No. 11817

Supreme Court of Illinois

Bennett

vs.

Yeamshaw

71641 7

66

John M. Graneshaw
vs
Clark Bennett

11817

50

John M. Graneshaw
vs
Clark Bennett

Bureau

30

1851

11817

Bureau Circuit Court

Pleas before the Hon.ble Theophilus L. Dickey Judge of the circuit court of the ninth judicial circuit of the State of the State of Illinois at the October Term of said circuit court in and for the County of Bureau begun and held at the court house in Princeton in said county on Monday the first day of October in the year of our Lord One Thousand Eight hundred and forty nine

Present Hon.ble Theophilus L. Dickey Judge
Justin H. Otis Clerk
Jo.n V Thompson Sheriff
B. C. Cook States atty

Clark Bennett
vs
Trover & conversion
John M Yearnshaw

Be it: on the Seventeenth day of August 1849 summons was issued in the above case as follows

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

We command you to summon John M Yearnshaw if he may be found in your county, to appear before our circuit court on the first day of the term thereof, to be held at Princeton, within and for the said county of Bureau, on the first Monday of October next there and there in our said court, to answer unto Clark Bennett, of a plea of trespass on the case to the damage of him the said

Clark Bennett, as he saith in the sum of Three Hundred dollars, and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held as aforesaid

Witness Justin H. Olds, Clerk of our said Court and the seal thereof at Princeton this Seventeenth day of August in the year of our Lord One Thousand Eight hundred and forty nine Justin H. Olds Clerk

{LS}

which was returned endorsed as follows

"I have executed this writ to me directed by reading the same in the presence and hearing of the within named John M. Gearnshaw this Eighteenth day of August A D 1849 "

" Joseph V Thompson "
" Sheriff Bu. Co. Ills "

To wit on the 11th day of September 1849 the said Plaintiff by M. Kendall his atty filed his declaration in the words & figures following to wit:

State of Illinois } In the Circuit Court for said County to the Oct.
Bureau County } term thereof A D 1849

Clark Bennett
vs
John M Gearnshaw

John M Gearnshaw the defendant in this suit was summoned to answer unto Clark Bennett the plaintiff in this suit of a plea of trespass on the case &c and thereupon the said plaintiff by his attorney complains for whereas the said plaintiff heretofore to wit: on the first day of August in the year of our Lord

1849 in the County of Bureau and State of Illinois was lawfully possessed as of his own property of certain goods and chattels to wit One thousand bushels of wheat in the straw and one thousand bushels of wheat in the stack unthreshed and one thousand bushels of other wheat of great value to wit of the value of three hundred dollars, and being so possessed the said plaintiff afterwards to wit on the day and year aforesaid at the County of Bureau aforesaid casually lost the said wheat out of his possession and the same afterwards to wit on the day and year aforesaid came to the possession of the said defendant by finding. Yet the said defendant well knowing the said wheat to belong to the said plaintiff hath not as yet delivered the said wheat or any part thereof to the said plaintiff (although often requested so to do) and hath hitherto wholly refused so to do and afterwards to wit: on the day and year aforesaid at the County aforesaid converted and disposed of the said wheat to his own use. To the plaintiffs damage of three hundred dollars and therefore he sues &c

Kendall atty for pltff

To wit on the 2d day of said term —

Clark Bennett

vs

John M Yearnshaw

Trover & Conversion

This day came the defendant by Merriman and Dalton his attorneys and in proper

[11817-1A]

person and filed his affidavit and thereon moved the court that the said plaintiff be ruled to file security for costs herein; and the said plaintiff appeared in proper person and by Peters and Kendall his attorneys and from the evidence offered by the said plaintiffs and the court being fully advised, considers that the motion be sustained and the said plaintiff was thereupon ruled to file his security for costs by noon to morrow

To wit on the 5th day of said Term

Clark Bennett
vs
John M Seamstrano

This day came the plaintiff in proper person & by O Peters his attorney & filed his affidavit herein and thereon moved the court that he have leave to prosecute this his suit as a poor person whereupon it was considered by the court on the agreement of the said parties, that the rule for security for costs heretofore entered in this suit be discharged, and the said plaintiff withdrew his petition to prosecute his suit as a poor person. And thereupon the said defendant filed his plea to the said plaintiffs declaration which is in the words and figures following to wit;

