

Case No. 7,838a.
[Hempst. 283.]¹

KIRK v. ARMSTRONG.

Superior Court, Territory of Arkansas.

July, 1835.

JUSTICES OF THE PEACE—APPEAL FROM JUDGMENT—NOTICE.

Appeal from a justice not taken on the day of trial, ten days' notice before the sitting of the next court authorized to try the same, must be given to the opposite party.

Error to Hempstead circuit court.

Before JOHNSON and YELL, JJ.

OPINION OF THE COURT. On the 5th of April, 1834, William Kirk obtained a judgment before a justice of the peace against Andrew J. Armstrong, for twenty dollars

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damages and costs of suit, from which Judgment Armstrong prayed an appeal to the Hempstead circuit court, on the 3rd day of May, 1834. Armstrong failed to notify Kirk that he had taken an appeal. At the next term of the Hempstead circuit court, Kirk failed to appear, and his suit, on the motion of Armstrong, was dismissed with costs. To this judgment this writ of error is prosecuted.

When an appeal is not prayed for on the day of trial, the party appealing is required by law to notify the opposite party, at least ten days before the next sitting of the court authorized to try the same. This not having been done, it was clearly erroneous to dismiss the suit. Geyer's Dig. 391. Judgment reversed.

¹ [Reported by Charles L. Woodbury, Esq.]