No. 8759

Supreme Court of Illinois

Jacob Wing

---

vs.

Jacob Dapler

71641 7

Jacob Weing
vs.
Jacob Doepler.
} Error to Wayne.

And the plaintiff in Error for cause of error assigns the following.

1st. The Court erred in overruling the motion of defendant below to dismiss the cause.

2nd. The Court erred in entering a judgment in favor of plaintiff below and against defendant.

C. A. Beecher Atty
for Pltff in Error.

Joinder in Error
S. S. Marshall
for Deft

Chambers Mt Vernon Ohio
Sept 25th 1855

Upon examination of the record & assignment of Errors it is ordered that the Writ of error issued in this Cause be made a Supersedeas, upon the plaintiff entering into bond in $400.— with Henry Holzhausen his Surety Conditioned according to law. Given under my hand

W. B. Scates Ch. Justice

[0759-1]

Jacob Weinz

vs.

Jacob Deppler

Assignment of Claims.

Plea had before the Hon Dunning Baugh Judge of the Circuit Court of the 12th Judicial Circuit Court. Comprising Amongst Others the County of Wayne in the State of Illinois.

At a Circuit Court began and held in and for said County of Wayne, at the Court House in Fairfield in said County, on the 4th Monday of ~~Septem~~ April -ber 1855

Be it remembered that on the 19th day of February 1855, Jacob Weing, filed in the Clerks Office of said Court the following Transcript viz:

"Case of arbitration by and between Jacob Depler, and Jacob Weing, both of Wayne County and State of Illinois, Submitted to arbitration Chosen by the said parties, as more fully appears by said Submission,

Now comes the said Jacob Depler, and files the award of said arbitrators with said Submission, and demands Judgment thereon for the amount of said award, as specified in said Submission. Judgment is therefore hereby rendered in favour of the said Jacob Depler against the said Jacob Weing on the award of said arbitrators for $71-86, with the cost of said arbitration, and cost of Suit. This 13th day of January 1855.

Execution issued on the 6th of said Jacob Depler, this 13th day of January 1855.

Appeal Bond filed and approved this 29th day of January 1855.

Arbitrators fees 2 days service Each $	12.00
Witness fees before Arbitrators	1.00
Jacob Depler charge for keeping hogs	3.00
Execution returned by R. S. McCarthen. Inspection fees	0.43
Constables fees summoning men, securing Property &c.	2.00

Blaffed Land Charge for Keeping Cattle & filling 2.50

I hereby certify the within to be a correct transcript of the proceedings had before me in the within described cause recorded in my docket.

Given under my hand and seal this 15th day of February 1855. Calvin McCracken JP (SS)

And also on the said 19th day of February 1855. the said Weing filed in said Court the following appeal Bond, viz:

"Know all men by these presents, that we Jacob Weing and Henry Holzhausen are held and firmly — unto Jacob Deppler in the penal Sum of Two 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 and Severally firmly by these presents. Witness our hands and Seals this 29th day of January A.D. 1855.

The Condition of the above Obligation is such that whereas the said Jacob Deppler did on the 15th day January A.D. 1855, before Calvin McCracken a Justice of the Peace ~~x Justice x the Peace~~ for the County of Wayne, recover a Judgment on the awards of Arbitrators against the above bounden Jacob Weing for the Sum of $71.83. with the Cost of said arbitration, and Cost of suit, from which Judgment the said Jacob Weing has taken an appeal to the Circuit Court of the County of Wayne aforesaid, and State of Illinois.

Now if the said Jacob Weing shall prosecute his appeal with effect, and shall pay whatever Judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above Obligation to be void, otherwise to remain in

full fine and effect

Jacob Weing
Henry Hetzhauer

Approved by me at my Office
this 29th day of January 1855.

Calvin McCracken

And also on the said 19th day of February 1855. the following Summons was issued by the Clerk of said Court. to wit:

"State of Illinois }
Wayne County } The People of the State of Illinois to the Sheriff of said County Greeting. We Command you that you Summon Jacob Deppler of to be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next Term thereof to be holden at the Court house in Fairfield on the 4th Monday of April next. to answer to an appeal Entered by Jacob Weing from a Judgment rendered by Calvin McCracken Esq. a Justice of the Peace of said County, in Favor of the said Jacob Deppler, and against the said Jacob Weing. and further to do and receive what the said Court shall consider of and concerning the Premises. and have you then there this writ.

