

No. 12643

Supreme Court of Illinois

Trainer.

vs.

Shirk.

117-50
John Sherke

Oliver Trimmer

119

1858

12643

1224
Rear

Supreme Court of the State of Illinois 3^d division
April Term 1858

John Shirk }
vs
Oleiver Haines }

Appeal from Jo Daviess

And now comes the said Appellant
by Leland & Leland his attorneys & says that
in the record & proceedings in said Cause there
is manifest error in this to wit

1st The Court erred in admitting evidence offered
by the Plaintiff below

2^d The verdict & judgment were against the
law & the evidence

3^d The Court erred in overruling the motions
for a new trial & in arrest of judgment

4th The Court erred in opening jurisdiction
to try the Cause there not having been any for-
feiture of the Justice of the Peace in the Cause

5th And for ^{these} other errors apparent on said record
the Appellant prays that said judgment be reversed
& set aside

Leland & Leland
for Appellant

And now comes the said
appellee by W H Wallace his
counsel, and joins in error and
says that there is no such error
in the record of the proceedings
aforesaid as appellant hath
above alleged & this he prays
may be inquired of by the
court - Wherefore he prays that
said judgment may be
affirmed &c

W H Wallace

April 23, 1858.

Check as follows

Appellant & counsel

h
State of Illinois
So Davie's County
Fourteenth Judicial Circuit

W
W
W
Pleas in the Circuit Court
begun and held within and for said County
of So Davie's County on the third Monday
in the month of October AD 1857 before the
Hon^{ble} Benjamin R. Sheldon Judge of the
Fourteenth Judicial Circuit of the State of
Illinois

W R Rowley Clerk

S R Miner Sheriff

W D Meacham Prosecuting Attorney

Oliver Truitt

vs

Appeal.

John Sherk

Be it remembered
that heretofore to wit on the
twenty third day of October AD 1856, the said
defendant John Sherk, filed in the office
of the Clerk of the Circuit Court in & for
said County, his appeal Bond in the
above entitled Cause. Which said Bond
is in the words and figures following
to wit:

Know all men by these Presents
That We John Sherk and Thomas S.
Maupin are held and firmly bound unto

Oliver Trantor in the penal sum
 of One hundred and ten Dollars
 for the payment of which well and
 truly to be made we bind ourselves
 and each of our heirs executors, and
 administrators jointly and severally
 firmly by these presents Sealed
 with our Seals and dated this 23rd
 day of October A. D. 1856 —
 The condition of the above obligation
 is such That whereas the above
 named Oliver Trantor did on the
 4th day of October 1856 before
 Josiah Conlee Justice of the Peace
 for Jo Daviess County recover a
 Judgment against the above named
 John Thirk for the sum of fifty
 five dollars and costs from which
 judgment the said John Thirk
 wishes to appeal to the Circuit Court
 of Jo Daviess County Now if the
 said John Thirk shall prosecute his
 appeal with effect and shall pay
 Oliver Trantor whatever judgment shall
 be rendered upon the dismissal or
 trial of said appeal then the above
 obligation to be void, otherwise to remain in full force & effect

(signed) John Shirk S.D.
 () Thos J. Maupin S.D.
 () _____ S.D.

Approved Geo. M. Mitchell Clerk
 per W. A. Waddell Dep.

Endorsed

Filed 23rd Oct. 1856

Geo M. Mitchell Clerk
 per W. A. Waddell Dep.

The Transcript as certified to by
 the Magistrate in the above entitled
 cause is as follows to wit

State of Illinois So Daviess County

Oliver Traner

vs

John Sherk

Justic fees \$ 1.25

Arbitrators

Abel Procter 1.00

Samuel Gagger 1.00

W. W. Williams 1.00

Witnesses blamed

William Martin 50

William Knuckey 50

A case of Damages
 submitted to Samuel Gagger

Abel Procter and Wilbias

W. Williams chosen by the
 Parties as Arbitrators who
 met on the 4th Day of Oct.

1856 and after being duly

Sworn heard the Testimony

of the parties after which

they awarded to the Plaintiffs

fifty five dollars and Cost

of Arbitration which will

appear from the award on

George Gagger 50 } file The Defendant demanded
 Joseph Roberts 50 } an appeal to the Circuit Court
 which was granted Transcript Delivered to Defendant
 on the 22nd Day of Oct. A.D. 1856 . . .

