

12528

No. _____

Supreme Court of Illinois

Chicago & St. Paul & Fond Du
Lac R. R. Co.

vs.

Murphy.

Supreme Court State of Illinois Third Grand Division

The Chicago & Paul & Ford du Lac

Rail Road Company

Appellant

Appeal from McHenry

County Court

William W. Murphy

Appellee

Now Comes said Appellant
by Blodgett its Attorney and says there is
manifest error in the Record and judgment of
the County Court in said Cause as follows
1st Said Court erred in rendering judgment in
said Cause upon what purported to be the verdict
of a jury when no jury was empaneled and
sworn in said Cause.

2^d Said Court erred in suffering said jury
to act without being sworn.

3^d There was no jury in said Cause.

4th Because the proceedings in said Cause
are otherwise erroneous incomplete and informal.

J. W. Blodgett
Atty. for Appellant.

Monday March 1 A D 1858.

United States of America

State of Illinois

McHenry County } Pleas before the Hon Theodore
D Murphy Judge of the County Court of the
County of McHenry and state of Illinois
began and held at Woodstock on Monday the
first day of March A D 1858 and of the Independence
of the United States the Eighty second

Present the Hon Theodore D Murphy
John Eddy Sheriff Judge
Attest W Stewart Clerk

And heretofore to wit on the 6th day of Jan'y
A D 1858 a summons was issued out of and under the
seal of our said Court, which said summons was in the
words and figures following to wit:

State of Illinois

McHenry County } The people of the state of Illinois
to the Sheriff of said County. Meeting: We command
that you summon Chicago St Paul & Fondulac
Rail Road Company. If they shall be found in
your county personally to be and appear before the
County Court of said county on the first day of the
next Term thereof. to be holden at the Court House in
Woodstock in said County on the first Monday of
March next to answer unto William H Murphy in a
plea of to the Damage of said Plaintiff as he says in
the sum of five hundred Dollars. and have you there and
there this writ with an Endorsement thereon as to the
manner in which you execute the same

Witness William Stewart clerk of our said County and the
seal thereof at Woodstock in said County this 15 day

of Feby AD 1858



W Stewart Clerk

(Endorsed) The President of the within named Defendant not found in my County and is not President of my County. Served by reading to & within hearing of Amisa Capp one of the acting conductors of the Chicago St. Paul & Fond du Lac Rail Road Company & also by delivering into his possession a copy of this writ for the use of the company done this this the 18th day of February 1858

John Caddy
Shiff

& filed March 2. 1858

W Stewart Clerk

And heretofore to wit on the nineteenth day of February AD 1858 Church & Kerr filed a narration in words and figures following. to wit:

State of Illinois } The County Court of McKenry
McKenry County } County March Term AD 1858
William H Murphy Plaintiff in this
suit by Church & Kerr his attorneys complains of the Chicago
St Paul and Fond du Lac Rail Road Company an
incorporated Company duly incorporated under and
by virtue of the laws of this state defendant in this suit
being summoned to do a plea of trespass on the case
for that whereas the said Plaintiff heretofore
to wit on the first day of October AD 1857 at the County of
McKenry and state of Illinois was and from thence hitherto
had been and still is possessed and in the occupation

3. of a certain Close situate~~ed~~ and being in the said County of McHenry and the said defendant during the time aforesaid was and still is possessed of and in the occupation of a certain piece of land for a Rail Road situate and being in the County aforesaid and contiguous and next adjoining to and extending through the said Close of the said plaintiff and the said defendant by reason of the possession of said piece of land with the said Rail Road appertaining during all the time aforesaid of right ought to have built repaired and amended and still of right ought to build repair and amend said fence between the said close of the said plaintiff and the said piece of land of the said defendant as often as occasion hath required to prevent cattle horses and other animals lawfully being in the Close of the said plaintiff or in the said piece of land of the said defendant from coming or escaping from and out of the one into the other through and by reason of the want of defects and insufficiencies of said fence yet the said defendant well knowing the premises but contriving and unjustly intending to injure and aggrieve the said plaintiff in that behalf whilst the said plaintiff and the said defendant were so respectively possessed of their respective closes and pieces of land with the appurtenances as aforesaid to wit on the day and year aforesaid and on divers other days and times between that time and the day of the commencement of this suit to wit at the County aforesaid wrongfully and unjustly neglected to build said fence between the said close of the said plaintiff and the said piece of land of the said defendant and then

and there suffered the same to be out of repair and prostrate for the want of necessary building and repairing the same whereby divers horses and cattle to wit three horses six oxen five cows five steers five heifers and other cattle of the said plaintiff lawfully feeding and being in the said close piece or parcel of land of the said plaintiff on the said several days and times aforesaid entered and escaped from and out of the same through and by reason of the absence defects and insufficiencies of said fence into and upon said piece of land and Rail Road of the said defendants and were there driven about and hunted and were there and there struck bruised and injured by a Locomotive of the said defendants then and there being driven by the said defendant and thereby divers of the said horses & cattle to wit three horses six oxen five cows five steers and five heifers of the said plaintiff of great value to wit of the value of five hundred dollars were killed and then and there died.

