

12539


No. _____

Supreme Court of Illinois

Goodrich, et al.

vs.

City of Chicago.

71641  7

SUPREME COURT,

APRIL TERM, 1858.

Albert E. Goodrich. et al. }
vs. } ERROR TO COOK.
City of Chicago.

ABSTRACT.

This was an action on the case in which the following declaration was filed.

Albert E. Goodrich and George C. Drew, plaintiffs in this suit, by Arnold Larned and Lay, their attorneys, complain of the city of Chicago in a plea of trespass in the case.

For that whereas by a law of the State of Illinois, approved February 14, 1851, creating the corporation of the city of Chicago, in the county of Cook, it became, and was the duty by law of the said defendant to remove, and prevent all obstructions in the waters which are public highways in the city of Chicago, and to widen, straighten, and deepen the same, and for that purpose the said corporation of the said city of Chicago were authorized to levy and collect taxes upon all and singular the real and personal property situated in said city; and whereas the city of Chicago assumed to discharge the duty and obligations imposed upon it by law, and for that purpose have, from the date of the incorporation of said city, levied and collected taxes and assessments, and controlled, regulated, and managed the navigable waters of said city, and for the purpose of carrying out said object have levied and collected taxes from the date of the incorporation of said city of and upon all and singular the real and personal property in said city, by means whereof, and by the laws of this State it became, and was the duty of said defendant to remove and prevent all obstructions in the waters, which are public highways in said city; and whereas said defendant entered upon and undertook to discharge such duty and obligation by the passage of ordinances, rules, and regulations in relations thereto.

By means whereof it became, and was the duty of said defendant, immediately and within a reasonable time, to remove all obstructions in the waters which are public highways in said city, and until so removed, to place ways and signals so as to point out the danger therefrom.

And whereas the Chicago river and harbor, so called, is a public highway in said city to the ends of the North and South piers, and being such public highways, the said defendant not regarding their duty in the

premises heretofore, to wit: on the 29th day of March, 1857, and for a long time prior thereto, to wit: for the space of five months, wrongfully, negligently, and carelessly suffered and permitted an obstruction to be and remain in said waters, so being such public highway, to wit: the hulk of the schooner James McKay, so called, and knowingly, carelessly, and negligently suffered, continued, and kept and permitted said wreck of said sunken vessel in said public highway, to wit: at or in the neighborhood of the mouth of the same, and inside of the North pier; and did not, nor would they during all said time remove, or caused to be removed the said hulk, or place any way or signal therein, although well knowing that the same was there as aforesaid out of sight, and beneath the water, as this plaintiff avers.

By means whereof, and in consequence of which negligence of said defendant, afterwards to wit: on the day and year aforesaid, a certain steamboat, the property of and belonging to the said plaintiffs, called the "Huron," of great value, to wit: of the value of twenty-five thousand dollars therein, then and there going and passing in and through the said stream, was accidentally, and without any fault, negligence, or misconduct, or any want of care and skill on the part of said plaintiffs, or their agent in that behalf, run upon and against the said obstruction and wreck so remaining beneath the water as aforesaid, and was thereby then and there greatly damaged and injured, and the said plaintiffs thereby then and there became and were deprived of the use of their said steamboat for the space of seventy-four days, and then and there were obliged to expend, and did expend divers sums of money, in all amounting to a large sum, to wit: to the sum of twenty-five thousand dollars, in and about the raising and repairing of their said steamboat. And the said plaintiffs are, by means of the premises, otherwise greatly injured, to wit: at the county of Cook aforesaid.

SEC. 2. And for that whereas before, and the time of the committing of the grievance hereinafter mentioned, there was, and from thence hitherto hath been, and still is a certain, common, and public navigable stream in said county of Cook, called the Chicago river and harbor, for all persons to pass and repass within and by boats, barges, steamboats, and vessels at their free will and pleasure, subject to such regulations as the city of Chicago may impose. And the said defendant was, before the time of the committing the grievance, complained of, and still is possessed of the jurisdiction, management, and control of the said harbor by an act of the legislature of Illinois, approved February 14, 1851, wherein, among other things, the said defendant was authorized and empowered—

