

Supreme Court of Illinois

Third Grand Session

April Term 1861.

The City of Chicago

Plaintiff in Error.

vs

Mayor & City Administration &c

Defendant in Error.

Points for Plaintiff in Error

The action is brought to recover damages for the death of Patrick H. Army occasioned by alleged negligence of the City.

The action could not be maintained at Common Law and is sustainable only under the Statute - "An Act requiring compensation for causing death by wrongful act neglect or default" approved Feb'y 12. 1853. 2 People's Statutes 1243.

The Declaration does not conclude "Entha formam statute", nor does it refer in any manner to the Statute nor show that the Action is founded upon it.

The Well settled rule of Pleading is that in an action founded on a Statute, giving a new Remedy, where none existed at Common Law, the Declaration ought to show that the Plaintiff derives his Cause of Action from the Statute.

Chitty / Pleading p 372 / says
"Where the act or omission which is the foundation of the suit was not an offence at the common law it is necessary in all cases to conclude against the form of the Statute or Statutes or to show at least that the Declaration is founded on the Statute by introducing the words de placito transgressionis et contemptus contra formam statute"

*** The omission of the words against the form of the Statute or Statutes when necessary or proper to be inserted is fatal even after

Verdict. *Baxter v Martin* 5 Greenl. 76.
Peabody v Hoyt 10 Mass. 36
Crop v United States 1 Gall. 26
Leas v United States id 257.
Maskell v Moody 9 Pick. 142.
Nichols v Squire 5 Pick 168
Perce v Harrington 1 Hawk. 142

In *Bailehamstead v Parsons* 3 Conn
1. The Court says — "Every offence
for which a party is sued or indicted
is supposed to be prosecuted as an
offence at Common Law unless the
prosecutor by reference to a Statute
shows that he means to proceed upon
it and without such express reference
if it be no offence at Common Law, the
Court will not look to see if it be
an offence by Statute. See *Clark*
2 East 340. No precise form of
allegation is required although the
one supposed to be necessary is the
most usual. Now, the plaintiffs have
clearly shown that their claim is
on the Statute. They have referred to
it by its title which they have recited
and they have averred that by reason

of their allegations and by force of the Statute they have a right to recover.

In Lee & Clark Lawrence, Justice intimates an opinion that these expressions are sufficient and, on this head, I think there can be no reasonable doubt.

The Statute of 1853 is substantially penal. Upon negligence causing death it inflicts damages as a penalty.

On this point the Supreme Court of Connecticut in a late case (1886) say -

"Modern legislation, for reasons connected with the public good, has in special cases, and, for the benefit of particular persons and to limited amounts, created a liability for injuries resulting in death when caused by misconduct of a certain specified character. But so far is this from being a recognition of any common law right or principle that the extremely artificial quality of such enactments furnishes the highest proof that they substantially create a public offence with the sanctions

of a suitable penalty, which is to be
appropriated to

Conn. Mutual Life Ins. Co v New
York & New Haven R. R. Co 25 Conn.
R. 265.

Precedents of Declarations in
cases like this may be found
Thompson v Bryan & Manning
Granger & Scott 116 - 65 Eng. Com Law R
114.

Lucas v N.Y. C R R Co 21 Barbours
245.

In this case the Declaration does
not cite, allude to, or in any way refer
to the Statute. To say for it, the ad
damnum includes in the sum of Five
thousand Dollars, from which the inference
would rather be that the action is not
based upon the Statute, inasmuch
as by its express terms the recoverable
amount is limited to Five thousand
Dollars.

Geo. L. L. King
City Attorney -

Miscellaneous
papers, bills
&c. &c.
1857

Supreme Court of Illinois
Third Grand Division
April Term 1861.

— " —
The City of Chicago
Plaintiff in Error

vs
Mary C. Cloney administratrix
of Patrick B. Cloney deceased
Defendant in Error.

— " —
Abstract of the Record.

Declaration — Mary Cloney as administratrix sues for herself being widow and for Sarah Cloney only child and heir at law of Patrick B. Cloney, and further alleges that on the 4th of December 1857 there was a certain public draw-bridge, called the Wells Street bridge, in the City of Chicago and for public use — that the City of

wrongfully and negligently opened
the draw of said bridge and negligently
permitted it to remain open, in the night
time, without placing any proper
signal light or barrier at or near
the draw to show it was open or
to prevent persons from falling there-
from, and, in consequence of such
negligence Patrick Avey, then
passing in the night time and using
proper care and caution as to
passing the bridge, fell from the bridge
and was drowned (in the caps river)
and died, and thereby said Mary
Avey & Sarah Avey were deprived
of the law assistance and support
of said Patrick Avey.

Second Count Substantially similar to first
stating the opening of the bridge without
giving sufficient and timely warning
of the opening and fixing no light
or barrier &c

Third Count Substantially similar to the
first, averring that the City allowed
the bridge to be and to remain in

in an unsafe and improper condition
dangerous to persons passing &c
Damages \$10,000.00

Plea by the City of General
Issue

Octo. 3 & 4 Trial and verdict
of the jury finding defendant guilty and
awarding damages at one thousand
dollars.

Motion by City for New trial and
in arrest of judgment on said verdict.

Nov 10. Court overrules motion in
arrest of judgment and for a
new trial - Judgment is entered
for the plaintiff on the verdict aforesaid.
Defendant excepts to the
decision of the Court overruling said
motions.