

8819

No. _____

Supreme Court of Illinois

Jordan McKinney

vs.

Shadrick Alvis

Pleas held before the Hon - S. S. Marshall Judge
of the Judicial Circuit, at the Special December
Term of the Jefferson Circuit Court - AD 1857

Be it remembered that on the 10th day of January
AD 1857 the following Summons, app transcript and
a special bond, account &c. - were filed in the Clerk's
Office of the Jefferson Circuit Court -

Account -
J. McKinney to S. Alois Dr
\$8.00 for rails \$8.00

State of Illinois }
Jefferson County } Set

The People of the State of Illinois
to any Constable of said County Greeting -
You are hereby commanded to summons Gordon
McKinney to appear before me at my house on the
12th of this Inst at the hour of 12 O'clock P.M. to
answer the Complaint of Shadrick Alois, for a failure
to pay him a certain demand not exceeding one hundred
dollars - Thereof make due return as the law
directs - Given under my hand and seal this 2nd Sept
the 2nd 1850

Wm. R. A. Ray (S.P.)
Transcript of Judgment

Shadrick Alois }
vs } Suit on account \$8.00
Gordon McKinney }

Summons issued to Peter Bean Constable, ^{returnable} on
the 12th of September 1850

This September 12th 1850 Summons returned served on the
Defendant by reading the same named Defendant -
This September 12th 1850, the parties met at the hour appointed

for trial and the Plaintiff set forth his ~~account~~
testimony &c - Being heard & considered, therefore Judgement
is rendered against the said Defendant in favor of said Plaintiff
for the sum of seven dollars, ^{together} with Costs of Suit

John P. A. Bay J.P. (Sd)

Judges fees

Summons

\$0.18³/₄

Docketing Suit

.12¹/₂

Subpoena

.18³/₄

Administering 4 oaths

.25

Entering Judgement

.25 \$1.00

Constable Cost

\$1.05

Witness fees

2.00

State of Illinois
Jefferson County

I John P. A. Bay Justice of the
peace within and for said County do hereby certify that
the foregoing transcript and Judgement of Shadrach Alois
vs Jordan McKinney is truly copied from files and
Books of my Office Given under my hand and
Seal this January 1850

John P. A. Bay J.P. (Sd)

Appeal Bond

Know all men by these presents, that we Benjamin McKinney &
Jordan McKinney, are held and firmly bound unto Shadrach
Alois in the several sum of thirty three dollars and 10 Cents
^{double}
- the amount of Judgement & Costs - lawful money of the
U.S. - for the payment of which well and truly to be made
We bind ourselves our heirs, Executors & Administrators, jointly
by these presents - Witness our hands and seals this

28th day of September ^{A.D.} 1850 — The Condition of the above obligation is such, that whereas the said Shadrach Alvis, did on the 12th day of Sept-
A.D. 1850 — before John D. A. Bay Justice of the peace for the County of
Jefferson, recover a Judgment against the Jordan McKimney — who
has taken an appeal to the Circuit Court of the County of Jefferson
and State of Illinois. — Now if the said Jordan McKimney, shall
prosecute his Appeal with effect, and shall pay whatever Judgment
may be rendered by the Court upon the dispositive trial said Appeal
then the above obligation to be void, otherwise to remain in full
force and effect — this September 28th 1850

Jordan McKimney Real
Benjamin McKimney Esq
Leonard Wood Esq
John D. A. Bay J.P.

Whereupon summons issued from the Clerk's Office
— (which cannot be found at present) — of the Jefferson Circuit
Court, returnable to the May Term then of, 1851

Orders of Court —

Shadrach Alvis vs Jordan McKimney
May Term Jefferson Circuit Ct A.D. 1851
Appeal
Ordered by the Court that this cause
stand continued to the next Term of this Court —
September Term, Jefferson Circuit Ct A.D. 1851
Appeal
Ordered by the Court that this cause
stand continued to the next Term of this Court —
Special December Term, Jefferson Circuit
Court A.D. 1851
Appeal

This day came the parties by their Attornies, and
Jury being joined, a Jury was called, whereupon came the following
Jurors (County) Solomon Ford, Sidney Andrews, Elias Bastian, David Roper,
Myatt Parrish, Benjamin Frey, Abram Madew, Edmund Pierce

