

12404

No. \_\_\_\_\_

# Supreme Court of Illinois

Bristol <sup>L</sup>~~\*~~.

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vs.

Chicago & Aurora R.R.Co.

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71641  7

Cook County Circuit Court.

of May Term, in the year  
of our Lords one thousand eight  
hundred & fifty four.

State of Illinois }  
Cook County } ss.

Harrison Bristol Plaintiff  
in this suit by Arnold Larned & Lay his  
Attornies complains of the Chicago and Aurora  
Rail Road Company Defendants in this suit  
in a plea of Trespass on the case.

For that whereas  
the said defendants heretofore, to wit on the  
thirtieth day of December A.D. 1852 in the County  
of Kane to wit in the County of Cook  
aforesaid were the owners of and were engaged  
in the building contracting and laying of  
a certain Rail Road track in the said  
county of Kane and were then and then  
engaged and occupied in laying and  
building the said Rail Road track under &  
across a certain highway situated in said  
County of Kane aforesaid running and  
leading from Aurora in the said County  
of Kane to Springfield in <sup>said</sup> State of Illinois  
and then and there it became the duty  
of the said defendants to use all due and  
proper care in the building constructing  
and laying of said Rail Road track  
under and across the said <sup>Public</sup> Highway as  
aforesaid that the same should be well  
and properly built constructed and laid

so as not to interfere with or endanger  
the comfort or safety of Travellers or passen-  
gers or to interfere with or impede or endanger  
the passage or transit of wagons carts Car-  
riages Stages or other vehicles passing over  
or driving along the said Public Highway  
leading from Aurora to Springfield as  
aforesaid. Yet the said Defendants  
not regarding their duty in this behalf  
then and there by their agent and servants  
so carelessly and improperly built construct-  
ed and laid the said Rail Road Track  
under and across the said public highway  
leading from Aurora to Springfield as  
aforesaid that a certain Stage coach  
in which said plaintiff then and there  
was a passenger on the Day and Year  
aforesaid going from Aurora in said  
county of Kane aforesaid to Springfield  
aforesaid on the said Public Highway lead-  
ing as aforesaid was then and there  
overthrown and upset by reason of  
the said carelessness and improper  
conduct of the said defendants in laying  
building and constructing their said Rail  
Road Track under and across the said  
Public Highway as aforesaid leading as  
aforesaid whereby the arm and Shoulder  
of said Plaintiff was then and there  
bruised and injured and the Shoulder  
of the said Plaintiff was put out of joint &  
the said plaintiff was otherwise <sup>greatly</sup> injured  
wounded cut bruised and rendered sore

inasmuch that the said plaintiff then and  
then became <sup>very</sup> sick, sore lame, and disordered  
for a long space of time, <sup>caused from the misdeeds, during which time</sup> and the said  
plaintiff suffered and underwent great pain  
and was hindered and prevented from  
transacting, carrying on and proceeding  
in his lawful and necessary affairs &  
business by him during that time to be  
performed and transacted and thereby  
lost and was deprived of divers great  
gains and profits, which had been accustomed  
to arise and accrue to the said plaintiff  
from the transacting and carrying on of the  
same and also by means of the premises  
last aforesaid the said plaintiff was forced  
and obliged to and did then and there  
pay lay out and expend divers large sums  
of money amounting in the whole to the sum  
of five hundred dollars in & about the curing  
and endeavoring to cure the said last  
mentioned bruises cuts and wounds done at  
Chicago as aforesaid

2<sup>d</sup> Count.

For that whereas hereupon to wit on the 30<sup>th</sup>  
day of September A.D. 1853 in the county of Kane  
to wit in the county of Cook aforesaid the said  
plaintiff then and there as passenger in a  
certain stage Coach running and being  
driven along a certain Public highway leading  
from Aurora in the said county of Kane  
aforesaid to Springfield in said state of Illinois  
under and across which said public highway  
in the said county of Kane to wit the County of Cook

as aforesaid the <sup>paid</sup> defendants by their agents and servants there and there were engaged occupied and employed in the digging running constructing <sup>laying</sup> and building of a certain Rail Road track and of a certain Deep cut and there and there <sup>in</sup> it became the duty of the said defendants to use due and proper care in the digging running contracting and building of the said Railroad track & of the said deep cut as aforesaid to construct dig and build the same so as not to endanger or interfere with the comfort safety or convenience of travellers or passengers travelling on or passing over the said public highway and so to construct dig and build the same as not to interfere with the passage or transit of teams wagons carriages stages Coaches or other vehicles passing over and along the said Public highway leading from Aurora to Springfield as aforesaid