Clark Bennett

vs

John M Beamshaw

Barran County Circuit Court

Oct 5. 1849

And said defendant by Ballou & Merriman his attorneys comes and defends the wrong and injury to him &c and says he is not guilty of the said several grievances above laid to his charge, or any or either of them and of this he puts himself upon the country for trial

And the plaintiff doth the like

Ballou & Merriman

for deft

And to wit: on the 4th day of said term

Clark Bennett

vs

John M Beamshaw

Trover and Conversion

This day the defendant comes and enters his motion for a continuance of this cause, which is sustained by the court, and it is considered by the court that this cause be continued to the next term of this court, and that the said defendant pay all the costs of this term;

[11817-2]

Bureau Circuit Court

April Term 1850

Pleas before the Hon. Theophilus L Dickey judge of the circuit court of the ninth judicial circuit of the State of Illinois, at the April term of the circuit Court in and for the county of Bureau begun and held at the court house in Princeton in said County on Monday the first day of April in the year of our Lord One thousand Eight hundred and fifty

Present Hon. Theophilus L Dickey Judge

Justin H. Olds Clerk

J. V. Thompson Sheff

B. C Cook States atty

To wit on the 3d day of said term

Clark Bennett

vs Trover & conversion

John M Beamshaw

This day came the plaintiff by B. C. Cook his attorney and the defendant appeared by Leland & Ballou his attorneys and in proper person and the witnesses who had been summoned to appear in behalf of the said plaintiff being called, Stephen Yoncy & Charles S. Boyd did not answer to their names and the said plaintiff by his said attorney moved the court to grant attachments for said absent witnesses, and the said motion was sustained by the court and an at-

tachment ordered to be issued against Each of said witnesses and made returnable forthwith.

And the said Stephen Young being brought into Court and being sworn touching his contempt, It was ordered that the said Young pay the costs accruing on the said attachment and that the usual process issue for the collection of said costs and that he be discharged on the payment thereof. And the Charles S Boyd being brought into court on the attachment issued against him & being duly affirmed to answer questions touching his contempt was by the consideration of the Court discharged from all liabilities thereby incurred

And the said Plaintiff also appeared in proper person and issue being joined on the foregoing plea of said defendant, the Court ordered that a jury be empannelled to try the said issue, and there came the jurors of a jury of twelve good & lawful men who were duly elected tried and sworn well and truly to try the said issue, to wit, Lazarus Reeve, Wm Lewis, Howard Munson Ellis Mercer, Joseph E Smith David E. Stevens, Thomas Mercer, Asa Barney, Hiram McKenzie John W Cowles, Sidney Smith and James Hamerie — And by the consent of the said parties and under the order of the court David E. Stevens one of said Jurors was withdrawn from the panel & the remaining Eleven allowed to try the said issue, who upon their oath do say — We of the jury do find the said defendant guilty of the trespasses complained of by the said plaintiff as

[11817-3]

charged in his declaration and assess the damages to the said plaintiff & against the said defendant at the sum of Seventy five dollars, and the defendant by Leland his attorney thereupon entered his motion for a new trial in this cause

To wit on the fifth day of said term

Clark Bennett

vs Trover & Conversion

John M Yeamshaw

This day this cause came up on the foregoing motion for a new trial herein the parties appearing by their counsel aforesaid, and after argument, and the court being fully advised in the premises doth consider that said motion be overruled.

It is therefore considered by the court that the said plaintiff have and recover of the said defendant the said sum of Seventy five dollars his damages assessed by said jury as aforesaid together with all ~~cost~~ his ~~singular~~ costs and charges in and about his suit in this behalf expended and that he have execution therefor,

And the said defendant by his said attorney comes and prays an appeal from this judgment to the Supreme Court of this State — and the court here grants the appeal prayed for subject to the following orders and provisions to wit: The defendant shall file his appeal bond with the

Clerk of this court. The conditions of said bond shall be such as the law directs in cases of appeal to the Supreme court of this State. The penalty therein to be inserted shall be two hundred dollars. It shall be signed and sealed by Charles S. Boyd and Mathew Trimble as securities and filed as aforesaid within forty days from the adjournment of this court

So mit April 12th 1850, the said defendant filed his bill of exceptions herein in the words and figures following to wit

