

Jefferson County Circuit Court
Case Files - Civil
January 1888

Box 39 Folder 35

Parks, William
Shearlock, Henry

vs.

Douglas Jersey Cattle Co.

Appeal

Defendant appealed from JP
Charles G. Warner on \$59.60 account
for stone, granite, carpenter
work; bill of exceptions

1887
August

Douglars Jersey Cattle Company
to W^m Parks & Henry Shearlock Sr

To 36 dimensions Stones @ 60¢ \$21.60

" 1 1/2 days hauling granite @ \$2.- 3.00

" Carpenter work on dwelling House

13 days @ \$3. = \$39

3 1/2 " " 1.50 - 5.25

1/2 " " " 75

45.00

\$ 69.60

Cr by rent - - - 12.00

Balance due - - - 57.60

Mr Parks &
Horn Shearlock

"

Angelo Henry
Cattle Company

Account

Filed

Oct 17/1887

David Martin
JP.

Filed Dec 7 1887

A. J. B. Neuge
Clerk

THE STATE OF MISSOURI,

To the Constable of Joachim Township, in Jefferson County, Greeting:

WE COMMANDED YOU, to summon

Wesley J. Kelley & Co. Cattle Company

to appear before the undersigned, one of the Justices of the Peace of Joachim Township, in Jefferson County aforesaid, on the *25th* day of *October* 1887, at ten o'clock in the forenoon, at my office in said Township, to answer the complaint of *Wm. D. Santo & Mary Shearlock on account of*
found ~~for~~ labor performed

and wherein he demands

Fifty Seven *00*

Dollars.

Given under my hand, this

11th day of *October* A. D. 1887.

Chas. G. Thorne

Justice of the Peace.

Constable's Return.

I HEREBY CERTIFY that I executed the within Writ by *deceit*

*A copy of same with H.M. Douglas Dec
proceeds of said Company at its place of business
he being the agent of said Company in charge thereof
the 17 day of October 1887, in Joachim Township, Jefferson
County, Missouri.*

Fee, \$

Constable.

John Davis

SUMMONS,

Wm D Parks & H. Shearlock
Plaintiff.

Jerseydale Cattle Co
Defendant.

Before

Chas. G. Warne,
Justice of the Peace.

Am t of Plaintiff's Demand,	\$ <i>57.60</i>
Justice's Fees,	\$ <i>1.90</i>
Constable's Fee,	\$ <i>30</i>
Constable's Mileage,	\$ <i>50</i>
Constable's Commission,	\$ <i>1.75</i>
Total,	\$

*Filed Dec 7th 1887
W.B. Veazey
Clerk*

(748 749)

Wm Parks & Henry Shearlock plaintiffs
vs

Douglas Jersey Cattle Co. defendant
Before Charles Warner

Justice of the peace,
Now comes the defendant, and appearing
specially for this purpose only, moves
the Court to set aside the judgment
herein by default and dismiss this suit.
1st Because the service in this case was
insufficient.

2^d Because the Court had no jurisdiction
of the case.

Thomas & Horne
Serving and Byrnes
Attys for Deft.

Mrs. Sanka A
Henry Shearlock
1255

no

Anglo Siam Co
Company 1255

Mahon to set aside
default 1255

Filed Nov 1 1878
Charles O'Brien

J. L.

Wm Parks & Henry Shearlock plffs,

vs

Douglas Jersey Cattle Company deft.

Before Chas. L. Warner

Justice of the Peace,

State of Missouri } p.

County of Jefferson }
Now, at this day, comes the defendant,
by its Agent, and moves the Court to grant an appeal
from the judgment rendered in said cause, and states
that the application for this appeal is not made for vexation
or delay, but because he believes the appellant is injured
by the judgment of the Justice.

Sworn to & subscribed before me

this 18th day of November 1887,

Chas. L. Warner

Justice of the Peace

Douglas Jersey Cattle
Co per H. W. Douglas
V. P. M.

We, the undersigned, Douglas Jersey Cattle Company
as principal, and

as sureties, acknowledge

ourselves indebted to Wm Parks & Henry Shearlock
plaintiffs in the above entitled cause, in the sum of one
hundred dollars, to be paid upon this condition:

Whereas, Douglas Jersey Cattle Company defendant,
has appealed from the judgment of Chas. L. Warner
a Justice of the Peace, in an action between Wm Parks
& Henry Shearlock plaintiffs and Douglas Jersey Cattle
Company Defendant, Now, if said Defendant will

prosecute its appeal with due diligence to a decision, and
 on such appeal the judgment of the Justice be affirmed,
 or if, in the trial anew in the Circuit Court, judgment be
 given against appellant, and it shall satisfy such
 judgment, or if its said appeal shall be dismissed, and
 it shall pay the judgment of the Justice, together
 with the cost of appeal, then this recognizance shall
 be void.

Douglas Jersey Cattle Company
 by A W Douglass Agent
 Thos A. Charles
 A W
 Horns 11312

Read
 Read
 Read
 Read

Taken and approved this 18th day of
 November 1887

Chas. L. Warner

Justice of the peace,

Wm Parks and
 Henry Shearlock
 Plffs

Douglas Jersey Cattle Company
 Defs

App'd & bond for appeal

Filed. Dec. 7th 1887
 J B Veazey
 Clerk

Before Chas G. Darnie Justice of the Peace
Joachim Township - Jefferson Co Mo

Wm Parks & Henry Shearlock plaintiffs
vs

Douglas Jersey Cattle Co defendants

Plaintiffs file an account for labor performed
for defendants October 11th 1887 claiming
amount due of \$57⁵⁰/₁₀₀

Summons issued October 11th 1887 and directed
to John Davis Constable of Joachim Township
and returnable on 25th day of October 1887
at 10 o'clock, A.M.

And on Oct 25th 1887 Summons returned served
by delivering a copy of same to H. H. Douglas
Vice president of said Company at its place of
business he being the agent of said Company in
charge thereof - and case being called and
after waiting three hours the defendants though
called come not - judgment by default for the
plaintiffs - after hearing the testimony produced
to the amount of \$57⁵⁰/₁₀₀

defendants by H. H. Douglas. ask for new
trial which is granted and case set for
November 8th 1887 - at 10 o'clock A.M. on condition
that defendants pay all costs.

Nov. 8, 1887, costs not having been paid the
said motion is overruled.

Now on this 18th day of November 1887 comes the
Douglas Jersey Cattle Company by H. H. Douglas

agent and file Motion to dismiss the suit
overruled. whereupon affidavit and bond
for appeal is filed. bond affirmed and
appeal granted.

Chas. H. Warner
Justice of the Peace

Fees.

Ch. Warner Justice

docket & file 1⁰⁰ Summons 30 2 Subpoena 50 1.85

judg 50 continuance 30 aff appeal 35 1.20

index 10 transcript 25 fee bill 25 .60

3.65

John Davis constable

Summons 30 Writ 50 4 Sub 100 mile 75 2.55

Witnesses.