I hereby certify the above to be a true Transcript
 of my Docket in the above case given under
 my hand and seal This 22 Day of October A.D. 1856

(signed) Josiah Conlee 
 J. P.

Endorsed

Filed 23rd Oct. 1856

Geo. M. Mitchell Clerk
 for W. F. Waadell Dep

Upon the filing of which bond and
 transcript there issued out of the office
 of the Clerk of said Court a Supersedeas,
 which is in the words and figures following
 to wit

State of Illinois }
 So Daviess County }
 The People of the State of Illinois To Josiah
 Conlee a Justice of the Peace and a
 Constable in and for said County,
 Greeting Whereas in a certain Arbitration
 lately depending before you the said Josiah
 Conlee wherein Oliver Trainor was plaintiff

and John Sherka^{ms} defendant Judgment has been rendered in favor of the said Plaintiff for the sum of fifty five dollars and costs as by the transcript of the said Judgment from the Docket of the said Justice filed in the Clerk's office of our Circuit Court in and for said County by the said Defendants in this behalf appears And whereas the said Defendant has taken an appeal from the said Judgment and has given Bond with security to the said Plaintiff for the due prosecution thereof according to Law which said bond is filed as of record in the said Clerk's office We therefore command and enjoin you the said Josiah Conlee so being Justice and Constable as aforesaid that you do entirely supersede and desist from proceeding any further in said suit and that you do forthwith suspend all proceedings in relation thereto and cease from molesting the said Defendant in anywise on that account until the said Circuit Court shall make other order to the contrary - And this you are in no wise to omit at your peril -

Go the Sheriff of said County to execute

Witness Geo. M. Mitchell



Clerk of the Circuit Court
of Jo Daviess County Illinois
at Galena this Twenty third
day of October A. D. 1856
Attest

Geo. M. Mitchell Clerk
per W. H. Waadell Dep.

Upon which was endorsed by the
Sheriff the following return to wit

Served this writ this 13th day of
January 1857 By reading the same
to Josiah Conlee a Justice of the Peace
for Jo Daviess Co. Ill.

(Signed) J. K. Miner Sheriff
By Peter Ostrander Dep.^y

The Summons issued in said cause
is as follows to wit

State of Illinois }
Jo Daviess County } The People of the State of Illinois
to the Sheriff of Jo Daviess County. Greeting
We command you to summon Oliver Trainor
to appear before the Circuit Court of Jo Daviess
County at the next term to be holden at Galena on the

7

Second Monday of March next to answer
John Thirk in An Appeal And have you
then there this writ.



Witness Geo. M. Mitchell Clerk
of the Circuit Court of So Daviess
County Illinois and the seal thereof
at Galena this 23 day of October
A. D. 1856

Attest Geo. M. Mitchell Clerk
per W. A. Waadell Dep.

Upon which is endorsed by the Sheriff
the following return to wit

Served the within writ this 19th
day of January 1857 by reading the same
to the within named Oliver Trainor -

(signed) J. H. Miner Sheriff
By Peter Ostrander Depy.

And afterwards to wit on the
25th day of March A. D. 1857 at the
March term A. D. 1857 of said So Daviess
County Circuit Court in the record of the
proceedings thereof in said cause appears
the following entry to wit

Oliver Trainer } Appeal
 vs
 John Shirk }

NOW at this day came the parties by their attorneys and upon issue joined thereupon came a Jury of good and lawful men to wit Joseph P. Shaw Jabez B. Haight Elmer A. Sanford Thomas C. Brickett William Warren Morgan Price H. W. Englesby John Marshall Bernard Mifflin J. H. Goble J. R. Rodney and Frank Noel who were duly elected tried and sworn and after hearing the evidence and arguments of counsel they retired to consider of their verdict and after a short absence they returned into court with the following verdict to wit We the Jury find for the plaintiff and assess his debt at fifty five dollars And the Defendant by his Attorney moves the Court for a new trial and files his reasons therefor

The motion and reasons referred to in the above recited entry was in the words and figures following to wit —

9 Oliver Trainer Circuit Court
vs } March Term A.D. 1857
John Thirk } Motion for New Trial

Now at this day comes
the defendant and moves the Court
for a new trial for the following
reasons

