No. 8500

Supreme Court of Illinois

Illinois Central R.R.Co.

---

vs.

John F.Dickerson

Know all men by these presents that
we the Illinois Central rail road
Company and J H Hayne are
held and firmly bound unto
John F Dickerson in the penal
sum of two hundred and fifty dollars
lawful money & for the payment of
which well and truly to be made we
bind ourselves our heirs executors
& jointly severally and firmly by
these presents, witness our hands and
seals on this the 26th day of ~~August~~
November 1860,

The condition of the above obligation is such
that whereas the above named John F Dickerson
did at the October term 1859 of the Jackson
Circuit Court, recover a judgment against
the above bounden Illinois Central
rail road Company from which the
said I C R R Co have obtained a
record, & prayed a writ of error, which
was at the November term of the Supreme
Court at Mt Vernon been allowed
& made a supersedeas. Now if the said
Illinois Central rail road Company
shall well and truly prosecute
their said writ of error without
delay & with effect — or in case of
[8500-1] failure shall satisfy the said

John F Dickerson all damages he may sustain by Reason of the Same together with costs in that behalf expended then this bond to be void Else to be and remain in full force & virtue

Illinois Central rail Road Company / per J. M. Haynie atty in fact [seal]

J. M. Haynie [seal]

Bond for Injunction
Ill C R R Co
vs
J F Dickerson

Filed Nov. 16. 1860
R. Johnston clk

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

ILLINOIS CENTRAL RAILROAD CO.
vs.
JOHN F. DICKERSON.
} Error to Jackson.

Abstract wrong in stating amount of judgment before justice at $85,00. The appeal bond recites a judgment for $46,00. Record p. 7; also, transcript record p. 8. The judgment in the Circuit Court was for $48,00.—Record p. 20. Hence very properly no order apportioning costs.

The justice very properly regarded the pleading in the case as a useless display of learning. Vide Transcript Rec. p. 8.

The Statute requires an appeal case to be heard and decided on the merits, unless it affirmatively appears from the evidence that the justice had no jurisdiction of the subject matter. Clark vs. Whitbeck, 14 Ill., 393; Vaughn vs. Thompson, 15 Ill., 40. Swingley v Hayes 22 Ill 216

It was clearly within the discretion of the Circuit Court to allow an amended account to be filed, and to hear and decide upon the evidence relating to the same, without regarding the proceedings before the justice. 1 Gil. 598; 4 Scam. 547. 2 2 Ill 216

The Court allowed an amended account to be filed in apt time. Rec. p. 11. The evidence objected to was properly received under the amended account.

The evidence sustains the finding of the Court. The evidence shows that defendants cattle were killed by the plaintiff's locomotive and train.—That at the place where defendants cattle got on the track, the fence was down and had been for some time; that it was the duty of the plaintiff to fence, at that particular place. The witness Burns states that he was in the employ of the Railroad Company; that he was a section boss for them, and that it was his business to keep up the fence there; that he found it down and put it up; that the cattle were not killed at a crossing of a public road nor within the limits of a town; that the cattle were killed within five miles of a settlement, to wit: within half a mile of the town of Makanda. That the cattle were killed after the 13th day of August, 1855, to wit: on the 17th day of October, 1858; that plaintiff's Railroad had been in operation more than six months previous to the killing, to wit: from 1854, and that the cattle were worth $48,00. Record pp. 14, 15, 16, 17, 18, 19 and 20.

14 Ill 632
Story on agency sec 134-6

CORNELIUS S. WARD, *For Defendant.*

18500-2

Guardian Office print, Mt. Vernon.

5

I C R R Co
v
Dickerson

Defts Brief

IN THE SUPREME COURT OF ILLINOIS.

FIRST GRAND DIVISION.----------NOVEMBER TERM, 1861.

The Illinois Central Railroad Co., Appell't
VS.
John F. Dickerson, Appellee.

This was an appeal from J. P. to Circuit Court of Jackson county.

On the trial in the Circuit Court, the evidence did not bring the Pltff. below within the statute entitled an "Act to regulate the duties and liabilities of railroad companies," approved Feb. 14, 1855, and hence he had no right of action under the evidence.

There was no proof to negative the fact, that the cattle might have been killed at the crossing of a highway and within the limits of a city or village; and there was no proof that the damage was "negligently or wilfully done." It does not appear in evidence that at the point where the cattle were killed it was necessary to maintain a fence in order to "prevent horses, cattle, sheep and hogs, from getting on the railroad."

The plaintiff must show that defendant is not within all the exceptions of the Statute found in the section which fixes the penalty.

——Chitty's Pleadings, p. 223.—20 Ill. R. 391; 23 Ill. R. 92 95; Purp. Stat. p. 1077 sec. 165.