Thos Ryan 1 day 50 & Writ 60 1.10

Sam Kuntz 1 " " 1.10

N Keith 2 " " 2.20 4.40

I certify that the foregoing is a copy of My
docket in the case of ~~Douglas Jersey Cattle Co~~
Wm Parks & Henry Shearlock vs Douglas
Jersey Cattle Co and that the fee bill
is correct

Chas. H. Warner
Justice of the Peace

703
Wm. D. Smith & H. A. Shearlock
vs

Longleaf Piney Cattle Co
vs
Transcript of record

More 2/88 motion but could determine result. See
after 1 day on 10th 8/11 -

Filed Dec 7th 1887
W. B. Yeager
Clerk

W^m Parks &
Henry Shearlock plffs
vs
The Douglass Tersey
Cattle Cattle Co. def.

In Circuit
Court
Jefferson
County

Plaintiffs move the Court
to dismiss the appeal taken
in this cause for the reason
that the said appeal was not
taken within the time prescribed
by law, to wit, within ten days
after the judgment in this cause
was rendered.

Tatum & Deering
attys for plffs

56.

Wm Parks
chal

or

Douglas Terry
Cattle Co.

Matton Salmon
Cattle Co.

Filed Jan 9th 1888
A. J. B. Hayes
Clerk

Wm Parks et al } In Circuit
 of } Court
 Douglass Jersey Cattle Co. } Jefferson
 Deft } County
 Appellant } Term 1888

Be it remembered that in the
 above entitled cause the following
 proceedings were had:

On the first day of said term being
 the return term the plaintiffs, appellants
 filed motion to dismiss appeal
 as follows:

(Here insert said motion /
 which motion being considered by
 the Court was overruled & to this
 action of the Court in overruling
 said motion plaintiffs at the
 time then & there duly excepted.

Now that the foregoing matters may
 be of record in this cause plaintiffs
 tender this their bill of exceptions
 which they pray may be signed sealed
 & made part of the record, all of which
 is done accordingly by the Court.

John L. Humer.

Judge

Mr Parks and

or

Douglas Veterinary
Cattle Co.

Placerville, Cal
of Occultions.

Filed Jan'y 12th 1888
A.D. Reager
Clerk

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

} ss.

No.

37

THE STATE OF MISSOURI, &

*Samuel Boone**J. H. Thomas**vs. Thomas Ryan and*

You are Hereby Commanded, That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the *Town*

of *Willsboro*the *12th* day of*January*

A. D. 1888, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein

Wm. M. Parsons & Henry Shearrell are Plaintiffs,

and

The Douglas Jersey Cattle Co. are

Defendants,

on the part of said

plaintiffs

, and this you shall in no

wise omit. And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

WITNESS my hand and the seal of our said Court. Done at

office in *Willsboro*

in said County, this

5th

day of

January

A. D. 1888

W. D. Deary

Clerk.

By

Deputy Clerk.

SUBPENA.

No. 37

CIRCUIT COURT

Of Jefferson Co., Mo.,
January Term, 1888Wm Parks &
H. Shearlockvs.
Douglas Jersey Cattle
CompanyPLAINTIFFS' }
DEFENDANTS' } WITNESSES.

Day of Trial 12 Jan'y

Thos. Ryan
Samuel CoontsFiled Jan'y 12/1888
W.B. Veager
Clerk

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson
and State of Missouri, on the 9th day of January, 1888, by
reading the same in the presence and hearing
of the within named Thos. Ryan and
Samuel Coonts

Ret. 5
W. Shearlock
Dec 8 1888By Wm M. C. J. Shearlock
J. G. Smith, Sec'y

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

} ss.

No. 74

THE STATE OF MISSOURI, To

John Leonard
Wm. Hendricksen, Wm. Landentree, Antonius (Betha)
Thomas Ryan, Rich. Keith, David McPherson
Ed. Butler, J. A. Garrison, Wm. Tenack, John Brock
Johns, & Co.

You are Hereby Commanded, That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the Town of *St. Louis*, within and for said County, on *Friday*

the *20th* day of *January* A. D. 18*88*, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court, wherein *Garth & Stuart* Plaintiff,

and *Langdon Lewis Battle & Company* Defendant,

on the part of said *Defendant*, and this you shall in no wise omit. And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

WITNESS my hand and the seal of our said Court. Done at

office in *St. Louis* in said County, this

17th day of *January* A. D. 18*88*

By

Deputy Clerk.

Clerk.

SUBPENA.

No. 74

CIRCUIT COURT

Of Jefferson Co., Mo.,

Term, 1888

Parks & Shearlock

VS.

Douglas Jersey Cattle Co.

PLAINTIFFS' }

WITNESSES.

DEFENDANTS' }

Day of Trial

January 20

Wm Hendricksen

Wm Hendricksen

Wm Gerdner

Antonia Biffa

Thos. Ryan

Nick Keith

Dan Smetzer

G. B. Butler

J. R. Gordon

Wm Jewett

John Zach

Filed January 20/1888
D. B. Vandy
Clerk

RETURN.

I hereby certify that I served the within Writ in the County of

Jefferson

and State of Missouri, on the

18th

day of

January

1888, by

FEE, \$ 5 75

By Ed General - Clerk

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

J. H. Hearn

} ss. No.

83

THE STATE OF MISSOURI, to

J. H. Hearn & David Cheever

You are *Hereby Commanded*, That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the *town*

of *White Grove*, within and for said County, on *Monday*

the _____ day of _____ A. D. 18____, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein *Jack & Cheever* Plaintiff,

and *Douglas Percy Battle Co* Defendant,

on the part of said *Plaintiff*, and this you shall in no

wise omit. And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Witness my hand and the seal of our said Court. Done at

office in *White Grove* in said County, this

20th day of *January* A. D. 188*8*

J. H. Hearn Clerk.

By _____ Deputy Clerk.

SUBPENA.

No. 85

CIRCUIT COURT

Of Jefferson Co., Mo.,

January Term, 1888

Parks & Shearlock

VS.

Douglas Jersey Cattle Co

PLAINTIFFS' }

~~DEFENDANTS'~~ }

WITNESSES.

Day of Trial

January 20
David SmileyFiled January 20/1888
J. M. Hedgcock
Clerk

FEE,

\$5.00

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson
and State of Missouri, on the 20th day of January, 1888, by
reading the same in the presence and hearing of the
within named David Smiley

J. M. Hedgcock
Sheriff

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

} ss.

No. 82

THE STATE OF MISSOURI, To

Jesse Leonard

(Bellevue)

You are Hereby Commanded, That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the *City*

of *St. Louis*

within and for said County, on

Friday

the

20th

day of

January

A. D. 1888, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein

Stark & Shearbrock

Plaintiff,

and

Langham Terrell Cattle Company

Defendant,

on the part of said

Defendant

, and this you shall in no

wise omit. And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

WITNESS my hand and the seal of our said Court. Done at

office in

St. Louis

in said County, this

18th

day of

January A. D. 1888

By

DEPUTY CLERK.

CLERK.

SUBPENA.

No. 82

CIRCUIT COURT

Of Jefferson Co., Mo.,

January Term, 1888

Parks & Shearlock

VS.

Douglas Jersey Cattle Co.

PLAINTIFFS

WITNESSES.