And also by reason of the neglect of the said defendant to build and repair said fence and of the insufficiency of defence on the said several days and times aforesaid divers other horses & cattle as well of the said defendant as of divers other persons feeding and depasturing and being in and upon the said piece of land of the said defendant on the several days and times aforesaid through and by reason of the absence defects and insufficiencies of said fence entered and escaped out of and from said piece of land into the said close of the said plaintiff and at once trod down and trampled upon consumed and spoiled

other the grass, wheat Corn Oats and herbage of the said ~~defendant~~ ^{plaintiff} then and there growing and being of great value to wit of the value of five hundred dollars

And whereas also the said plaintiff heretofore to wit on the first day of October 1885 at the County of McHenry aforesaid was the owner ~~of~~ ^{and} in possession of divers other horses and Cattle of great value to wit of the value of five hundred dollars which said horses and Cattle had been ^{to} therefore feeding and grazing upon a close of the said plaintiff in said County through and over which was a certain Rail Road of the said defendant then and there and which said Rail Road was then and there open and unenclosed with a fence or other protection from horses and Cattle and by reason of the exposed condition of said Road the said horses and Cattle of the said plaintiff were then and there upon said Road so being through over and across the said close of the said ~~defendant~~ plaintiff to wit at the County aforesaid and the said defendant was also then and there possessed of a certain Locomotive and Car which was then and there upon said Rail Road of the said defendant so as aforesaid over and across the said close of the said plaintiff Nevertheless the said defendant then and there so carelessly and negligently managed said Rail Road Locomotive and Car that by and through the neglect carelessness and improper conduct of the said defendant the said Locomotive of the said defendant then and there struck wounded and bruised destroyed and killed divers of the said horses and Cattle of the said plaintiff to wit three horses six or seven five cows five steers five heifers and ten other Cattle of the said

6 Plaintiff then and there being of great value to wit the value of five hundred dollars and the said horses oxen. Cows. steers heifers and other cattle were thereby then and there rendered and become of no use or value to the said Plaintiff to wit at the County aforesaid

And whereas also the said defendant at and before the committing of the several grievances hereinafter mentioned was in possession of a certain Rail Road known as the Chicago St Paul and Fond du Lac Rail Road. which for several years heretofore had been completed and in operation over and across a close of the said Plaintiff situated in said County and the said defendant had then and theretofore and did then and there carelessly negligently improperly and contrary to their legal and proper obligation in that behalf imposed by law and by legal duty suffer and permit the said Rail Road to be and remain unfenced and exposed to the free ingress therein of horses and cattle such as are hereinafter mentioned and by reason of such careless negligent improper and unfenced and exposed condition of said ~~Road~~ Road of the said defendant so carelessly negligently and improperly suffered and permitted by the said defendant certain horses and cattle to wit three horses six oxen five cows five steers five heifers and ten other cattle of the said Plaintiff of great value to wit of the value of five hundred dollars then and there being in said Close of said Plaintiff did then and there contrary to the will of the said

7
Plaintiff escape from his said close and did
then and there go upon said Rail Road of the
said defendant and by reason aforesaid were
then and there bruised destroyed and killed by a
locomotive which was then and there being fur-
iously driven by the said defendant over and along
the said Rail Road so carelessly negligently
and improperly then and there suffered and
permitted as aforesaid by the said defendant
and by reason of the premises the said horses
oxen cows steers heifers and other cattle
then and there became and were of no use
or value to the said plaintiff to wit at the
Court aforesaid wherefore the said plaintiff
says he is injured by reason of the premises
and has sustained damage to the amount
of five hundred dollars and therefore he
brings suit

Church & Kerr
attys for Plff

(Endorsed) Filed 6 day of Jan 1858
W H Stewart CLK

And thereafter on the third day of March being one of
the days of the March term of said Court the following
among other proceedings were had

Wm H Murphy
vs

Case

Chicago St Paul and Fond
du Lac Rail Road
Company

And now comes the
plaintiff by Church and
Kerr his attorneys and the
defendants being three times solemnly called came not
nor any one for them but fail and make default

herein which is ordered to be entered of record
It is further ordered that a jury come to enquire into
and assess the said plaintiffs damages

And thereafter on the Fifth day March being
one of the days of the March term of said Court
the following among other proceedings were had

William A. Murphy } Case

vs } And now comes the
Chicago St Paul and } Jury formerly empanelled
Fond du Lac Rail Road } herein and for verdict say
Company } the Jury find for the plaintiff
assess his damages at one hundred

forty dollars. It is ordered and considered that
that the plaintiff have and recover of said Defendant
his damages in the sum of one hundred and forty dollars
which he hath sustained as also his costs and charges
herein expended and that he have execution therefor
Thereupon comes the defendant and pray an appeal
which is granted on condition that said defendant
enter into bonds in the penal sum of five hundred
dollars with Henry Smith as surety.