1 The Court below had no
jurisdiction and the suit should
have been dismissed —

2 The Court improperly permitted
the submission and award of
the arbitrators to be given in
evidence to the jury —

3 The Verdict was against
the evidence.

4 The Verdict was against
the instructions of the Court

5 For other good and
sufficient reasons appearing
on the face of the papers —

(Signed) W. Weigley

Atty for Plffs

Endorsed

Filed March 25th 1857
W. R. Rowley Clerk

And afterwards to wit on the 2nd day of April A. D. 1857 as yet of said March term A. D. 1857 of said So Daviess County Circuit Court in the Record of the proceedings thereof in said cause appears the following entry to wit—

Oliver Trainer	Appeal
vs	
John Shurke	

Now at this day came on to be heard the motion heretofore filed by Defendant by his attorney for a new trial herein which after argument by counsel is overruled by the Court And the Defendant by his Attorney moves the Court for an Arrest of Judgment

And afterwards to wit on the 17 day of November A. D. 1857 as yet of the October term A. D. 1857 of said So Daviess County Circuit Court in the Record of the proceedings thereof in said cause appears the following entry to wit—

Oliver Trainer

vs

John Thirk

} Appeal

Now at this day came on
to be heard the motion heretofore
entered herein by Defendant by his Attorney
for an arrest of judgment which after
argument by counsel is taken under
advisement by the Court

And afterwards to wit on the
19th day of November A.D. 1857
as yet of the October Term A.D. 1857
of said So Daviess County Circuit Court
in the Record of the proceedings thereof
in said cause appears the following
entry to wit

Oliver Trainer

vs

John Thirke

} Appeal

The Court being
fully advised and having
fully considered of the Motion heretofore
entered in this cause for an arrest of judgment
herein overrules the same to which ruling of
the said Court the defendant by his attorney
excepts It is thereupon considered by the Court
that the plaintiff have and recover of the
Defendant the said sum of Fifty five Dollars

so as aforesaid found and returned by the Jury in this cause together with his costs by him about his suit in this behalf expended and that he have execution therefor -

And afterwards to wit on the 2nd day of December A.D. 1857 as yet of the said October Term A.D. 1857 of the said So Davies County Circuit Court in the Record of the proceedings thereof in said cause appears the following entry to wit,

Oliver Trainer
vs
John Sherck } Appeal

The defendant by his attorney comes and prays an appeal to the Supreme Court which is granted by the Court conditioned that he enter into and file and with the clerk of this Court an appeal bond properly conditioned in the sum of Three hundred Dollars with Abel Procter as surety within thirty days from this date and the defendant comes & files his bill of exceptions which is certified by the Court -

The Bill of Exceptions referred to in the above recited entry is in the words and figures following to wit

Oliver Trainer } So Daviess County. State
vs } of Illinois. Circuit Court
John Shirk } Of the March Term A. D. 1857
Appeal from Magistrates Docket

Be it remembered that on the trial of the above entitled cause at the above entitled term of the Circuit Court the Plaintiff to maintain and prove the issues on his part called Josiah Conley as a Witness who after being duly sworn testified that he was acquainted with the parties to the suit That he was a Justice of the Peace That the following Transcript shewn the witness was made by him and was the transcript in this case of the proceedings before him

State of Illinois So Daviess County -

Oliver Trainer

vs

John Shirk

Justic fees \$ 1.25

A case of Damages submitted to Samuel Jagger Abel Trocter and Wilbias W. Wilbioms Chosen by the Parties as Arbitrators who

Arbitrators

Abel Procter 1.00

Samuel Gagger 1.00

W. W. Williams 1.00 }

met on the 4th day of Oct.

1856 and after being duly

Sworn heard the Testimony

of the parties after which

they awarded to the Plaintiffs

Witnesses Claimed

William Martin 50 }

William Knuckey 50 }

George Gagger 50 }

Joseph Roberts 50 }

fifty five dollars and cost
 of Arbitration which will
 appear from the award on
 file The Defendant
 demanded an appeal
 to the Circuit Court which was granted
 Transcript Delivered to Defendant on the 22nd
 Day of Oct. A. D. 1856

I hereby certify the above to be a true &
 Transcript of my Docket in the above case
 given under my hand and seal this 22 Day
 of October A. D. 1856

(signed) Josiah Conlee *Seal*
 J. P.

Endorsed, filed 23rd Oct. 1856

Geo M. Mitchell clk
 per W. F. Woodell Dep.?