DEFENDANTS

Day of Trial

January 20

Antonio Berra

Thos Kaatner
HiramFiled January 21/1888
D. B. Vealger Clerk

FEE, \$100

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson
and State of Missouri, on the 20th day of February, 1888, by
serving the same on the within named
returning officer and Thos Kaatner

J. W. McCoy

572	Samuel Gorham	
X	Leah Trazier	
R	J B Moss	
R	Eric Pauls	
	Joseph Tiefenbrun	1
	Frank Hick	2
	James Crossman	3
	Henry Marx	4
	James Lafoord	5
	B M. Lankham	6
R	Wm Dahl	
	John Mc Mullin	7
W	V. Meh	
	W. J. Haverstick	8
W	D E O'Donnell	
	G M Schmoll	9
	Wm Heller	10
X	John B Craft	
X	Leah A Parks	
	Frank Lee	11
	Stephen Pounds	12
X	R E Mockbee	
X	Wm Glass	

Parkes and Stanton
or

Longleaf Lumber
Cattle Company

Panel

Filed June 30/1888
A. J. B. B. B. B.
Clem

Referred
Harris
Judge

The court instructs the
jury that under the pleadings
and evidence in this case
the plaintiffs cannot recover
and the verdict must be
for the defendant.

Refused
Honor
Judge.

The court instructs the jury
that you believe and find from
the evidence that Park and Sherlock
formed a partnership, to carry on
the business of stone quarrying
and that as such partnership
they entered into a contract
with the defendant to quarry
stone, then and in that work
they are not entitled to recover
on their account for any of the
items for work on the house
even though you should
further find that Douglas
did agree to pay Sherlock for
his work on said house,
~~unless you further find from the~~
~~evidence that the work on the house~~
~~was done by the under the partnership~~
~~agreement.~~

Refund
Money
prop

The Court instructs the Jury that if you believe from the evidence in this cause that at the time the receipt for seventy five dollars was given that the Plaintiffs had not given more than Three hundred and seventy six perch of rock then in that case the whole of said receipt must be applied ^{on} any other work done for Defendants by Plaintiff.

Refund
Money
prop

The Court instructs the Jury that if you find from the evidence in this cause that Plaintiffs agreed to do the Carpenter work on the house for the use of the house during the time of the building of the house then you will not find anything for Plaintiffs ^{on} those items of the account.

Michael S. Butts

²
H. W. Douglass

Refused by
S. H. M. Phillips.

Filed Aug 21/1888
J. B. Deane
Clerk

Refused
Money
Judge

The Jury are instructed that when one person performs work or labor for another at the instance or request of the latter, the law implies a contract or agreement to pay for the same its reasonable value, & that there need not be an actual or express agreement or promise to pay.

If therefore you believe ~~that~~ from the evidence that the plaintiffs jointly, or one for the other, performed the work & furnished the stones mentioned in the account filed in this suit, for the defendant at its instance & request acting through its manager H. W. Douglass, & that the plaintiffs have not been paid for the same in whole or in part, then your verdict must be for the plaintiffs, & you will allow them such sum as you may believe from the evidence to be reasonable compensation for the work & stones you may believe ~~to have~~ from the evidence the plaintiffs did & furnished for ~~or~~ to the defendant less such as they have been paid for if any.

Refused
Thomson
note

The Court instructs the Jury that if the Defendant furnished the foundation and materials for the erection of the dwelling house for work on which Plaintiffs have sued in this action and if Plaintiffs were by agreement with Defendant to do the carpenter work of said house and occupy it after it was sufficiently finished for use during the time they might be engaged in the quarry and then leave the same for Defendant, and if there was no express contract between Plaintiffs and Defendant as to payment of rent on said house by Plaintiffs or as to payment of Plaintiffs for their work on the house then in that event Plaintiffs are entitled to so much for their work on the house as the same may have been reasonably worth after deducting therefrom the value of the rent thereof for such time as it was occupied by them.

Shellock & Parker

~

W. M. Douglas

Refused here.
on behalf the
Plaintiff

Filed June 21/1888

W. B. Douglas
Clerk

Sheelock & Park }
H. W. Park }

The Court instructs you gentlemen
of the jury as follows-

The plaintiffs sue in this action for
getting out stone, building a house
and hauling granite for defendant
amounting in all to \$69⁰⁰ on which
they give defendant credit for \$12
leaving a balance due them as
they claim of \$57⁰⁰ and plaintiffs
can recover if at all, ^{only} on the above
items

If you believe from the evidence in the case
that plaintiffs agreed with defendant that
if the latter would furnish the materials
they would ~~would~~ erect a house to be oc-
cupied by them while at work for defend-
ant & would not charge for their work
then you will not allow plaintiffs any
thing on the item for building the house.
If however on the other hand you find
from the evidence ~~that plaintiffs were~~
~~to receive pay for building the house~~
~~then you~~ that it was understood by all
the parties that plaintiffs were to be
paid for building the house then
you ^{will} allow plaintiffs what ^{the} work they did
therein was reasonably worth to defendant
but before you can allow any thing on that

item you ^{must} find, ^{from the evidence} that plaintiffs intended at the time they did the work, to charge ^{for it} and that defendant expected at that time to pay for it and unless you so find your verdict on that item will be for defendant.

As to the item of lumber the defendant claims to have furnished plaintiffs you are instructed that if he furnished any lumber to them and at the time he did so he intended to charge them ^{for it} in their account for work and they expected to pay for it and it was understood that it should go as a payment on the account for work claimed by them then you will allow defendant as a payment such sum as you may believe from

the evidence such ~~has~~ lumber was
worth.

And in adjusting the account between
the parties you will ~~find~~ ascertain
how many perches of rock ^{plaintiffs} ~~they~~

granted for defendant under this con-
tract and its value at the contract price,
to it how much dimension rock they

granted for him & the value of the
~~at the contract price~~
~~rock~~ and dimension rock, how much

if anything is due plaintiffs for work on
the house they built show much if any
thing is due plaintiffs for helping to haul

granite & from the total sum of
all these items you will ~~deduct~~

deduct the amount defendant paid

them on these items ~~within~~ in cash
and butter, meat & lumber ^{if any} ^{than} furniture &c

and ⁱⁿ settling the Cook payments
you will consider all the checks issued
plaintiff by defendant.
to defendant, as Cook. When you
have made this cancellation if any
thing remains due plaintiff you
will return in your verdict that same
for them: but if you find defendant
has paid them all that is due them
or more than is due them you will
simply return a verdict for defend-
ant: he having in no event cannot
recover any balance you may find
to be due him if any.

In allowing the payments defendant has made
you will credit ~~them~~ as follows: 1st On
the item for rock quarried, and 2nd on
the other items, and ~~no~~

Samuel Stanton
ad

Weyland Cullen Co.

Indemnity

Recd Jan. 24/1888

1708/1882
Cen

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

} ss.

No. 146

THE STATE OF MISSOURI, To

Jefferson
William Henderson

You are Hereby Commanded, That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the town
of *Millersburg*

the *2nd* day of *March*, within and for said County, on *Friday*
A. D. 188*8*, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein

Perry F. Harlow

Plaintiff,

and

Norglas Levy Co. & Alfred Stark

Defendant,

on the part of said _____, and this you shall in no
wise omit. And the person or officer serving this Writ is commanded to have the same at the
time and place aforesaid, certifying thereon his return.