WM. H. GREEN,
Attorney for Appellant.

7

The Ill. C. R. Co Appellant
V.S
John F Dickerson
Appellee

[redacted]

Brief

Filed Nov. 14–1861.
St. Schuyler Clk

ABSTRACT.

I. C. R. R. Co.,
vs.
John F. Dickson.
} Appeal from Justice.

This case began before (p1) Hamilton, a J. P. of Jackson Co., and judgment for pl'ff in that cause on an action for 2 cows and one heifer for $85.00.

In the Justice's Court the attorney for pl'ff (5) filed a regular and formal declaration in case at common law for negligence in killing said cattle (6) to which a plea of NOT GUILTY was filed in due form of law, and issue joined.

At (11) October term 1859 this cause was tried and judgment for pl'ff below for $48 and costs and no order apportioning costs.

Bill of exceptions [13] shows that the court heard proofs [14] fixing liability on def'ts below under [15] the Statutes; whilst the declaration [16] was based on merely [17] a common law liability. [18]

The cause was heard by A. M. Jenkins, judge, without jury. Verdict for pl'ff below. Motion for new trial overruled and excepted to.

Testimony was objected by defendant below. Overruled and excepted to.

Motion for new trial overruled and excepted to at time.

Errors.

1st. The Court heard and allowed improper evidence for plaintiff below.
2d. The Court refused to receive proper testimony offered by defendant below.
3d. The testimony of pl'ff below was not sufficient to justify verdict.
4th. The finding of the Court was without evidence to sustain it.
5th. The Court erred in rendering judgment for pl'ff below and against def't below.
7th. Declaration for *killing by running* a train. Proofs were for failure to erect fence. A variance.
8th. Proofs show no liability in any form of action.

HAYNIE & PARRISH.

109

Ill. C. R. R. Co.

vs

John F. Dickson.

Appeal from Jasper

ABSTRACT

Filed Jany. 25. 1861.

N. Johnston Clk

IN THE SUPREME COURT OF ILLINOIS.

FIRST GRAND DIVISION.----------NOVEMBER TERM, 1861.

The Illinois Central Railroad Co., Appell't
VS.
John F. Dickerson, Appellee.

This was an appeal from J. P. to Circuit Court of Jackson county.

On the trial in the Circuit Court, the evidence did not bring the Pltff. below within the statute, entitled an "Act to regulate the duties and liabilities of railroad companies," approved Feb. 14, 1855, and hence he had no right of action under the evidence.

There was no proof to negative the fact, that the cattle might have been killed at the crossing of a highway and within the limits of a city or village; and there was no proof that the damage was "negligently or wilfully done." It does not appear in evidence that at the point where the cattle were killed it was necessary to maintain a fence in order to "prevent horses, cattle, sheep and hogs, from getting on the railroad."

The plaintiff must show that defendant is not within all the exceptions of the Statute found in the section which fixes the penalty.

——Chitty's Pleadings. P. 223.—20 Ill. R. 391; 23 Ill. R. 92 95; Purp. Stat. P. 1077 sec. 165.

WM. H. GREEN,
Attorney for Appellant.

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Sheriff of Jackson County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of ____ county, before the Judge thereof between ____

John F. Dickerson plaintiff and The Illinois Central Railroad Company defendant it is said that manifest error hath intervened to the injury of said Illinois Central Railroad Company as we are informed by their complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said John F. Dickerson

that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John F. Dickerson notice together with this writ.

WITNESS, the Hon. John D. Caton Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this Sixteenth day of November in the year of our Lord one thousand eight hundred and Sixty.

Nath Johnston
Clerk of the Supreme Court.

[esoo-L]

Executed the within writ By Giving notice to John T. Dickerson By C. S. Ward his Atty November 22d 1860 A. C. Davis Shff of Jackson Co Illinois

Shff Fees
Serving 50
Mileage 60
10
Ret 1.20

SUPREME COURT.
First Grand Division.
5

Illinois Central Rail Road Company
Plaintiff in Error,

vs.

John T. Dickerson
Defendant in Error.

Shff fees 50
Serving 60
Mileage 10
Ret 1.20

SCIRE FACIAS.

FILED.

The writ of Error which has been issued and filed in this Cause, is made a Supersedeas, and, as such, is to be obeyed by all Concerned.

Noah Johnston Clk

Executed the within By Reading the Same To John H Dickerson on the 3 day of January 1861 in the Presents of A C Davis

Wm Cox Shff

In the Supreme Court. State of Illinois.
At Mount Vernon, November Term 1861

The Ill C R R Co Plaintiffs in error
vs
John F Dickerson deft } Error to Jackson

Argument on the part of the defendant in error. To the judges of said Court.