"State of Illinois } Circuit court for said County
Bureau County } April Term 1850

Clark Bennett
vs
John McGearnshaw

Be it remembered that on the trial of this cause the plaintiff introduced two witnesses who testified that in February A.D. 1847 the plaintiff and defendant had an interview at the plaintiffs house and that the defendant then and there wrote a draft of an agreement which was in the words and figures following viz;

This agreement made and entered into this Seventeenth day of February in the year Eighteen hundred and forty seven between John McGearnshaw and Clark Bennett both of Bureau County Illinois as follows

[11817-4]

1st The said J. M. Gramshaw agrees to grant to said Bennett the use of his farm now under cultivation consisting of 90 acres, for three years from the first of March next so as not to interfere however with said Gramshaw's harvesting the grain now on the ground.

2d To furnish one span of Horses to cultivate said land and to be under the control of said Bennett for all farming purposes on said land and to used by him for hauling his wood and his grain to mill or to market not farther distant than Perth and the ordinary jobbing of the family

3d To furnish farming implements for the cultivation of said land

4th To let said Bennet have the use of the cattle and Hogs now on the place or which may hereafter be furnished, an inventory of which shall be taken at the time of delivery by two or more competent persons agreed upon by the parties.

5th To let said Bennett have the occupancy of the North East part of his house together with fire wood sufficient to supply one fire, to be taken from such part of his timber lot as said Gramshaw shall direct and ground sufficient for an ordinary garden

6 To let said Bennett have ten acres of wheat now on the ground and fodder sufficient to carry the cattle through to grass, and the horses to finish the spring work, and grain for horses cattle and Hogs until a supply can

raise, and to furnish a machine to thrash the small grain with 2 teams & 2 hands.

And the said Clark Bennett does hereby agree to cultivate said land in a workmanlike manner, to keep up the fences and gates thereon to put in at least forty acres wheat yearly and to change the crops as reasonably thereon for that length of time also to spread upon the elevated portions thereof the stable and yard manure yearly

2 To take good care of said team to furnish fodder for the same, and to let said yearnshaw have the use of it when he may not require it on the farm.

3 To take good care of the farming tools furnished not to destroy or injure them by careless use, to be responsible for any injury sustained by loaning to others, to put them under cover when not in use and make all repairs upon them so far as able to do so himself.

4th To take good care of the cattle and hogs furnished to pay particular attention to their increase and young to furnish fodder for said stock and to faithfully make the milk into butter and cheese in their season and return to said yearnshaw at the expiration of said term of years the same number and of the same quality as to age sex and condition as are now or shall be delivered but should any be lost by accident the parties shall share equally in the loss

5th To use in a proper manner the house and all the premises and to be responsible for all damages

[11817-2]

incurred by carelessness and negligence.

6th To deliver to said Yearnshaw, the one half of corn raised on said land well and seasonably gathered in the crib and one half of all the small grain in the Grainery, and as soon after harvest each year as he shall desire it, and one half of all other crops which may be raised, and one half the butter and cheese made in a sweet, well cured and preservable state at the close of each dairy season — and one half of all the cattle and hogs slaughtered in a suitable state for market, and one half of all stock or avails of stock sold off at any time by consent of both parties and half of all the increase and growth of stock at the expiration of the time above stated, and if the parties do not agree on the division and the quality of the stock to be returned, the same shall be determined and divided by the men who take the inventory at first

7th To leave on the place fodder sufficient to carry through the cattle to grass and the horses to finish the spring work, and ten acres of fall wheat on the ground well put in and as much grain as shall now be furnished by said Yearnshaw for seed and allow him to put in the corn ground into wheat the fall before leaving the place, the grain fed to teams, cattle and hogs to be furnished equally by the parties

In testimony whereof the parties have hereunto set their hands and seals this date above written

The witnesses testified that the defendant wished to have the agreement executed at the time and that the plaintiff wished to have the execution of it deferred a few days as they might upon reflection think of some things which they might want to put into it, and the witnesses also testified that they understood from both parties that the paper contained the contract between them.