Said Witness further testified that the

parties came before him and said they had agreed to arbitrate their difficulties and requested him to make out the papers. Upon cross examination the witness stated that there was no suit pending before him at the time they requested him to make out their papers they said when they came to him that they had agreed and wished witness to draw the arbitration papers which he did and the following submission was made by him and signed by the parties

Know all Men by these presents That Where a controversy is now existing Between Oliver Traner of the County of So Daviess and State of Illinois and John Thirk of the same place Concerning the Leasing or Renting of a farm By the said Oliver Traner of the John Thirk aforesaid Now therefore We the said Oliver Traner and John Thirk Do hereby submit the said controversy to the Decision and arbitration to Samuel Igger Abel Procter and W. W. Williens all of So Daviess County aforesaid or to any two of them and Do Covenant each with the other that we will in all things faithfully keep observe and abide By the Decision and award that they or any two of them may make in Writing in the Premises under their hands

Ready to be Delivered on or before the tenth Day
 of October inst. And it is further agreed Between
 the Parties hereto that the Partie that shall
 fail to keep abide by and observe the Decision
 and award that shall be made according
 to the foregoing Submission will Pay to the
 other the Sum of two hundred Dollars as
 Liquidated first and Settled Damage -
 Witness our hands and seals this fourth Day
 of October A.D. 1856.

Sealed and Delivered in Present

of William Vipond { (signed) Oliver Tramer 
 Joseph Roberts { " John Shick 

The Plaintiff then called Joseph
 Roberts as a witness who stated
 that he was a witness before the
 arbitrators. That there was some
 difference between the parties about
 the rent of the farm - There was
 due to Mr Tramer about nineteen
 dollars - I was not called to testify
 on any question about the lease of
 the farm by the defendant to the
 Plaintiff - The money admitted by
 the Defendant to be due to the Plaintiff
 was paid to the Plaintiff before the

arbitration Mr. Tramer did not like to take it. Mr. Phetk got a receipt drawn by the Squire for the money; This conversation was before we testified. The question submitted to the arbitrators was concerning the destruction of a piece of corn on Land rented to Mr. Tramer. Witness knew the corn was destroyed; - There was nothing about the leasing and renting of a farm by Oliver Tramer from John Phetk. The only thing testified of was a dispute about corn alleged to have been destroyed for want of a fence on the farm of the defendant which he rented to the Plaintiff and by the Lease was to build by a certain time.

The Plaintiff then called W.W. Williams who testified that he was one of the arbitrators before the justice and that the submission shewn him was the one the arbitrators acted under that the matter testified of before the arbitrators was the destruction of corn - He understood the dispute about the rent was settled before the arbitration. It was in evidence that the defendant

Phritz was present on the arbitration and examined ~~him~~ and cross examined the witnesses - The plaintiff then offered the following award which was objected to by the defendants counsel because it appeared from the evidence that the arbitrators awarded upon matters not contained in the written submission which objection was overruled by the Court and the said ruling of the Court in permitting the award to go to the jury was then and there excepted to -

Which award is in the words and figures following to wit

In Justice Court

Before Josiah Conlee Esq. Justice
Oliver Teamer

vs } The matter in difference
John Sherke } between the parties to the
above entitled suit having been referred to the subscribed arbitrators mutually chosen by them to examine the matter in controversy in said suit & make out their award thereon in writing & deliver the same to the said Justice and

19-

the said Arbitrators being first duly sworn & the having heard the proof and allegations of the said parties and having considered the same do award adjudge and determine that there is due from the Defendant to the Plaintiff the sum of Fifty five Pds and that the said Defendant pay the said said sum to the said Plaintiff and all costs of suit In witness whereof we have hereunto set our hands this fourth day of October Eighteen hundred and fifty six

(Signed) { W^m W. Williams
Abel Procter
Samuel Jagger

Plaintiff then offered the following on the Oath of the Arbitrators & which was read to the jury

We the undersigned Arbitrators appointed By and between Oliver Tranor and John Shirk Do Swore fairly and faithfully to hear and examine the matters in controversy Between the said Oliver Tranor and John Shirk and to make a Just award according

to our Judgment So help us God

(signed) Abel Procter

(") Samuel Jagger

(") W^m W. Williams

Sworn to and Subscribed
before me this 4. Day of
Oct. 1850

Josiah Conlee
J. P.