WITNESS my hand and the seal of our said Court. Done at

office in

Millersburg

in said County, this

1st

day of

March

A. D. 188*8*

W. B. Neasey

CLERK.

By

DEPUTY CLERK.

SUBPENA.

No. 146

CIRCUIT COURT

Of Jefferson Co., Mo.,

Term, 1888

Parks & Shearson

VS.

Douglas Jersey Cattle Co.

PLAINTIFFS'

WITNESSES.

DEFENDANTS'

Day of Trial *Mar 30/88*

Nm Garden Lark

FEE, \$ 50.00

RETTURN:

I hereby certify that I served the within Writ in the County of Jefferson and State of Missouri, on the 22 day of March 1911.

day

1888, by

I hereby certify that I served the within writ in the County of _____
and State of Missouri, on the _____ day of _____, 1888, by

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

} ss.

No. 141

THE STATE OF MISSOURI, To

Jesse H. Smith

William A. Macmillan

John Jack Nickle

You are Hereby Commanded, That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the town

of Stellens

within and for said County, on March

the 2nd

day of

A. D. 1888, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein

Berns & Harlow

Plaintiff,

and Douglas Jones Lath Company

Defendant,

on the part of said

Adams

, and this you shall in no

wise omit. And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Witness my hand and the seal of our said Court. Done at

office in Stellens

in said County, this

27

day of

February A. D. 1888

W. B. O'Leary

Clerk.

By

Deputy Clerk.

SUBPENA.

No. 141

CIRCUIT COURT

Of Jefferson Co., Mo.,

Term, 1888

Parke & Shearlock

VS.

Douglas Jersey Cattle
Company

PLAINTIFFS'

WITNESSES.

DEFENDANTS'

Day of Trial

March 2/88

Wm Henderson for
 H. Henderson for
 John Gack
 Nick Keith

Filed March 2/1888

W.B. Vandy
clerk

Fee, \$ 2.00

George W. Gingsheriff
 by Ed. Forrest & S

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson,
 and State of Missouri, on the 1st day of March, day of February, 1888, by
 reading the same in the hearing and in the presence of
 the within named, Wm Henderson, for and Wm Henderson
 do, John Gack and Nick Keith

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

} ss.

No. 142

THE STATE OF MISSOURI, To

Jefferson Thomas Ryan Esq

Samuel Berny, Cordonia Adolphus, Melty Leapher
Jacob L. Reis, Y. Bernick, John Gaymott

You are *Hereby Commanded*, That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the town

of *Shellsboro*

within and for said County, on

Friday

the *2nd*

day of

March

A. D. 1888, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein

Parks & Hearlson

Plaintiff,

and

Douglas Leroy Battle

Defendant,

on the part of said

plaintiffs

, and this you shall in no

wise omit. And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

WITNESS my hand and the seal of our said Court. Done at

office in

Shellsboro

in said County, this

27

day of

July

A. D. 1888

Clerk.

By

DEPUTY CLERK.

SUBPENA.

No. 142

CIRCUIT COURT

Of Jefferson Co., Mo.,

Jury Adj. Term, 1888
Parks & Shearson

VS.

Douglas Jersey Cattle
Company

PLAINTIFFS'

WITNESSES.

DEFENDANTS'

Day of Trial

Mar. 2nd/88

Thos. Ryan

Saml. Coontz

Constantine Lehner

Nesley Cooper

Jacob L. Ries

J. Branch

John Gaxtonette

Filed Mar. 2/88
D. C. Venable

RETURN.

I hereby certify that I served the within Writ in the County of

Jefferson,

and State of Missouri, on the

1st

day of

March,

1888,

by

The undersigned the same in the hearing and in the presence of
the within named Thomas Ryan, Saml. Coontz, Constantine Lehner
Nesley Cooper, John L. Ries, J. Branch, John Gaxtonette
not found

FEE, \$ 37.57

George W. McFry, Sheriff
By Ed. Hornet D. S.

Wm Parks et al, plaintiffs, appellees
vs
Douglas Jersey Battle Co.
defendant & appellant.
Circuit Court Jefferson County.

Plaintiffs, appellees, move
the Court to set aside the order
of dismissal of this suit herein
rendered & to grant a rehearing
because

1. The Court had no jurisdiction
of this suit, the appeal herein
not having been taken in time to
confer jurisdiction.
2. The only power possessed by this
Court over this case is to dismiss
the appeal.
3. If this Court had jurisdiction
in this cause, the cause should not
have been dismissed, no notice of
appeal having been given as
required by law, but the cause
should have been continued.

For Tatum
with Dr Williams
attys for pltfs.

Parker & Co

N

Douglas Jersey
Cattle Co.

Wooten Street
Seaside pickpocket Co

Filed March 22-1888

2703 New York

Gen

Park & Shearlock
v
The Douglass Jersey Cattle Co. }

This case originated before C. W. Warner Justice of the Peace. The return day of the summons was October 25, 1887. The defendant failed to appear and judgment was rendered by default. On the same day the defendant moved for a new trial which was granted and case reset for trial Nov 8, 1887 "on condition that defendant pay all costs." On Nov 8 1887 the justice made this entry "As costs not having been paid the said motion is overruled." On Nov 18 1887 the defendant perfected ~~his~~ appeal to this Court. On the second day of the January Term of this Court 1888 plaintiffs filed their motion to dismiss the appeal upon the ground that the appeal was not taken within ten days after the rendition of the judgment which the Court overruled. A trial was then had which resulted in a hung jury. The case was then set down for trial March 2, 1888. At that time the plaintiffs failed to appear and the cause of action was on motion of defendant, dismissed. ^{for want of prosecution.} Plaintiffs now move the Court to set aside this dismissal and because the Court had no jurisdiction of the cause ^{no} had authority to dismiss ~~the case~~. The Court now holds as follows - 1. The appeal must from a Justice of the Peace must

be taken within ten days after the rendition
of the judgment. Sess acts 1885 p 186.

2. The justice has the power however to
set aside a judgment by default or non-
suit upon payment of costs. Sec. 2949 R.S.
This section is not repealed, but ^{is} still in force.

3. A party can now appeal from the judgment
by default or non-suit without first
moving the justice to set it aside and
having that motion overruled.

See Sess. acts 1885 p 186.

4. When an appeal from a justice is not
taken within the time prescribed by the
statute, the Circuit ^{court} does not obtain
jurisdiction to try the case, even though
the parties appear and go to trial

James v Robinson 1 Mo. 594

Moore v Munkle 3 M.A. 596

Moore v Samson 4 " " 111

Hatt v Vamer 5 Mo. 386

Leason v Lott 8 " 45-

Bermiker v Muth 37.. 498

45- " 117

Patchin v Boncak 52 " 431

Union Sav. & L. Co. v Kiser 8 Mo. 232

10 " 457

11 " 114

In view of these propositions and the
facts in this case the only question for
me now to determine is, was the appeal
taken within the time prescribed by statute?
If it was not then this Court acquiesce

no jurisdiction to either try or dismiss
the case. If it was, then the dismissal
for want of prosecution ought not to
be disturbed. In determining this
question we must determine when
the judgment in the case was rendered.
What effect must be given to acts of
the justice as evidenced by the entries
he made? In order to answer this
question correctly it will be necessary
to quote the exact language used by the
justice in his docket entries. These
~~entries~~ ^{entries} are as follows, "Case being called
and after waiting three hours the defendant
though called come not, judgment by default
for the plaintiffs - after hearing the testimony
produced to the amount of \$750. defend-
ants by H. W. Douglass, ask for new
trial which is granted and case sett
for Nov. 8 1887, at 10 o'clock A. M. on
condition that defendants pay all
costs." ~~Nov 8 1887~~ Costs not having
been paid the said motion is overruled.
Then follows the entry of Nov. 18/88 allow-
ing the appeal.

