

No. 14242

Supreme Court of Illinois

Ill. Cent. R. R. Co.

vs.

Graham

71641  7

SUPREME COURT OF ILLINOIS.
FIRST GRAND DIVISION.
NOVEMBER TERM, A. D. 1857.

ABSTRACT.

Record Page	Ill, C. R. Company Plaintiff in error } vs. } Alexander Graham, Defendant in error. } Assumpsit.
2	This was an action of assumpsit instituted in the Union County Circuit Court, at the October term, 1855, by Alexander Graham the defendant in error, against the Ill. C. R. Company the Plaintiff, in error. The declaration contains three common counts, (to wit:) for work and labor done; for money paid and advanced, and on account stated; with which was filed the following bills of particulars, (to wit:)
4	Illinois Central Railroad Company To Alexander Graham, Dr..
1851.	July 18, Travelling expenses from 15th of June, to the 18th of August, to Caledonia from Camp. \$11,32
	Horse hire .. 1,00
"	October 1st, Travelling expenses and pay, from 1st to the 4th of October inclusive from Jonesboro, Caledonia and Neighborhood \$19,00
"	October 8th to the 12th, ..17,00
	\$59,52
	Amount paid Medical fees, ..14,00
	Error on Pay-roll, ..18,68
5	\$92,20 Illinois Central Railroad Company To Alexander Graham Dr.,
1851.	July 18th, Travelling expenses from the 15th of June to 18th of August to Caledonia from Camp, \$11,32
"	18th, Horse hire " 1,00
	October 1st Travelling expenses and pay from the 1st to the 4th of October, inclusive from Jonesboro to Caledonia and neighborhood, \$19,50
	October 8th do., to the 12th ..17,70
	\$59,52
Note,	I certify this account because I think Mr. Graham entitled to some compensation, from not having money to pay him off. ARTHUR L. ORMSBY, Div. Engineer.
	Received fifty nine and fifty-two hundredths dollars in full of the above
6	The above is correct } Arthur L. Ormsby, } Division Engineer }
	The Illinois Central Railroad Company To Alexander Graham Dr.,
	To Amount on Voucher 1 \$59,52
	" " paid Medical Fees 14,00
	" " Error on Pay roll 18,68
	\$92,20
7	To which the Plaintiffs in Error filed two pleas—general issue and payment, upon which issue was joined, and the cause submitted to the court.
10	Upon the trial in the court below, the defendant in error introduced as a witness, John

Dougherty Esq., who testified, as follows (to wit:) "I am acquainted with Alexander Graham, and knew him during the summer and fall of 1851. He was employed as Engineer on the Illinois Central Railroad during the summer of that year. He served in that capacity under Arthur L. Ormsby Division Engineer, in charge of the first division of the Illinois Central Railroad, and I presume was employed by him; at all events he acted in that capacity. He, witness, then produced a paper, and continued; I am acquainted with the hand writing of Arthur L. Ormsby—have seen him write a number of times, the paper which I hold, or rather the certificate at the bottom, and the signatures thereto are in Ormsby's hand writing.

Upon his cross examination he stated that he did not recollect when Mr. Ormsby was discharged—knew he was discharged and thought it was in the month of November 1851, did not think it was as early as October—felt confident that it was not—did not recollect when Graham was discharged—did not know whether he was discharged at all, or resigned—knew that he did not leave until about the time Ormsby did—knew that he was addicted to drinking, but could not tell how much of the time it incapacitated him for business, if at all or not."

Defendant in Error, by his counsel, John Dougherty, then offered in evidence the following paper or voucher, being the same about which he had testified.

1851.

Illinois Central Railroad Company."

VOUCHER NO. 1.

To Alexander Graham

Dr.,

July 18th. Travelling expenses from 15th of June, to the 18th of August to Caledonia, from Camp.	\$11.32
Horse hire	" 1.00
October 1st, Travelling expenses and pay from the 1st to 4th October inclusive, from Jonesboro to Caledonia and neighborhood,	"19.50
October the 8th, do., to the 12th,	"17.70
	<u>\$59.52</u>

Note, I certify this account because I think Mr. Graham entitled to some compensation, from not having money to pay him off.

ARTHUR L. ORMSBY,

Div. Engineer.

Received fifty nine and fifty-two hundredths dollars in full of the above.