The plaintiff also introduced witnesses who testified that the plaintiff during said time occupied the north east part of defendants house — that he raised crops on the place during the years 1847 & 1848 that each party during the year 1847 and until the fall of 1848 furnished one half the seed sown by the plaintiff and received one half of the crops raised as rent and until the fall of 1848 the defendant furnished the plaintiff with a team, that when the plaintiff went on to the place there were ten acres of fall wheat on the place which had been sown the previous fall by defendant, that the plaintiff harvested it during the summer of 1847 and delivered one half to defendant, and that when the plaintiff left the place in the spring of 1849 there were thirty nine and a half of fall wheat growing on the place and that nineteen and a half acres thereof were sowed by the ~~defendant~~ plaintiff and that the remaining twenty acres were sowed by the defendant —

That the defendant in the fall of 1848 refused to furnish the plaintiff with one half of the seed to sow the crop of fall wheat and told him he could not keep the place another year, that at this time the plaintiff had nearly completed the sowing of the nineteen and a half

acres aforesaid for which he furnished all the seed — that in the summer of 1849 the Plaintiff made an attempt to harvest the nineteen acres and a half which he had sowed and that the defendant prevented him from so doing and harvested the said nineteen and a half acres himself and sold and disposed of the wheat and that the value of the wheat standing was seven dollars and a half or eight dollars per acre. The Plaintiff then offered in evidence the written draft of said contract the defendant objected, the Court overruled the objection and permitted it be read as evidence to the jury and the defendant excepted to the decision of the court. Defendant then introduced a witness who testified that he was present at the interview at the house of the Plaintiff and that during the interview but whether before or after the defendant had written a draft of the contract he could not tell, that the defendant insisted he would not make any agreement unless it was so that he could terminate the tenancy at the end of any year, and that there were also some other matters that should be stated in the agreement and that he would take the paper home and prepare two agreements one for each party and that the defendant did take said draft which had then and there been written by him home ~~and~~ Whether the talk about terminating the tenancy was before or after the writing witness did not know, the defendant then produced a paper in the words and figures following to wit.

This agreement made and entered into this first day of march in the year Eighteen hundred and forty seven Between John M Yearnshaw & Clark Bennett both of Bureau County Ill as follows.

1st The said J. M. Yearnshaw agrees to grant to said Bennett the use of his farm now under cultivation consisting of 90 acres for three years from this date, so as not to interfere however with said Yearnshaw harvesting the grain now on the ground.

2d To furnish one team of horses to cultivate said land and to be under the control of said Bennett for all farming purposes on said land, and to be used by him for hauling his wood, and his grain to mill or to market not farther distant than Peru and the ordinary jobbing of the family.

3d To furnish farming implements for the cultivation of said land.

4th To let said Bennett have the use of the cattle and hogs, which may be now or hereafter furnished him an inventory of which shall be taken at the time of delivery by two or more competent persons agreed upon by the parties.

5th To let said Bennett have the occupancy of the North East part of his house, together with fire wood sufficient to supply one fire, to be taken from such part of his timber as said Yearnshaw shall direct, and ground sufficient for an ordinary garden

6th To let said Bennett have ten acres of wheat now on

[11817-7]

the ground and fodder sufficient to carry the cattle through to grass and the horses to finish the spring work and grain for horses and cattle & Hogs until Harvest, and to furnish a machine 2 teams & 2 hands to thrash the small grain.

And the said Clark Bennett does hereby agree to cultivate said land in a workman like manner, to keep up the fences and gates thereon, to put in at least forty acres of wheat yearly, and change the crops seasonably thereon, also to spread upon the elevated portions thereof the stable and yard manure yearly

2nd To take good care of said team, to furnish fodder for the same and to let said Yearnshaw have the use of the same when not required as specified above.

3 To take good care of the farming tools furnished, not to destroy or injure them by careless use, to be responsible for any injury sustained by loaning to others, to put them under cover when not in use, and to make all repairs repair them so far as able to do himself.

4 To take good care of the cattle and hogs furnished, to pay particular attention to their increase and young, to furnish fodder for said stock, and faithfully make the milk into Butter and cheese, in their season, and return to said yearnshaw at the expiration of said years, the same number and of the same quality as to age sex and condition as shall be delivered, but should any be lost by accident the parties shall share equally the loss.

