

12728

No. _____

Supreme Court of Illinois

Chicago & Rock Island

R. R. Co.

vs.

Whipple

~~32~~ 32

The Chicago and North Western
Rail Road Company
vs
Wm W. Whipple

32

1859

12728

1859

Prepared

It is remembered that heretofore to wit: on the thirtieth day of July A. in the Year of our Lord one thousand eight hundred and fifty six there was filed in the office of the clerk of the Circuit Court of the County of Peoria in the State of Illinois the following ^{& Record with a certificate thereof} Summons, Certified transcripts and Appeal ^{in the words and figures following} to wit:

Summons.

"State of Illinois, ss.
La Salle County.) The People of the State of Illinois to any
Constable of said County Greeting: You are hereby Commanded to sum-
mon The Chicago & Rock Island Rail Road Company to appear before me,
at my office in La Salle on the 30th day of September 1854 at 9 o'clock
A. M. to answer the Complaint of Warner H. Whipple for a failure to pay
him a certain demand not exceeding one hundred dollars and to
make due return as the law directs. Given under my hand and seal
this 19 day of September A.D. 1854.

Oliver Putnam J. C.

[Endorsed as follows -]

"B" W. H. Whipple vs Chicago & R. I. R. Co.

Demand \$100.

Justice's Fees .56

Served the within Summons this 25th day of September A.D. 1854 by leaving
a true copy of the same with George H. Buck an Agent of the Chicago
& Rock Island Rail Road Company, the President of said Company
not residing in my County J. B. Cogswell, Const.

[Certified transcript]

Certified Transcript	Warner H. Whipple vs	Sept 17th 1854 Summons issued returnable on the 30th inst. 9 o'clock A. M. given to J. B. Cogswell, Const.
	The Chicago & Rock Island Rail Road Company	Demand \$100. also made copy of summons
Dem. Costs		Returned served this 25th day of Sept. 1854 Cogswell Const.
my costs		suit called at the appointed hour. Parties appeared
Jury		by L. L. Hough for Jeff and C. A. Glover for Defs, 2 Deane's docket introduced in evidence
Costs		Judgment for Jeff for \$77.20 and costs.
Costs		State of Illinois J. P. I hereby certify that the above is a correct transcript from my
	La Salle County	docket with papers belonging to same A. Putnam J. C.
	[Endorsed] "B" Whipple vs R. I. Co. transcript	Filed Nov. 22. 1854 J. B. Cogswell, Const.

Certified
Transcript

[Certified transcript]
Warren W. Whipple } Justice's Court
vs }
Chicago & Rock Island } Summoned do. Sept 19th 1854 Returnable on
Rail Road Company } the 30th day of Sept. 1854 at 9 o'clock A.M.
Return served by R. S. Cogswell Constable by leaving
copy of Summ with George W. Buck Sept 25th 1854
Plff by D. I. Hough appeared and declared on a Judgment rendered
by Nicholas Duncan J.P. November 13th 1853 for seventy one dollars 20
cts Plff offered in evidence the docket of said Duncan to which
the deft by their atty J. O. Glover objected Court overruled objection to
which the deft excepted It is adjudged by the court that
the Plff recover & have judgment for the sum of seventy one dollars
dollars 21 cents besides costs & that he have execution therefore
State of Illinois, }
La Salle County, } I hereby certify the foregoing to be a true transcript
of the proceedings & Judgmt in the above cause. Given under my hand
& seal this 30th day of September A.D. 1854.
O. H. Putnam J.P.

[Endorsement]
"Warren W. Whipple vs Ch & R. I. R.R. Co. Transcript "G"
Filed October 14, 1854. P. Lindley clk.

[Appeal Bond.]
Know all Men by these presents, that we The Chicago & Rock Island
Rail Road Company by their President Henry Farnam & J. O. Glover in the
State of Illinois, are held and firmly bound unto Warren W. Whipple in the penal
sum of one hundred & fifty dollars lawful money of the 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 our hand
and seals this 14th day of October A.D. 1854.
The Condition of the above obligation is such, that whereas the said Warren W.
Whipple did on the 30th day of September A.D. 1854 before O. H. Putnam a
Justice of the Peace for the said county of La Salle recover a judgment against
the above bounden Chicago & Rock Island Rail Road Company for the sum
of seventy one dollars & twenty one cents besides costs from which judgment the said
Rail Road Company has taken an appeal to the circuit Court of the county of
La Salle aforesaid, and State of Illinois, Now if the said Chicago & Rock
Island Rail Road Company shall prosecute their appeal with effect, and shall pay

Whatever judgment may be rendered by the Court upon decision or trial of said appeal, then the above obligation to be void; otherwise to remain in full force and effect.

Approved before ^{by} me at my office,
this 14th day of October 1854
P. Lindley, clerk

Henry Farnam, Post
attest N. G. Elwood Sec
J O Glover



(Record)

"State of Illinois,
LaSalle County ss} Pleas before the Honorable Edwin S. Leland
Presiding Judge of the Ninth Judicial Circuit of the State of
Illinois, at a circuit court commenced and held in and for the
County of LaSalle and State of Illinois at the Court House in
Ottawa on the Second Monday of November in the year of our Lord
one thousand eight hundred and fifty four and of the Independence
of the United States the Seventy eighth

Present

The Honorable Edwin S. Leland	Presiding Judge
Phil. Lindley	Clerk
W. L. McKee	State Attorney
Richard Thorne	Sheriff

On Tuesday November 14th 1854 the same being one of the days of the
November Term of said Court for the year 1854 the following order was
entered of Record, viz:

Warren W. Whipple

vs

The Chicago and Rock
Island Rail Road Company

Appeal.