But the said defendants neglecting their said duty in this behalf by their agents & servants so carelessly and improperly built constructed laid dug and ran their said Railroad and their said deep cut under and across the said public highway leading and running from Aurora as aforesaid that the said stage hereinbefore mentioned in which said plaintiff was a passenger <sup>is</sup> hereinbefore stated was overturned and upset while being driven along the said highway aforesaid and passing

By reason of the care and im-  
proper manner in which said defendant  
by his agent and servants holding bill  
constructed and down this said railroad track

over and across the said Railroad track  
and <sup>this said deep cut</sup> deep cut under and across the  
said public highway leading as aforesaid  
whereby the arm and shoulder of the said  
plaintiff was then and there bruised and  
injured and the shoulder of the said  
plaintiff was put out of joint and the said  
plaintiff was otherwise greatly injured  
wounded cut and rendered sore in so  
much that the said plaintiff then and  
there became and was sick and sore lame  
and disordered for a long space of time  
to wit from thence hitherto. During all  
which time said plaintiff suffered and  
underwent great pain and was hindered  
and prevented from carrying on and  
transacting and proceeding in his lawful  
and necessary affairs and business by him  
during that time to be performed and  
transacted and thereby lost and was  
deprived of divers great gains and  
profits which had been accustomed to  
rise and accrue to said plaintiff from the  
transacting and carrying on of the  
same. And also by means of the premises  
last aforesaid the said plaintiff was forced to  
obey and did then and there pay  
lay out and expend divers large sums  
of money amounting in the whole to the  
sum of five hundred Dollars in and  
about the curing and endeavoring to cure  
the said last mentioned bruises cuts and wounds  
to wit at Chicago aforesaid.

3<sup>d</sup> Count

And for that whereas heretofore to wit on the 30<sup>th</sup> day of September A.D. 1830 in the county of Kane to wit in the County of Cook as aforesaid the said defendants by their agents and servants more than there occupied and engaged in the digging constructing and making of a certain deep trench or ditch under or across a certain public Highway in the said County of Kane to Springfield in the state of Illinois which said Highway was then and there in good <sup>& perfect</sup> state and condition well repair and safe for the passage or transit of travellers or passengers and safe for the passage and transit of wagons carts stage coaches and other vehicles of conveyances and then and there it became the duty of said defendants to use due and proper care in the constructing digging building and running of the said deep trench or ditch as aforesaid under and across the said public highway leading as aforesaid that the same should be well and properly dug constructed built and run so as not to interfere with or endanger the comfort or safety of passengers or travellers on the said public highway leading as aforesaid and so as not to interfere with or impede the passage or transit of wagons carts, canaries stage coaches or other vehicles passing over and upon the said Public Highway leading as aforesaid Yet the said defendants not regarding their said duty in this behalf

then and there by their agent and servants  
so improperly and carelessly built, run  
constructed and dug out the said deep  
trench or ditch under and across the said  
Public Highway leading as aforesaid and so  
carelessly and improperly and imprudently  
excavated the earth or ground from the said  
deep trench or ditch under <sup>the</sup> <sup>said</sup> public highway  
leading as aforesaid so improperly carelessly  
and imprudently placed and piled the  
said earth or ground excavated and dug  
out from the said deep trench or ditch as  
aforesaid in and upon the said public  
highway leading as aforesaid in the said  
county of New Tork ~~Cook~~ in the county of  
Cook aforesaid that on the day and year  
aforesaid a certain public stage in which  
the said plaintiff was Passenger going from  
Amorora to Springfield, <sup>on the said public highway leading from Amorora to Springfield,</sup> as aforesaid was then  
and there overthrown and upset by reason  
of the said careless imprudent and improper  
conduct of the said defendants by their agent and  
servants in excavating and digging out the said  
deep trench or ditch as aforesaid and by reason  
of said ~~careless~~ imprudent and improper conduct  
of the said defendants by their agent and  
servants in placing and piling the said earth  
or ground so excavated and dug out on  
the said Public Highway as aforesaid whereby the  
arm and shoulder of the said plaintiff was  
then and there much <sup>injured</sup> bruised, <sup>wounded</sup> and cut and  
the shoulder of said Plaintiff was then and  
there put out of joint and the said plaintiff