This was all the evidence offered
by the Plaintiff to prove the issues
on his part—

The Defendant for the purpose
of proving his Defence called Josiah
Conlee who testified that he drew
the submission to arbitration offered
in evidence in this cause— That at
the time he drew it, he supposed the
controversy grew out of the leasing and
renting of a farm but before the bond
was signed the parties settled the
difficulty in regard to the rent and
thats the Defendant paid Trainor
the Plaintiff nineteen Dollars the

balance agreed to be due to Trainor
That Trainor objected to taking the
money because he thought there was
a trick in it; and would not receive
it until the defendant admitted
that there was a matter still in
controversy; and then Mr Shurt paid
the money and took the receipt
offered in evidence - which is as follows

Recd Scals Mawnd Oct. the 4. 1856
of John Shurt Nineteen Dollars in full
of all Dets up to this date

(signed) Oliver Trainor

That the only thing which was
submitted to the Arbitrators was
the question of damages done to
the crop on the farm for want of a
fence which by the Lease Shurt was
to build by a certain time This was
all the Testimony offered by the
Defendant to maintain his defence
and the foregoing was all the
evidence offered by either party on
the Trial of this cause

The Defendants Counsel then asked
the Court to instruct the jury as
follows; which was done

Trainer
as
Thirk

} Defendants Instructions

1

If the Jury believe from the evidence that the matter submitted to the arbitrators in the Court below was a different matter from the one stated in the written submission offered in evidence in this cause then the Law is with the Defendant -

Given

2

If the Jury believe from the evidence that after the submission offered in evidence was written and before it was signed by the parties the controversy concerning the leasing or renting of a farm was settled by the parties and that the defendant paid the difference between them and that after the settlement they signed the submission and a different subject of controversy was submitted to the arbitrators upon which they rendered the award offered in evidence in this cause then the Jury should find for the Defendant -

Given

The jury returned the following verdict -

"We the jury find for the plaintiff and assess his debt at fifty five dollars"

Whereupon the defendant by his counsel moved the court for a new trial and filed the following reasons,

Oliver Trainer	}	Circuit Court
vs		March Term A. D. 1857
John Thirk		Motion for new Trial

NOW at this day comes the defendant and moves the court for a new Trial for the following reasons

- 1 The Court below had no jurisdiction and the suit should have been dismissed
- 2 The Court improperly permitted the submission and award of the arbitrators to be given in evidence to the Jury
- 3 The Verdict was against the evidence -

4

The Verdict was against the instructions of the Court

5

For other good and sufficient reasons appearing on the face of the papers -

(Signed) W. Weigley

Atty for Pltfs

Endorsed

Filed March 25th 1857

W. Weigley Clk

The Motion of the Defendant for a new trial was overruled by the Court To which ruling the Court the Defendant by his Counsel then and there excepted

The Defendant then moved an in arrest of judgment for the reasons that there was no Judgment rendered in the Court below from which an appeal could be taken to this Court and because the Justice had no jurisdiction there having been no suit before the Justice which was referred to arbitration which motion afterwards to

wit, at the October Term A. D. 1857 of
the Circuit Court was overruled by the
Court and Judgment rendered on the
verdict To which ruling of the Court
the Defendant by his attorney then and
there excepted and prays that his his
Bill of Exceptions may be signed and
sealed by the Court which is accordingly
done in open Court

(signed) Benj. R. Sheldon 

Endorsed

Filed Nov. 25th 1857

W. R. Rowley Clerk

And afterwards to wit on the
22nd day of December A. D. 1857
The said Defendant filed with
the clerk of said Circuit Court his
Appeal Bond which is in the words
and figures following to wit

To know all men by these presents
that We John Thirké as principal
and Abel Procter as surety both
of the County of Jo Daviess
and State of Illinois are held
and firmly bound unto Oliver Tramer

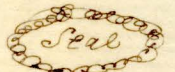
in the penal sum of Three hundred Dollars & lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents Witness our hands and Seals the 17th day of December A. D. 1857

The condition of the above obligation is such that whereas on the 2nd day of December A. D. 1857 in the Circuit Court of the County of So Daviess in the State of Illinois then being held it being the October Term of said Court in the year A. D. 1857 the said Oliver Trainer did obtain a judgment against the above bounden John Thirk for the sum of Fifty five Dollars and costs of suit from which judgment the said John Thirk prayed for and obtained an appeal to the Supreme Court of the State of Illinois

