Tripp, Talmon vs. Lomax, R. F.; Jacobs, Thomas W. 1855 Lafayette Co. Ct. Cir. 211/2

Old 73/19

Dismissed

Debt for merchandise

Richard Lomax

Richard S. Tomas &
Thomas W. Jacobs } Respondents
vs.
Talmon Tripp } Appellant

} Supreme Court,
} July Term, 1855.

} Appeal from Lafayette Circuit Court.

Comes the said Talmon Tripp, by his attorney, and says, that in the record and proceedings aforesaid there is manifest error in this, to wit — that there was a good and sufficient affidavit for an appeal from the Justice of the Peace; the affidavit set forth in the record aforesaid having been made by the appellant before said Justice, and sent up by said Justice with, and as a part of, the papers of said cause.

There is, in like manner, error in this, to wit — that there was a good & sufficient appeal bond to sustain said appeal; the appeal bond set forth in the record aforesaid having been executed by the appellant, and sent up with, and as a part of, the papers belonging to said cause.

There is, in like manner, error in this, to wit — that the transcript of the Justice shews that an appeal was prayed by the appellant; the appellant having been obliged to perfect his said appeal within ten days from the day of the rendition of the verdict of the jury before said Justice, notwithstanding no judgment had, within that time, been rendered by said Justice upon said verdict.

Wherefore appellant avers, that said Circuit Court committed manifest error in sustaining said motion to dismiss said appeal from said Justice, and in dismissing the same; and he therefore prays that the judgment of said Circuit Court may be reversed &c.

J. R. Boyd, Atty.
for Appellant.

25 XX.

R. S. Thos. W.

Somax & Jacobs, Respondents

9.

vs. } Transcript & Assignment of Errors.

Talmon Trift.

filed June 28 1855.

Wm E Dunscomb

Clerk

488 12th

Lafayette

4th

J. R. Troxell, Atty.

[91]

Lomax & Jacobs Respondents
v
Talman Trepp

In the Supreme Court
July Term 1858

Respondents move to ~~[illegible]~~ dismiss the appeal in this case for want of assignment of errors — the present Term being the second Term ~~since~~ of the sup. Court since the appeal was taken

Naylor
for respondents

Soman & Jacobs
v.
Tripp

Motion to dismiss

Napton for
resp.ts

filed July 10 1856
Wm E Dunscomb
Clerk

15

THE STATE OF MISSOURI, SCT.

THE STATE OF MISSOURI TO THE SHERIFF OF THE COUNTY OF Lafayette IN SAID STATE, **Greeting:**

Whereas, R S Lomax & Thos W Jacob

on the twelfth day of July in the year eighteen hundred and fifty six at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Talmon Tripp

the sum of three 95/100 dollars for their costs and charges by them expended in a certain suit wherein the said Lomax & Jacob were respondents

and the said Tripp was appellant

which to the said respondents were adjudged, as appears to us of record. Therefore, We command you, that of the goods and chattels, lands and tenements of the said Talmon Tripp in your bailiwick, you cause to be made the aforesaid costs, and that you have the same before the Judges of our said Supreme Court, on the second Monday in January next, to render unto the said R S Lomax & Thos W Jacob the costs aforesaid, and that you certify to our said Judges how you execute this writ, and have you then there this writ.

Witness, William E. Dunscomb, Clerk of said Supreme Court, at office, in the City of Jefferson, the twentieth day of August in the year of our Lord one thousand eight hundred and fifty six

Wm E Dunscomb

15

January Term 1857

R. S. Lomax et al

v. Exec.