5th To use in a proper manner the House and all the premises, and to be responsible for all damages incurred by carelessness and negligence

6th To deliver to said Seamshaw the one half of all the Corn raised on said land, well and reasonably gathered in the crib, and one half of all the small grain in the grainery, and as soon after harvest each year as he shall desire it, and half of all the other crops which may be raised, and one half of the butter & cheese made, in a sweet, well put down and preservable state, at the close of the dairy season and one half of all the cattle and hogs slaughtered in a suitable state for market and one half of all stock or avails of stock sold off at any time by consent of both parties and one half of all the increase and growth of stock, at the expiration of the contract and if the parties do not agree on the division and quality of the stock to be returned the same shall be determined and divided by the men who take the inventory at first.

7th To leave on the ground the same quantity of fodder & grain, for cattle, Hogs, & Horses as is now furnished by said Seamshaw, and ten acres of wheat well put in, and allow him to put in the corn ground into wheat the fall before leaving.

The seed, the grain fed to team, cattle & Hogs to be furnished equally by the parties.

This contract may be dissolved at the

Expiration of any one year by either of the parties giving two months notice, and its specification fulfilled as at the expiration of the whole time

In testimony whereof the parties have hereunto set their hands and seals this date above written

Seal

Seal

and proved by a witness that he saw it in the possession of the defendant in march 1849, and on the trial said paper had a soiled and worn appearance — the defendant offered to read said paper in evidence to the jury, the plaintiff objected and the court sustained the objection and excluded the paper and to the decision of the court the defendant then and there excepted — The defendant then introduced several witnesses who testified that at the time the plaintiff attempted to harvest the nineteen and a half acres which he had sown in the fall of 1848 the defendant offered to permit him to harvest and take away one half of nine and a half acres — or that defendant ~~offered~~ would harvest it for plaintiff and deliver it to him in the stack and stated that the labor of cutting the grain was worth about as much as the seed — that the defendant did make two equal stacks of the wheat of the said nine and a half acres and tendered one to the plaintiff and the plaintiff refused

all the oats and insisted upon harvesting and leaving one half of the whole nineteen and a half acres, one of said witnesses testified that at about seeding time for fall wheat in Eighteen hundred and forty eight but whether before or after the sowing of said nineteen and a half acres, he could not say but his impression was that some portion had then been sown, that defendant told Pltff he could not sow the ground and that he could not have the place another year, Plaintiff then introduced a witness who testified that he heard some conversation at the interview at Plaintiff's house in relation to terminating the lease at the end of any one year but he thought it was before defendant wrote the papers and that Plaintiff objected to taking the farm on those terms, one of Pltffs witnesses also testified that the defendant on one occasion told said witness that the Plaintiff should not remain on the place if he had to burn the house down to get him off. Said witness also testified that he heard defendant tell Plaintiff in the spring of 1849 that he could not stay on the premises any longer. This was all the evidence in the case

The Plaintiff asked the court to give the following instructions in writing to the jury — and to the giving said instructions and each of them the defendant objected.

The Plaintiff asks the court to instruct the jury

1st That if the defendant contracted with the plaintiff to rent to him the farm spoken of by the witnesses for the term of three years and the plaintiff went on and cultivated the farm in question under that contract from the Spring of 1847 until September 1848 before any notice to quit the defendant could not terminate the plaintiffs right to the premises so as to deprive the plaintiff of a share of the wheat sown by plaintiff before the notice to quit even if the contract for the leasing was not in writing.

Given

2d That if defendant leased the premises in question to plaintiff for the term of three years, and said contract was not in writing and the defendant desired to put an end to the contract after the plaintiff had occupied under the lease from March 1847 to September 1848, the plaintiff would be entitled to a share of all crops previously sowed by him.

Given

3d A contract for the lease of land for three years if not in writing is only voidable & not void & is good so long as the parties act under it and when it is avoided by the lessor because it was not in writing the tenant is entitled to remove his share of all crops sown before the avoidance of the contract by the lessor

Given

4th If plaintiff was tenant from year to year of defendant he was entitled to six months notice to quit & also entitled to a share in all crops sown before notice to quit

The objections were overruled and said instructions given and to the decision of the Court defendant excepted

The following instructions in writing were asked for by the defendant and were given

1st Will the Court instruct the jury, that if the defendant contracted with the plaintiff to lease him his land for three years there being ten acres of fall wheat then growing on the farm and if by the terms of the ~~lease~~ contract the plaintiff was to leave the same amount of fall wheat on the ground at the expiration of the term & the plaintiff did leave said premises in the Spring of 1849 before the expiration of three years there being ten acres or more of fall wheat growing then ten acres thereof became the property of the defendant