Now if the said John Thirk & shall prosecute his said Appeal & with effect and shall pay the said judgment costs and all interest and damages in case the said judgment shall be affirmed then the above

obligation shall be void otherwise
to remain in full force and effect

(signed) John Sherk
(") Abel Procter



Endorsed

Filed Dec. 22nd 1857

W R Rowley

Clerk

State of Illinois
Jed Davis County

I J W Rowley Clerk of
the Circuit Court in and for
said County hereby certify the foregoing to be a
full and correct Transcript of the Record
and proceedings of said Circuit Court in
the above entitled Cause, of Oliver Trainer
vs John Sherk as the same appears
of file in my office

In testimony whereof I have here-
unto set my name and af-
fixed the Seal of said Court at
my office in Galena this 29th
day of January A.D. 1858

Attest J W Rowley Clerk

Clerks fees

Transcript \$6.75

Certificate & Seal 35

\$7.10

John¹¹⁷ Sherk
vs.
Oliver Trainer

Appeal from Jo.
Dwight Co. Circuit
Court-

Record & assignment
of errors

Filed April

45 p. in for clerk

SUPREME COURT-THIRD DIVISION.

APRIL TERM, A. D. 1858.

JOHN SHIRK, } Appeal from Jo Daviess County.
vs. }
OLIVER TRAINER. } Abstract of Record.

Appeal Bond, reciting that Trainer recovered a judgment of \$55 against Shirk, before Josiah Conlee, a Justice of the Peace, Oct. 4th, 1856.

The Justice's Transcript is as follows:

STATE OF ILLINOIS, JO DAVIESS COUNTY.

OLIVER TRAINER, }
vs. }
JOHN SHIRK, }

A case of damages, submitted to Samuel Jagger, Abel Proctor and Wilbias W. Williams, chosen by the parties as arbitrators, who met on the 4th day of October, 1856, and after being duly sworn, heard the testimony of the parties, after which they awarded to the plaintiff fifty-five dollars and cost of arbitration, which will appear from the award on file. The defendant demanded an appeal to the Circuit Court, which was granted. Transcript delivered to the defendant on the 22d day of October, A. D. 1856.

On the 25th of March, 1857, in the Circuit Court, a Jury came, and upon issue joined, they found a verdict for the plaintiff for fifty-five dollars debt. Motion for new trial and motion to arrest the judgment both overruled, and judgment on the verdict.

BILL OF EXCEPTIONS.

Josiah Conlee testified that he was a Justice of the Peace, and that the following was the transcript in this case, of the proceedings before him. (Here the transcript above was set out. Said witnesses further testified that the parties came before him and said they had agreed to arbitrate their difficulties and requested him to make out the papers. Witness stated that there was no suit pending before him at the time they requested him to make out their papers. They said when they came to him that they had agreed, and wished witness to draw the arbitration papers, which he did, and the following submission was made by him and signed by the parties:

The arbitration bond states that there is a controversy existing between the parties, concerning the leasing or renting of a farm by Trainer to Shirk and that they submit said controversy to the decision and arbitration of Samuel Jagger, Abel Proctor and W. W. Williams.

Joseph Roberts then testified that he was a witness before the Arbitrators; that there was some difference between the parties about the rent of the farm; there was due Trainer about \$19. I was not called to testify to any question about the lease of the farm; the money admitted by the defendant to be due to the plaintiff was paid to the plaintiff before the arbitration; Trainer did not like to take it; Shirk got a receipt drawn by the Squire for the money; this conversation was before we testified; the question submitted to the arbitrators was concerning the destruction of a piece of corn on land rented to Trainer; witness knew the corn was destroyed; there was nothing about the leasing and renting of a farm by Trainer from John Shirk; the only thing testified of was a dispute about corn alleged to have been destroyed for want of a fence on the farm of the defendant, which he rented to the plaintiff, and by the lease was to build by a certain time.

W. W. Williams testified that he was one of the arbitrators, and that the matter testified of before the arbitrators was the destruction of corn; he understood the dispute about the rent was settled before the arbitration.

It was in evidence that Shirk was present on the arbitration and examined the witnesses; the plaintiff then offered the following award, which was objected to by the defendant's Counsel, because it appeared from the evidence that the arbitrators awarded upon matters not contained in the written submission; which objection was overruled by the Court and the award read in evidence and the defendant excepted.

