

12520

No. _____

Supreme Court of Illinois

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

vs.

Badger.

Supreme Court of the State of Illinois Third Grand Division
Chicago St Paul & Fond du Lac
Rail Road Company
Appellant

Appeal from McHenry
County Court

vs
Charles Badger Appellee

Now Comes said appellant by
Blaque their attorney and says that there is
manifest error in the record and judgment in
said cause in this
1st Said County Court erred in rendering judgment
upon the declaration filed in said cause.

2^d The declaration in said cause is not
sufficient in law.

3^d Said proceedings are otherwise erroneous & imperfect.

W. D. Blaque
Atty for appellant.

Charles Badger
atc Appellee

appeal from McHenry

the Chicago St Paul &
Fond du Lac R R Co & And the said Appellee
of Church & Kerr his attys comes and for judgment
in error says that in said record and judgment
must there is no such error as is in by said
affirmance of errors supposed. &
Church & Kerr
attys for Appellee

Monday March 1st 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 in said County 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

Attest W. H. Stewart Clerk

And herefore to wit in the 15th day of February a
Summons was issued out of and under the seals
of our said Court which said Summons was in
the words and figures following, to wit:

State of Illinois (The People of the State of Illinois to
McHenry County) the Sheriff of said County Writing:

We Command you that you summon
Chicago St Paul and Bond Du Lac 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
Monday of March next to answer unto Charles Badger
in a plea of Case, to the damage of said Plaintiff
as he says in the sum of two hundred dollars

And have you there and there this writ
with an Endorsement thereon as to the manner in
which you execute the same

Seal

Witness William H. Stewart Clerk of our said
Court and the seal thereof, at Woodstock in
said County this 15. day of Feby. A.D. 1858
W. H. Stewart Clerk

(Endorsed) The President of the within named Defendant
not found in my County & is not a resident of my County

Served by Reading to & within hearing of Amasa Capp
one of the acting conductors of the of the Chicago St. Paul &
Fond du Lac Rail Road Company & also by delivering
into his possession a copy of this summons for the use
of Company done this the 18th day of February 1858
John Eddy Sheriff

(And) Filed March 2, 1858.

W. H. Stewart Clerk

And on said day to wit on the 19th day of February 1858
The said Plaintiff filed his narration in the words and
figures following

~~State of Illinois / The County Court of McHenry
McHenry County, Charles Baggett March Term, 1858
Hajah Beardsley Plaintiff in this
suit by Church & Kerr his attorneys complains of the
Chicago St. Paul & Fond du Lac Rail Road Company
an incorporated company
~~a corporation~~, duly incorporated under and by virtue
of the laws of this state defendants in this suit ~~is~~
^{being} summoned or of a plea of trespass on the case
~~upon promise~~ for that whereas the said ^{Plaintiff} ~~defendant~~
heretofore to wit on the ¹⁷ day of June AD 1857
the year of our Lord one thousand eight hundred and
fifty eight at Woodstock to wit at the County of
McHenry aforesaid was ^{forsevered} ~~committed~~ to the said
Plaintiff in the sum of four hundred dollars
lawful money of the United States of America
for divers goods wares and merchandize by
the said Plaintiff before that time sold and
delivered to the said defendants and at the~~

State of Illinois The County Court of McHenry County,
McHenry County March Term A.D. 1858

Charles Badger Plaintiff in this suit by Chas
Herr His Attorneys Complain of the Chicago St Paul
and Fond du Lac Rail Road Company an incorpo-
rated company duly incorporated under and by virtue
of the Laws of this State Defendants in this suit Being
Summoned &c of a plea of Disput on the case for
that whereas the said Plaintiff heretofore to wit on
the 17th day of June A.D. 1858 at the County of McHenry
And State of Illinois was Possessed of Certain Horses
Cows & other Cattle of Great value to wit of the value of
two hundred dollars, which said Horses Cows & other
Cattle were then and there in and upon certain
unenclosed Land or Common and upon the highway
Grazing and feeding as they lawfully might, And the
said Defendants at the time aforesaid was and still
is possessed of an in the occupation of a certain piece
of land for a Rail Road situate and being in the
County aforesaid and contiguous and next adjoin-
ing to and extending through the said unenclosed lands
or common and across the said Highway aforesaid
And the said Defendants by reason of the possession
of this piece of land with the said Rail Road appertain-
ing at the time aforesaid of right and by force of the
Statute in such case made and provided ought
to have built and kept in repair a fence upon each
side of and between the said Piece of land and the
unenclosed Lands or Common aforesaid and Cattle
guards at the Highway Crossing aforesaid to prevent
Cattle & Horses lawfully being upon the said enclosed
lands and highways aforesaid from Erring or escaping