The law requires the party applying to have
a judgment by default or non-suit set
aside ~~must~~ pay the costs.

Palmer v R.R. Co. 55 Mo. 250

But a party is not bound to tender the
costs when ~~the~~ ^{he} makes the motion. The
justice can overrule the motion because
the costs are not paid & for that reason

alone if he sees proper to do so

Beers v A & P. R. Co. 53 Mo. 292.

Palmer v R R Co. 57 " 250.

The Justice could have overruled the motion in this case, in the first instance simply because defendant did not at that time pay the costs but he did not see proper to do this but made the entry above quoted. Did that entry in fact set aside the judgment of default? If it did then it is immaterial whether the Justice ought to have refused to set it aside when made. Could defendant have taken an appeal while that entry granting a new trial on condition that defendant pay all costs remained in force? I think not.

A judgment which has been set aside upon payment of costs, cannot be enforced till that order is vacated.

Ransom v City of N. Y. 20 How. U.S. 581

An order that plaintiff's suit be dismissed if he fail to answer interrogatories in 120 days and pay all costs is not a final order and it may be modified at a subsequent term of Court. The matter still remained sub judice. It had to be judicially determined that the condition had not been complied with before the judgment was final. Till this was done the cause was in fieri.

Ex Parte M'Lenon 33 Ala. 276

Reese vs Billings 19 .. 263

Ex Parte Remsen 23 .. 25

Edwards vs Lewis 18 .. 494

In Willis, Geo. vs P. & M. Bank 19 Ala. 141 the order was that a new trial be granted upon payment of all costs and it was held that this was a conditional ~~order~~ judgment which might be vacated at a subsequent term, which would leave the first judgment in force. The effect of the cost judgment was to determine judicially that the condition had not been complied with.

In California the payment of costs is a condition precedent to setting aside a default but yet it has been held there that when the Court does set aside a judgment by default on condition that the cost be paid, the judgment is in fact set aside and nothing further can be done till the Court finds that the condition has not been complied with and enters judgment ^{thereby} accordingly.

Hovey vs The C. G. & S. M. Co 29 Cal. 74

People vs O'Neal 23 .. 281

Leet vs Hunt 36 .. 288

Horton vs Oliver 49 .. 101.

And in Michigan it has been held that the justice may waive the payment of the costs. People vs Judge 29 Mich 487

But the Core most in point is *Zapry*
vs *Leitchfield* 38 Ind. 508. In that
Core judgment was for plaintiff. On
application of defendant a new trial
was granted upon payment of costs
within four days. On the day set
for the second trial, on motion of
plaintiff the order of the justice granting
a new trial was set aside and a
new judgment for same amount was
entered. On appeal to the Supreme
Court it was held that the appeal
from the justice was from the
lost judgment and not the first.
The only difference in the Core at bar
and *Zapry* vs *Leitchfield* is that
when the justice overruled the motion
on Nov 8 1887 he did not reverse the
judgment but that. Indeed there is
no formal judgment at all in the Core,
but that is not necessary as it has
often been ruled by our Supreme
Court. In view of all the authorities
I have cited I am satisfied that
the Conditional order granting a
new trial in the Core at bar did in
fact set aside the judgment and it
remained set aside from Oct
25 to Nov 8 1887 during which pe-
riod no execution could have been
issued nor could an appeal have been
taken. If the justice had taken the

motion to set aside the default and
advisement till Nov 8, defendant
could have appealed but when
the justice granted the new trial
on condition that defendant pay
the costs the defendant was debarred
from taking an appeal until
the justice vacated that order, which
I hold was the effect of the justice's
action on Nov 8. If the order had
been formal the entries would have
been that the order granting a new
trial be set aside and the original
judgment reinstated, ~~but the act~~
of justices must ^{be} construed ^{according to} ~~as to~~
their effect and not ^{things} formality.
When the justice on Nov 8, overruled
the motion he in effect set aside the
order granting a new trial because
the condition had ^{not} been complied
with. This he judicially determined
on Nov 8. Holding as I do that
the final judgment rendered by
the justice in this case was on Nov
8, 1887, and the appeal being taken
within ten days thereafter was
within the time prescribed by
statute & hence the dismissal of the
cause of action for want of prosecu-
tion will be allowed to stand.

John L. Thomas
prose

Part to Chap

3

Douglas & Jones, Cutt
Co.



Opinion of the
Court

Filed May 24 1888

W.B. Rogers
Clerk

Wm Parks et al or Douglas Tersey, cattle composers, appellant.	}	In Circuit Court Jefferson County.
---	---	--

Be it remembered that in this cause the following proceedings were had.

On January 9, 1888 the plaintiffs filed motion to dismiss the appeal from the justice of the peace taken in this cause as follows:

(Here insert said motion) which motion being considered by the Court was overruled, & to this action of the Court in overruling said motion plaintiffs at the time then & there duly excepted.

On January 20, 1888 said cause was called for trial, plaintiffs & defendant appeared, a jury was impaneled, ~~com~~ issues submitted but the jury failed to agree & was discharged.

On March 2, 1888, this cause being again set down for trial on that day, ^{did not appear in person but their attorneys being present} plaintiffs, objected to this Court assuming any jurisdiction over this cause & asked to have the said appeal dismissed on the ground that the said appeal was not taken in time to confer jurisdiction in this Court over said cause, but the Court refused to dismiss this

said appeal & to this action of the Court the plaintiffs then & there duly excepted.

The Court thereafter on said last mentioned day called this cause peremptorily for trial but the plaintiffs not appearing ^{for trial} the Court at request of defendant dismissed this cause for want of prosecution against the objection of the plaintiffs attorneys on the ground that the Court had no jurisdiction to dismiss this cause, & to this order of dismissal by the Court plaintiffs by attorneys then & there duly objected & excepted.

Thereupon on ~~said~~ day plaintiffs filed motion to set aside said judgment of dismissal as follows:-

(Here insert)

Which motion being considered by the Court was overruled & to this action of the Court plaintiffs then & there duly excepted, & on motion leave was granted plaintiffs to file their bill of exceptions on or before September 10, 1888.

Now that the foregoing matters may be of record in this cause plaintiffs present this their bill of exceptions which they pray may be signed & sealed & made part of the record, all of which is done accordingly.

John L. Thomas, Jr. (Seal)

New York
etal.

At

The Douglass
Jersey Bottle Co.

Plaintiffs

vs
Bill of Exchange

Filed

September 5th, 1888

D. D. Hayes
Clerk

WILLIAM M. PARKS & HENRY S. SHEARLOCK

PLAINTIFFS,

-VS-

DOUGLAS JERSEY CATTLE COMPANY.