The award is entitled Oliver Trainer vs John Shirk, and after reciting that the matters in difference between the parties to the above entitled suit were referred to the subscribed arbitrators mutually chosen by them, to examine the matter in controversy in said suit, and to make out their award thereon and deliver the same to the Justice; that they were duly sworn and that they heard the proofs; states that they adjudged and determined that there was due to the plaintiff from the defendant \$55, and that he pay the same to the plaintiff and all costs of suit, and is signed by all the arbitrators.

Josiah Conlee, called by the defendant, testified that he drew the submission offered in evidence; that when he drew it he supposed the controversy grew out of the leasing and renting of a farm, but before the bond was signed the parties settled the difficulty in regard to the rent and Shirk paid Trainer \$19—the balance agreed to be due Trainer; that Trainer objected to taking the money because he thought there was a trick in it, and would not receive it till the defendant admitted that there was a matter still in controversy, and then Shirk paid the money and took the receipt offered in evidence, which is a receipt dated Oct. 4th, 1856, for \$19, in full of all debts up to date. Witness Conlee further testified that the only thing which was submitted to the arbitrators was the question of damages done to the crops on the farm for want of a fence, which by the lease Shirk was to build by a certain time. The foregoing was all the evidence.

The Court gave for the defendant the following instructions:

1st. If the Jury believe from the evidence that the matter submitted to the arbitrators in the Court below was a different matter from the one stated in the written submission offered in evidence in this cause, then the law is with the defendant.

2d. If the Jury believe from the evidence that after the submission offered in evidence was written and before it was signed by the parties, the controversy concerning the leasing or renting of a farm was settled by the parties, and that the defendant paid the difference between them, and that after the settlement they signed the submission, and a different subject of controversy was submitted to the arbitrators, upon which they rendered the award offered in evidence in this cause, then the Jury should find for the defendant.

ERRORS ASSIGNED.

- 1st. Admitting evidence offered by plaintiff below.
- 2d. Verdict and judgment against law and evidence.
- 3d. Overruling motions for new trial and in arrest of judgment.
- 4th. Assuming jurisdiction to try the cause—there being no judgment of the Justice of the Peace.

¹¹⁹
Shirk vs Trainer

Abstract

Filed Apr 20, 1858

L. Ireland

Clary

Selander & Selander
for Appellant

T. L. Dickey for Appellee

NOTES OF THE COURT IN THE CASE OF SHIRK vs. TRAINER

SUPREME COURT—THIRD DIVISION.

APRIL TERM, A. D. 1858.

JOHN SHIRK, } Appeal from Jo Daviess County.
 vs. }
 OLIVER TRAINER. } Abstract of Record.

Appeal Bond, reciting that Trainer recovered a judgment of \$55 against Shirk, before Josiah Conlee, a Justice of the Peace, Oct. 4th, 1856.

The Justice's Transcript is as follows:

STATE OF ILLINOIS, JO DAVIESS COUNTY.

OLIVER TRAINER, }
 vs. }
 JOHN SHIRK, }

A case of damages, submitted to Samuel Jagger, Abel Proctor and Wilbias W. Williams, chosen by the parties as arbitrators, who met on the 4th day of October, 1856, and after being duly sworn, heard the testimony of the parties, after which they awarded to the plaintiff fifty-five dollars and cost of arbitration, which will appear from the award on file. The defendant demanded an appeal to the Circuit Court, which was granted. Transcript delivered to the defendant on the 22d day of October, A. D. 1856.

On the 25th of March, 1857, in the Circuit Court, a Jury came and upon issue joined, they found a verdict for the plaintiff for fifty-five dollars debt. Motion for new trial and motion to arrest the judgment both overruled, and judgment on the verdict.

BILL OF EXCEPTIONS.

Josiah Conlee testified that he was a Justice of the Peace, and that the following was the transcript in this case, of the proceedings before him. (Here the transcript above was set out. Said witnesses further testified that the parties came before him and said they had agreed to arbitrate their difficulties and requested him to make out the papers. Witness stated that there was no suit pending before him at the time they requested him to make out their papers. They said when they came to him that they had agreed, and wished witness to draw the arbitration papers, which he did, and the following submission was made by him and signed by the parties:

The arbitration bond states that there is a controversy existing between the parties, concerning the leasing or renting of a farm by Trainer to Shirk and that they submit said controversy to the decision and arbitration of Samuel Jagger, Abel Proctor and W. W. Williams.