Talmon Tripp

Costs

Mc D Dennis	60
Wm E Dunscomb	3.35
this unit	1.00
	$4.95
	20
	5.15

Paid

Lafayette

Received August 23 A.D. 1856

Jno P. Bowman Sheriff

Return this Execution satisfied in full November 19 1856

Jno P. Bowman Sheriff
of Lafayette County
Missouri

Please collect Lying the Mercury with

State of Missouri
Lafayette County

Pleas in the Circuit Court of Lafayette County in the State of Missouri before the Honorable William T. Wood Judge of said Court

Be it remembered that on the 30th day of April in the year Eighteen Hundred and fifty five Fred L Fishback a Justice of the Peace of said County of Lafayette filed in the office of the Clerk of the Circuit Court of said County of Lafayette a transcript of a certain Suit before them pending before said Justice which transcripts is in the words & figures following to wit:

" Transcripts of the March term of F L Fishback's Court
" R. S. Lomax &
" Thomas W Jacobs
" vs
" Talmon Tripp & others

Transcript of Justices Docket

Account filed October 25th 1854 and the parties were summoned and appeared on trial the 6th day January 1855. but the plaintiff made application to withdraw his account which the Court granted. The plaintiffs filed their accounts again on the first day of February 1855. Summons issued the 8th day of February 1855 and returned Served Defendant Tripp Feb. 9th 1855. the other Defendant not found. three Subpoena issued. The case was called on the 3d of March 1855 ~~Witness appeared for plaintiff~~ & The Defendant asked for a Jury — Jury — George Adamson Mr Mullican J. A. Elmore Moran John Snead James W Wallace ~~John~~ Witnesses appeared for Plaintiff John W Sanders Benjamin Emerson Wm B Majors & Price Lee — For Defendant, Silburn Wood

After Witnesses were examined the Jury went and brought in a verdict for the plaintiffs for Eighty five Dollars & Eighty one Cents ($85.81) for his debt & $4.25 damages. The Defendant made application on the day of trial for an appeal, and the bond and affidavit was filed on the 9th day of March 1855

[2]

amount of bond one Hundred and Seventy five Dollars ($175-
as the law requires

Justices Costs $ 1 75 cts
Constable, Cost 2.00

I do hereby Certify the above is a true Copy of my docket. Given under my hand this 19th day of April A D 1855

Hart L Fishback
Justice of the Peace

And be it also remembered that at the time said transcript was filed as aforesaid, the said Justice of the Peace also filed therewith, the original Summons issued by him in said Suit the account sued on, and the bond and affidavit taken by him in said Suit, — Which Original Summons is in the Words & figures following to wit:

Original Summons

The State of Missouri. To the Constable of Clay Township in the County of Lafayette Greeting, We Command you to Summon Samuel B Teen Talmon Tripp and Ivan Norfleit to appear before the undersigned one of the Justices of the Peace of Clay Township in Lafayette County on the 3d Day of March AD 1855 at ten Oclock in the forenoon at my office in the Town of Wellington in the said Township to answer the Complaint of Richard S Lomax & Thomas W Jacobs Given under my hand this 8th day of February AD 1855

Hart L Fishback
Justice of the Peace

Upon Which Writ is an endorsement in Writing in the Words & figures following to wit:

Constables return

"Served by reading to the Defendant February 9th 1855. A. C. Sloan Constable, The others not found in my Township"

And Which said account sued on & so filed with said transcript is in the Words & figures following to wit:

Saml B. Teen & D. T. Tripp & Ivan Norfleit

To Lomax & Jacobs Dr

1852		
Plaintiffs Account	Nov 2 – To 3 axes 137½ 413 – 1 Butcher Knife 50, 1 Whetstone 20, 3 plates 20 1 Do 15 – 1 Box 25 – 1 Pt. Bucket 30, 1 Crock 15 – 1 fry pan 75 1 Jug 25 – 2 Molasses 150, 1 Sett Kns. & forks 125 3 Pad Locks 60 Candles 50, 1 Candle stick, 1 Sett Cups & Saucers 37 2 Cups 10 1 Coffee boiler 75, 1 lb. Salaeratus 12, 1 pr. Blkts 10.00 1 Large Iron Spoon 15 Sugar & Coffee 2.00 2 pans 1/25 1/50 Pepper 13 – 1 Kettle 50 – 5½ yds Jeans 50c 275 Trimings 50 1 Blkt. 3.00 Trimings for Blkt. 115 Thd 10 needles 10	$ 33.36
6	9 lb. Oven Lid 5c 45 1 Crock 15 3 plates 20 1 Coffee Mill 50 2½ flax Linen .63 Paper 12 Bottle Ink 10 Steel pens 15 1 Bucket 40 1 pr Beg Brushes	2.95
15	1 lb Powder 40 Coffee Coffee 100 1 Gal Why 40 Lead 10 flints 10	1.95
27	Candles 50 Spice 20 pens & holder 10 Soda 10 ~~Coffee 100~~	90
Dec, 7	Sugar 100 Coffee 100 1 Gal Why 40 Toba 50 6 " Canton flanel 100	
" "	1 Sett Spoons 50 2 pr Socks 50, 1 Oz Asa foetida 10	5.00
29	1 Axe 140 1 pr Gloves 35 1 lb Soda 15 ½ " ginger 12 1 Plug Toba, 40 2 gals Why 80	3.22
23	2 pr gloves 100 1 Silk Hdkf 88	1.88
24	Paid yr order to wood	1.75
31	2 plugs Toba 50 Why 40 Candles 50 Coffee 100 Powder 40	2.80
Jany 1	1 Bed Cord 50 Candy 20 Wafers 10 2 " Drill 30 1 Bot oil & Cologne 50 16 " Calico 15 240	3.80
1853 Jany 10	Sugar 100 Soda 15 1 Plug Toba 25	1.40
Feby 1	2 plugs Toba 50 1 meal Sack 50 2½ Bus meal 100 Sugar 100 Coffee 100	4.00
5	1 gal Why 40 Soap 10 ginger 5	55
11	Toba 50 Candles 50 1 pr pants 600 1 Hat 250 1 Hdkff 125 1 pr Buck Mitts 75	11.50
15	1 gal Why 40 1 lb pepper 25	65
	1 " " 40 Powder 20 Sugar 50	1.10
		$ 76.81
21	Sugar 100 1 gal Why 40	1.40
25	1 gal Why 40	" 40
26	5 doz Eggs 50 1 Hdkf 100	1.50
Mar. 3	Sugar 100 Coffee 100 – Soap 10	2.10

[4]

Mar 4	1/2 gal Why	.20
11	2 pr Socks 60 Sugar 100 Powder 40 Shot 20	2.20
14	2 1/2 " Jeans 50 1.25 Trimings 20 ginger 10 Why 40	1.95
23	Coffee 100 Sugar 100 Shot 20 Caps 10 garden Seed 20	2.50
28	39 " Bro. Cotton @ 10	3.90
apl 1	1 Kip Horse Collar	1.50
9	1 gal Why 40 2 Hoes 100 Coffee 100 garden Seed 5	2.45
11	1 Lb Wdkf 50 1 pr Shoes 140 Soda 15 Spice 25	
	1 gal Molasses 75 1 gal Why 40 Eggs 40	
	Back band 75 Sugar 100 Toba 50 —	6.50
12	6 yds Calico 12 1/2	.75
20	Sugar 100 Ginger 10 Thd 10 Caps 10	
	7 " Hickory 12 1/2 88 Buttons 10	2.28
29	Sugar 100 Toba 50 Needles 10 Cotton Wdkf 15	1.75
May 6	Coffee 100 Why 40 Shot 20 Powder 10	1.70
11	1 pr Boots 3.50 Thd & Needles 15 1 Canteen 25	3.90
19	Sugar 100 Coffee 100 2 plugs Toba 50	2.50
June 9	2 plugs Toba 50 Jacks 10 1 pr Socks 25	.85
10	1 gal Why 40 Vinegar 25 Sugar 100	1.65
11	7 3/4 yds Calico 6 1/4 44 — 11 Bro Cotton 7 1/2 83	
	1 Sett Cups & Saucers 65 1 Sett Knes & Forks 165	
	6 Bundles Batting 60 1 paper pins 10	4.27
		123.06
apl 18 54 26	Cr By Cash paid by Norfleet 280	
	" " " " " 34.75	37.55
		$85.51

Int on 123 $ 6 mos
85.51 from May 1854

And which said bond and affidavit are in the words and figures following to wit:

Appeal Bond

Wellington Mo March 3d 1855 We the undersigned Talmon Tripp Samuel Teen & Iva Norfleet & James M Holloway acknowledge ourselves indebted to Thos W Jacob & R. S. Lomax in the sum of one Hundred and Seventy five Dollars

to be void upon the; Condition, Whereas Talmon Tripp Samuel Dean & Ira Norfleat have appealed from the Judgement of Paul L Fishback a Justice of the Peace in an action between Thomas W Jacobs & Richard S Lomax plaintiffs, and Talmon Tripp Samuel Dean & Ira Norfleat Defendants, Now if on such appeal the Judgement of the said Justice be affirmed or if on the trial anew in the Circuit Court judgement be given against the appellants, and they shall satisfy such judgement or if their appeal shall be dismissed and they shall pay the judgement of the Justice together with the cost of the appeal, the recognizance shall be void

Talmon Tripp (Seal)
James M Holloway (Seal)

Affidavit for Appeal

State of Missouri
County of Lafayette } Your affiant Talmon Tripp makes oath & says that this application for an appeal in the Case of Thomas W Jacobs & R S Lomax against Talmon Tripp Samuel Dean & Ira Norfleat is not made for vexation or delay but because he believes the appellants are injured by the judgement of the Justice and further Your affiant says not

Talmon Tripp

(Justices fees 30 cts Paid by Defendants)

Sworn & Subscribed to this 9th day of March 1855 before me

F. B. Burwell J.P.

And be it also remembered that afterwards to wit at a term of the Circuit Court of said County of Lafayette begun and holden on Monday the 21st Day of May in the year 1855 and on the fifth day of said term the same being the 25th day of May 1855 the following among other proceedings were had and made to wit:

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Richard S Lomax &
Thomas W Jacobs
vs
Salmon Tripp } Appeal

Order to dismiss appeal

Now at this day come the parties aforesaid by their attornies, and said ~~Defendants~~ Plaintiffs file motion to dismiss the appeal taken by the Defendant in this cause which being seen and heard by the Court here, is sustained, and said appeal is ordered to be dismissed at the Costs of the appellant, whereupon said plaintiffs pray Judgement against said Defendant for their Costs. It is

Judgt. for Costs

therefore considered by the Court here that said plaintiffs recover against said Defendant their Costs and charges by them in this behalf expended and that they have thereof execution

And afterwards on the sixth day of the term of said Court last aforesaid the same being the 26th day of May in the year 1855 the following further proceedings were had and made in said cause to wit:

Richard S Lomax &
Thomas W Jacobs
vs
Salmon Tripp } Now at this day come the parties aforesaid by their attornies and the said Defendant

Defendant Excepts

tenders to the Court here his bill of exceptions to the decision of the Court in this cause which is signed sealed and made a part of the records and ordered to be filed, and thereupon prays an appeal of this cause to the Supreme Court. and the said Defendant also files a bond

Appeal to Sup. Court allowed &c

executed by him as principal and Allogan Day as security in the penal sum of Two Hundred Dollars which being seen and approved, it is ordered that an appeal of this cause be granted

Which said bill of exceptions is in the words & figures following to wit:

Richard S Lomax & Thomas W Jacobs
vs
Talmon Tripp

In the Circuit Court of Lafayette County, Mo
Appeal

Bill of Exceptions.

Be it remembered that on Friday the 25th Day of May AD 1855 being the fifth Juridical day of the May Term of the Circuit Court of said County of Lafayette for the year aforesaid, Plaintiffs filed in said Court their certain motion to dismiss the appeal in the above entitled cause for the reasons in said motion specified, which said motion reads in the words & figures following

Richard S Lomax &
Thomas W Jacobs,
vs
Talmon Tripp

In the Circuit Court
Lafayette County,

The said plaintiff comes & moves the Court to dismiss the appeal in said cause

1st. Because no bond or affidavit for an appeal were ~~given~~ made or given in said action for an appeal

2nd Because no appeal was prayed or allowed therein

3d Because there does not appear to have been any Judgement rendered therein by the Justice from which an appeal could be granted

4th Because only one of the Defendants asked for an appeal nor was an appeal granted to any others

F C Sharp atty
for Pltffs.