David Marero. Lewis Johnson. Thomas Angling. John Foster. — who
being elected, tried & sworn according to law, well and truly to try the issue
between the parties — having heard the proofs and arguments of Counsel
upon their Oaths do say that "We the Jury find for the Plaintiff
for \$8 ⁰⁰/₁₀₀." — Whereupon the Defendants Counsel, moved for a
new trial and in arrest of Judgment; but the Court being
fully advised by the premises, overruled said motions — ^{It is}
^{therefore} Considered by the Court that the Plaintiff have Judgment for \$800, debt & his Costs in this Court ^{expended} —
Whereupon the Defendants Counsel excepted to the overruling of
said motions — and tendered a Bill of exceptions & prayer for
the signing & reading of the same, which was granted accordingly

State of Illinois 3
Jefferson County 3 Set

I John Wilbourns Clerk of the Circuit Court
for the County of Jefferson and State aforesaid, hereby certify that
the foregoing is substantially a true copy of the record in
my Office, of the above entitled Cause

In testimony whereof I have hereunto set my hand and
the seal of said Court this 16th day of February A.D. 1852

John Wilbourns Clerk

By N. B. Farmer D.C.

Shadrack Alvis 3
vs 3
Jordan McKinney 3 Appeal

Be it remembered that on the trial of this cause Robert Holt, a witness on behalf of Alvis testified, that, one day before the commencement of the suit, at Plaintiff's Mill, he heard a conversation between Alvis and McKinney, in which Alvis asked McKinney, if he owed Sandy Piper 500 rails, and the hauling of them — adding that he had bought the debt on him. To which McKinney replied that he did owe the rails and the hauling of them, and that he would as soon pay them to him as Alvis, as any other person — and would if he had bought it. And McKinney agreed, in the same conversation, that the rails were to be hauled around the plantation — that a few days after this conversation, the said Sandy Piper told witness, that he had sold said debt on McKinney, to Alvis; and asked witness what McKinney said, to his trading the rails to Alvis — witness replied that McKinney did not say anything against it, that he heard — witness further testified, that said Sandy Piper is now dead — But then Alvis, another witness, introduced on behalf of plff — testified, that he, witness heard McKinney say that it was then (at the time of the conversation) too muddy to haul the rails for Alvis — that he heard McKinney speak of hauling the rails to Alvis, as many as four or five times — Plaintiff further proved by Wiley Piper that McKinney told him — Piper, that he owed Alvis some rails, and the hauling of them. Leonard Woods, another witness testified that McKinney came to him, to borrow oxen to haul rails, for Alvis, as McKinney said — Defendant then called James Moore a witness who testified, that deft — called upon him to go and hear him settle with Alvis; and McKinney then proposed to pay Alvis, in a crop fence between their farms; Alvis refused to take them; McKinney insisted that they were as good rails as he had, but he did not care — he then started home, when Alvis called him back, and said rather than have a dispute he would take the rails, if McKinney would give him the crop fence as it stood; to which McKinney objected because it was on his land, and insisted if Alvis took it, he should move the rails. Alvis asked, what will you do for a fence if I

haul it away, McKinney replied, that, that was his business, whereupon
Alvis agreed to take the fence and haul it away; but wanted McKinney
to have them counted; to which McKinney replied you count them yourself
as you haul them away, and if there is not enough in the fence to pay
the debt, I will make it up — to which Alvis assented, and they then called
Witness and one Simmons as witnesses to the contract — One of the parties
then asked the other if he was satisfied, to which the other replied that he
was — that Alvis afterwards sent witness and James Simmons to count the
rails in the fence — they counted, 652 rails, to the Crook in the Cross fence
— the said rails, to where the said Crook in the fence was, were good rails
and nearly new — There were 16 panels inside of McKinney's mill
and beyond said Crook or turn in the fence, about 7 rails high, ~~about~~
of which they did not count; the rails were older than those they
counted — there were also two panels more in said string of
fence, where the fence made a corner and turned South, outside of
McKinney's inclosure which they did not count — That they did not count
further than the new rails extended to the turn in the fence, because they
did not know whether the others were embraced in the contract
(Witness sometimes afterwards counted the others — there 16 panels, about
7 rails high — and they were tolerably good rails — Asbury Bean
another Witness for Dft. stated that Alvis told witness that he, Alvis
and McKinney had settled their dispute; and on being asked how they
had settled, Alvis replied that he had agreed to take the Cross fence, between
him and McKinney for the debt — Asa McKinney, another witness for Dft.
testified that the said Cross fence belonged to Dft. McKinney, that the 652 rails
counted by Simmons & Home, were hauled and put up there by said Dft.
— and that said 16 panels & the 2 panels outside, with 5 or 6 panels more
outside the Cross fence of Dft., were bought by Dft. of Sandy Piper deceased
and were on the claim bought by said Dft. of Sandy Piper deceased & were Dft.'s rails, as
he believed — George Knox another witness for Jt. was called and testified
that after the present suit was commenced before the Justice, McKinney offered
to pay Alvis 800 rails in the woods, if Alvis would pay the costs