DEFENDANTS

ACTION ON ACCOUNT.

STATE OF MISSOURI;
COUNTY OF JEFFERSON, X
X SS
X

PLEAS BEFORE THE CIRCUIT COURT OF
JEFFERSON COUNTY, AT A TERM BEGUN AND HOLDEN IN THE TOWN OF
HILLSBORO, COUNTY AND STATE AFORESAID ON THE SECOND MONDAY
OF JANUARY 1888, BEFORE THE HON. JOHN L. THOMAS, JUDGE OF THE
26TH, JUDICIAL CIRCUIT, OF THE STATE OF MISSOURI.

WILLIAM M. PARKS & HENRY S. SHEARLOCK

PLAINTIFFS

-VS-

DOUGLAS JERSEY CATTLE COMPANY.

DEFENDANTS.

BE IT REMEMBERED, THAT HERETOFORE TO-WIT,
ON THE 7TH, DAY OF DECEMBER 1887, A TRANSCRIPT AND ORIGINAL
ACCOUNT IN THE ABOVE ENTITLED CAUSE WAS FILED IN THE OFFICE
OF THE CLERK OF THE CIRCUIT COURT IN AND FOR THE COUNTY OF
JEFFERSON, IN WORDS AND FIGURES AS FOLLOWING TO-WIT:

BEFORE CHAS. G. WARNE, JUSTICE OF THE
PEACE, JOACHEM TOWNSHIP, JEFFERSON CO. MO.

JUSTICE
COURT

WM. M. PARKS & HENRY SHEARLOCK PLAINTIFFS.

-VS-

DOUGLAS JERSEY CATTLE CO. DEFENDANTS.

PLAINTIFFS FILE AN ACCOUNT FOR LABOR PERFORMED FOR
DEFENDANTS OCTOBER 11TH, 1887, CLAIMING AMOUNT DUE OF \$57.50.

SUMMONS ISSUED OCTOBER 11TH, 1887, AND DIRECTED TO
JOHN DAVIS, CONSTABLE OF JOACHIM TOWNSHIP, AND RETURNABLE ON
25TH, DAY OF OCTOBER 1887, AT 10 O'CLOCK A.M.

ACCOUNT AND ON 25TH, 1887, SUMMONS RETURNED, SERVED BY DELIV-
FILED ERING A COPY OF SAME TO H. W. DOUGLAS, VICE-PRESIDENT OF SAID
COMPANY, AT ITS PLACE OF BUSINESS, HE BEING THE AGENT OF SAID
COMPANY, IN CHARGE THEREOF, -AND CASE BEING CALLED AND AFTER
JUDGMENT WAITING THREE HOURS, THE DEFENDANTS, THOUGH CALLED COME NOT-
OF JUDGMENT BY DEFAULT FOR THE PLAINTIFFS - AFTER HEARING THE TES-
JUSTICE TIMONY PRODUCED, TO THE AMOUNT OF \$57.50.

DEFENDANTS BY H. W. DOUGLAS ASK FOR NEW TRIAL WHICH
IS GRANTED, AND CASE SETT FOR NOVEMBER 8TH, 1887, AT 10 O'CLOCK
A.M. ON CONDITION THAT DEFENDANTS PAY ALL COSTS.

NOV. 8TH, 1887, COSTS NOT HAVING BEEN PAID THE SAID
MOTION IS OVERRULED.

NOW ON THIS 18TH, DAY OF NOVEMBER 1887, COMES THE DOUGLAS JERSEY CATTLE COMPANY, BY H.W. DOUGLAS AGENT, AND FILE MOTION TO DISMISS THE SUIT, OVERRULED, WHEREUPON AFFIDAVIT AND BOND FOR APPEAL IS FILED, BOND APPROVED, AND APPEAL GRANTED.

CHAS. G. WARNE

JUSTICE OF PEACE

FEES

C. G. WARNE, JUSTICE.

FEES	DOCKET & FILE 1.00	SUMMONS .35	2 SPA'S .50.	1.85
OF	JUDG'T .50.	CON'T .35.	AFF. APPEAL .35.	1.20
JUSTICE	INDEX .10.	TRANS'T .25.	FEE BILL .25.	.60

				3.65

FEES	JOHN DAVIS CONSTABLE.	
OF	SUMMONS .30.	MILAGE .50. 4 SPA'S 1.00 MIL. .75.
CONS'T		2.55
	WITNESSES.	

FEES	THOS. RYAN, 1 DAY .50.	MILAGE .60.	1.10
OF	SAM KENTZ, 1 DAY .50.	MILAGE .60.	1.10
WIT'S	N. KEITH, 2 DAYS 1.00	MILAGE 1.20.	2.20
			4.40

I CERTIFY THAT THE FOREGOING IS A COPY OF MY DOCKET IN THE CASE OF WM. PARKS & HENRY SHEARLOCK -VS- DOUGLAS JERSEY CATTLE COMPANY, AND THAT THE FEE BILL IS CORRECT.

CHAS. G. WARNE

JUSTICE OF THE PEACE.

AUGUST, 1887.

ACCOUNT
REN'D

DOUGLAS JERSEY CATTLE COMPANY

TO WM. PARKS & HENRY SHEARLOCK DR.

TO 26 DIMENSIONS STONES	<i>at 60¢</i>	21.60
.. 1 1-2 DAYS HAULING GRANITE AT \$2.00		3.00
.. CARPENTER WORK ON DWELLING HOUSE 13 DAYS AT \$3.00		39.00
.. 3 1-2 DAYS AT \$1.50		5.25
.. 1-2		75

		\$69.60
CR. BY RENT		12.00

BALANCE DUE		\$57.60

AND AFTERWARDS TO-WIT, ON MONDAY THE 9TH, DAY OF JANUARY 1888, IT BEING THE FIRST DAY OF THE JANUARY TERM OF SAID COURT, THE FOLLOWING PROCEEDINGS WERE HAD IN SAID CAUSE.

WM.M. PARKS & H. SHEARLOCK

-VS-

DOUGLAS JERSEY CATTLE CO.

APPEAL FROM JUSTICE COURT

RECORD

NOW ON THIS DAY COMES THE PLAINTIFFS BY THEIR ATTORNEY AND FILE THEIR MOTION TO DISMISS THE APPEAL OF THE DEFENDANT FROM THE JUSTICE COURT.

AND AFTERWARDS, TO-WIT, ON THURSDAY THE 12TH, DAY OF JANUARY 11, BEING THE 4TH, DAY OF THE JANUARY TERM AFORESAID, THE FOLLOWING PROCEEDINGS APPEAR OF RECORD IN THIS CAUSE.

RECORD

WILLIAM M. PARKS & HENRY SHEARLOCK

-VS-

DOUGLAS JERSEY CATTLE COMPANY.

ON MOTION FOR DISMISSING
APPEAL

NOW ON THIS DAY COMES THE PARTIES AFORESAID, BY THEIR ATTORNEYS, AND ALL AND SINGULAR THE MATTERS CONTAINED IN SAID MOTION, BEING BY THE COURT HERE, SEEN, HEARD AND FULLY UNDERSTOOD, IS OVERRULED.

RECORD

WM.M. PARKS & HENRY SHEARLOCK

-VS-

DOUGLAS JERSEY CATTLE COMPANY

APPEAL FROM JUSTICE.