was otherwise greatly injured wounded  
and cut and rendered sore inasmuch  
that the said Plaintiff then and there  
became and was sick sore lame and  
disordered for a long space of time ~~and~~  
from thence hitherto during all which time  
the said Plaintiff suffered and underwent  
great pain and was hindered and prevented  
from carrying on transacting and proceed-  
ing in his lawful and necessary affairs  
and business by him during that time to be  
performed and transacted and thereby  
lost and was deprived of divers great  
gains and profits which had been accus-  
-tomed to <sup>and which</sup> accrue to the said Plaintiff  
from the transacting and carrying on  
of the same and also by means of the  
premises last aforesaid the said Plaintiff <sup>was</sup> obliged to  
do there + there lay out pay and expend divers large sums of  
money amounting in the whole to the sum of ~~five~~ hundred Dollars in  
and about the curing and endeavoring to cure the said last men-  
tioned bruises cuts and wounds ~~and~~ at Chicago aforesaid  
To the Damage of said Plaintiff of Ten thousand Dollars  
And therefore he brings Suit etc

Arnold David Lay

Atty for Pltff.

Coats Circuit Court

Marion Bristol

vs

The Chicago and  
Northwestern R.R. Co

Copy

Arnold David Lay  
Atty

and then and there on the 30<sup>th</sup> day of May  
A.D. 1854, came the said Defendants by  
James, J. by their President in person and  
to the said Declaration of the said Plaintiff  
filed their plea in abatement which is in  
the words and figures following

Cook Circuit Court

The Chicago & Aurora Rail Road  
Company vs

At Bristol

And the said Defendants  
in proper person comes & says that this  
court ought not to have or take further  
cognizance of the action aforesaid, because  
this defendant says that the supposed causes  
of action & each & every of them (if any such  
have accrued to the said Plaintiff), accrued  
to the said Plaintiff out of the jurisdiction  
of this court to wit in the County of DuPage  
in the State of Illinois & not within the  
County of Cook or elsewhere within the jurisdic-  
tion of this court, and that the said Defen-  
dant is a corporation authorized by the  
laws of the State of Illinois to & maintain  
and continue a Rail Road from a point  
in the County of DuPage where it may  
connect with the Galena and Chicago  
Union Rail Road Company, to a point at

at least fifteen miles north of La Salle  
in the county of La Salle, & not elsewhere,  
and the said Defendant avers that no portion  
of the route of said Rail Road tracks passes  
through said county of Cook and within  
the jurisdiction of this Court, and said  
Defendant further avers, and that it has  
no corporate franchises to be exercised in the  
county of Cook.

J. P. Coy  
President Chicago & Aurora R R  
Company

State of Illinois  
Cook County

J. P. Coy, President of  
the Chicago and Aurora Rail Road Com-  
pany being first duly sworn deposes and  
says that the plea above signed by  
him is true in substance and fact

J. P. Coy  
Subscribed and sworn to  
this 30<sup>th</sup> day of May  
A D 1854  
L. D. Hoard  
Clerk

And then and there on the 1<sup>st</sup> day  
of June A D 1854 came in the said  
Plaintiff in his own proper person and  
to the said Court. Plea in abatement of  
the said Defendant by James F. Fox their Friend  
and filed his Answer which is in the words  
and figures following

Court Circuit Court

Harrison Bristol

The <sup>vs</sup> Chicago & Aurora Rail  
Road Company

And the said Plaintiff  
saith, that the said plea of the said  
defendant and the matters therein cont-  
-ained, in manner and form as the same  
are above pleaded and set forth, are not  
sufficient in law to quash the said declar-  
-ation, and that he the said Plaintiff is  
not bound by the law of the land to  
answer the same, and that he is ready  
to verify, wherefore for want of a suff-  
-icient plea in this behalf, the said  
Plaintiff prays judgment, and that the  
said defendant <sup>may</sup> answer further  
to the said declaration &c.

