

No. 12645

Supreme Court of Illinois

Scriven.

vs.

Dillon

71641  7

in the case the Jury returned the following
Verdict. We the Jury find the Defendant
Guilty of the of the Trespas herein and that
the Plaintiff has sustained damage hereby
in the Sum of 47.75/100 dollars. { Signed }

J. L. Dean, J. C. Wosman, Edward Pratt
Andrew McClure G. H. Mason and Stephen Seale

It is therefore ordered that the said
Plaintiff have Judgment against the said
Defendant for the Sum of \$47.75/100 and also
for Costs of Suit

A. R. Brown, J. P.

Defendant Comes into his appeal and gives
Bond with Isaac Merriam for Security

State of Illinois

Essex County

I A. R. Briggs one of
the Justices of the Peace
within and for said County do hereby certify
that the foregoing Transcript and Judgment
of J. A. Scriven vs. A. H. Dillon is truly copied
from the files and Books of my Office

Given under my hand & Seal this 20th day
of April A. D. 1857. A. R. Brown, J. P. { Seal }

Appeal
Bond

Know all Men by these presents That we A. H.
Dillon and Isaac Merriam are held and
firmly bound unto John A. Scriven in the
penal Sum of one hundred and twenty dollars

Lawful Money of The U. 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 Seal this 2^d day
of April A.D. 1857 The condition of this
Obligation is such that whereas the Said
John A. Scriven did on the 30th day of March
A.D. 1857 before A. R. Brown, a Justice of
the Peace, for the County of Tazewell recover
a Judgement against the Said A. M. Dillon
in action of Trespass upon personal property
for the Sum of \$477⁹⁰/₁₀₀ and also for cost
of Suit. From which Judgement the
Said A. M. Dillon has taken an appeal
to the County Court of the County of Taze-
well aforesaid and State of Illinois.

Now if the Said A. M. Dillon shall proce-
ute his appeal with Effect and pay whatever
Judgement may be rendered by the Court
upon dismissal or trial of Said appeal
and shall pay all costs from the commen-
cement of this Suit until the final determi-
nation thereof. Then this obligation to be void
Otherwise to remain in full force and Effect
approved this 2^d day Allen A. Dillon
of April A.D. 1857 Isaac Merriam

A. R. Brown J. P. {Seal}

{Seal}
{Seal}

Summons

State of Illinois
Pazewell County

The people of the State of
Illinois to any Constable

Greeting— You are hereby Commanded to
Summon A A Dillon to appear before me
at my house in Elm Grove on the thirtieth
day of March A D 1857 at one O'clock P.M.
to answer the Complaint of J A Seiven in
an action of Trespas to personal property
for damages not exceeding one hundred
dollars and thereof make due return as the
Law direct

Given under my hand and Seal
this Twenty fourth day of March A D 1857

Demand \$100.

G. W. Greely, J. P. ^{Seco} Seal

Which Summons was returned endorsed as follows

I have Served the within Summons
by reading the Same to the within named
A A Dillon this 24th day of March, A. D., 1858.
A. J. Davis, Const

Oath

You do solemnly swear that it is your
belief that you cannot have an impartial
trial in the Suit commenced before me
G. W. Greely a Justice of the peace. by J. A.

Scriven, and that you ask it to be removed
to some other Justice of the Peace so help
you God

A. H. Dillon {Seal

Subscribed and Sworn to before
me this 26 day of March A D 1857

G. W. Grady J. P. {Seal

And now afterwards, to wit: on the Eighteenth
day of May in the year of our Lord One Thousand
Eight Hundred and fifty Seven, the Clerk Issued
Appeal Summons in words and figures following
to wit:

State of Illinois }
Tazewell County } The people of the State of
Illinois to the Sheriff of said
County Greeting

We Command you that you
Summon J. A. Scriven. If he shall be found
in your County personally to be and appear
before the County Court of said County on the first
day of the next term thereof to be held at the Court
House in Pekin in said County on the 3^d
Monday of July next to prosecute his Suit
against Allen H. Dillon, lately appealed
from before A. P. Brown, Esq.

And have you then and there this
writ with endorsement thereon in

What manner you shall have Executed
the Same,

Witness John Gridley Clerk of
our said Court and the Seal
thereof at Pekin aforesaid This
18th day of May A.D. 1858
Jno Gridley Clerk County Court

Which Summons was returned on the 13th day
of July 1857 Enclosed as follows

The within named J. A. Scriven. is not found
in my County June 24th 1857.