If the court please;

One of the points made on the argument of this case by the attorney for the plaintiffs in error, was this: The evidence is clear that the cattle in question were killed on the morning of the 17th of October 1858, just before daylight; and if the evidence showed (which he contended it did) that the fence, at the place where the cattle got in, was up at dark the night before, that in such case the plaintiff below ought not to have recovered a judgment. This point is not contained in his printed brief, but I believe I have stated it fairly. In order to test this position, I will assume for the purpose of this argument that otherwise the plaintiff below had made the full measure of proof which the statute requires and was entitled to the verdict he obtained. This argument will be limited to a brief consideration of the point above stated.

As it will take but a moment to copy all the Evidence in the case relating to the condition

[8500-7]

of the fence. I here insert it in full.

On his direct examination the witness Burns said: "The cattle got in two or three hundred yards from where they were killed. There was a gap in the fence South of where the cattle were killed. I tracked them back to the gap. They had been about two hundred yards on the track. They were killed on the morning of the 17th of October 1858. by the up train. The train paped up North about daylight. One panel of the fence was down all except four rails."
On cop examination he said: "One panel of the fence was down & four rails high only. It was my business to keep the fences up. I paped down by the place where the fence was down on the Evening before the Killing. I paped down after six o'clock and the fence was all right then. I went out at six o'clock the next morning on the road to work and found the cattle immediately. At the place where the fence was down, the top rails were lying right close to the gap. I made up the gap."

On a reexamination he said: "The fence might have been down and I might not have noticed it. It was my business to see that the fences were up and I dont think the fence was down the night before the Killing."
The witness Penrod said: "right close to where the cattle were killed. I had noticed before that,

that the fence was not good. I had noticed that the fence was down both North and South of the place of Killing — at places where they had been hauling ties — I do not recollect of seeing the fence down at the place spoken of by the witness Barnes, before the cattle were killed. I saw the fence down at that place, but I do not recollect whether it was before or after the cattle were killed".

1st The assumption that the fence was up the night before the killing finds but feeble support in the Evidence — It rests upon the Single Statement of Barnes that he paped down the road after six o'clock the night before the killing and the fence was all right then — There is nothing to show that his attention at that time was in any way directed to the fence. He does not say how much after six, he paped down. Considering the time of year, it is likely it was too dark for him to see the fence. He says the fence might have been down at the place where the cattle got in and he might not have noticed it — showing clearly that his attention had not been particularly directed to the fence at that point — His testimony on this point amounts to no more than this; paping down the road after six o'clock and paying no particular attention to the fence, he did not notice that it was down —

[9-500-B]

Burns says it was his business to see that the fence was up. How well he performed his duty generally is shown by the testimony of Penrod- who testifies that he had seen the fence down both North & South of where the cattle were killed- that the Employees of the Company were hauling in ties there- and that he had seen the fence down at the very place where the cattle got in- either before or after the killing- Perhaps the old adage applies to Burns that there are none so blind as those who will not see- It can hardly be necessary to remark that the interest of this man Burns was directly against the plaintiff below.

2nd

Admitting, however that the proof was entirely satisfactory that the fence was up to its usual height and in its usual repair the night before the killing, still that fact would not be enough of itself to defeat a recovery. I contend, under the proofs made by the plaintiff below, that the defendants in order to defeat a recovery were bound to show by affirmative proof that the fence there was good and sufficient- If the fence were up, it would be no defence, unless it was a sufficient fence- That it was a part of the case of the defendants below to introduce such proof will appear from the following considerations-

If this suit had been brought originally in the circuit court, the Declaration, after stating the duty of the defendants below to erect and thereafter maintain in good repair, at the particular place, fences suitable and sufficient to prevent cattle sheep & hogs from getting on their road, and after stating their liability for all injuries done, in case they failed to erect and maintain such fences in good repair, would contain an averment that the defendants did fail to erect and maintain such fences in good repair, whereby the plaintiff was injured &c. This is what in pleading is termed a negative averment, and the books lay down the rule of Evidence that governs in such case. It is true there were no written pleadings in this case in the circuit court, but is it not also true that the same fact was in issue, and the rule of Evidence the same, as if there had been? The rule of Evidence in such case I apprehend is correctly stated in 1 Greenl Ev sec 78. It is this: "A party is not required to make plenary proof of a negative averment. It is enough that he introduces such proof as in the absence of all counter testimony will afford reasonable ground for presuming that the allegation is true; and when this is done, the onus probandi will be thrown upon his adversary."