This day D. L. Hough enters the
appearance of the Plaintiff.

And afterwards to wit: on Tuesday November 21st the same being
one of the days of said November Term the following further order was
entered of record in said cause to wit:

Warren W. Whipple

vs

Chicago Rock Island Rail Road Company

Appeal

This day the Plaintiff by Hough his

Attorney Moves the Court to dismiss this appeal for want of an appeal bond, which Motion is overruled by the Court

On the 24th day of November the same being also one of the days of said November Term the following further order was entered of record in said Cause, to wit:

"Warren W. Whipple }
vs } Appeal
Chicago and Rock Island }
Rail Road Company } It is ordered by the Court that a certiorari
issue to the Justice of the Peace from whose decision this appeal was
taken to send up all the papers herein."

On Friday December 5th the same being one of the days of said November Term 1864 the following Matter was made and entered of record in said Cause, viz:

"Warren W. Whipple }
vs } Appeal
Chicago and Rock Island }
Rail Road Company } This day the defendants by Glover &
Cook their attorneys Move the Court for a continuance herein."

December 11th 1864 the same being one of the days of said November Term the Motion to continue was disposed of in the words and figures following, viz:

"Warren W. Whipple }
vs } Appeal
The Chicago and Rock }
Island Rail Road Company }

This day again comes the Plaintiff by
Lough his attorney & the defendants by Glover & Cook their attorneys,
and after hearing the arguments of counsel the Court overrules
defendants Motion for a continuance."

And finally on Wednesday June 1st 1865 the same being one
of the days of the May Term of said Court for the year 1865 the
following final order was entered of record in said Cause, viz:

"Warren Kieppe

vs
The Chicago and Rock
Island Rail Road Company

Appeal

It is ordered by the Court that a change of venue be had herein to Peoria County Circuit Court, the Presiding Judge of this Court having been of counsel in the subject matter of this cause.

State of Illinois
Laudelle County,  J. J. Smith, Clerk of the Circuit Court in and for said County, do hereby certify that the above and foregoing record in the above entitled cause contains all the records and that they are a true, full, perfect and complete copy as the same appear of record in my office, and further that the papers herewith transmitted marked from letter A to H inclusive are all the papers on file in said cause in my office -



In Testimony whereof I have hereunto set my hand and the Seal of said Court at Alton this 2^d day of July A.D. 1856
J. J. Smith Clerk.

And afterwards to wit: on the Seventeenth (17th) day of November in the Year of our Lord one thousand eight hundred and fifty six there was filed in the office of the Clerk of said Circuit Court of Peoria County in said cause a summons which with the examinations theron also a transcript which with the certificate thereto attached ^{are} in the words & figures following to wit:

[Summons]

"State of Illinois,
Laudelle County, }
To the People of the State of Illinois To any
Constable of said County, Greeting: You are hereby commanded to
Summon the Chicago and Rock Island Rail Road Company
to appear before me at my office in Laudelle in said County on the
12th day of November 1856 at 9 o'clock A.M. to answer the complaint

I Warner W. Whipple of a plea of trespass on ~~and~~ personal property
to the damage of the said Warner W. Whipple one thousand
dollars. And have you then and there this precept
Given under my hand and seal, this 4th day of November 1853,
Nicholas Duncan Esq.

(Endorsements)

"Summons - W. W. Whipple vs the C & N. W. R. Co -
Demand \$100.00

Costs due \$1 1/4 -

Executed the within summons by leaving this 7th day of November
A.D. 1853 a true copy of the same with George H. Buck an agent
of said Company the President of said Company not residing
in my County R/B Cogswell
Constable for Co "

(Transcript)

"Warner W. Whipple 1853. 4th day of November
vs Summons issued returnable on
the Chicago & Rock Island the 12th day of November instant
Rail Road Company 9 o'clock A.M. delivered to R/B Cog
Justice fees = well Constable -

Docket entry 12 1/2

Summons 18 3/4

Copy 18 3/4

Subj. by file 18 3/4

Index 18 3/4

Enty judge 25

Manuscript 25

Certificate ~~25~~ 25

Manuscript 25

Certificate 25

Certificate

County clerk 3 1/2

\$250

Constable's fee

On summons 60

Demand. Trespass on Personal Property
damages \$100.00

1853. 12th day of November, said
summons returned endorsed "Executed
the within summons by leaving this 7th day
of November 1853 a true copy of the
same with George H. Buck an agent
of said Company, - the President of said
Company not residing in my county
(Signed) R/B Cogswell Constable -

The plaintiff appeared at the
time appointed for trial - an appear-
ance was entered on behalf of said
Rail Road Company, Charles R.
Brown, Paul McDonald and Thomas
Purns testified on behalf of said plain-
tiff and having heard the proofs and
allegations ^{said} plaintiff, it was adjudged and

Plaintiff's fees
On July 37 1/2

Witness fees
Charles W. Mann 50
Paul McDonald 50
Timothy Brum 50

Admitted that the Plaintiff have and recover of said Chicago & Rock Island Rail Road Company the sum of twenty one dollars & twenty cents damages and three dollars and sixty cents costs.