Given

2d If the jury believe the facts be as above stated and if one half of the excess over the ten acres mentioned in the foregoing instruction has been offered to the plaintiff by defendant & refused by plaintiff, plaintiff cannot recover

Given

Will the court instruct the jury that if they believe from the evidence that by the terms of the contract either party might determine the tenancy at the end of either one of the three years by giving three months or any other length of notice of the intention so to do to the other party and the defendant has given such notice to the plaintiff the tenancy was at an end at the time of which said notice was given and if at said expiration of the tenancy ten acres of fall wheat then on the ground became the property of the defendant if the plaintiff contracted to leave that amount on the ground at the end of the term.

Given

The Jury rendered a verdict for the plaintiff the defendant moved for a new trial and the motion was overruled by the court, and to the opinion of the court in overruling said motion the defendant then and there excepted, and said defendant prays that this his bill of exceptions may be signed and sealed by the court which is done

Theophilus L Dicky Seal

Know all men by these presents that we John M Yearnshaw, and Charles S. Boyd and Mathew Trimble of the County of Bureau and State of Illinois are held and firmly bound unto Clark Bennett also of the same County and State in the penal sum of two hundred dollars 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 seals this Seventh day of May A.D. 1850.

The condition of the above obligation that whereas the said Clark Bennett did on the third day of April A.D. 1850 in the circuit court in and for the county and State aforesaid recover a judgment against the above bounden John M Yearnshaw for the sum of seventy five dollars damages and costs of suit from which said judgment of said circuit court the said John M Yearnshaw has prayed for and obtained and appeal to the Supreme court of the said State, Now if the said John M Yearnshaw shall duly prosecute his said appeal with effect and shall moreover pay the amount of the judgment costs interests and damages rendered and to be rendered against him in case the said judgment shall be affirmed in the said Supreme court then

[11817-11]

the above obligation to be void, otherwise to remain in full force and effect

John M Yeamshaw (Seal)

C S Boyd (Seal)

Mathew Trimble (Seal)

State of Illinois }
Bureau County } ss

I Justin H. Olds clerk of the Circuit Court in and for said County do hereby certify that the foregoing contains correct and perfect copies of the summons, Plaintiffs declaration, defendants plea and all the orders of the court in the above cause; and also of the instructions of the court to the jury and the defendants bill of exceptions and appeal bond as the same appear of Record and on file in my office

Witness my hand and the seal of said circuit court at Princeton in said this twenty fifth day of June in the year of Our Lord One Thousand Eight Hundred and fifty

Justin H. Olds Clerk

3

Clerks Fees.

Copy of Records 58 fol @ 10 $ 5.80
Cert & Seal 35
$ 6.15

[11817-12]

John M. Kanshaw
Clark vs Bennett

Supreme Court of the State of Illinois

And the said plaintiff in error by E S Leland his attorney comes &c & says that in the record & proceedings in this cause there is manifest error in this to wit

1st The Court erred in permitting the unexecuted draft of the agreement to be read as evidence by the plaintiff below

2d The court erred in excluding the unexecuted draft of the agreement offered in evidence by the defendant below

3d The court erred in rendering judgment for the plaintiff

4 The Court erred in giving the second third & fourth instructions & each of them asked for by the plaintiff below

5th The Court erred in overruling the motion for a new trial

E S Leland for plff in error

Let the writ of Error in this cause be made a supersedeas upon the plff in error filing a bond conditioned as the law directs in the penal sum of two hundred dollars with Charles S. Hayes & ~~Nathan Lambert~~ Thomas J Elston ~~Lambert~~ sureties

S D Caton
Prest. Sup. Court.

John M. Kanshaw vs Clark Bennett
Record.

Filed Aug. 27. 1859.
R. Leland Clk.