"To remove and prevent all obstructions in the water, which are public highways in said city, and to widen, straighten, and deepen the same," and to collect such taxes, and pass such ordinances as should be needful to carry said power into effect. And in pursuance thereof, the Common Council of the city of Chicago did, on the 20th day of May, A. D. 1856, pass an ordinance for the removal, without delay, of any obstructions to the free navigation of said harbor, wherein, among other things, it was ordained that—

SEC. 3. "Whenever there shall be in the harbor any vessel, craft, or float insecurely fastened, adrift, sunken, or laid up, not in use, which may require to be fastened, raised, removed, or its location changed, it shall be the duty of the harbor master, or his assistants, to notify the owner, master, or other person who may be in charge thereof, to secure, raise, or remove such vessel, craft, or float without delay; but if the harbor master, or his assistants shall be unable to find the master, owner, or person in charge of such vessel, craft, or float as aforesaid, or if no person answering such description can be found by him or them, such notice shall not be required."

And whereas the said Chicago river and harbor, so called, is a public highway in said city to the ends of the North and South piers, and being such, it became and was the duty of the said defendant to remove, or cause to be removed all obstructions to the free and safe navigation of the said river and harbor.

Yet the said defendant well knowing the premises heretofore, to wit: on the 29th day of March, A. D. 1857, and for a long time previous thereto, to wit: for the space of five months, wrongfully and unjustly kept and continued the wreck or hulk of a sunken vessel, to wit: the wreck of a sunken schooner known as the schooner James McKay, in the said harbor, at or near the mouth of the Chicago river, and inside the North pier, so called, in and under water, so that the same could not be seen without giving or placing, or causing to be fixed or placed, any mark or signal at or near such obstruction to denote that the same was so there as aforesaid, wrongfully and unjustly keeping and continuing the said hull or wreck so sunk then and there in that place without raising up and removing, or causing to be raised up and removed said obstruction as by said ordinance, in such case made and provided said defendant was bound to do, and without erecting, or placing, or causing to be erected or placed any buoy, float, or signal to denote the place where the said wreck or hulk was sunk, or without giving any notice or information thereof to the public, or to the plaintiffs. By means, and in consequence of which negligence of said defendant in not removing said sunken vessel, and in omitting to place any buoy, mark, float, or signal at the place of such obstruction, or to give notice thereof afterwards, to wit: on the day and year aforesaid, a certain steamboat, the property of and belonging to the said plaintiffs, called the "Huron," of great value, to wit: of the value of twenty-five thousand dollars with her cargo, engines, machinery, and furniture therein, then and there going and passing in and through the said river was accidentally, and without any fault, negligence, misconduct, or want of care or skill on the part of the plaintiffs, run upon and against the said obstruction and wreck so remaining beneath the water as aforesaid, and was thereby then and there greatly damaged and injured, by means whereof the said steamboat immediately thereafter with her cargo, engines, machinery, and furniture sunk, to wit: at the county aforesaid, and the said plaintiffs thereby then and there became, and were deprived of the use of their said steamboat for a long space of time, to wit: for the space of seventy-four (74) days, and were then and there obliged to expend, and did expend divers sums of

money, in all amounting to a large sum, to wit: to the sum of twenty-five thousand dollars in and about the raising and repairing of their said steamboat, and the said plaintiffs are by means of the premises otherwise greatly injured, to wit: at the county of Cook aforesaid, to their damage of twenty-five thousand dollars.

And whereas also before and at the time of the committing of the grievance by the said defendant, as hereinafter mentioned, there was and from thence hitherto hath been, and still is, a certain other common and public navigable river in said county of Cook, called Chicago river or harbor, for all persons to pass or repass within and by boats, steamboats, barges, and vessels at their free will and pleasure, subject to such regulations as the city of Chicago may impose.

And which said public navigable river was, at the time of the grievance hereinafter mentioned, under the exclusive control and jurisdiction of the said defendant, and it was then and there the duty of the said defendant to keep the said Chicago river or harbor free from obstruction in such manner that all persons might pass and repass, sail and navigate the same at their free will and pleasure safely and securely. And whereas the said Chicago river or harbor is such public highway in said city, to the end of the North and South piers.