Order of Circuit Court - dated December 27th 1857 to send up a transcript of this judgment with the proceedings thereon and all things

touching the same &c. done by Sheriff - and transcript sent up accordingly - 1856, 14th day of November transcript certified delivered to D. L. Hough Esq.

State of Illinois } ss.
Ladelle County } I, the Subscriber a Justice of the Peace in and for said county do hereby certify the foregoing to be a full and perfect transcript from my docket of the proceedings and judgment herein in the above entitled cause. Given under my hand and seal this 14th day of November 1856.
Nicholas Duncan J. P. Seal

[Certificate attached]

State of Illinois } ss.
Ladelle County } I, Samuel W. Raymond Clerk of the county court in and for said county, do hereby certify, that Nicholas Duncan Esquire, whose name appears to the annexed transcript was on the 14th day of November A.D. 1853 & from that time until the date hereof & is now an acting Justice of the Peace in and for said county duly commissioned and qualified, and, as such, full faith and credit is and of right ought to be given to all his official acts.

L. S.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Ottawa this 14th day of November A.D. 1856.
S. W. Raymond Clerk.

And afterwards to wit: on the twenty seventh day of February in the year of our Lord one thousand eight hundred and fifty seven there was filed in the office of the Clerk of said Circuit Court of said County in said cause a certified transcript in the words and figures following, to wit:

"1270 Warner W. Whipple

The Chicago & Rock
Island Rail Road
Company

1853 - 4th day of November

Summons issued returnable on the 12th day
of November instant 9 o'clock A.M. delivered
to R. B. Cogswell constable

Demand - trespass on personal property,
damages \$100.00

Justice's fees

Docket entry 12 1/2

Summons 18 3/4

Copy - 18 3/4

Subp. for self 18 3/4

3 oaths 18 3/4

Entering judgment 25

Manuscript 25

Certificate thereof 25

\$162 1/2

Constable's fees

On summons 60

Subp. fees on subp. 37 1/2

Witness fees

Charles P. Mann 50

Paul McDonald 50

Timothy Burns 50

1853. 12th day of November said summons returned -
endorsed "Executed the within summons by leaving
this 7th day of November A.D. 1853, a true copy
of the same with George W. Buck an agent of
said company - the President of said company
not residing in my county (signed)
R. B. Cogswell, Constable

The plaintiff appeared at the time appointed
for trial - No appearance was entered on
behalf of said Rail Road Company, Charles H.
Mann, Paul McDonald & Timothy Burns test-
ified on behalf of said plaintiff and having
heard the proofs and allegations of said
plaintiff it was adjudged and determined
that said plaintiff have and recover of said
Chicago and Rock Island Rail Road
Company the sum of seventy one dollars
and twenty cents damages, and three dollars
and sixty cents costs.

Order of Circuit Court, Dated December 27th 1854
to send up a transcript of this judgment - with the
proceedings thereon, and acc. things touching the same, &c.
Served by Sheriff and transcript sent up accordingly

State of Illinois, ss.
LaSalle County,

I the subscriber a Justice of the Peace in
and for said county do certify, that the above transcript is
a full and perfect copy (from my docket) of the proceedings
and judgment before me in the above entitled case fully and
exactly as in my custody they now remain. Given under my hand
& seal this 5th day of April 1855.

Nicholas Duncan J.P. LaSalle
Endorsed "Filed April 24, 1855. J. B. Mack, clerk."

Norren W. Whipple
vs
Chicago and Rock Island

Appeal

State of Illinois
La Salle County, Jo.

I, John F. Nash Clerk of the circuit court
in and for said county and state do hereby
certify that the justices Transcript herewith transmitted marked H is one
of the papers belonging to the above entitled cause & should have been
transmitted to the Peoria County Circuit Court with the balance of the papers
in the above entitled cause where the change of venue was had from the
La Salle County circuit court



In Testimony Whereof, I have hereunto set my hand
and the seal of said court at Ottawa this 26th day
of February A.D. 1857

J. F. Nash, clerk

Endorsed "Filed 27, 1857 Enoch P. Sloan, clerk."

Proceedings at a term of the Circuit Court begun and held at the
Court House in the City of Peoria in and for the county of Peoria in the State
of Illinois on the third Monday of November in the year of our Lord one
thousand eight hundred and fifty six, it being the seventeenth day
of said month. Present the Honorable Oliver N. Powell Judge of the
Sixteenth Judicial Circuit in the State of Illinois, David D. Stone Sheriff
and Enoch P. Sloan, clerk, to wit:

Monday December 2nd A.D. 1856.

Norren Whipple

Appeal from S.P.

Chicago and Rock Island Rail Road Company.

is continued to next term of court

My agreement of fees in this case

X
ran Whipple and he denies the appeal and the Court being
fixed in the premises sustained said motion and ordered that
writ of procedendo be issued thereon, Whipple came
defendant in People v Pratt its attorney and prayed an app
to the Supreme Court of this State, which was allowed on a
dilation that the said Chicago & Rock Island Rail Road Com
pany file a bond with the clerk of this Court, in the pen
sum of three hundred dollars, conditioned as the law directs.
Washington Cooke as security, said bond to be filed with said
Clerk within thirty days from this date.

And on the same day, to wit: the Seventh day of December in the
Year of our Lord one thousand eight hundred and fifty seven
there was filed in the office of the clerk of said circuit court of
Peoria County in said Cause the defendants Bill of Exceptions
in the words and figures following to wit:

"Warren W. Whipple

vs

The Chicago & Rock
Island Rail Road Co.