He would do this to settle the dispute, and ~~this~~ by way of compromising it - that there was a great deal of contention & wrangling between the parties. Witness further stated that afterwards at the house of Witness's Mother, Dft. McKinney in speaking of the dispute told witness that he did not deny owing the debt to somebody. - Robert Holt, the former witness was again recalled by Jtft - and testified that after said agreement about the Crossfence, he heard Mr. Kinney the Dft. say, that said fence was on his land, and that Abies should not have it, and if he took the rails or attempted to move them, he would sue him for it; and if he wanted anything he might go to Elijah Piper the Administrator of Sandy Piper and he would pay him - that rails delivered were worth one dollar per hundred - that McKinney had told him, Holt, that he McKinney offered his son, some \$5. - to go and settle with Abies Dft. then called James Smith, William Wood, Leonard Wood, William Lee and James Clark as witnesses, who testified that they were, and had been acquainted with Robert Holt - the witness introduced by the Jtft in this Cause - that they had known him a long time; and were acquainted with his Character for truthfulness in the neighborhood in which he lived - that his Character for truthfulness was bad & from their knowledge of that Character they would not believe him on oath - some 2 or 3 of them added, that at least they would not like to believe him, where he had any interest or feeling in the Cause - And this is substantially all the Evidence that was given in the Cause - Whereupon the Jury retired and after considering the Cause returned into Court the Verdict, for the Jtft, for \$5. Upon which the Counsel for the Dft. moved for a new trial and in arrest of judgment - for the following reasons, - First because the Verdict is contrary to law - Secondly, because it is contrary to law & Evidence. Thirdly, because it is contrary to Evidence and law - But the Court overruled the motions - and to the ruling & opinion of the Court in overruling said motions, the Dft. by his Counsel excepts and prays this his Bill of Exceptions, may be signed sealed & made a part of the Record - which is accordingly done

S. S. Marshall Seal

This Bill of Exceptions was presented in open Court - and by agreement of the Counsel of the parties the signing & sealing thereof was postponed until the Judge of said Court had time to examine & consider it; and it is now signed sealed accordingly

S. S. Marshall

State of Illinois
Jefferson County

I John Wilbanks Clerk of the Circuit Court in
and for the County and State aforesaid do certify that the
foregoing Bill of Exceptions is a true ^{perfect} copy ^{of} from the record
proceedings in the above entitled cause as appears of records
in my office. In testimony whereof I have hereunto set my
hand and affixed the seal of said Court. At Mt Vernon Mo.
16th day of February A.D. 1852.

John Wilbanks Clerk
By S. B. Tamm

~~Shadrach A. Cook~~
~~Shadrach A. Cook~~

~~For the Plaintiff~~
~~Shadrach A. Cook~~

affidavit

In the Supreme Court of the State of Missouri

~~The plaintiff vs. the defendant~~

~~1st That the plaintiff is entitled to recover the sum of \$1000~~
~~2nd That the defendant is not entitled to recover the sum of \$1000~~
~~3rd That the plaintiff is entitled to recover the sum of \$1000~~
~~4th That the defendant is not entitled to recover the sum of \$1000~~