Yet the said defendant, well knowing the premises heretofore, to wit: on the 29th day of March, A. D. 1857, and for a long time previous thereto, to wit: for the space of five (5) months wrongfully and unjustly kept and continued the wreck of a sunken vessel, viz., the wreck of a certain schooner, known as the McKay, or James McKay, in said harbor, at or near the mouth of the Chicago river, so being such public highway, viz: in the said Chicago river, at or near the mouth of the same, and inside the North pier, so called, and under water, so that the same could not be seen without fixing or placing, or causing to be fixed or placed any buoy, float, mark, or signal at or near such obstruction to denote that the same was so there as aforesaid, and did not, nor would they during all said time remove, or cause to be removed the said hulk, or wreck, or place any buoy, mark, or signal thereon, or near the same, to denote the place where said hulk, or sunken wreck was, or give notice thereof to the public, or to the said plaintiffs, although well knowing that the said hulk was so there as aforesaid out of sight, and beneath the water, by means of, and in consequence of which negligence of said defendant, afterwards, to wit: on the day and year aforesaid, a certain steamboat, the property of and belonging to the said plaintiffs, called the Huron, of great value, to wit: of the value of twenty-five thousand dollars, therein then and there going and passing in and through the said river, was accidentally, and without any fault or negligence, misconduct, or want of care and skill on the part of said plaintiff, or their agent in the management of said steamboat, run upon and against the said obstruction and wreck so remaining beneath the water as aforesaid, and was thereby then and there greatly damaged and injured. And the said plaintiffs thereby then and there became, and were deprived of the use of their said steamboat for the space of seventy-four days, and then and

there were obliged to expend, and did expend divers sums of money, in all amounting to a large sum, to wit: to the sum of twenty-five thousand dollars in and about the raising and repairing of their said steamboat, and the said plaintiffs are by means of the premises otherwise greatly injured, to wit: at the county of Cook aforesaid, to the damage of said plaintiffs of twenty-five thousand dollars, and they therefore bring this suit, &c., by

ARNOLD, LARNED, & LAY,
Attorneys for said Plaintiffs.

To this declaration the defendants filed a general demurrer, which was sustained by the court, and judgment rendered thereon for defendants at the April term, 1858, and plaintiffs bring the case to this court.

353

Albert C. Goodrich et al

vs

The City of Chicago

Record

Filed May 14th 1868

L Leland
Clerk.

SUPREME COURT,

APRIL TERM, 1858.

Albert E. Goodrich. et al. }
 vs. } ERROR TO COOK.
City of Chicago. }

ABSTRACT.

This was an action on the case in which the following declaration was filed.

Albert E. Goodrich and George C. Drew, plaintiffs in this suit, by Arnold Larned and Lay, their attorneys, complain of the city of Chicago in a plea of trespass in the case.

For that whereas by a law of the State of Illinois, approved February 14, 1851, creating the corporation of the city of Chicago, in the county of Cook, it became, and was the duty by law of the said defendant to remove, and prevent all obstructions in the waters which are public highways in the city of Chicago, and to widen, straighten, and deepen the same, and for that purpose the said corporation of the said city of Chicago were authorized to levy and collect taxes upon all and singular the real and personal property situated in said city; and whereas the city of Chicago assumed to discharge the duty and obligations imposed upon it by law, and for that purpose have, from the date of the incorporation of said city, levied and collected taxes and assessments, and controlled, regulated, and managed the navigable waters of said city, and for the purpose of carrying out said object have levied and collected taxes from the date of the incorporation of said city of and upon all and singular the real and personal property in said city, by means whereof, and by the laws of this State it became, and was the duty of said defendant to remove and prevent all obstructions in the waters, which are public highways in said city; and whereas said defendant entered upon and undertook to discharge such duty and obligation by the passage of ordinances, rules, and regulations in relations thereto.

By means whereof it became, and was the duty of said defendant, immediately and within a reasonable time, to remove all obstructions in the waters which are public highways in said city, and until so removed, to place ways and signals so as to point out the danger therefrom.

And whereas the Chicago river and harbor, so called, is a public highway in said city to the ends of the North and South piers, and being such public highways, the said defendant not regarding their duty in the

premises heretofore, to wit: on the 29th day of March, 1857, and for a long time prior thereto, to wit: for the space of five months, wrongfully, negligently, and carelessly suffered and permitted an obstruction to be and remain in said waters, so being such public highway, to wit: the hulk of the schooner James McKay, so called, and knowingly, carelessly, and negligently suffered, continued, and kept and permitted said wreck of said sunken vessel in said public highway, to wit: at or in the neighborhood of the mouth of the same, and inside of the North pier; and did not, nor would they during all said time remove, or caused to be removed the said hulk, or place any way or signal therein, although well knowing that the same was there as aforesaid out of sight, and beneath the water, as this plaintiff avers.