Witness Joseph G. Bradley Clerk of our said Circuit Court and the seal thereof at Fairfield this 19th Febry. 1855. J. G. Bradley Clk."

which Summons was returned by A. Campbell Sheriff of said County, with the following endorsement thereon,

"Served on the within named Jacob Deppler by reading the 29th March 1855.

A Campbell. Shff. WC"

And afterwards to wit on the 27th day of April 1855. the following Order was made by said Court. viz:

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Jacob Deplu
vs
Jacob Weing } Appeal.

This day came the Parties by their Attorney, and the defendant moved to dismiss the Suit for want of Jurisdiction of the Justice of the Peace by whom the Judgment in this Cause was rendered. Which Motion is overruled, And the defendant not ~~having~~ making any further answer. It is considered and adjudged by the Court that the said Plaintiff recover of the said defendant the sum of Seventy one dollars and Eighty three Cents, and his costs in this behalf expended and therefor have Execution &c. to which several opinions of the Court the defendant by his Counsel at the time excepts."

And afterwards to wit, on the 27th day of April 1855 the following Bill of exceptions was filed in said Court to wit:

"State of Illinois Wayne County Circuit Court ss
April Term A.D. 1855.

"Jacob Deplu
vs
Jacob Weing } Appeal.

Be it remembered that on the Calling of this Cause, the defendant appeared by his Counsel and moved the Court to dismiss this Cause for the reason that the Justice who Entered the Judgment had no Jurisdiction of the Case, there having been no Summons issued by the Justice to the defendant and no appearance by said defendant before said Justice, on which Motion the defendant Offered the following Affidavit of Henry Holzhausen viz:

"Wayne Circuit Court, April Term 1855.

Jacob Deplu
vs
Jacob Weing } Appeal.

"Henry Holzhauer being duly sworn according to law, deposes and says, that he was present at the ~~trial~~ Arbitration set forth in the papers filed herein, and on which this suit is based.

That one of the Arbitrators, Calvin McCracken was not sworn as such Arbitrator, alleging at the time that as he was a Justice of the Peace he was not required to be sworn. That said Arbitrators did not make their award in said cause until the 11th day of January 1855, one day after the time when by said Submission, said award was to have been made, and ready to be delivered to said parties. He further says that said Weing is a German and knows very little of the English language. That he knew nothing of said Arbitrator not being sworn, and never gave consent to his acting without it, nor did he consent that said award should be found after said tenth day of January.

Sworn to & Subscribed before me
this 24th day of April 1855
J. G. Binkley Clk.
By E. Beecher D.C.

Henry Holzhauer

The Plaintiff also offered the following affidavit of Jacob Erkman, viz:

"Jacob Kepler
vs
Weing.

Arbitration

Jacob Erkman being sworn says after the award of the Arbitrators in said cause was made as appears by the papers on file in said cause, the Justice of the Peace Calvin McCracken before & by whom the Judgment was rendered, called on this affiant to interpret a communication to said Weing from the said Justice, & that this affiant did interpret such

communication to said Weing as follows, "said Justice informed said Weing of the award, having been made, and the amount thereof, and also that a Judgment would then be entered for said amount, which said Weing then expressed himself as dissatisfied and content, and then made no objections he had nothing further to say, so Justice done what was right thereto, and such Judgment was entered, said Weing being a German & this affiant also a German, and the necessity for such interpretation then existed,

Subscribed & sworn before the undersigned,
J. G. Buckley Clk

Jacob Erkman,

Jacob Powell was called and sworn as a witness on the part of the defendant who testified that about four days after the award, named in the papers in this case, was made, the said defendant and said Erkman came to his house, that said Erkman then stated that said Weing, was dissatisfied with said award, and that he defendant had no knowledge that Judgment would be entered against him on said award, by the said McCracken, Justice of the Peace, that he questioned said Erkman very particularly as to whether said defendant, had assented to said award, or knew that it was to be presented to a Justice of the Peace, to obtain a Judgment on it, and said Erkman replied that he defendant had not,

The Plaintiff offered in evidence the submission of the parties to arbitrate, and their award, which are as follows, viz:

Know all men by these presents that a certain controversy is now existing between Jacob Kepler of the County of Wayne and State of Illinois and Jacob Wintz of the same place, concerning the work of a certain farm belonging to the said Kepler and which has been rented to the said Wintz for the last three years by the said Kepler upwards, therefore we agree to the said Kepler and Wintz do hereby submit the said controversy to the decision and arbitration of Isaac Hand, Noah Swan, Jeremiah Butcher, William Mackey, Eli Johnson & B. Thirman, all of the County of Wayne and State of Illinois, gentlemen, or any five of them, and we do hereby agree with the other, that we will in all things faithfully keep, observe and abide by the decision and award that they or any five of them may make in making in the premises under their hands ready to be delivered in the 10th day of January 1855.

And it is further agreed between the parties hereto, that the party that shall fail to comply with and observe the decision and award so shall be made according to the foregoing submission will pay to the other the sum of Five hundred dollars as liquidated fixed and settled damages, and that judgment be rendered on such award in any court having jurisdiction of the same.

Witness our hands and seals this twelfth day of January One thousand Eight hundred and fifty five.

Jacob Kepler [Seal]

Jacob Wintz [Seal]

Signed and delivered

[Stamp]

vs. Personal

Henry Hedgehanson
Rufus Lewis

Bond of Arbitration.

In all to whom these presents shall come or may concern greeting: We S. B. Robinson, Jesse Lard Esq. Franklin Butler Calvin McCracken Seals Jones, the parties to a certain bond submitted as arbitrators in controversy existing between said Seals and said Wells, both of the county of Lawrence in the State of Illinois, as by an inspection of their respective Bonds of Submission executed by the said parties respectively each unto the other, said bearing date the tenth day of June 1855, more fully appears.

Now therefore Know ye that we the arbitrators mentioned in the said bonds having been first duly sworn according to law, and having heard the proofs and allegations of the parties, and examined the matter in controversy by them submitted, pursuant to their award in writing, that is to say, We find that said Defendant owe to the said Plaintiff a certain farm in the County of Wayne State of Illinois, containing 45 acres with all the buildings thereon, on the 4th day of March 1855, for the term of two years, at seven bushels of corn per acre, the said Seals Wells find to be to said said Defendant owe said, moreover that the said Wells shall pay to the said Defendant the sum of $ 14. 85, costs besides the costs of their ~~award~~ arbitration.

In witness whereof we have hereunto subscribed our names this 17th June 1855.

S. B. Robinson
Jesse Lard Esq.

Ole Johnson
Neal Jones
Jeremiah Butler
Calvin McDaniel

vs Trespass &
Solomon Mitchell
& B. Butler

Witnesses fees

for 2 days Seven each $ 14.00

Witness fees

Jacob Bean 2 days 1.00
B. F. Bean 2 days 1.00
Solomon Mitchell 2 days 1.00
J. Kerr 2 days 1.00
Ely Stone 2 days 1.00
J. Steele 2 days 1.00
Blagrove Lane 2 days 1.00

Whereas it appears by the Records that said
cause was not completed until the 17th day
of January 1855, but that said defendants
were present at the time and made no Objection thereto. This waives the error
in the cause, whereupon the Court overruled
the motion to discharge the cause and Entered
a Judgment for the Plaintiff for the amount
of the award. to which Opinion of the Court
in overruling said motion, and in Entering
said Judgment the defendant at the time
excepted; and prays that this his bill of
exceptions may be signed and sealed by
the Court and made a part of the record
of this cause.

April 27th 1855. D. Baugh Judge
Judge 1st Circuit.

[8759-4]

State of Illinois }
Wayne County } I, Joseph G. Bentley clerk of the Circuit Court in and for said County, do hereby certify that the foregoing contains a true copy of the papers and proceedings in the case of "Jacob Dofler ~~Dofler~~ against Jacob Ning" as appears from the papers and records now in my office.