C Williamson

Sheriff. J. C.

And now afterwards to wit: at a term of the
County Court began and held at the Court
House in the City of Pekin and for the County
of Tazewell and State of Illinois on the
third Monday in the month of January in the
year of our Lord One Thousand Eight Hundred
and Fifty Eight. it being the Eighteenth day
of said Month. Present. The Honorable John
M. Bush, Judge. Chapman Williamson
Sheriff and John Gridley, Clerk.

Thursday Jan. 28th 1858.

J. A. Scriven

A A^{vs} Dillon } Appeal

And now on this day came as well the Plaintiff by his attorney Davison as the Defendant by his attorney Prettyman and Puterbaugh. Whereupon came a Jury of Twelve good and Lawful men, to wit: Robert Thompson Jonathan Moll, J. Jones William Dixon Albert Park ~~with~~ Lewis G. L. Thomas Wm Eagle Daniel Trail Joseph Hicks David Williams, Joseph Stewart, duly elected tried and sworn, who having heard part of the testimony in the cause were discharged from further consideration thereof for this day

Jan 29th 1858
J. A. Scriven
vs
A. H. Dillon

appeal

And now again come the parties by their attorneys and the Jury having heard the remainder of the proofs and allegations of the parties and arguments of Counsel thereon, for Verdict Say we the Jury find for the Plaintiff for the sum of \$45.75 dollars

It is therefore ordered and adjudged by the Court that the plaintiff Recover of said defendant the amount found as aforesaid and Likewise the Costs and Charges by him about his suit

Expended and that Execution be Issued
therefor.

Then upon the defendant Entered his
Motion for a new trial.

Tuesday February 2^d, 1858

J. A. Scriven }
vs } Appeal
A. N. Dillon }

And now again come the
the parties by their attorneys and the Court
and the Court having considered the motion for
a new trial of this Cause and heard the argu-
ment of Counsel thereon is of opinion that said
Motion be overruled.

Friday February 5th 1858

On Motion leave is granted Defendant to
file appeal Bond in Thirty days in Sum of \$200,
to be approved by the Clerk. and Ten days to
file Bill of Exceptions

And now afterwards to wit: on the Twentieth
day of January in the Year of our Lord One
Thousand Eight Hundred and Fifty Eight the
defendant filed his appeal Bond in the words
and figures following, to wit:

Know all men by these presents that we Allen N.
Dillon of Logan County and State of Illinois
and Jesse Merriam of Pigeon County and

State aforesaid are held and firmly bound
unto J A Scriven of Woodford County and State
aforesaid in the penal sum of Two hundred
Dollars (Sum fixed by the Court) Current Money
of the United States for the payment of which
well and truly to be made, we bind ourselves
our heirs executors and administrators jointly
severally and firmly by these presents. Witness
our hands and Seal this 20th day of January
A.D. 1858. The Condition of the above obligation
is Such that whereas the Said J A. Dillon did
on the 28th day of January A.D. 1858, in the
County Court in and for the County of Tazewell
and State of Illinois recover a Judgement
against the above bounden Allen H. Dillon
for the Sum of Forty Seven 47/100 Dollars Damage
and Costs of Suit from which Said judgement
of the Said County Court the Said A H Dillon
has prayed for and obtained an appeal to
the Supreme Court of Said State, Now if the
Said A. H. Dillon Shall duly prosecute his said
appeal with effect and Shall moreover pay the
amount of the Judgement, Costs interest and
damage rendered and to be rendered against
him in Case the Said judgement Shall be
affirmed in the Said Supreme Court, then the
above obligation to be void, Otherwise to remain
in full force and virtue.

Allen. N. Dillon Seal
By B. S. Prettyman atty for Plaintiff Seal
Jesse Morrison Seal

Taken and approved
before me at my office
this 20th day of February
A. D. 1858

Wm. Guidley Clerk

And now heretofore to wit: on the 29th day
of January in the year of our Lord One thousand
and Eight Hundred and Fifty Eight come
the Defendant and filed his reasons for a new
Trial in the words and figures following, to wit:

Reasons of J. A. Scriven
New trial

A. N. Dillon

Motion for New trial

- 1 Because the instruction of the court was contrary
to the Law and calculated to mislead the
Jury
- 2^d Because the Finding of the Jury was contrary
to the Law and the Evidence
- 3 The Court admitted improper Testimony to go to
the Jury and rejected proper Testimony