Under this rule of evidence, when the plaintiff below had proven that his cattle got on the rail road track through a gap in the rail road fence, down of four rails, and that his cattle so being on the track were killed by the defendants locomotive and train, he had made out a prima facie case. And it then and there devolved on the defendants below to show not only that the fence was up, but also that it was sufficient, if they wished to make that fact a matter of defence— This court say (13 Ill 610) that a sufficient fence is a fence sufficient ordinarily to prevent stock from going on one's land. There is not a particle of proof in this case to show that this fence was ever such a fence. To show There is not a particle proof that this fence even when up to its usual height and in its usual repair offered any impediment to the progress of stock. There is nothing to show that this fence at the place where and at the time when, the plaintiffs cattle got in, was such a fence as is ordinarily sufficient to turn stock. The only evidence in the case as to the sufficiency of the fence is the statement of the witness Penrod that the fence along where plaintiffs cattle got in— was not good— The defendants below wholly failed to show a sufficient fence— They did not even attempt it—

For these reasons, the point under consideration presents no ground for disturbing the judgment below= All of which is respectfully submitted.

Cornelius S Ward
Atty for Defendants

[8500-15]

9–15

Ill C RR Co. plff in err

vs

John F. Dickerson

Argument

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon---November Term, A. D., 1861.

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vs.
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24 Ill 632
Story on Agency Sec 134-6

CORNELIUS S. WARD, *For Defendant.*

Guardian Office print, Mt. Vernon.

IN THE SUPREME COURT OF ILLINOIS,

FIRST GRAND DIVISION.----------NOVEMBER TERM, 1861.

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VS.
John F. Dickerson, Appellee.

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On the trial in the Circuit Court, the evidence did not bring the Pliff. below wlthin the statute entitled an "Act to regulate the duties and liabilities of railroad companies," approved Feb. 14, 1855, and hence he had no right of action under the evidence.

There was no proof to negative the fact, that the cattle might have been killed at the crossing of a highway and within the limits of a city or village; and there was no proof that the damage was "negligently or wilfully done." It does not appear in evidence that at the point where the cattle were killed it was necessary to maintain a fence in order to "prevent horses, cattle, sheep and hogs, from getting on the railroad."

The plaintiff must show that defendant is not within all the exceptions of the Statute found in the section which fixes the penalty.

——Chitty's Pleadings, p. 223.—20 Ill. R. 391; 23 Ill. R. 92 95; Purp. Stat. p. 1077 sec. 165.

WM. H. GREEN,
Attorney for Appellant.

[9500-12]

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The P. C. R. R Co Appellt
vs.
John H. Dickerson
Appellee

~~Abstract~~
Brief

Filed Nov. 14-1861
A. Johnston Clk

ABSTRACT.

I. C. R. R. Co.,
vs.
John F. Dickson.
} Appeal from Justice.

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4th. The finding of the Court was without evidence to sustain it.
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7th. Declaration for *killing by running* a train. Proofs were for failure to erect fence. A variance.
8th. Proofs show no liability in any form of action.

HAYNIE & [redacted] Green

Rec'd. 14 bottom Burnes testimony that fence was up night before.

L4500-13

No 9. - 15

Ill. C. R. R. Co.

vs

John F. Dickson

Abstract

Filed Jany. 25. 1861.

N. Johnston Clk

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IN THE SUPREME COURT OF ILLINOIS.

FIRST GRAND DIVISION.----------NOVEMBER TERM, 1861.

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——Chitty's Pleadings, p. 223.—20 Ill. R. 391; 23 Ill. R. 92 95; Purp. Stat. p. 1077 sec. 165.

WM. H. GREEN,
Attorney for Appellant.

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The B. & O. R. Co Appellant

vs.

John F. Dickerson

Appellee

[redacted]

Filed Nov 14 1861

St. Johnston Clk

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Jackson Greeting:

Because, *In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of* ..... *county, before the Judge thereof between* .....

John H. Dickerson *plaintiff and* The Illinois Central Rail road company *defendant it is said manifest error hath intervened to the injury of the aforesaid* Illinois Central Rail Road company — *as we are informed by* Their *complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given; you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid; with all things touching the same; under your seal, so that we may have the same before our Justices aforesaid at* **Mount Vernon,** *in the County of Jefferson, on the* 1st Tuesday after the 2d Monday of November *next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.*

WITNESS, *the Hon.* John D. Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* Sixteenth *day of* November *in the year of our Lord one thousand eight hundred and* Sixty.

Wash Johnston
Clerk of the Supreme Court.

[8500-18]

SUPREME COURT.

First Grand Division.

Ill. C. R. R. Company

Plaintiff in Error,

vs.

J. F. Dickerson

Defendant in Error.

WRIT OF ERROR.

Issued - made a Supersedeas - and

FILED - 16. Nov. 1860

N. Johnston clk

This writ of Error is made a Supersedeas, and is to be obeyed accordingly. Noah Johnston clk

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Ill. C. R. R. Company

vs

John J. Dickerson

Certified on Page 479

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1861

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