from and off of the said unenclosed lands or
Common and Highway aforesaid on or into the
said piece of land or the Rail Road Track upon
the same by reason of the want or defect of said
fence, yet the said defendant well knowing the
premises but contriving and unjustly intending
to injure and agrieve the said Plaintiff in that
behalf when the said defendant was so possessed
of the said piece of land with the appurtenances
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 of ~~McHenry~~ aforesaid
wrongfully and unjustly neglected to build said
fence between said unenclosed lands or Common
and the said cattle guards at the said Highway
Crossings aforesaid, 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 Cattle and Horses
to wit three Horses and one Cow of the said Plaintiff
carefully feeding and being upon the said unenclosed
ground or Common and Highway on the said
several days and times aforesaid, went and
escaped from and off of the same through
and by reason of the absence defects and
insufficiencies of said fences into and upon the
said piece of land and Rail Road of the said
defendant and were then and there driven about
thunted and were then and there struck bruised
and injured by a Locomotive of the said defendant
and thereby divers of the said cattle horses, to wit

one horse and one cow of the said Plaintiffs of Great Value to wit of the value of two hundred dollars were killed and then and there died

And whereas also the said Plaintiff heretofore to wit on the 17th day of June A.D. 1857 at the County of McHenry aforesaid was the owner of and in the possession of divers other Horses and Cattle of great value to wit of the value of two hundred dollars, which said Horses and Cattle had been theretofore feeding and grazing upon certain unenclosed lands or Common and upon the highway in the said Highway County through with unenclosed land or Common and over or across which highway 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 and the said highway was unprotected by Cattle guards or otherwise and by reason of the Exposed Condition of said Rail Road Horses and Cattle of the said Plaintiff were then and there upon said Road so being through over and across the said unenclosed lands or Common and Highway aforesaid, to wit at the County aforesaid and the said Defendant was also then and there possessed of a certain Locomotive and cars which was then and there upon said Rail Road of the said Defendant so as aforesaid on and across the said unenclosed lands Common and highway aforesaid.

Nevertheless the said Defendant then and there so Carelessly and improperly managed said Rail Road Locomotive and Cars that by and through the negligence

Careless and improper conduct of the said defendant the said Locomotive of the said defendants then and there struck wounded bruised destroyed and killed drivers of the said Horses and Cattle of the said plaintiff to wit one horse and one cow of the said Plaintiff, then and there being of great value, to wit of the value of two hundred Dollars and the said Horses and Cow 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 Defendants at and before the committing of the several grievances herein after mentioned was in possession of a certain Rail Road known as the Chicago St Paul & Fond du Lac Rail Road which for several years theretofore had been completed and in operation on and across a certain close owned and occupied by one Benjamin Perry situated in said County of McHenry the said defendants had then and theretofore and did then and there carelessly negligently improperly and contrary to the 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 herein after mentioned and by reason of such careless negligent improper and unlawful and exposed condition of said Road of the said defendant so carelessly negligently and improperly suffered and permitted by the said defendants, Certain Horses ^{and} Cattle to wit one

horse and one cow of the said Plaintiff of great value to wit of the value of two hundred dollars then and there being in said close of the said Benjamin Pressy and by and with the consent and permission of the said Benjamin Pressy did then and there contrary to the wish of the said Plaintiff escape from the said close and did then and there go upon said Rail Road of the said defendants and by reason aforesaid were then and there crushed destroyed and killed by a locomotive which was then and there being furiously driven by the said defendants 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 horse and cow then and there became and were of no use or value to the said Plaintiff to wit at the County aforesaid wherefore the said Plaintiff says he is injured by reason of the premises and has sustained damage to the amount of two hundred dollars and therefore he brings suit.