~~5th That the plaintiff is entitled to recover the sum of \$1000~~

~~6th That the defendant is not entitled to recover the sum of \$1000~~

~~7th That the plaintiff is entitled to recover the sum of \$1000~~

~~8th That the defendant is not entitled to recover the sum of \$1000~~

~~9th That the plaintiff is entitled to recover the sum of \$1000~~

~~10th That the defendant is not entitled to recover the sum of \$1000~~

the finding & assigning
errors

Jordan McKimney plaintiff in error

vs
Shadrach A. Lewis defendant in error

In the Supreme Court 3^d Division

Nov term A.D. 1852

Errors to Jefferson
and the 5th plea by Nelson his attorney
Comes & assigns the following grounds
of error in record & proceedings
aforesaid & in the rendition of the Jury
aforesaid

1st That the Jury is rendered therein
for the debt in error whereas it ought to
have been for the debt

And for special assigning errors
therein the plea by his attorney aforesaid
says that the Court erred in not
arresting the Jury

1st because upon the whole view the record
the Law is clearly for the plea in error
2nd because there ~~was~~ is not sufficient
evidence to warrant the Jury in finding
a verdict for the debt in error & for
that reason the Court ought not to
have rendered Jury for the Debt in
error but ought to have arrested the
Jury.

2nd The Court erred in not over-
ruling the Motion for a new trial
1st because the verdict was contrary
to evidence.

2nd because it was contrary to Law

3rd because the verdict was against
Law & evidence

4th Because there was no proof

of Piper because in ordering Mc Kinn
 to pay debt to Alvis - duly said
 Mc Kinn to him for rails
 5th Because there was no evidence to
 show that Mc Kinn Alvis and Piper
 were all present and agreed to
 the transfer of ^{S. Piper's} Claim on Mc Kinn
 to Alvis - or that Alvis in the
 presence of Piper wrong and S. Piper
 deceased, agreed to take ~~for the debt~~
 said Mc Kinn for the debt and when
 Piper & that Mc Kinn assented ^{or agreed} to it.

6th There is no evidence to show that
 Piper was told, or apprised Mc Kinn
 of his having transferred his Claim on him
 for rails to S. Alvis or S. Mc Kinn
 ever agreeing with S. Piper to become
 debtor or paymaster to Alvis
 7th ^{Before} That there is no evidence of Piper or
 Mc Kinn either assenting to transfer
 of his Claim on Mc Kinn to Alvis
 or agreeing that Mc Kinn should
 pay the same to Alvis

8th - Because a chose in action and
 and consequently the Claim of Piper on
 Mc Kinn is & was, not assignable so as to
 authorize Alvis to sue Mc Kinn in his
 own name - at Law.

9th Because the Jury ^{ought not} ~~was~~ to give
 any credit what so ever to West's Holts
 a witness for Piper.

Whereupon the Cause as aforesaid
 & was argued the proper wrong says
 by his atty argued that the Jury ought
 to be reversed & so I think is ready to say
 so

W. S. Mc Kinn for Piper

given in error
 R. F. Wray
 for Alvis

Jordan McKimney, Plff in Error } Error to Jeffers.
 or } Don County.
 Shadrack Alis, Dft in Error }

The Clerk of the Supreme Court by
 the First Grand Decision will cause
 the writ of error to be issued herein to
 be made a supersedeas, upon the Plff. in
 Error with his security
 giving bond in the penal sum of one hundred
 dollars, made payable to the Dft. in error
 & conditioned as required by law.

The plaintiff in error, or some other credible
 person in his behalf, first to make & file an
 affidavit of the sufficiency of the security for
 the amount of the bond.

Alton, Feb. 21 1852 } Lyman Fremont
 Justice Sup. Court.

The Clerk will insert the security's name in
 above blank -

Jordan M. K. K. K.

V.
Shadrick does

When the 20th May,

1862 A. D. H. H. H.

S. C. R.

6188
2819

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Effusion* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Effusion* County, before the judge thereof, between *Shadrack Alvis Plaintiff*

and *Jordan McKinney* —

defendant, it is said that manifest error hath intervened to the injury of said

Defendant

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Shadrack Alvis*

that *he* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Shadrack Alvis* notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said

Court, and the seal thereof, at Mount Vernon, this *20th*

day *May* in the year of our Lord,

one thousand eight hundred and fifty- *two*

Princy D. Huston

Clerk of Supreme Court.



Supreme Court.

Jordan McQuinn

Wm. in error

Shadrach Aldrich