In the Circuit Court of Peoria County Ill.

Be it remembered that on the trial of
this Cause, the plaintiff to maintain the issue on his part
offered in evidence the transcript of a judgment of Warren W.
Whipple vs Chicago & Rock Island Rail Road rendered Nov.
12, 1853 which said transcript is as follows

"Warner W. Whipple

vs

The Chicago & Rock Island
Rail Road Company

1853, 4th day of November

Summons issued returnable on the 12th
day of November instant 9 o'clock A.M.
delivered to R. B. Cogswell constable

Justice fees
 Docket entry 12 1/2
 Summons 18 3/4
 Copy 18 3/4
 Subp for Jeff 18 3/4
 Oaths 18 3/4
 Entry Judgt 25
 Transcript 25
 Certificate there to 25
 Transcript 25
 Certificate 25
 Certificate of
 County Clerk &c 37 1/2
 \$2.50

Constables fees
 On Summons 60

Plaintiffs fees
 On Subp 37 1/2

Witness fees
 Charles N. Brown 50
 Paul McDonald 50
 Timothy Burns 50

Demand, Trespass on Personal Property
 — Damages \$100.00
 1853, 12th day of November, said
 Summons returned endorsed "Executed the
 within Summons by leaving this 7th day of
 November 1853 a true copy of the same with
 George H. Busk an Agent of said Company,
 — the President of said Company not residing
 in my county (Signed) W.B. Cogswell Crickable.

The Plaintiff appeared at the time ap-
 pointed for trial — no appearance was entered
 on behalf of said Rail Road Company —
 Charles N. Brown, Paul McDonald and
 Timothy Burns testified on behalf of said
 Plaintiff, and having heard the proofs and
 allegations of said Plaintiff, it was adjudged
 and determined that said Plaintiff have
 and recover of said Chicago & Rock Island
 Rail Road Company the sum of twenty and
 dollars & twenty cents damages and three dollars
 and sixty cent costs. Order of Circuit

Court — dated December 27th 1854 to send
 up a transcript of this judgment, with
 the proceedings thereon, and all things
 touching the same &c, Served by Sheriff
 and transcript sent up accordingly —

1856, 14th day of November transcript certified

delivered to D. L. Hough Esq

State of Illinois } ss.

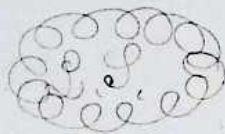
La Salle County } I, the subscriber a Justice of the Peace in
 and for said county, do hereby certify the foregoing to be a full and
 perfect transcript from my docket of the proceedings and judgment
 before me in the above entitled cause, Given under my hand and
 seal this 14th day of November 1856.

Nicholas Duncan Lt. Seal

State of Illinois } ss.

La Salle County } I, Samuel W. Raymond Clerk of the County Court
 in and for said county, do hereby certify that Nicholas Duncan
 Esquire whose name appears to the annexed Transcript was on the 14th

day of November A.D. 1853 & from that time until the date hereof & is now an Acting Justice of the Peace in and for said county, duly commissioned and qualified, and, as such, full faith and credit is, and of right ought to be given to all his official acts



In Testimony whereof, I have hereunto set my hand and affixed the Seal of said court, at
Ottawa, this 14th day of November A.D. 1856.
S. W. Raymond Clerk "

He then offered in evidence the Petition, Record, Certiorari, Bond in the Suit of the Chicago & Rock Island Rail Road Company vs Warren W. Whipple of this term, and the judgment and order of the court in said cause dismissing said certiorari which are as follows

I do remember that a certain writ in the last day of July in the year of our Lord one thousand eight hundred and fifty three was filed in the office of the clerk of the Circuit Court of the County of Peoria in the State of Illinois a Petition for Certiorari Bonds for Certiorari Summons and List of Certiorari which are in the words and figures following to wit:

[Petition for Certiorari]

"State of Illinois

La Salle County

vs Circuit Court thereof

To Nov. Term A.D. 1854

To the Honble Edwin S. Leland Judge of the 9th Judicial Circuit

Your petitioner the Chicago and Rock Island Railroad Company respectfully represents, that they are an incorporated Company under and by virtue of an Act of the General Assembly of the State of Illinois entitled An Act to incorporate the Rock Island and La Salle Rail Road Company approved February 27th 1847, And an Act to amend an Act to incorporate the Rock Island & La Salle Rail Company approved February 7th 1851, That they were so incorporated and were acting, and constructing and operating their Rail Road from Rock Island to Chicago by contracts in the year A.D. 1853, That on the 4th day of November A.D. 1853 one Warner W. Whipple procured a summons to be issued by one Nicholas Duncan against your petitioner at the suit of said Whipple, which summons was as follows in substance

State of Illinois,

La Salle County,

The People of the State of Illinois

To any Constable of said County, Greeting:

You are hereby Commanded to summon the Chicago and Rock Island Rail Road Company to appear before me at my office in La Salle in said county on the 21st day of November 1853 at 9 o'clock A.M. to answer the Complaint of Warner W. Whipple of a plea of trespass on personal property to the damage of the said Warner W. Whipple one hundred dollars and have you there then this precept. Given under my hand and seal the 4th day of November 1853

Nicholas Duncan C.J.