Churck & Kerr
Atty for Plff

(Endorsed) Filed Feb 19. 1858

W. H. Stewart Clerk

And thereafter to wit, on the Sixth day of March A.D. 1838
it being one of the days of the March term of said
Court the following among other proceedings were had
to wit:

Charles Badger } Case

^{vs}
Chicago St Paul & Fond du Lac Rail Road Company } And now comes the
Plaintiff by Church & Kerr
his Attorneys and the
Defendants being three

times solemnly called come not nor any one for them
but fail and make default herein which is ordered
to be entered of Records. And it is further ordered that a
jury come to enquire into and assess the said
Plaintiffs damages.

And thereafter to wit on the 9th day of March being
one of the days of the March term A.D. 1838 the following
among other proceedings were had

Charles Badger } Case

^{vs}
Chicago St Paul & Fond du Lac Rail Road Company } And now on this day
again comes the plaintiff
to this suit by his attorney

And also come a jury of twelve good and lawful men
to wit: Frank Hill, Elijah Williams, Samuel Garrett, Charles
Sallisbury, William Walkup, William C. Rider, William
Millard, Lyman Glep, John Ellison, Robert Turner,
Joshua Downst, Samuel Griffing, who being duly Empannelled
and sworn, and after hearing the evidence and argument
of Counsel retire to consider upon their verdict

And now again come the jury and for verdict
say, We the jury find and assess the plaintiff's damages

at One Hundred and Seventy Five Dollars

It is therefore Ordered and Considered that said Plaintiff have and recover against said Defendants his damages in the sum of One Hundred and Seventy Five Dollars which he hath sustained as also his costs and charges therein expended And that he have Execution therefor

And now come the Defendants By Joslyn their Attorney and prays an appeal, which is granted by the Court on condition that they Enter into Bonds in the penal sum of five Hundred dollars with Henry Smith as surety by the 19 Instant

And thereafter writ on the 17 day of March A.D. 1858 came the said Defendants and filed in the Office of the Clerk of said Court a Bond in the words and figures following to wit

Know all men by these Presents, that we Chicago St Paul & Fond du Lac Rail Road Company & Henry Smith of the County of McHenry in the State of Illinois are held and firmly bound unto Charles Badger in the penal sum of Five Hundred dollars lawful money of United States, for the payment of which well 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 the said Henry Smith and the Corporate seal of said Company attested by J. B. Redfield assistant secretary, this fifteenth day of March A.D. 1858 The condition of this ^{above} Obligation is such, that whereas the said Charles Badger did on the ninth day of March A.D. 1858 before the County for the said County of McHenry recover a judgment against the above Bounden Rail Road

For the sum of One Hundred & Seventy five dollars, from
which judgment the said Rail Road Company have taken
appeal to the supreme Court and State of Illinois.

Now, if the said Rail Road Company shall prosecute this
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 (Corporate Seal) 17 day of April 1858.

Wm. Stewart Clerk

(Endorsed) Filed March 17, 1858

Wm. Stewart Clerk

State of Illinois
McHenry County J. William W. Stewart Clerk of the County
Court in and for said County hereby certify
the above to be a true and correct copy of the records in the case
of Charles Badger against the Chicago St Paul & Fond du Lac
Rail Road Company as appears upon an examination of the
records and papers on file in my office

Witness Wm. Stewart Clerk of the said Court and
the seal thereof at my office in Woodstock the
tenth day of April A.D. 1858

Wm. Stewart Clerk

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Chicago & North
Lake Road Company
Appellant

¹⁰⁷
Charles Baer
Appellee

Filed April 24, 1858
L. Leland
Clerk

Rs. p. 2

Supreme Court of the State of Illinois
The Chicago St Paul & Northern Pacific
Rd & Lake Superior Rail
Road Company } 3^d Grand Division
vs
Charles Badger } Appeal from Mr Henry

It is agreed and stipulated by the parties to the above cause by their respective attorneys H W Blodgett for the Appellant and Church & Kerr for the Appellee that the appeal taken in this cause be dismissed at the costs of the Appellant and that a procedendo issue to the Court below

H W Blodgett
Atty. for Appellant
Church & Kerr
Atty. for Appellee

Suprem Court

The Chicago St Paul
& Fond du Lac R.R. Co.
vs

Charles Badger
appellant.

Stipulation

Filed May 21, 1858.
L. Island Ck.

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Chicago St Paul
Mon. Dubuc & P. Co.
vs
Charles Buckner

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1858