Prettyman

for Deft

And now afterward to wit: on the
day of in the year of our Lord
One Thousand Eight Hundred and Fifty Eight
The Plaintiff filed his bill of Exceptions
in the words and figures following, to wit:

John A. Scriven vs
Allen A. Dillon

Be it remembered that
on the trial of this case the plaintiff gave in
evidence the following lease

Lease

Article of agreement made and entered into
between A. W. Dillon of the first party and
John A. Scriven of the Second party, This
Witnesseth that the first party agrees to let on
lease all the tillable land now occupied by
him. Except the fall wheat in the Orchard and
and furnish the Second party one Span of Horses
Waggon and two plows, and one hundred bushels
of Corn. To feed the team, until grain is raised
also Orchard, Eight Milk Cows, and four Steers
and one Breeding Sow, also House garden and
fire wood, and half the Seed, Cheese press, and Drib,
and twenty pans, and one half Salt and pasture
for the Cows, also Stabling and two bins to hold
grain, and half the corn to feed the Hogs.

The Second party is to furnish

One team and other farming utensils. And four milk cows, and Eight Hogs and one sow, and half the Salt, and other utensils for Making butter and cheese, and one half the Seed. And it is understood that the second party is to till the farm well and attend to the above stock well. The second party is to market the fruit, cheese butter, and cider. The first party to pay the cider press for his share of the expense of Making. The second party is to thrash the small grain and put the half of it in the grainery, and the first party is to pay half the Machine Expense.

The second party is to pay for the above privileges one half the Corn in Sack delivered in Pekin. The first party paying six cents per bushel for thrashing and delivering of his half also the third of the neat income of the cows is to be paid to the first party and one half the proceeds of the orchard and the hogs. Each party is to be to equal Expense in feeding all stock and team after the grain is raised. The second party is to use down Timber for fuel. The first party is to take four of the cows the first of Feb. The second party is to leave the farm and fences in good repair and the first party is to pay the second party for putting them in repair when the second

party comes on the place. Each to have an
Equal Share of the Calves

This the 17 of Dec 1855

A. H. Dillon

And also the following arbitration bond and
award:

Know all men by these presents that
Whereas a matter of difference is now existing
between Allen H. Dillon of the County of Mc
Lean and State of Illinois and John Scriven
of the County of Tazewell and State aforesaid
concerning all matters, accounts, bargains,
contracts and agreements whatsoever between
the said parties

Now therefore we the said
Allen H. Dillon and John Scriven do
hereby Submit the said unsettled accounts
together with all claims contracts partnerships
agreements causes of action covenants promises
and all matters both in Law and equity to the
award order and arbitrament and determination
of Seth Talbot Augustus Ames and Robert
Wynd all of Tazewell County aforesaid, and
do covenant each with the other that we will in
all things faithfully keep observe and abide
by the decision and award that the said
arbitrators may make in writing in the
premises under their hands and seals

To be commenced on the 12th day of March
A.D. 1857. and delivered as soon thereafter
as practicable.

And it is further ^{agreed} that between
the said parties hereto. That the Party that
shall fail to keep abide and observe the dec-
ision and award that shall be made accor-
ding to the foregoing Submission, will
forfeit and pay to the other the Sum of One
Thousand Dollars, as liquidated fines and
settled damages

Witness our hands and Seals

This 10th day of March A.D. 1857

Witness

A. P. Brown,

Allen A. Dillon ^{Seal}

John A. Scriven ^{Seal}

State of Illinois

Pease County } The undersigned arbitrators
in the Cause of A. A. Dillon
and John Scriven having been duly sworn
and having as required by their Oaths determined
the Cause submitted do hereby award and decide
herein as follows. That John Scriven shall
deliver to A. A. Dillon the five Stock hags on
farm and pay him the same of Forty Seven ⁷⁵/₁₀₀
dollars and A. A. Dillon is to receive the pay
for the three loads of Corn delivered at
Peoria on the Seventh day of March. Said

Scriven to deliver up the Farm now occupied
by him to the Said Dillon on or before the 24th
day of March 1857. Each party to pay one half
of the costs of this Suit

Witness fees as claimed \$ 6.50
Arbitrators \$1. Each 3.00

Premont March 14th 1857
Seth Talbot *Wm*
Aug. James *Wm*
R. Wynd *Wm*
Arbitrators

He then called Charles Scriven his Son as
a witness who testified that his father moved
on to the place mentioned in the Lease in
the Spring of 1856. That the Wheat Sown in
the orchard by Dillon was winter Killed
and the Land plowed up and re sown with
Spring wheat by the plaintiff - That Dillon
Left some Wheat in the barn when he left
the place which he took away in July 1856
That at the time of the arbitration There was
wheat Corn and oats in the barn all of which
had been raised on the place by the plaintiff
Think there was 60 or 65 bushels of Corn. Cant
remember how much Wheat and oats.