And thereafter to wit on the seventeenth day of
March said defendant filed a bond in the
words and figures following to wit,

Know all men by these presents That me the Chicago
St Paul & Fond du Lac Rail Road Company and Henry
Smith of the County of McHenry in the state of Illinois are
held and firmly bound unto William A. Murphy in

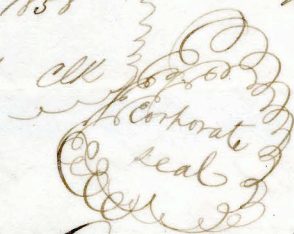
the penal sum of five hundred dollas lawful
money of the United States for the payment of which we
and truly to be made we bind ourselves our heirs executors
and administrators jointly severally and firmly by
these presents. Witness the hand and seal of said
Henry Smith and the corporate seal of said Chicago
St Paul & Grand du Lac Rail Road Company attested by
J B Redfield assistant secretary this fifteenth day of
March A D 1858

The condition of the
above obligation is such that whereas the said H^{ny}
Murphy did on the tenth day of March A D 1858
before the County Court for the said County of McHenry
recover a judgment against the above bounden Rail
Road Company for the sum of one hundred & forty
dollars from which judgment the said Rail Road
Company has taken appeal to the supreme court of
state of Illinois. Now if the said Rail Road
Company shall prosecute his appeal with effect
and shall pay whatever judgment may be
rendered by the court upon dismissal or trial
of said appeal then the above obligation to be void
otherwise to remain in full force and effect

Approved me at my office

this 17 day of March 1858

W A Stewart



Henry Smith (seal)

attest J B Redfield (seal)

asst secy

(Endorsed) Filed March 17. 1858

W A Stewart Clerk

State of Illinois
McHenry County J. William H. Stewart Clerk of
the County Court in and for said
County hereby certify the within to be a true and
correct copy of the Record in the Case of William
H. Murphy against Chicago St. Paul and Fond
du Lac Rail Road Company as appears from an
examination of said Records & the papers on file in
my Office

Witness My Hand Clerk of the County
Court in and for said County and the seal
thereof at my Office in Woodstock this 10
day of April A.D. 1858
W. H. Stewart Clerk

217
Chicago St Paul & Fond du Lac
Rail Road Company

Appellant

vs.
William H. Murphy
Appellee

Appeal from the County

Filed April 21. 1858
J. L. Deland
Clerk.

5/8/58

United States of America

State of Illinois

County of McHenry

Pleas Before the Hon Theodor D. Murphy
Judge of the County Court of McHenry Co.
And State of Illinois at a Term thereof begun and held
at the Court House in Woodstock in said County on
Monday the first day of March in the year of our
Lord One thousand Eight Hundred and Fifty Eight and
of the American Independence the Eighty second
John Eddy Sheriff Present the Hon Theodor D. Murphy
Attest M. H. Stewart Clerk Judge

The following among other proceedings ~~Among other~~
proceedings were had

Saturday March 13 A.D. 1858 being one of the days
of said Term.

It is Ordered by the Court that the Court adjourn
to Court in Course

John Eddy Sheriff

Theodor D. Murphy

Attest M. H. Stewart Clerk

Judge

State of Illinois

County of McHenry

I M. H. Stewart Clerk of said Court
do certify that the above is a true and
Correct Copy of the proceedings had in regard to the
order for adjournment as appears from an examination
of the records in my Office.

Witness M. H. Stewart Clerk of said Court and
the seal thereof at my Office in Woodstock
this 17 day of May A.D. 1858.

M. H. Stewart Clerk

William H. McLaughlin
at 217

The Chicago St Paul
& Fond Du Lac R.R.
Road Company

Order on Martin
to Druggs

Filed May 19, 1858
Leland
alk

Chas & Huer

William H. Murphy
als Appeller
The Chicago St Paul &
And Du Lac Rail Road
Company, Appellants

Superior Court
St Paul Term
April Term 1858

} Appeal from the
County Court of McHenry
County

And now comes the said appeller by
L S Church his attorney and moves
the Court to dismiss the appeal
herein for the following reasons

1 The appeal was not taken in
time. The appeal bond not having
been filed until after the
adjournment of the Court at
which the judgment was rendered
and

The Court adjourned on the 13th
of March 1858 and the appeal bond
was not filed until the 17th of the
same month and no order of
the Court was entered of Record
allowing time to file appeal bond

2 The bond does not correctly state the
judgment the judgment was for \$40 and
costs.

Church & Kerr
attys for Deft

Sup Cont

William H Murphy

at 217

The Chicago St Paul
& Fond du Lac
R.R. Company

Notice to Deposit
at hand

Chas & Har

O. H. & Co.

W. H. & Co.

217

Levee Mill
+ St. Paul

1858

paid \$4000
Dy. \$2.00

12528

Not to be used
for anything