NOW ON THIS DAY COME THE PLAINTIFFS BY THEIR ATTORNEY AND FILE THEIR BILL OF EXCEPTIONS.

AND AFTERWARDS, TO-WIT, ON FRIDAY THE 20TH, DAY OF JANUARY, 1888, BEING THE 11TH, DAY OF SAID JANUARY TERM, THE FOLLOWING OTHER PROCEEDINGS WERE HAD, TO-WIT:

RECORD

PARKS & SHEARLOCK

-VS-

DOUGLAS JERSEY CATTLE CO.

APPEAL FROM JUSTICE.

NOW ON THIS 20TH, DAY OF JANUARY, 1888, COME THE PARTIES AFORESAID, IN PERSON AND BY THEIR ATTORNEYS, AND ALSO COMES A JURY, TO-WIT:

JURY

BBAERKHHBCKXXXNBRUM X

JOSEPH FIEFENBRUM

FRANK HUCK

JAMES CROSSMAN

HENRY MARX

JAMES LAFOON

B.M. LANHAM

JOHN M'MULLEN

J.W. HAVERSTICK

G.M. SCHMALL

WM. HELLER

FRANK LEE

STEPHEN POUNDS

TWELVE GOOD AND LAWFUL MEN OF THE BODY OF THE COUNTY OF

RECORD

JEFFERSON, WHO WERE ELECTED, TRIED AND SWORN WELL AND TRULY TO TRY THE ISSUES, AND A TRUE VERDICT RENDER ACCORDING TO LAW AND EVIDENCE, THE TRIAL PROGRESSED UNTIL THE USUAL HOUR FOR ADJOURNMENT, AND NOT BEING COMPLETED WAS CONTINUED UNTIL TOMORROW, THE JURY BEING ADMONISHED BY THE COURT.

AND AFTERWARDS, TO-WIT, ON SATURDAY THE 21ST, DAY OF JANUARY 1888, IT BEING THE 12TH, DAY OF THE JANUARY TERM AFORESAID, THE FOLLOWING PROCEEDINGS APPEAR OF RECORD IN SAID CAUSE.

RECORD

WM.M.PARKS & HENRY SHEARLOCK X

-VS- X

APPEAL FROM JUSTICE. X

DOUGLAS JERSEY CATTLE COMPANYX

NOW ON THIS DAY COME THE PARTIES IN PERSON AND BY THEIR ATTORNEYS AND ALSO COMES A JURY HERETOFORE SWORN WELL AND TRULY TO TRY THE ISSUES AND A TRUE VERDICT RENDER ACCORDING TO LAW AND EVIDENCE, AND THE JURY HAVING HEARD THE EVIDENCE, ARGUMENT OF COUNSEL AND INSTRUCTIONS OF COURT RETIRE TO CONSIDER THEIR VERDICT, AND NOW COME THE JURY INTO COURT AND INFORM THE COURT THAT THEY ARE UNABLE TO AGREE UPON THIS CAUSE.

RECORD

WHEREUPON IT IS ORDERED BY THE COURT THAT THE JURY BE DISCHARGED FROM FURTHER CONSIDERATION OF THE ISSUES IN THIS CAUSE. AND IT FURTHER ORDERED THAT THIS CAUSE BE CONTINUED TO THE ADJOURNED TERM, COMMENCING MONDAY THE 27TH, DAY OF FEBRUARY 1888.

AND AFTERWARDS, TO-WIT, ON FRIDAY THE 2D, DAY OF MARCH 1888, IT BEING THE 17TH, DAY OF THE JANUARY TERM AFORESAID, THE FOLLOWING FURTHER PROCEEDINGS WERE HAD IN SAID CAUSE, TO-WIT:

RECORD

PARKS & SHEARLOCK X

-VS- X

ON ACCOUNT, APPEAL FROM JUSTICE. X

DOUGLAS JERSEY CATTLE CO.X

NOW AT THIS DAY COMES THE DEFENDANT IN PERSON AND BY ATTORNEY, BUT THE PLAINTIFFS COME NOT AND FAIL TO APPEAR AND PROSECUTE SAID CAUSE. IT IS THEREUPON CONSIDERED AND ORDERED BY THE COURT, THAT THIS CAUSE BE DISMISSED FOR WANT OF PROSECUTION, AND THAT DEFENDANT GO HENCE WITHOUT DAY AND RECOVER OF PLAINTIFFS, HIS COSTS LAID OUT AND EXPENDED HEREIN

RECORD

PARKS & SHEARLOCK X

-VS- X

APPEAL FROM JUSTICE. X

DOUGLAS JERSEY CATTLE COMPANYX

NOW ON THIS DAY COME THE PLAINTIFFS BY THEIR ATTORNEY AND FILE A MOTION TO SET ASIDE THE JUDGMENT AND ORDER OF DIS-

MISSAL HEREIN AND GRANT A REHEARING.

AND AFTERWARDS, TO-WIT, ON FRIDAY THE 8TH, DAY OF JUNE, 1888,
IT BEING THE 10TH, DAY OF THE MAY TERM OF SAID COURT, THE FOLLOWING PROCEEDINGS WERE HAD IN SAID CAUSE.

RECORD

PARKS & SHEARLOCK

-VS-

ON MOTION TO SET ASIDE JUDGE T

DOUGLAS JERSEY CATTLE COMPANY

NOW AT THIS DAY COME THE PARTIES AFORESAID, BY THEIR
RESPECTIVE ATTORNEYS, AND ALL AND SINGULAR THE MATTERS CONTAINED
IN SAID MOTION, BEING BY THE COURT HERE SEEN, HEARD AND FULLY
UNDERSTOOD, THE SAME IS BY THE COURT OVERRULED, -OPINION FILED-

RECORD

PARKS & SHEARLOCK

-VS-

LEAVE TO FILE BILL OF EXCEPT'S

DOUGLAS JERSEY CATTLE COMPANY

NOW AT THIS DAY COME THE PARTIES AFORESAID, BY THEIR
RESPECTIVE ATTORNEYS, AND BY CONSENT AND AGREEMENT OF PARTIES
AND BY CONSENT AND AGREEMENT OF THE COURT, IT IS ORDERED BY
THE COURT THAT PLAINTIFFS HAVE AND IS HEREBY GRANTED LEAVE
TO FILE THEIR BILL OF EXCEPTIONS, IN THIS CAUSE ON OR BEFORE
SEPTEMBER 10TH, 1888, WHICH WHEN FILED, SHALL HAVE THE SAME FORCE
AND EFFECT AS IF FILED IN TERM TIME.

BILL

OF

WM. M. PARKS ET AL

APPELLEE

EXCEPT'S

-VS-

DOUGLAS JERSEY CATTLE COMPANY, APPELLANT.

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, MISSOURI.

BE IT REMEMBERED, THAT IN THIS CAUSE THE FOLLOWING
PROCEEDINGS WERE HAD :

ON JANUARY 9, 1888, THE PLAINTIFFS FILED
MOTION TO DISMISS THE APPEAL FROM THE JUSTICE OF THE PEACE,
TAKEN IN THIS CAUSE AS FOLLOWS :

WM. PARKS & HENRY SHEARLOCK PLAINTIFFS

-VS-

MOTION

DOUGLAS JERSEY CATTLE COMPANY DEFENDANTS

TO

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, MISSOURI.