H. Bristol

And afterwards on the first day of June  
A.D. 1854, came the said Plaintiff Harrison  
Bristol by his said attorney Arnold James  
& Lay and there and there also came  
the said Defendants The Chicago and  
Aurora Rail Road Company by Joy their  
and it was then and there considered  
by the said court that the said Demour  
of the said Plaintiff, as is to the said  
plea <sup>in abatement</sup> of the said Defendants as is heretofore  
more fully set forth and shown, was not  
sufficient in law to bar the said plea in  
abatement, and it was also considered  
by the said court, that the said Comp-  
loit of the said Plaintiff be dismissed  
from which decision of the said court  
the said Plaintiff then & there appealed  
to this court.

It is agreed & stipulated by & between the  
parties hereto that the above shall be deemed &  
taken as a full & sufficient record in the above  
subtilled cause & that no exceptions shall be  
taken hereto for want of any formality in the  
making up of the same

Blackwell & Breckinridge  
Attys for ~~the~~ <sup>Plaintiff</sup> ~~Plaintiff~~

Cook Circuit Court

Harrison Britton

vs

The Chicago & Aurora  
Rail Road Company

It is hereby stipulated & agreed by & between the parties to the above entitled suit, that the Demurrer now on file in this cause, shall be overruled pro forma, and that the same shall be argued at the next term of the Supreme Court to be held at Ottawa, commencing in the second week of June next, and that the same shall be argued at said term in its order upon the docket or before if counsel shall so agree, & it is also stipulated that the Defendants shall raise no objections on account of the shortness of time & all objections on account of shortness of time are hereby waived

Blackwell & Prekitt  
Attys for Drft

Supreme Court  
Harrison Burtis

to  
The Chicago &  
Aurora Road  
Road Company

State of Illinois }  
Supreme Court } of some term, in the year  
of our Lord, one thousand  
eight hundred and fifty four.

Harmon Bristol

The Chicago and Aurora }  
Rail Road Company } In Error

Afterwards to wit on  
the day of June A.D. 1854, at this  
same term of the Court, before the justice  
thereof, came the said Harmon Bristol by Arnold Lueders & Son, his  
attornies, and says that in the record  
and proceedings aforesaid, and also in  
the rendition of the judgment aforesaid,  
there is manifest error, to wit that  
the declaration aforesaid, are suf-  
ficient in law, for the said Harmon  
Bristol to have and maintain his  
aforesaid action thereof against the said  
The Chicago and Aurora Rail Road  
Company. There is also error in this  
to wit that by the record aforesaid it  
appears that the judgment aforesaid  
in form aforesaid given, was given for  
the said The Chicago and Aurora Rail  
Road Company against the said  
Harmon Bristol, whereas the laws  
of the land, the said judgment ought  
to have been given for the said  
Harmon Bristol against the said  
The Chicago and Aurora Rail



Company. There is also error in this to  
wit, that by the record aforesaid it appears  
that the Sumner aforesaid to the Plea  
in Abatement aforesaid of the said The  
Chicago and Aurora Rail Road Company  
was overruled whereas by the laws of the  
land the said Sumner aforesaid  
ought to have been sustained in favor  
of the said The Harrison Bristol.

And the said Harrison Bristol  
prays that the judgment aforesaid,  
for the errors aforesaid and for other  
errors appearing in the record and  
proceedings, may be ~~reversed~~ reversed,  
annulled and altogether held for nothing,  
and that he may be restored to all  
things, which he hath lost by occasion  
of the said judgment. &c

Arnold Samuel Day  
Attorney for H. Eff

And now the said Chicago & Aurora Railroad Company by  
their Attorney Blackwell & Breckinridge, comes and says that in  
not any error in any manner and form in the record and  
proceedings aforesaid and this he is ready to verify by the record  
aforesaid &c Wherefore he prays judgment &c

Blackwell & Breckinridge  
Attors for Drift

101

101

Supreme Court

Harrison Bristol

vs

The Chicago &

North West

Company -

Filed July 18, 1854

L. Leland  
Clerk

1854

12404

Referred

[12404]

Keenish Bristol  
" "  
Chicago & Aurora  
Railroad Company



Supreme Court Ottawa  
June Term 1854

1. A corporation has a local habitation as well as a name.  
At common law locality was of the essence of a corporation

Grant on Corp 14. 53. 54

Butter v Wrightman Collig 338

Pitt v James HB 124

Agray Car 10 Rep 19

10 Rep 30 a 32 a b

Waters Abr 261.