Your Petitioner further shews that no knowledge of any of said proceedings or of said judgment ever came to your Petitioner until more than six months from the rendition of said judgment. Your Petitioner shews that said George H. Buck was not at any time during the year 1853 the agent of Your Petitioner. Nor was a service of summons on him any notice to Your Petitioner, whatever and the first notice your Petitioner had of said judgment or proceedings was a service of a summons upon your Petitioner the foundation of which was the judgment recited first above

For As much as Your Petitioner hath sustained wrong and is manifestly Aggrieved and injured by the errors and illegal proceedings of said Justice of the Peace and for as much as your Petitioner has had no opportunity to take an appeal in the ordinary way or to sue out a writ of certiorari under the statute, Your Petitioner prays that a writ of certiorari according to the course of the Common Law be issued out of and under the seal of this Honor Court directed to said Nicholas Duncan Justice as aforesaid Commanding him to certify to this Court a statement under his Hand & Seal of the proceedings had before him in said suit and a statement of the claim of the plaintiff which was adjudicated upon before him, stating particularly what acts of trespass the plaintiff claimed to recover for & whether for the trespass of your Petitioner as a body or for the acts of their servants & agents, and that this Court will review the said proceedings of the said Justice and correct the errors therein and that said erroneous judgment may be annulled set aside and wholly for nothing esteemed

The Chicago and Rock Island
Rail Road Company

by Chumacero Cook
their attys

State of Illinois
La Salle County

B. C. Cook being first duly sworn saith that he is the agent and attorney of the Chicago and Rock Island Rail Road Company. That he has diligently sought to ascertain the truth of the facts stated in the above petition, that the statements of said petition are true to the best of his knowledge information and belief, the information in relation to the agency of George H. Buck was derived from said Buck. Affiant believes that no agent of said Rock Island Rail Road Company could from the nature of the case have personal knowledge of all of the facts stated and affiant believes that no agent of said

Has more numerous or correct sources of information than affiant in relation to the statements of the petition. Affiant states that he is credibly informed & verily believes all of the statements of said petition to be true.
B. C. Cook

Subscribed & Sworn to
this 11 Dec, 1854

P. Lindby clk. "

Endorsed "Filed Dec, 14th 1854 P. Lindley clk."

[Bond]

"I know all & Men by these presents that are the Chicago and Rock Island Rail Road Company as principal & B. C. Cook as surety are held and firmly bound unto Warren H. Whipple in the penal sum of one hundred & fifty dollars lawful money for the payment of which well & truly to be made we bind ourselves, our heirs, executors and administrators jointly severally & firmly by these presents

Sealed with our Seals & dated at Ottawa this 15th day of December A. D. 1854

The Condition of this obligation is such that whereas the said Warren H. Whipple did on the 21st day of November A. D. 1853 before Nicholas Duncan a Justice of the Peace in & for La Salle County Illinois recover a judgment against the said Rail Road Company for the sum of twenty one dollars & twenty cents damages beside costs and whereas the said Rail Road Company have presented a petition to the Circuit Court of said county alleging that said Justice had no jurisdiction to render the judgment aforesaid & whereas said Circuit Court has awarded a writ of certiorari to said Justice requiring him to certify to said court a statement of said cause & of his proceedings therein to the end that the same may be inspected & reviewed in said circuit court and the errors therein corrected

Now if said Rail Road Company shall present said writ of certiorari with effect without delay and shall pay said judgment with all damages interest & costs in case the same shall be affirmed by said circuit court then this bond to be void otherwise in force

The Chicago & Rock Island R.R. Company

By Jno: M. Guinis Jr

B. C. Cook att Sec



[Certiorari]

"State of Illinois
La Salle County

vs. The People of the State of Illinois
To Nicholas Duncan Petitioner.

Whereas it has been represented by the Petition and Affidavit of the Chicago & Rock Island Rail Road Company that in a certain suit lately depending before You wherein Warren W. Whipple was plaintiff and the said Chicago & Rock Island Rail Road Company were defendants and wherein judgment was rendered in favor of said Whipple and against the said Chicago & Rock Island Rail Road Company that manifest injustice has been done to the said Chicago & Rock Island Rail Road Company in the rendition thereof as aforesaid, And we being willing for certain causes in said petition stated & set forth that the said judgment and the matters and things in controversy between the said Warren W. Whipple and the said Chicago and Rock Island Rail Road Company should be re-examined in the Circuit court of said County, Do hereby Command and require you that You do forthwith without excuse or delay certify to the said Circuit court a transcript of the said judgment with the proceedings thereon and all things touching the same by whatever names the parties aforesaid or any or either of them are, or is, set down, truly, fully and exactly, as in your custody they now remain under your hand and seal together together with this writ, that further thereof the said Circuit court may do, that which of right ought to be done.



Witness Philo Lindley Clerk of said circuit court and the Seal of said court at my office in Ottawa this 27th day of December A.D. 1854
P. Lindley Clerk."

(Endorsed)

"Executed this writ by reading the same to Nicholas Duncan and by leaving a copy of the same with him Jan'y 12th 1855. J. Warner, Shff."

[Record.]