By means whereof, and in consequence of which negligence of said defendant, afterwards to wit: on the day and year aforesaid, a certain steamboat, the property of and belonging to the said plaintiffs, called the "Huron," of great value, to wit: of the value of twenty-five thousand dollars therein, then and there going and passing in and through the said stream, was accidentally, and without any fault, negligence, or misconduct, or any want of care and skill on the part of said plaintiffs, or their agent in that behalf, run upon and against the said obstruction and wreck so remaining beneath the water as aforesaid, and was thereby then and there greatly damaged and injured, and the said plaintiffs thereby then and there became and were deprived of the use of their said steamboat for the space of seventy-four days, and then and there were obliged to expend, and did expend divers sums of money, in all amounting to a large sum, to wit: to the sum of twenty-five thousand dollars, in and about the raising and repairing of their said steamboat. And the said plaintiffs are, by means of the premises, otherwise greatly injured, to wit: at the county of Cook aforesaid.

SEC. 2. And for that whereas before, and the time of the committing of the grievance hereinafter mentioned, there was, and from thence hitherto hath been, and still is a certain, common, and public navigable stream in said county of Cook, called the Chicago river and harbor, for all persons to pass and repass within and by boats, barges, steamboats, and vessels at their free will and pleasure, subject to such regulations as the city of Chicago may impose. And the said defendant was, before the time of the committing the grievance, complained of, and still is possessed of the jurisdiction, management, and control of the said harbor by an act of the legislature of Illinois, approved February 14, 1851, wherein, among other things, the said defendant was authorized and empowered—

"To remove and prevent all obstructions in the water, which are public highways in said city, and to widen, straighten, and deepen the same," and to collect such taxes, and pass such ordinances as should be needful to carry said power into effect. And in pursuance thereof, the Common Council of the city of Chicago did, on the 20th day of May, A. D. 1856, pass an ordinance for the removal, without delay, of any obstructions to the free navigation of said harbor, wherein, among other things, it was ordained that—

SEC. 3. "Whenever there shall be in the harbor any vessel, craft, or float insecurely fastened, adrift, sunken, or laid up, not in use, which may require to be fastened, raised, removed, or its location changed, it shall be the duty of the harbor master, or his assistants, to notify the owner, master, or other person who may be in charge thereof, to secure, raise, or remove such vessel, craft, or float without delay; but if the harbor master, or his assistants shall be unable to find the master, owner, or person in charge of such vessel, craft, or float as aforesaid, or if no person answering such description can be found by him or them, such notice shall not be required."

And whereas the said Chicago river and harbor, so called, is a public highway in said city to the ends of the North and South piers, and being such, it became and was the duty of the said defendant to remove, or cause to be removed all obstructions to the free and safe navigation of the said river and harbor.

Yet the said defendant well knowing the premises heretofore, to wit: on the 29th day of March, A. D. 1857, and for a long time previous thereto, to wit: for the space of five months, wrongfully and unjustly kept and continued the wreck or hulk of a sunken vessel, to wit: the wreck of a sunken schooner known as the schooner James McKay, in the said harbor, at or near the mouth of the Chicago river, and inside the North pier, so called, in and under water, so that the same could not be seen without giving or placing, or causing to be fixed or placed, any mark or signal at or near such obstruction to denote that the same was so there as aforesaid, wrongfully and unjustly keeping and continuing the said hull or wreck so sunk then and there in that place without raising up and removing, or causing to be raised up and removed said obstruction as by said ordinance, in such case made and provided said defendant was bound to do, and without erecting, or placing, or causing to be erected or placed any buoy, float, or signal to denote the place where the said wreck or hulk was sunk, or without giving any notice or information thereof to the public, or to the plaintiffs. By means, and in consequence of which negligence of said defendant in not removing said sunken vessel, and in omitting to place any buoy, mark, float, or signal at the place of such obstruction, or to give notice thereof afterwards, to wit: on the day and year aforesaid, a certain steamboat, the property of and belonging to the said plaintiffs, called the "Huron," of great value, to wit: of the value of twenty-five thousand dollars with her cargo, engines, machinery, and furniture therein, then and there going and passing in and through the said river was accidentally, and without any fault, negligence, misconduct, or want of care or skill on the part of the plaintiffs, run upon and against the said obstruction and wreck so remaining beneath the water as aforesaid, and was thereby then and there greatly damaged and injured, by means whereof the said steamboat immediately thereafter with her cargo, engines, machinery, and furniture sunk, to wit: at the county aforesaid, and the said plaintiffs thereby then and there became, and were deprived of the use of their said steamboat for a long space of time, to wit: for the space of seventy-four (74) days, and were then and there obliged to expend, and did expend divers sums of