Bureau Circuit Court

Pleas before the Hon. Theophilus L. Dickey Judge of the ninth judicial circuit of the State of Illinois at the April term of the circuit court in and for the county of Bureau begun and held at the court house in Princeton in said county on monday the first day of April in the year of our Lord One Thousand Eight hundred and fifty

Present Hon. Theophilus L Dickey Judge
J. Hurd Clerk
J V Thompson Sheriff
B. C Cook State atty

To wit on the 3 day of said term

Clark Bennett
vs Trespass
John W. Gearshaw

This day came the plaintiff by B. C. Cook his attorney and the appeared by Selame and Ballou his attorneys and in proper person, and the witnesses who had been summoned to appear in behalf of the plaintiff being called, Stephen Young and Charles S Boyd did not appear to answer to their names — and the said attorney for said plaintiff moved the court to grant attachments for said absent witnesses, and the said motion was sustained by the court and an attachment ordered to be issued against each of said witnesses forthwith, And the said Stephen Young being brought in to court & being sworn touching his contempt — It was ordered that the said Young pay the cost accruing on the said attachment and that the usual process issue for the collection of said cost and that he be discharged on the payment thereof. And the said Charles S. Boyd being brought into court on the attachment issued against him and being duly affirmed to answer questions

touching his contempt, was by the consideration of the Court discharged from all liabilities thereby incurred. And the said plaintiff also appeared in proper person, and issue being joined on the foregoing plea of said defendant the Court ordered that a jury be empannelled to try the said issue, and there came the jurors of a jury of twelve good and lawful men who were duly elected tried and sworn well and truly to try the said issues to wit: Lazurus Reeve, William Lewis Horace Munson Ellis Mercer Joseph E. Smith, David E Stevens, Thomas Mercer, Asa Barney, Hiram Mc Kenzie John W. Combs Sidney Smith and James Hamerie — and by consent of the said parties and by the order of the Court David E Stevens one of said jurors was withdrawn from the pannell and the remaining Eleven allowed to try the said issue, who upon their oaths do say — We of the jury do find the said defendant guilty of the trespasses complained of by the said plaintiff as charged in his declaration and assess the damages to the said plaintiff and against the said defendant at the sum of Seventy five dollars; And the defendant by Leland his attorney thereupon entered a motion for a new trial in this cause.

And on the fifth day of said term

Clark Bennett
vs
John W Gramshaw

Trespass

This day this cause came upon the foregoing motion for a new trial the parties appearing by their attorneys aforesaid, and after argument of counsel & the Court, being fully advised in the premises, doth consider that said motion be overruled.

It is therefore considered by the Court that the said plaintiff have and recover of the said defendant the said sum of Seventy five dollars his damages assessed by said jury as aforesaid together with all his costs and charges in and about his suit in this behalf expended and that he have execution therefor.

And the said defendant by his said attorney comes and prays an appeal from this judgment to the Supreme Court of this State, and the Court here doth considerer that the said appeal be granted on the following conditions to wit: The said defendant shall file his appeal bond with the clerk of this Court. The conditions of said bond shall be such as the law directs in appeals to the Supreme court of this State. The penalty therein shall be the sum of Two Hundred Dollars. It shall be signed and sealed by Charles S. Boyd and Mathew Trimble as securities, and filed as aforesaid within forty days from the adjournment of the present term of this Court.

May 15. 1850 The said Defendant filed his appeal bond in the words & figures following to wit

"Know all men by these presents that we John M. Yeamshaw and Charles S. Boyd & Mathew Trimble of the county of Bureau and State of Illinois are held & firmly bound unto Clark Bennett also of the same county and state in the penal sum of Two Hundred Dollars current money of the United State 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 this 15th day of May AD 1850

The condition of the above obligation is such that whereas, the said Clark Bennett did on

the third day of April A.D. 1850 in the circuit court in and for the county and State aforesaid, recover a judgment against the above bounden John M Yeamshaw for the sum of Seventy five dollars damages — and costs of suit from which said judgment of the said circuit court the said John M Yeamshaw has prayed for and obtained an appeal to the Supreme court of said State. Now if the said John M Yeamshaw shall duly prosecute his said appeal with effect and shall moreover pay the amount of the judgment costs interest and damages, rendered and to be rendered against him, in case said ~~appeal~~ judgment shall be affirmed in the said Supreme court then the above obligation to be void otherwise to remain in full force and virtue

John M Yeamshaw (Seal)
C. S. Boyd (Seal)
Mathew Brindle (Seal)

State of Illinois }
Bureau County } ss

I Justin H Olds clerk of the circuit court in and for said county do certify that the foregoing is a true copy of all the orders of the court at said term in said case and also of the appeal bond as the same appears on record and on file in my Office and also that the said appeal bond was filed at the time above stated

In testimony whereof I have hereunto set my hand and the seal of said court at Princeton in said county this Eighth day of June A.D. 1850

Justin H. Olds clerk

66

John H. Gearnehan
vs
Clark Bennett

75¢ Transcript

Filed June 13. 1850.
L. Leland Clk.