The above is correct }
 Arthur L. Ormsby, }
 Division Engineer }

To the introduction of said voucher, as evidence, the defendants by their Counsel, objected; but the objection was overruled by the court; and the defendant by counsel excepted. The voucher was then read in evidence to the Court.

Here the Plaintiff rested his cause.

12. The Defendant introduced as a witness William W. Bennett who testified as follows, (to wit:) I am or was acquainted with Alexander Graham and with Arthur L. Ormsby in the summer of 1851, and up, until the time he was discharged. Mr. Ormsby was the Engineer in charge of the first division, of the Illinois Central Railroad from the Spring of 1851 to the fall of the same year. I was employed in Ormsby's corps from June until he was discharged. I was at Mt. Vernon sick during a part of September, 1851, but was on road during June, July and August, and all of the time except as above stated. Mr. Ormsby was discharged as Engineer, between the ninth and twelfth of October; did not serve the company after that. He was discharged by Col. Mason Engineer in Chief, on the road. Mr. Graham was employed on the road as Engineer under Ormsby when I came on the road. He was with same corps with me. He continued in the service of the company until August, I think about the eighteenth, or nineteenth, perhaps on the twentieth, at all events the pay roll will show that it was about that time. Graham was then discharged for intemperance and incompetency. I think he was crazy. He was incapable of doing any service for a long time before he was discharged. He was beastly drunk a good part of the time and sick in consequence of it the remainder. He was not employed by the company in any capacity after he was discharged, to my knowledge. It is true I was away during a part of September, but I never heard of his being employed, or rendering any service while I was away, he was not employed when I went away, nor was he when I returned, nor after. I am acquainted with Graham's hand writing, have

seen him write a good many times saw him begin a number of the pay rolls. Here the witness was shown a number of papers, after examining which he stated. "they are the pay rolls of corps," I find Alexander Graham's name written here on the rolls for June, July and August, the signature is in Graham's hand writing. I cannot say I saw him sign them all, but I did the most of them, every thing due each man was put down on the roll and paid each month. They were regarded as a settlement, with each man for the time specified therein. The company paid once a month, and these rolls were taken as receipts and settlements for the such months. Witness further stated that Ormsby was fully authorized as the agent of the defendants to employ hands in and about the business of the defendants or make settlement with such hands up to the time of his discharge. The record in this cause from pages 15 to 28 inclusive, contains pay rolls and receipts, signed by Alexander Graham, which show that he received from plaintiffs in Error for services as assistant engineer, from June 9th 1851, to August 23rd 1851, \$268,00 and for money expended by him for the use of plaintiffs in error; from July 2nd 1851 to July 31, 1851, \$173,00. After submitting the foregoing pay rolls, and receipts to the court, without objections from the Plaintiff's counsel, the defendants rested their cause. This was all the testimony introduced by Plaintiff and Defendant, upon the trial of the cause; and upon which the court rendered a verdict in favor of the Plaintiff for \$59,52 and costs of suit.

The defendants made their motion for a new trial; which motion was overruled by the court; and to such ruling of the court, the defendants excepted; and for error assign the following causes, (to wit:)

- 1st. The verdict is against the Law.
- 2nd. The verdict is against the Evidence.
- 3rd. The verdict is against the law and the evidence.
- 4th. The Court admitted improper evidence on behalf of the Plaintiff.

8. The Court then gave judgement in favor of the Plaintiff for \$59,52 and the costs of the suit.

29. The Plaintiffs now assign the following causes of error, (to wit:)

- 1st. The verdict of the Court was against the law and evidence.
- 2nd. The Court erred in admitting the voucher signed by Arthur L. Ormsby Division Engineer, in favor of Alexander Graham as evidence upon said trial.
- 3rd. That the Court erred in overruling the motion for a new trial, made by Plaintiffs in error.
- 4th. The Court erred in rendering judgement for \$59,52, ~~and the costs of the suit.~~
- 5th. The Court erred in admitting the evidence objected to by Defendants.
- 6th. That the Court erred in rendering judgement.

For which errors the Plaintiffs in Error pray that this cause may be reversed.

CYRUS G. SIMONS, Atty.,

For Plaintiffs in Error.

Nov 11 - 1857
No 2 - 1858

W. C. M. M. Company
by
Alexander Graham

Ernesto Uvino
~~14/2/58~~
Abstract

~~8/5/58~~

Filed 19. Nov. 1857
A. Johnston Ck

J. Mcayrie for
Puck to 5 Nov