5 Waters & Perry 379  
187

And a departure from this rule was made only when the  
corporation was of such a character, that its corporate  
franchises were not to be exercised within any particular  
locality

7 B & C 838

2 Arnold & G 244

1 Brod & Pul 40

6 Jarnt 467

4 Dowd & L 450

Grant on Corp 14.

2. Corporations have a locality also in their country in the state in which they are created, as regards suing and being sued.

1 Blatch R. 633

13 Peters R. 588

2 How

3. So corporations in this state may have a locality in some particular part of it where its corporate franchises are to be exercised -

+ 1. They are local as regards taxation

+ 2. As regards residence to commence suits.

4. A corporation is not capable of motion - Its officers and agents may be found in one county and another, and in different counties at the same time, but the corporate person remains stationary

1 Blatch 633

13 Peters R. 588.

5. The Revised Statutes § 413. provide, "that it shall not be lawful to sue  
"defendant out of the county where the latter resides or may be found  
"except the cause of action accrued in the county of the plaintiff or where  
"the contract may have specifically been made payable."

And, "that the word person or persons as well as all words referring to or  
importing persons," shall be deemed to extend to and include bodies  
politic and corporate as well as individuals." - RS p 472

The word defendant refers to and imports a person and by the statutory  
construction includes a corporate defendant.

These provisions of the Statute, clearly establish, that under them,  
suits against corporations were to be brought in the county where  
the corporation had its locality.

6. The Revised Statutes § 413. go on to prescribe the mode of service  
of process upon corporations. - They provide " In all suits instituted  
"against any incorporated company in this state, a summons returned  
"excepted on the president thereof, or served by leaving a copy of the  
"summons with the principal clerk, cashier or secretary of such  
"company at his office, within such time and under such reg-  
"ulations as are herein provided for the service of such process in  
"suits against natural persons, shall be deemed a sufficient service  
"wherein to ground subsequent proceedings and judgment against  
"such company, in any court of this state having jurisdiction."

The latter clause of this section, "in any court  
having jurisdiction" clearly shows, that there were courts that  
would not have jurisdiction; that suits could not be brought in  
any Circuit Court of the State, but only in such courts as were  
under the second section ~~was~~ entitled to take cognizance of  
the same.

The same regulations with respect to opening process to a foreign county in proper cases, against natural persons, are to be observed in suits against corporations

7. The Act of 1853 § 15, although its principal provisions, are designed to provide a new mode of bringing suits against corporations, yet the first section must be held to declare in what counties suits may be brought, and to exclude all other counties by <sup>or to enlarge the jurisdiction of courts from one county, to all the counties in which the road is located</sup> implication. - This Act was passed Feb 12, 1853, subsequent to the one of Feb 8, 1853. - In either point of view it shows that the court below had no jurisdiction in this case. -

The first section provides, "that actions at law or in chancery may be brought against any railroad company in any circuit court, in any county in this state through which any railroad of such company may be located"

The sixth section provides, that "all actions instituted under the provisions of this act shall be commenced and prosecuted in the counties where the cause of action accrued, and not otherwise"

A comparison of the two sections, shows, that the first section was intended to embrace ~~cases~~ suits, not commenced in the manner provided by said act.

8. The Act of Feb 8. 1853. provides, "that in all cases where suit has  
"been or may hereafter be brought against any incorporated company  
"process shall be served upon the president of such company, if he  
"reside in the county in which suit is brought, and if such  
"president be absent from the county, or does not reside in the county  
"then the summons shall be served by the proper officers by leaving  
"a copy thereof with any clerk cashier secretary, engineer,  
"conductor, or any agent of such company found in the county  
"at least five days before the trial, if suit be brought before a justice  
"of the peace, and at least ten days where suit is brought in the  
"Circuit Court"

This act does not profess to enlarge the jurisdiction of the circuit  
courts, nor to prescribe when suits against corporations shall be  
commenced. It only prescribes a new mode of service  
of process regularly issued from the proper court. The fact  
that no difference is made between suits then commenced  
and those thereafter to be commenced, shows that such  
was the intent, as it cannot be supposed that the  
legislature intended to give courts jurisdiction, in  
all cases where suits had been improperly commenced  
in a wrong court.

The Act does not conflict with the 12<sup>th</sup> section of Practice Act,  
prescribing when suits shall be brought, and so it must have  
been understood by the legislature in the passage of the  
act of Feb 12. 1853.

Brief

Hoaniasu Prints

"

Chicago & Aurora  
Railroad Company