Joseph Roberts then testified that he was a witness before the Arbitrators; that there was some difference between the parties about the rent of the farm; there was due Trainer about \$19. I was not called to testify to any question about the lease of the farm; the money admitted by the defendant to be due to the plaintiff was paid to the plaintiff before the arbitration; Trainer did not like to take it; Shirk got a receipt drawn by the Squire for the money; this conversation was before we testified; the question submitted to the arbitrators was concerning the destruction of a piece of corn on land rented to Trainer; witness knew the corn was destroyed; there was nothing about the leasing and renting of a farm by Trainer from John Shirk; the only thing testified of was a dispute about corn alleged to have been destroyed for want of a fence on the farm of the defendant, which he rented to the plaintiff, and by the lease was to build by a certain time.

W. W. Williams testified that he was one of the arbitrators, and that the matter testified of before the arbitrators was the destruction of corn; he understood the dispute about the rent was settled before the arbitration.

It was in evidence that Shirk was present on the arbitration and examined the witnesses; the plaintiff then offered the following award, which was objected to by the defendant's Counsel, because it appeared from the evidence that the arbitrators awarded upon matters not contained in the written submission; which objection was overruled by the Court and the award read in evidence and the defendant excepted.

The award is entitled Oliver Trainer vs John Shirk, and after reciting that the matters in difference between the parties to the above entitled suit were referred to the subscribed arbitrators mutually chosen by them, to examine the matter in controversy in said suit, and to make out their award thereon and deliver the same to the Justice; that they were duly sworn and that they heard the proofs; states that they adjudged and determined that there was due to the plaintiff from the defendant \$55, and that he pay the same to the plaintiff and all costs of suit, and is signed by all the arbitrators.

Josiah Conlee, called by the defendant, testified that he drew the submission offered in evidence; that when he drew it he supposed the controversy grew out of the leasing and renting of a farm, but before the bond was signed the parties settled the difficulty in regard to the rent and Shirk paid Trainer \$19—the balance agreed to be due Trainer; that Trainer objected to taking the money because he thought there was a trick in it, and would not receive it till the defendant admitted that there was a matter still in controversy, and then Shirk paid the money and took the receipt offered in evidence, which is a receipt dated Oct. 4th, 1856, for \$19, in full of all debts up to date. Witness Conlee further testified that the only thing which was submitted to the arbitrators was the question of damages done to the crops on the farm for want of a fence, which by the lease Shirk was to build by a certain time. The foregoing was all the evidence.

The Court gave for the defendant the following instructions:

1st. If the Jury believe from the evidence that the matter submitted to the arbitrators in the Court below was a different matter from the one stated in the written submission offered in evidence in this cause, then the law is with the defendant.

2d. If the Jury believe from the evidence that after the submission offered in evidence was written and before it was signed by the parties, the controversy concerning the leasing or renting of a farm was settled by the parties, and that the defendant paid the difference between them, and that after the settlement they signed the submission, and a different subject of controversy was submitted to the arbitrators, upon which they rendered the award offered in evidence in this cause, then the Jury should find for the defendant.

ERRORS ASSIGNED.

- 1st. Admitting evidence offered by plaintiff below.
- 2d. Verdict and judgment against law and evidence.
- 3d. Overruling motions for new trial and in arrest of judgment.
- 4th. Assuming jurisdiction to try the cause—there being no judgment of the Justice of the Peace.

John Shirk

vs

Oliver Trainer

appeal from Jo Davis

Points for appellee

1st The only exception to the admission of evidence, was to the admission of the award in evidence - It was a question of fact to be determined by the jury whether the award was or was not upon matter submitted to the arbitrators, & the jury could only determine that fact, by having the award before them - The instructions of the court given in behalf of appellant (which this court will presume the jury followed) - *Matow v People* 15th Ill. R. 536) were such as to prevent any prejudice to appellant even if the award were not within the submission

2nd Although there was no judgment before the justice to appeal from, yet the ^{circuit} court having jurisdiction of the subject matter and having acquired jurisdiction of the parties by their coming before it & joining issue, its ~~judgment is not~~ jurisdiction cannot now be questioned -

Allen v. Belcher 3. Gilman 594.

Ralls v. Randolph Co. 18 Ill. 29.

W H Wallace
for appellee

Shirk

vs

Trainer

abstract with points
& authorities for appellee

Will Judge Dickey please
argue this case & present
the written points & authorities
to the court for me

W. H. H.