Filed Sept 27th 1886

Billings clk

Both of which papers are marked filed
September 27th 1886, and were delivered to the
Clerk open & not sealed & by him filed, which
read in evidence without objection.

The Plaintiff further offered and read a
notice of the making of said motion, which
reads as follows, and proved the service of
the same more than ten days before the

two of each }
as per Statute }
\$1.00 each }

Sitting of this Court, which reads as follows
to Wits,

State of Illinois } Hannu Circuit Court
Hannu County } March Term AD 1887

Sir you will take notice that
at the March Term of our Circuit Court AD
1887 we will enter a motion to have judgment
entered up against you for \$526.75 Dollars
on the following Award in the case of Truman
Eldridge vs George Reeves, in favour of said
Plaintiff, which Award was in the following
figures and words to Wits

State of Illinois }
Hannu County }

The undersigned Arbitrators in
the case of Truman Eldridge vs George Reeves
having been duly sworn and having as required
by their Oaths determined the case submitted
to hereby Award and decide herein as follows
No find for the Plaintiff Truman Eldridge
Five hundred and twenty six Dollars and
Seventy cents, and we having delivered to
each party a copy hereof as to be dischar-
ged herein with our cost

Given under our hands and seals this the

17th day of Sept 1886

as per Statute

\$1.00 each

A. S. Smith (Ls)
Thompson Brooks

Wm W Ward

When & where you can appear and object
or show cause why said award should not
be entered up as final judgment against
you

Monmouth Ill

Feb. 2^d 1857

Truman Eldridge

Plaintiff & Griffith

Attys for Pltff

Received a copy of the within motion this
21st day of February A D 1857

Filed Mar 14th 1857

W. S. Laferty, clk

Which was all the evidence offered or
introduced by either party.

And the Court thereupon sustained said
motion and determined that judgment should
be entered for the amount of said award, &
which decision the defendant then and
thereby his Counsel excepted,

And because the same facts do not appear
of record the defendant prays that this his
Bill of exceptions be signed and sealed
by the Court and made a part of the
record in this case which is accordingly
done,

John S. Thompson, Secy

Filed March 25th 1857

W. S. Laferty, clk

(Copy of Bond)

Know all men by these presents that we
 George Reeves and Rubin Reeves of the
 County of Marion and State of Illinois are
 held and firmly bound unto Truman Eldridge
 in the penal sum of Eight hundred dollars
 for the payment of which well and truly to
 be made we and each of us bind ourselves
 our heirs, executors and administrators jointly
 and severally and firmly by these presents,
 sealed with our seals and dated at Mount Vernon
 this 21st day of May A.D. 1887 One
 Thousand eight hundred and fifty seven

The Condition of the above obligation
 is such that whereas Truman Eldridge did
 on the 24th day of March 1887 in the Circuit
 Court within and for the County of Marion
 and State of Illinois, obtain a judgment
 against the above bounden George Reeves for
 the sum of Five hundred & twenty six dollars
 and seventy cents and costs of suit, from which
 judgment the said George Reeves has prayed for
 and obtained an appeal to the Supreme Court
 of said State, now if the said George Reeves
 shall duly prosecute said appeal and shall
 moreover pay the amount of the judgment
 costs, interest, and damages rendered and
 be rendered against him the said,

27

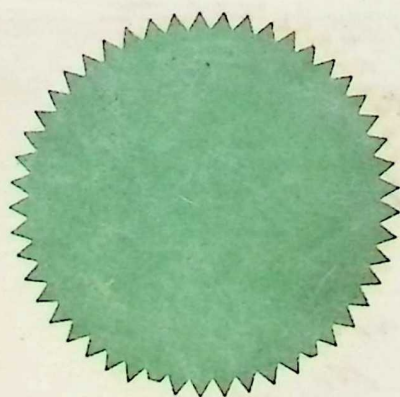
George Reeves in. Case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be null and void. Otherwise to remain in full force and virtue.

George Reeves L.S.
Reuben Reeves L.S.

Approved by me this 21st day of May 1857
Wm. Lafaty, clk
Filed May 21st 1857
Wm. Lafaty, clk

State of Illinois
Marion County } I William Lafaty Clerk
of the Circuit Court for said County do hereby
Certify that the foregoing is a full, true, and
perfect copy of all the proceedings in the fore-
going Case as appears from the files and
records now in my office.

In Testimony whereof I have hereunto
set my hand and affixed the Seal
of our said Circuit Court at Marion
with this 12th day of November
A.D. 1857 Wm. Lafaty Clerk



State of Illinois, 3rd Grand Division
Supreme Court April Term A.D. 1858.

George Reeves
vs
Guman Eldridge } Appeal from Warren

The said Appellant comes
by his attorneys Gandy & Judd and says
that manifest error hath intervened in the proceed-
ings whereby the foregoing is a record and
he assigns the following

- 1st The Circuit Court erred in sustaining
the motion for judgment.
- 2^d The Circuit Court erred in rendering
judgment on the award.
- 3^d The Circuit Court should have set
aside the award and
- 4th The proceedings are otherwise informal
and erroneous.

Wherefore he prays judgment &c.

Gandy & Judd
Appellants Attorneys

110

Guman Eldridge

vs
George Reeves

Certified Copy of

Proceedings in

Warren County

Ill. cont.

Filed March 21, 1858

J. L. Leland

clerk

And now comes the defendant saying that
no such error as is alleged hath intervened
in this cause By Paine & Wood
his Attorneys

State of Illinois, 3^d Grand Division
George Reeves }
vs } Appeal from Warren
Griman Eldridge }

Points & brief for Appellant by
Gandy & Judd.