money, in all amounting to a large sum, to wit: to the sum of twenty-five thousand dollars in and about the raising and repairing of their said steamboat, and the said plaintiffs are by means of the premises otherwise greatly injured, to wit: at the county of Cook aforesaid, to their damage of twenty-five thousand dollars.

And whereas also before and at the time of the committing of the grievance by the said defendant, as hereinafter mentioned, there was and from thence hitherto hath been, and still is, a certain other common and public navigable river in said county of Cook, called Chicago river or harbor, for all persons to pass or repass within and by boats, steamboats, barges, and vessels at their free will and pleasure, subject to such regulations as the city of Chicago may impose.

And which said public navigable river was, at the time of the grievance hereinafter mentioned, under the exclusive control and jurisdiction of the said defendant, and it was then and there the duty of the said defendant to keep the said Chicago river or harbor free from obstruction in such manner that all persons might pass and repass, sail and navigate the same at their free will and pleasure safely and securely. And whereas the said Chicago river or harbor is such public highway in said city, to the end of the North and South piers.

Yet the said defendant, well knowing the premises heretofore, to wit: on the 29th day of March, A. D. 1857, and for a long time previous thereto, to wit: for the space of five (5) months wrongfully and unjustly kept and continued the wreck of a sunken vessel, viz., the wreck of a certain schooner, known as the McKay, or James McKay, in said harbor, at or near the mouth of the Chicago river, so being such public highway, viz: in the said Chicago river, at or near the mouth of the same, and inside the North pier, so called, and under water, so that the same could not be seen without fixing or placing, or causing to be fixed or placed any buoy, float, mark, or signal at or near such obstruction to denote that the same was so there as aforesaid, and did not, nor would they during all said time remove, or cause to be removed the said hulk, or wreck, or place any buoy, mark, or signal thereon, or near the same, to denote the place where said hulk, or sunken wreck was, or give notice thereof to the public, or to the said plaintiffs, although well knowing that the said hulk was so there as aforesaid out of sight, and beneath the water, by means of, and in consequence of which negligence of said defendant, afterwards, to wit: on the day and year aforesaid, a certain steamboat, the property of and belonging to the said plaintiffs, called the Huron, of great value, to wit: of the value of twenty-five thousand dollars, therein then and there going and passing in and through the said river, was accidentally, and without any fault or negligence, misconduct, or want of care and skill on the part of said plaintiff, or their agent in the management of said steamboat, run upon and against the said obstruction and wreck so remaining beneath the water as aforesaid, and was thereby then and there greatly damaged and injured. And the said plaintiffs thereby then and there became, and were deprived of the use of their said steamboat for the space of seventy-four days, and then and

there were obliged to expend, and did expend divers sums of money, in all amounting to a large sum, to wit: to the sum of twenty-five thousand dollars in and about the raising and repairing of their said steamboat, and the said plaintiffs are by means of the premises otherwise greatly injured, to wit: at the county of Cook aforesaid, to the damage of said plaintiffs of twenty-five thousand dollars, and they therefore bring this suit, &c., by

ARNOLD, LARNED, & LAY,
Attorneys for said Plaintiffs.

To this declaration the defendants filed a general demurrer, which was sustained by the court, and judgment rendered thereon for defendants at the April term, 1858, and plaintiffs bring the case to this court.

25-3

Albert C. Goodrich

vs

The City of Chicago

Filed May 14. 1838

A. Helmes
Clerk

Albert L. Gordon

353

The City of Chicago

Aspen

12539

1858

159

X

Refused