Shortly after the arbitration while Witness
and his father were from home the wheat

and Oats were taken away by same person
The he saw Mr Waldron The Deft and
Mr Davis at the barn measuring the grain
Shortly before the arbitration before there was
any difficulty between the parties. Dillon agreed
to let the plaintiff have ten bushels of wheat
to pay him for seed which he had furnished
to sow in the Orchard.

The plaintiff then called
Thomas Edes who testified that he lived
about $\frac{1}{2}$ mile from the farm of Dillon
where plaintiff lived in 1856. That a few days
after the arbitration he went to the barn on
the place where Scriven lived. Saw Dillon
(the deft) there Sacking Wheat that Dillon
had horses and a Wagon there and Witness
Saw him Start from the Barn Shortly after
with of grain in Sacks a common sized Load
Should judge there was about thirty bushels
in the Load.

The plaintiff then called David
Hanger who testified that he moved on to
the Dillon place after Scriven left about
1st April 1857. that the house was vacant when
he went there. That Dillon sold him the
Corn in the barn about 47 bushels at 27cts
per bushel and that witness has used up
the corn

The plaintiff then called George Grady who testified that in the winter before the arbitration the witness threshed out the corn raised by Scriven except about 65 bushels which by order of Defendant was left in the barn for the plaintiff in the ear.

The Plaintiff then called Augustus Ames who testified that he was one of the arbitrators Dillon told me after the arbitration that he should take the grain away and asked witness who they had given the grain to witness told him they had allowed him money for the grain on the place. He said he should take it away any how for he had it in possession before the arbitration.

The plaintiff then called Seth Talbott who testified that he was one of the arbitrators that they took proof of all the grain raised on the place and allowed Dillon money for his share about \$60, that they deducted from that sum what they found due to Scriven and gave their award to Dillon for the balance which paid him for his part of the crop raised and that no proof was made before them of the grain or any part of it having been delivered to Dillon - It was determined by the arbitrators that all the grain on the place was

Scriven and we gave Dillon pay for his part
Wheat raised 60 bus Oats 150, Wheat \$, Oats 400

The defendant then called
William Davis who testified that he was directed by the Justice before the arbitration to go with Mr. Waldron and measure the grain then in the barn. That Dillon came to us and got us to go. When we got there Scriven was not there. we first measured the corn while we were doing it Scriven came into the barn and said it was of no use to measure the corn it had been measured and put there for Dillon. there was about 65 bush of corn we measured in a barrel and put it into an adjoining bin. Scriven said he wanted two barrels of it for seed which Dillon gave to him and it was put in another place. That they then measured the wheat. thinks there was fifteen bushels of it and also the Oats. That Scriven made the same remark about measuring the oats and wheat that he did about the corn. That witness and Waldron were both before the arbitration as witnesses for Dillon but were not sworn. There was 4 Bins in the Barn and witness put the corn in one and the wheat and Oats were in an other

The defendant then called Thomas
Puntz who testifies that he and the parties
to this suit were present at the Justice
Brownes office on Monday when the when
the award of the arbitrator was read and
saw Scriven there pay the amount of it to
Dillon. Heard Scriven complain that
Dillon the day before had mailed up the
bins where the grain was in the barn as he
thought it reflected upon his honesty.
That the hearing before the arbitration was
finished the Saturday night before Mitrop
took it from the conversation that both
parties understood the grain to be Dillons
and on his Cross Examination said he
did not think he heard Scriven say
any thing about the right and title to the
grain. This was all the evidence in the
case. The plaintiff asked the following
Instruction

State of Illinois }
 Tazewell County }

I, John Gridley Clerk of the County Court within and for said County do hereby certify that the foregoing Amotion papers contain a true and perfect copy of all the Papers and the record of the proceedings had in the cause therein named. So far as the same appears of Record in my Office.

Witness John Gridley Clerk of the said County Court and the Seal thereof hereto affixed at Pekin this 15th day of March A.D. 1858

John Gridley clerk

335
 14 Division
 24 191 Dillon

335

1858

Filed May 6 1858
 L. Leland
 Clerk

1858

Just. \$45.25
 Dgs \$45.7
 pg. 281

15.40

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