DISMISS

APPEAL

PLAINTIFFS MOVE THE COURT TO DISMISS THE APPEAL TAKEN
IN THIS CAUSE. FOR THE REASON THAT THE SAID APPEAL, WAS NOT
TAKEN WITHIN THE TIME PRESCRIBED BY THE LAW, TO-WIT :

WITHIN TEN DAYS AFTER THE JUDGMENT IN THIS CAUSE WAS RENDERED.

TATUM AND DEARING

ATTY'S FOR PLAINTIFFS.

BILL
OF
EXCEPT
WHICH MOTION BEING CONSIDERED BY THE COURT WAS OVERRULED, AND TO THIS ACTION OF THE COURT, IN OVERRULING SAID MOTION PLAINTIFFS AT THE TIME, THEN AND THERE DULY EXCEPTED.

ON JANUARY 20, 1888, SAID CAUSE WAS CALLED FOR TRIAL, PLAINTIFFS AND DEFENDANT APPEARED, A JURY WAS EMPANNELED ISSUES SUBMITTED, BUT THE JURY FAILED TO AGREE, AND WAS DISCHARGED

ON MARCH 2, 1888, THIS CAUSE BEING AGAIN SET DOWN FOR TRIAL ON THAT DAY, PLAINTIFFS DID NOT APPEAR IN PERSON BUT THEIR ATTORNEY BEING PRESENT, OBJECTED TO THIS COURT ASSUMING ANY JURISDICTION OVER THIS CAUSE, AND ASKED TO HAVE THE SAID APPEAL DISMISSED, ON THE GROUND THAT THE SAID APPEAL WAS NOT TAKEN IN TIME TO CONFER JURISDICTION IN THIS COURT, OVER SAID CAUSE, BUT THE COURT REFUSED TO DISMISS THIS SAID APPEAL, AND TO THIS ACTION OF THE COURT, THE PLAINTIFFS THEN AND THERE DULY EXCEPTED.

THE COURT THEREAFTER ON SAID LAST MENTIONED DAY CALLED THIS CAUSE PREEMTORILY FOR TRIAL, BUT THE PLAINTIFFS NOT APPEARING FOR TRIAL, THE COURT AT THE REQUEST OF DEFENDANT DISMISSED THIS CAUSE, FOR WANT OF PROSECUTION, AGAINST THE OBJECTION OF THE PLAINTIFFS ATTORNEYS, ON THE GROUND THAT THE COURT HAD NO JURISDICTION TO DISMISS THIS CAUSE, AND TO THIS ORDER OF DISMISSAL BY THE COURT, PLAINTIFFS BY ATTORNEYS THEN AND THERE DULY OBJECTED AND EXCEPTED.

THERE UPON ON SAME DAY PLAINTIFFS FILED MOTION TO SET ASIDE SAID JUDGMENT OF DISMISSAL AS FOLLOWS:

WM. PARKS ET AL PLAINTIFFS, APPELLEES.

-VS-

DOUGLAS JERSEY CATTLE COMPANY, DEFENDANTS & APPELLANT.

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, MISSOURI.

MOTION

TO

SET

ASIDE

JUDG'T

PLAINTIFFS, APPELLEES, MOVE THE COURT TO SET ASIDE THE ORDER OF DISMISSAL OF THIS SUIT HEREIN RENDERED, AND TO GRANT A REHEARING, BECAUSE:

FIRST - THE COURT HAD NO JURISDICTION OF THIS SUIT, THE APPEAL HEREIN NOT HAVING BEEN TAKEN IN TIME TO CONFER JURISDICTION. SECOND - THE ONLY POWER POSSESSED BY THIS COURT OVER THIS CASE, IS TO DISMISS THE APPEAL.

THIRD - IF THIS COURT HAD JURISDICTION IN THIS CAUSE, THE CAUSE SHOULD NOT HAVE BEEN DISMISSED, NO NOTICE OF APPEAL HAVING BEEN GIVEN AS REQUIRED BY LAW, BUT THE CAUSE SHOULD HAVE BEEN CONTINUED.

JOS. TATUM

WITH JOS. WILLIAMS

ATTY'S FOR PLAINTIFFS.

MOTION
OVER'D
LEAVE
TO
FILE
BILL
OF
EXCP'T

WHICH MOTION BEING CONSIDERED BY THE COURT, WAS OVERRULED, AND TO THIS ACTION OF THE COURT PLAINTIFFS THEN AND THERE DULY EXCEPTED, AND ON MOTION, LEAVE WAS GRANTED PLAINTIFFS TO FILE THEIR BILL OF EXCEPTIONS ON OR BEFORE SEPTEMBER 10, 1888.

NOW THAT THE FOREGOING MATTERS MAY BE OF RECORD IN THIS CAUSE, PLAINTIFFS PRESENT THIS, THEIR BILL OF EXCEPTIONS WHICH THEY PRAY MAY BE SIGNED AND SEALED AND MADE PART OF THE RECORD, ALL OF WHICH IS DONE ACCORDINGLY.

JOHN L. THOMAS, JUDGE.

SEAL

Index

	Page
Transcript from Justice Court	1
Account	2
Record - Motion to dismiss appeal -	3
" " " " overruled -	3
" Jury	3
" Cause dismissed	4
" Motion to set aside order dismissing -	4
" " " " overruled	5
Bill of Exceptions	5

Index

Transcript from Justice	Page 1
Copy account	2
Record. Motion to dismiss appeal	3
" Motion to dismiss overruled	3
" Jury &c	3
" Judgment dismissing cause	4
" Motion to set aside judgment	4
" Motion to set aside &c overruled	5
" Leave to file Bill &c	5
Bill of exceptions	5

Transcript from Justice	Page 1
"	2
Record. Motion to dismiss appeal	3
" Motion to dismiss overruled	3
" Jury &c	3
" Judgment dismissing cause	4
" Motion to set aside judgment	4
" Motion to set aside &c overruled	5
" Leave to file Bill &c	5
Bill of exceptions	5

STATE OF MISSOURI,

COUNTY OF

Jefferson

} ss.

I,

D. D. Deary

Clerk

of the
of the Record and Proceedings had in the

Court in and for said County, hereby certify the foregoing to be a true, full and complete Transcript

Circuit

Court in said County, in the matter of

*Parke and**Shenker against Alvin Lee Jersey Cattle Company*

as fully as the same appears of record and on file in my office.

WITNESS my hand as Clerk, and the seal of said Court. Done at office in

St. Louis

this

8th

day of

September, 18*88*

Per

D. D. Deary

DEPUTY.

CLERK.

6346

565

GEO. D. BARNARD & CO., PRS., ST. LOUIS

Class 5

No. Term, 188

William M. Parks &
Henry Shearlock

vs. }

Douglas Jersey Cattle
Company

Jefferson Co. Mo., CIRCUIT COURT.

26th Circuit.

Jos T. Tatum Att'y for
Thomas W. Corine Att'y for

Filed 188

....., Clerk.

By D. C.

\$..... Transcript Fee paid by

\$10.00 Docket Fee, paid by