State of Illinois
La Salle County

vs. Has before the Honorable Edwin S. Leland
Presiding Judge of the Ninth Judicial Circuit
of the State of Illinois at a circuit court commenced and held in and
for the County of La Salle and State of Illinois at the Court house in Otta
wa on the second Monday of November in the year of our Lord one

Thousand eight hundred and fifty four and of the Independence of the United States. the seventy eighth
Present

The Honorable Edwin S. Leland	Presiding Judge
Philo Lindsey	clerk
W. H. L. Wallace	State attorney
Richard Thorne	Sheriff

On Monday the 18th day of December 1854 the same being one of the days of the said November Term of said Court the following order was entered of Record in said Court, to wit:

"The Chicago & Rock Island

Rail Road Company

vs

Warren W. Whipple

Appeal by certiorari

This day came the plaintiffs by Cook and Chumaceo their attorneys and the defendant by Hough his attorney and the plaintiffs Counsel move the Court for a common law writ of certiorari to issue herein, and after hearing the arguments of counsel, it is ordered that said writ issue upon petitioners filing a bond herein payable to the defendant in the penal sum of one hundred dollars and fifty dollars with Bruton C. Cook as security."

And Afterwards to wit: on Thursday November 22^d 1855 the same being one of the days of the November Term of said Court for the year 1855, the following further order was entered of Record in said Cause, viz:

"The Chicago & Rock Island

Rail Road Company

vs

Warren W. Whipple

Appeal by certiorari

On Motion of the plaintiffs by Sheer & Cook & Chumaceo their attorneys, the Justice of the Peace from whose decision this appeal was taken or his successor in office, is ruled to return to this Court the Cause of action on which this suit was founded together with all the records remaining before him appertaining to this cause."

And afterwards on Wednesday June 14th 1856 the same being one of the days of the May Term of said court for the year 1856 the following final order was made in said cause, to wit:

"The Chicago and Rock Island

Rail Road Company

vs
Warren Whipple

Appeal by petitioner

It is ordered by the court that a change of venue be had herein to Peoria County Circuit court, the Presiding Judge of this court having been of counsel in the subject matter of this cause."

State of Illinois

La Salle County, ss.

I, John F. Nash Clerk of the Circuit Court in and for said County and State do hereby certify that the above foregoing Companies a true, full, perfect and complete record of all the orders of Court in the above entitled cause as the same appear of record in my office, and that the papers herewith transmitted marked from letter "A" to "D" inclusive are all the papers in my office on file in said cause.



In Testimony whereof I have hereunto set my hand and the Seal of said court at Ottawa this 7th day of July A.D. 1856.

J. F. Nash, clerk."

Proceedings in the Circuit court at a term thereof began and held in the Court house in the City and County of Peoria, in and for said County and State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty seven, it being the sixteenth day of said month. Present the Honorable Elihu W. Powell, Judge of the 16th Judicial Circuit in the State of Illinois Francis H. Smith Sheriff and Enoch P. Sloan clerk, to wit:

Monday December 7th A.D. 1857

Warren Whipple,

Appeal from La Salle

Chicago & Rock Island

Rail Road Company

This day this cause came on to be heard upon the motion of Plaintiff by Whipple his attorney, to quash writ of certiorari herein and to dismiss this appeal, and the court being satisfied



in the premises sustained said motion, and ordered that a writ of process be issued herein. Thereupon came the defendant by Joseph R. Pratt its attorneys and prayed an appeal to the Supreme Court of this State, which was allowed, on condition that the said Chicago & Rock Island Rail Road Company file a bond with the clerk of this Court, in the penal sum of three hundred dollars conditioned as the law directs with Washington Cockle as security, said bond to be filed with said clerk within thirty days from this date.

This was all the evidence in the cause, the Court gave judgment for the plaintiff for ninety three dollars and nine cents, and the defendants then and there excepted to the opinion of the Court and requested the Court to sign and seal this bill of exceptions which is done
C. W. Powell *Seal*

And afterwards to wit: on the nineteenth day of December in the year of our Lord one thousand eight hundred and fifty seven there was filed in the office of the clerk of the Circuit Court of said County of Ponia in said Cause the Defendants Bill of Exceptions in the words and figures following, to wit:

"I now all Men by these presents that we the Chicago & Rock Island Rail Road Company as Principals and Washington Cockle as Security are held and firmly bound unto Warren H. Whipple in the penal sum of two hundred dollars for which payment well and truly to be made and done we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, witness our hands and seals this 19th day of December A.D. 1857.

The Condition of the above bond is this, (Whereas on the tenth day of December A.D. 1857 in the Circuit Court of Ponia County Illinois the above named plaintiff recovered a judgment against the said Chicago and Rock Island Rail Road Company for the sum of ninety three ^{and 00} dollars from which judgment the said Company has prayed an appeal to the Supreme Court and which appeal has been allowed by said Circuit Court - Now if the said defendants shall duly prosecute their said



And on the sixth day of March in the Year of our Lord one thousand eight hundred and fifty seven there was filed in the office of the Clerk of the said Circuit Court of Peoria County in said Cause the defendants Motion in the words & figures following to wit:

"Peoria Circuit Court
March Term A.D. 1857

Chicago & Rock Island
Rail Road Company

vs
Warren Whipple

Plaintiff

Defendant moves the Court

to quash writ and dismiss said suit for reasons

1. No Common law writ of Certiorari lies in such case
2. The facts appearing on the face of the petition in said Cause do not authorize the issuing of any such writ
3. The transcript and papers on file show that the justice decided correctly in said Cause
4. By the return of said justice it does not appear that said justice has committed any error in law
5. The justice had jurisdiction, and did not proceed illegally, so that no such writ lies