II. The matter referred to the arbitrators
was the cause of action set forth in
a declaration of Eldridge vs Reeves pend-
ing in the Warren Circuit Court
by virtue of the provisions of
Rev. Stat. p. 56. Art. § 2.

Before proceeding to hear &c. "The
arbitrators shall be sworn, faithfully
and fairly to hear, examine and determine
the cause, according to the principles
of equity & justice"
Id. § 4.

By the evidence, the oath adminis-
tered to the arbitrators, varied substan-
tially from the requirement of the Statute;
the oath taken was "to faithfully and
impartially to arbitrate upon all matters
and differences between Griman Eldridge

and George Reeves, and more particularly concerning a contract to build a house by said Reeves for said Eldridge, and an award make therein."

It is insisted that this oath did not qualify the arbitrators, and that their action would have no more force than it would have if no oath had been taken.

Instead of swearing to "hear, examine and determine" they swear to "arbitrate"; that is what the parties were to do, & the arbitrators could not refer the questions to others to be selected by them.

Instead of swearing that they would determine the matters in controversy in that suit, they swear "to arbitrate upon all matters and differences."

Most clearly the parties were bound without the sanction of an oath required by the State; and perjury could not be assigned on the affidavit made.

II II.

The question referred by the rule of the Court was the cause of action pending & nothing else.

What did they determine?

It is answered that they determined more than was submitted to them, as is shown by the evidence.

1st The order issued by the Clerk & on the authority of which they acted, directed them to hear and determine "upon all matters and dealings between the said parties, but particularly the cause of action between the said parties pending in said Court"

2^d The arbitrators then took an oath in regard to "all matters and ^{differences} ~~dealings~~"

3^d They recite in the award itself "having been duly sworn and having as required by their oaths (not as required by the rule of Court) determined" &c

Hence we infer that the arbitrators did exceed the terms of the submission

This renders the award void & no judgment could be obtained on it, these facts appearing on the record by the evidence for authorities; See over

Kydou Awards 140 et seq
Watson on Arbitration 105 et seq
Butter vs The Mayor 7 Hill 329
Keiny vs Dopler 17 Ill 111.

III.

The arbitrators shall appoint a time & place for hearing and adjourn from time to time as may be necessary.

Rev. Stat p. 56. Arb. § 3.

And shall give notice to the parties thereof and any award made without notice shall be void.

Kydou Awards 95

Abbe vs Norcott 8 N. H. 53

Book vs Philbrick 3 N. H. (Foster) 188.

3

Elmendorf vs Harris 23 Wend 630

Emorysal vs Owings 7 Gill 488.

Youngs vs Reynolds 4 Md 375

Halcomer vs Montgomery 4 Dallas 232.

IV.

It does not affirmatively appear that notice was given of the hearing, or that the parties appeared & were heard.

1. In the absence of such notice shown by the report of the arbitrators, there is no presumption that the arbitrators did give the notice.

Where an oath is required it must affirmatively appear that the oath was taken.

Lile in Barnett 2 Bibb 166

French in Mosely 1 Little 250

Reeves in Gaff 1 Pennington (N.J.) 143.

Parker in Cramer Ibid 197

Little in Silverthorne Ibid 680

If the fact that the oath was taken must appear, the omission of which is a more irregularity, a fortiori, the failure to give notice, ^{be} which would render the award void, must ~~appear~~ be negatived by the award.

V.

The arbitrators were acting under the Statute and under a rule of Court entered in pursuance of its provisions, 1. § 10 Chap Arb. (Rev Stat p 57) provides, "that if any legal defects appear in the award, or other proceedings" x x x x "said Court may set aside such award, or if corruption or fraud be relied upon such facts must appear by oath or affirmation; but in this case the defects appear in the award and other proceedings," and the defendant having objected to the entry of judgment on account thereof, the Court erred in rendering judgment.

3

2. The proceeding being under the Statute before the prevailing party is entitled to judgment on the award, it must appear that the arbitrators have complied with

the Statute, otherwise he will be left to his
common law remedies.

Lowe v. Holte 15 Ms. 373

Waring v. Hooper 17 Ibid 411.

The fact that the defendant below withdrew
his motion to set aside the award & relies on the
irregularities & the fact that award is void cannot
affect him.

VII. It is claimed by the appellee that it is
to be presumed that notice was given
to the parties by the arbitrators, but a
reference to the authorities cited upon
Point IV. of this brief, shows that no
such presumption was made in any
of those cases, but that it must affirmatively
appear that the Statute has been
complied with.

At most no stronger presumption
could arise than in case of a judgment
by default. This Court has decided
that the fact that notice was given
must affirmatively appear to sustain
a judgment by default in a Court of
record.

Warren v. Edmonson 5 Gilman 271

Yorkees v. Jackson 10 Peten 449

Lowe v. Parker v. Miller & Co 9 Ohio 108

And in other case where judgments have been rendered by inferior Courts it has been decided that it must affirmatively appear that the Court had jurisdiction of the person & subject matter.

Hannay v Montgomery Breeze 188

Robinson v Harlan 1 Scam 237

Wells v Mesonsal 4 Scam 89

Reasoning from analogy, can it be said that the proceedings of arbitrators conducted without the knowledge and supervision of the Court, to which they are to report their award for approval, are entitled to more force and to greater presumptions in their ~~affair~~ ^{favor}, than the judgments of Courts of inferior jurisdiction?