Yarnshaw vs Bennett

The appellee makes the following additional point

After the appeal bond is filed it relates back & gives effect to the appeal from the time of the praying for and allowing the same.

Where there are divers acts necessary to make a conveyance or other thing the original act shall be perfected and to this the other acts shall have relation

3d Cowen 80. & cases there cited

Gearshaw v Bennett

additional points
& authority

Vance v Schuyler
4 Scam. 286.

State of Illinois, Set.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of Bureau—Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Bureau county, before the Judge thereof, between Clark Bennett

plaintiff and

John M. Grandstaff

defendant it is said manifest error hath intervened to the injury of the aforesaid defendant as we are informed by his complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the second Monday of June next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. Samuel H. Treat Chief Justice of our said Court, and the seal thereof at Ottawa, this 27th day of August in the year of our Lord one thousand eight hundred and ~~forty~~ fifty.

X. Leland

Clerk of the Supreme Court.

John M. Yeamshaw
vs
Clark Burnett

Writ of Error

This writ of error is made a Supersedeas & is to be obeyed accordingly.
L. Leland Clk.

Filed August 27. 1850.
L. Leland Clk.

State of Illinois, } SS.
Supreme Court,

SCIRE FACIAS.—FREE TRADER OFFCE, OTTAWA.

The People of the State of Illinois

TO THE SHERIFF OF Bureau 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 Bureau county, before the Judge thereof, between Clark Bennett

Plaintiff &

John M. Yeamshaw

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

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the second Monday in June 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 Clark Bennett notice, together with this writ.

WITNESS, the Hon. Samuel H. Treat
Chief Justice of our said Court, and the seal thereof,
at Ottawa, this 27th day of August
in the year of our Lord, one thousand eight hundred
and fifty.

K. Leland
Clerk of the Supreme Court.

[1817-18]

John M. Grimshaw
vs
Clark Bennett

Sci. Fa. –

To Bureau County

June Term 1851. –

Served the within
writ as I am within
Commanded June 3rd 1851
Edward N. Fisher
Sheriff Bu. Co. Ills.

Sheriffs fees
Serving writ .50
One mile travel .5
Return .10
.65

Filed Oct. 13. 1851.
L. Leland Clk.

Know all men by these presents that we John McYeamshaw & Charles S Boyd & ~~Matthew Trimble~~ Thos L Elston of the County of Bureau & State of Illinois are held & firmly bound unto Clark Bennett of said County in the penal sum of two thousand dollars to the true payment whereof well & truly to be made to the said Clark Bennett his executors & administrators we bind ourselves our heirs executors and administrators jointly & severally firmly by these presents. Sealed with our seals. Dated this tenth day of August in the year of our Lord one thousand eight hundred and fifty

The condition of this obligation is such that whereas at the April term of the Circuit Court of Bureau County in the year of our Lord one thousand eight hundred and fifty the said Clark Bennett recovered a judgment in an action of Trover against the said John McYeamshaw for the sum of seventy five dollars & costs. And whereas the said John McYeamshaw has sued out a writ of Error from the Supreme Court of the State of Illinois for the third Grand division to the said Circuit Court of Bureau County. Which said writ of Error is to be made a supersedeas upon condition that the said John McYeamshaw Charles S Boyd & ~~Matthew Trimble~~ Thomas L Elston do enter into bond in the sum of two thousand dollars conditioned as the law directs

Now therefore if the said John McYeamshaw shall well & truly prosecute his said writ of error and if the said John McYeamshaw shall pay whatever judgment may be rendered against him and all costs interest and damages in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to be and remain in full force & virtue

John McYeamshaw (Seal)
C S Boyd (Seal)
Thos. L. Elston (Seal)

[11817-19]

John M. Yearnshaw
vs
Clark Bennett

Bond for Supds. —

Filed Aug. 27. 1850.
A. Leland Clk.