Manning & Merriman
Attys for deft

Proceedings in the Circuit Court at a term thereof begun and held in the Court House in the City and County of Peoria in and for said County and State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty seven, it being the sixteenth day of said month, Present the Honorable Elihu S. Powell judge of the 16th Judicial Circuit in the State of Illinois - Francis W. Smith Sheriff and Crook P. Hoan Clerk, to wit:

Wednesday December 9th A.D. 1857
Chicago & Rock Island
Rail Road Company
vs
Appeal - venue from La Salle
Warren Whipple

This day came the parties to this suit, the Plaintiff by Morrison and the defendant by Purple and waived trial by jury and agreed that all matters both of law and fact shall be tried by the court and the court being satisfied in the premises does find the issues for the plaintiff and does assess his damages at the sum of ninety three dollars and nine cents, Therefore it is considered by the court that the said Warren Whipple have and recover of the Chicago and Rock Island Rail Road Company the sum of ninety three dollars and nine cents his damages aforesaid and also his costs and charges by him about his suit in this behalf expended and that he have execution therefor.

Whereupon the defendant by Purple its attorney prayed an appeal to the Supreme Court of this State which was allowed on condition that the said Chicago and Rock Island Rail Road Company file a bond with the clerk of this court in the penal sum of three hundred dollars conditioned as the law direct with Washington Cockle as security said bond to be filed with said clerk within thirty days from the date.

Appeal and pay the judgment, costs, interest and damages in case the said judgment shall be affirmed by the Supreme Court then this bond to be void otherwise in force.



Chicago & Rock Island
Rail Road Company

By Henry Farnam President

Washington Cockle Secretary

Attest

State of Illinois, ss.
County of Peoria, ss. I, Enoch P. Sloan clerk of the circuit
Court and ex officio Recorder of said county
in said State do hereby certify that the foregoing is a true and
correct copy from the files and Records of a certain cause wherein
Warner H. Whipple is plaintiff and the Chicago and Rock
Island Rail Road Company is defendant as the same
appear on file & of Record in my office.

In witness whereof, I hereunto set my hand
and affix the seal of said Court this
19th day of March A. D. 1858
Enoch Sloan, Clerk.

And now comes the Appellant and
says that in the Records and proceedings and in
the rendition of the judgment aforesaid there is
Error in this, to wit:

1. Said Court erred in rendering Judgment in favor
of the Plaintiff, the Evidence showing that he
was not entitled to recover.

2nd. In rendering Judgment against the defendant
in damages, the Evidence and Record showing
that the Judgment if any should have been in debt
for the amount of the Judgment Costs and for
and damages for interest only (Over)

Appeal and pay the judgment, costs, interest and damages in case the said judgment shall be affirmed by the Supreme Court then this bond to be void otherwise in force.



Chicago & Rock Island
Rail Road Company

By Henry Farnam President

Washington Cockle Secretary

Attest

State of Illinois, ss.
County of Peoria, ss. I, Enoch P. Sloan clerk of the circuit
Court and ex officio Recorder of said county
in said State do hereby certify that the foregoing is a true and
correct copy from the files and Records of a certain cause wherein
Warner H. Whipple is plaintiff and the Chicago and Rock
Island Rail Road Company is defendant as the same
appear on file & of Record in my office.

In witness whereof, I hereunto set my hand
and affix the seal of said Court this
19th day of March A. D. 1858
Enoch Sloan, Clerk.

And now comes the Appellant and
says that in the Records and proceedings and in
the rendition of the judgment aforesaid there is
Error in this, to wit:

1. Said Court erred in rendering Judgment in favor
of the Plaintiff, the Evidence showing that he
was not entitled to recover

2nd. In rendering Judgment against the defendant
in damages, the Evidence and Record showing
that the Judgment if any should have been in debt
for the amount of the Judgment Costs and for
and damages for interest only (Over)

Be cause the defendants in the originals sent
for judgment and judgment Nov. 12, 1853, were not
legally served with process and said Justice
had no jurisdiction in the case

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The Chicago & Rock Island
Rail Road Company

Warren W. Whipple

Transcript of assignment
of errors.

Filed April 15, 1858
Chicago Ill

3d. The Court erred in not rendering judgment
in favor of the defendant

For these and other manifest errors
in said record & proceedings we pray that the
said Judgment, may be reversed set aside &
wholly for nothing estimated.

M. C. Ruple
Atty for Appellant.

The Chicago & Rock Island
Railroad Company
vs
Warren W. Whipple

In Supreme Court
Do April Term AD 1859

And now comes the said appellee
and says that there is no error in the record & proceedings
& the rendition of the judgment aforesaid

D. L. Bough
Attorney for appellee

No. 32

The Chicago & Rock
Island Railroad Company } Appeal from Bond
vs. }
James W. Whipple }

This suit was commenced before
Alfred Putnam, a Justice of the Peace in
Ladette County, Sept 19. 1854. -

Summons served by leaving a
copy with George W. Buck, an agent of
said Company

The parties appeared & proceeded to
trial. - The plaintiff claimed to recover
upon a judgment which had been previously
been rendered in his favor against defendant
by W. Duncan, another Justice of the Peace of
Ladette County, November 12. 1853. -

Justice Putnam gave judgment in favor
of plaintiff for \$71,20, & costs, Sept 30. 1854

Defendant within twenty days
appealed to the Ladette Circuit Court, from
which a change of venue was taken to Bond
County. - On the 14th day of December
AD 1854, defendant filed his petition for
a common law writ of Certiorari, to review
the proceedings before Justice Duncan,
November 12. 1853, & annul the judgment
rendered by him. -

The proceedings in the appeal
suit, from judgment of Justice Putnam,
were stayed, until the position should
be made of the certiorari proceedings,
to annul judgment of Justice Duncan.