Given under my hand and the seal of said Court at Fairfield this 2nd day of July 1853

Joseph G. Bentley Clk

Clerks fees in Circuit Court 7.60 = Sheriff fees 1.20		8.80
J. P. docket 68 = Constables Cost 2.25.		2,93
Arbitrators fees 12.00 = B Lander fees for keeping filly. 2.50		14.50
Jacob Dofler fees for keeping hogs, 3.00 = ~ ~ ~		3.00
Witness fees in J. P. 7.00, do in Cir Court 22.40		29.40
Attest J. G. Bentley clk		$58,63

No 40
Jacob Dofler
vs
Jacob Ning
on
Jacob Dofler
Error to Wayne

Dismissed

Filed 3d day of Oct 1853
J. G. Bentley clk

Payment by Jacob Dofler
Purchase $5.00

Know all men by these presents, That we Jacob Weing and Henry Holzhauser, are held and firmly bound unto Jacob Doppler, in the penal sum of Four hundred dollars for the payment of which well and truly to be made and performed we and each of us bind ourselves, our heirs, Executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this 27 day of October A. D. 1855.

The condition of the foregoing obligation is such that whereas at the April Term 1855. of the Circuit Court of Wayne County, Illinois, the said Jacob Doppler received a judgment against the said Jacob Weing for the sum of $130.46 and cost; from which said judgment the said Weing has obtained an order for a Supersedeas from the Supreme Court. Now if the said Jacob Weing shall prosecute said suit in the Supreme Court, with effect, or in case the same shall be affirmed in said Court, shall pay the said judgment and all cost therein in the Circuit and Supreme Court, then this obligation to be void, otherwise to remain in full force and virtue.

Henry Holzhauser (Seal)
Jacob Weing (Seal)

Approved & filed 3rd Nov 1855. J. Johnston Clk

[8757-7]

Jacob Weing
vs
Jacob Duplu
Bond

Filed 3d Nov. 1855
N. Johnston Clk

State of Illinois }
Supreme Court, } ss.

The people of the State of Illinois to the Clerk of the Circuit Court of Wayne County 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 Wayne County, before the Judge thereof, between Jacob Duplex, plaintiff, and Jacob Wing defendant, it is said manifest error hath intervened, to the injury of the ~~said~~ aforesaid Jacob Wing as we are informed by his complaint, and we being willing in due form and manner, that the 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 Mount Vernon, in the County of Jefferson, on the second Monday of this month, that the record and proceedings, by inspection, we may cause to be done thereon, to correct this error, what of right ought to be done according to law;

Witness, the Hon. Walter B Scates,

[8759-9]

Jacob Young
vs
Jacob Doplu
Writ of error

Filed 3rd Nov. 1855.
A. Johnston Clk

Now Writ of error is made a supersedeas
to be disposed according to law
A. Johnston Clk

State of Illinois, Cass County, ss.
I, Jacob Ebert, Clerk of the Circuit Court and ex officio Recorder in and for said County, do hereby certify the foregoing to be a true copy of the record and proceedings in the case of Jacob Young vs Jacob Doplu, as the same appears of record in said Court.
Witness my hand and seal of said Court at Virginia this 3rd day of November A.D. 1855.
Jacob Ebert
Clerk of Cass Circuit Court

Fairfield Illinois
Oct 30. 1855

Noah Johnson Esq
Mt Vernon Ills

Dear Sir

Enclosed I send you bond in case of Kaplin vs Nevins, taken to the Supreme Court from this County

Yours Truly
C A Beecher

[5757-2]

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of Wayne **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 Wayne County, before the judge thereof, between Jacob Dapler, pltff.

and Jacob Wright

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 Jacob Dapler

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~~ instant, 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 Jacob Dapler notice, together with this writ.

Witness, the Hon. ~~Samuel H. Treat~~ Walter B. Scates, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this third day of November in the year of our Lord, one thousand eight hundred and fifty-five

Noah Johnston
Clerk of Supreme Court.

28759-10

Jacob Weing
vs
Jacob Doppler

Writ

Serving	50
Mileage	50
Returning	40
Postage	5
	1.15

A. Campbell
Sheriff

Service on the within Jacob Doppler by reading this 14th day of November 1855
A. Campbell Sheriff

Filed this 20 day of Nov. 1855
Wm. Pettit Clerk

No 40

Wendle
vs
Dobler

1 Record
1 Opinion
2 small

Dismissed

No. 40

Wendle v. Dobler

Reversed.
no confession

Copy filed without
prejudice to the
defendant's right
to have the
22 Sep. 1856

8759