And thereupon plaintiffs moved said Court to dismiss said appeal: And on the hearing of said motion a certain transcript of the record and proceedings in the above entitled cause before the Justice of the Peace before whom said cause originated together

with a Certain affidavit and appeal bond, Were introduced being the same transcript, affidavit and appeal bond filed by said Justice in said Court as the transcript and papers relating to said Cause; which transcript affidavit and appeal bond read in the Words & figures following: (The transcript affidavit and appeal bond, being already copied, as a part of the record, are omitted here)

Whereupon said Court sustained said motion & ordered said appeal to be dismissed, to which opinion of said Court in sustaining said motion & dismissing said appeal, Defendant at the time excepted, and he now prays that this his bill of exceptions may be signed & sealed by said Court and made a part of the record of said Cause — Which is accordingly done

Wm. T. Wood Judge (Seal)

Costs

Lomax & Jacobs vs Talmon Tripp

To L W Smallwood Clerk

May Term 1855	Filing 8 Appeal papers 40 — appearances 20 Motion & filing to dismiss 30	.90
	issue on Motion 25 — order to dismiss appeal 25 Judgt vs appellant for Costs 50	1.00
	appearances 20 filing exceptions 5 Bond 25 filing same 5	.55
	order approving bond 25 Entering appeal 50	75
	4 oaths	.20
	Making Transcript of record 3200 words & figures 10 ¢ (3.20)	3.20
	Certificate & Seal	.50

To Mr W Withers Sheriff

For Calling action & parties		30

Witnesses

Edward P Lee	1 Day	14 miles	1.20
Wm B Major	1 "	14 "	1.20
F L Fishback	1 "	30 "	2.00
Jno W Sanders	1 "	30 "	2.00

Which Said Bond Executed by Said Defendant & Morgan Day for an Appeal to the Supreme Court, in this Cause is in the Words & figures following to Wit:

" Know all men by these presents that We Talmon Tripp as principal and Morgan Day as Security are held and firmly bound unto Richard S Lomax and Thomas W Jacobs in the penal Sum of Two Hundred Dollars for the payment of which well & truly to be made and done We bind ourselves our heirs Executors and administrators firmly by these presents Sealed with our Seals and dated this day of May 1855

The Condition of the above obligation is such that Whereas at the present term of the Circuit Court of Lafayette County, Missouri Said Lomax and Jacobs, in a Certain pending therein on appeal from a Justice of the Peace where Said Lomax & Jacobs are plaintiffs and Said Talmon Tripp is defendant moved Said Court to dismiss the appeal in this case and Whereas Said Court on Said motion dismissed, from which decision of Said Court in Sustaining Said Motion & ordering Said appeal to be dismissed Said Talmon Tripp has this day prayed an appeal to the Supreme Court of Said State, Now if Said Talmon Tripp Shall pay all Costs & damages which may be awarded against him occassioned by Such appeal and if Said Talmon Tripp shall prosecute his Said appeal in Said Supreme Court

and shall perform such judgement as shall be
given by said Supreme Court and such judgement
as said Supreme Court may direct said Circuit
Court to give and if the judgement of said
Circuit or any part thereof be affirmed
and he will comply with & perform the same
so far as it may be affirmed and will
pay all damages which may be awarded
against him said appellant by said Supreme
Court then the above obligation to
be null & void but otherwise to be and
remain in full force & vertue in law

Talmon Dopp Seal
M. Day Seal

State of Missouri
Lafayette County } ss

I the undersigned Clerk of the Circuit Court of Lafayette County in the State of Missouri Certify that the above & foregoing is a true full and Complete transcript of the record and Proceedings of the Cause therein mentioned as fully as the same appears of record in my office

In testimony Whereof I hereto set my hand and affix the seal of said Court at Office in the City of Lexington this 19th Day of June 1855

LAFAYETTE CIRCUIT COURT MO

Louis N Smallwood
Clerk

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Lafayette Circuit Court

Lomax & Jacobs
vs
Salmon Triplo