On the 6th day of March AD 1837
the Court for Whipple entered a motion
to dismiss the certiorari proceedings, for
reasons set forth in printed abstract
in this case. —

The motion to dismiss was
sustained by the Court, after full
argument by Counsel for both parties,
& the day thus cleared for a trial
of the appeal from Justice Putnam. —

The appeal suit was tried
by the Court, & verdict, & judgment
rendered for plaintiffs, from which
judgment an appeal was taken to
this Court. —

If I understand the
argument of the Counsel for the
appellant, filed in this case, the main
ground on which a reversal is asked
at the hands of this Court, is, that
the Court erred in sustaining the
motion to dismiss the certiorari pro-
ceedings. —

The petition contained a multitude
of averments as to the cause of action, —
the proof introduced in this case before
the magistrate, &c., but an inspection
of the transcript returned by Justice
Duncan, in obedience to the writ, does
not sustain any of such averments.

The petition admits that the
Railroad Company was an existing cor-
poration at the time the original

and was brought before Justice Duncan, who denied the agency of Buck, on whom the summons was served.

Part I submit that the return of the officer as to such agency, was at least prima facie evidence thereof, and abundantly sufficient to authorize the magistrate to entertain jurisdiction of the party, - and the statute gave him jurisdiction of the subject matter - which was simply - "Trespass on personal property" - as appears from the transcript of the magistrate.

As to the return of the officer of service of summons on an agent, & the force & effect of such return, I apprehend an analogy can be found in the case of a return of service of summons in chancery, by leaving such copy at the usual place of abode, with some white person of the family, of the age of ten years or upward, &c.

This Court has recognized the sufficiency of such return, provided the name of the person on whom the summons is served, is given in the return. - In 2 Gilman 584, the Court say - "Where this is done, a check is furnished the defendant, which enabled him to follow up the officer's conduct, & ascertain at once the truth of the return. If upon enquiry the return is found to be false, there will be no difficulty in enforcing the remedy against the sheriff."

So in this case. - If the return of the Comptroller as to the agency of Buck is false, the Railroad Company has ample remedy against the officer. -

In the one case the officer determined the question of membership in the family; - in the other the question of agency. -

If then the return of the officer was sufficient to give the magistrate jurisdiction of the party, is there anything in this transcript which shows that he exceeded his jurisdiction or proceeded illegally? - If not, there was nothing to sustain the proceeding by certiorari, & the motion to quash the writ, and I dismissed the writ was properly sustained by the Court. -

The motion to dismiss was also properly sustained, because the Statute provided for an appeal, of which the Railroad Company should have availed itself, but I kept upon its rights.

Having failed to avail itself of its Statutory remedy, it was not authorized to resort to a Common Law writ of certiorari, for the proceedings of inferior tribunals can only be reviewed on certiorari "in cases where they exceed their jurisdiction, & in cases where they proceed illegally, & there is no appeal or other mode of directly reviewing the proceedings. - 14 Phil 383. -

For further suggestions bearing
upon that case, I would refer the
Court to the written argument of
Messrs. Manning & Merriam in Case
of The Chicago & Rock Island Railroad
Company vs. Evans & Co., No. 33, on
the docket of this term of this Court

D. L. Connelley
Attorney for Appellee

No 32

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Chicago & Rock
Island Railroad
Company

James W. Whipple

— " —

Argument

D. L. Strong

No 123) The Chicago & Rock
Island Rail Road Company } Appeal from
Wm. M. Whipple } Prior —

This case was brought into the Circuit Court upon a Common Law writ of Certiorari— The Petition for which is set out in substance in the abstract

The Petition is sufficient in form and substance and on its face shows good cause for reversing the Justice's Judgment

The Court could not dismiss the writ on motion

It is like any other writ of Error from a Superior Court to an inferior one

If it is regular on its face it is Error to dismiss it on motion.

The Plaintiff in Error had a right to assign Error, have an issue made thereon and the questions of law heard, considered and decided by the Court upon the Records as returned. And the Court could not against the wish of the Plaintiff in Error dismiss the writ, and affirm the Judgment of the Circuit Court. The same rule of Law & Practice should obtain and

be observed as in this Court upon a
Mist of Error to the Circuit Court.

I submit also that the Evidence
Offered by the Plaintiff in Error ought to
have been heard upon the trial

If the Judgment had been
paid - If there was no such Company
in existence - Or if a new Judgment
had been rendered upon this merging
the Old one - the Original Judgment
ought to have been reversed, and not
affirmed.

Again - I insist that the Return of
a Constable that he served the Summons
on George H. Buck an agent of
said Company is not prima facie
evidence even that he was such
agent - But only that he served it
on the person - The Agency must be
proved Alimunde

This is a fact to be judicially
and not ministerially determined

The Constable is incompetent
to decide the question of Agency

There being then no Evidence before
the Court that Buck was agent of

of the C & N. I. R. R., for the latter
had no jurisdiction to render Judgment
in the Cause & his said Judgment
was wholly void

As to the Power to issue the writ on
the part of the Circuit Court See
People v. Wilkinson 13. Ill. 660.

J. E. Hupto

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The Chicago R.R.
R Co

~~1875~~

Harmon Whipple

Argument

M. E. Purley