

No. **12309**

Supreme Court of Illinois

Ill. Cent. R. R. Co.

vs.

Reedy.

71641  7

67

Illinois Central Rail
Road Company.

Henry Reedy,

69

12309

#

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Saballe County Court September Term 1855

State of Illinois
Saballe County } &

Pleas proceedings and
Judgments held and taken in and before the
Saballe County Court in the State of Illinois at
the Court House in Ottawa in the County of
Saballe of September term thereof to wit - of the
third day of September in the year of our
Lord One thousand Eight hundred and fifty
five and of the Independence of the
United States of America the eightieth,

Present Hon. Henry G. Cotton Judge

Saml N. Raymond Clerk

Francis Warner Sheriff

Be it remembered that on the 11th day of August
A.D. 1855, a Summons, Transcript and Bond,
was filed in the Office of the Clerk of the County
Court of Saballe County, which Summons,
Transcript and Bond are in the words &
figures following to wit -

Summons - State of Illinois

Saballe County } &

The People of the State of Illinois, to
any Constable of said County greeting

You are hereby commanded to summon the
Illinois Central Rail Road Company to appear
before me at my Office in Mendota on the 19th day
of May 1855 at 3 O'clock P.M. to answer the complaint
of Henry Reedy, to his damage in certain sum not
exceeding one hundred dollars for running against
Killing or injuring a Steer belonging to Plaintiff with

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a Locomotive or train of cars, and hereof make
due return as the law directs, Given under my
hand and seal this 14th day of May A.D. 1855

C. H. Gilman *Seal*

Justices of the Peace

Endorsed - "May 14th I have executed this writ by
"giving in hand of O. Ott the agent of the I. C. & N. R.
"Co. a true and attested copy of the within the agent
"not residing in my county. "Service 25

"Copy 50

"Mileage 05
 .80

"Samuel Black, Constable

"Filed Aug. 11-1855

"S. M. Raymond Clerk"

Transcript-

Henry Reedy vs The Illinois Central Railroad
Company -

Demand \$25, For killing a Steer belonging to P. Ott -
May 14th 1855 issued Summons returnable on the 19th
inst. at 3 o'clock P.M., same issued Subpoena for P. Ott,
Summons returned by S. Black Constable Endorsed
served by giving a copy of this Summons to O. Ott
the company's agent at Mendota on the day of
May 1855 fees .80 May 19th 1855 on the application
of O. Ott continued case to the 26th inst. at 3 o'clock P.M.,
Subpoena returned by S. D. Graff Const. fees on same \$1.87
May 26th 1855 - J. W. Esqr Counsel for defense moved
to have the case dismissed on account of the return
of the summons not showing that the President of the
company does not live in the County - Overruled,
cause continued to the 31st of May 1855 by
agreement of parties - May 31st 1855 after hearing
the proofs and allegations of the parties it is hereby

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decided that the said Henry Reedy, have a judgment against the said Illinois Central Railroad Company for the sum of twenty five dollars and costs of suit

Judgment \$ 25.00

Jus fees - Decidms 31. 2 Aids 38. 7 Cts 44. 2 Continues 25 1.38

Fees \$2.00 Ent. judgment 25. Ent appeal 25. Bond and Transcript 75 3.25

Total Jus fees 4.63

Witnesses C. Hackstetter 50, Wm Nockstetter 50 1.00

John Gamm 50, Wm Ockert 50, F. Goust 50, H Ockert 50 2.00

F. Mogenham 50, Wm Eckert 50, H Eckert 50, H. Hackstetter 50 2.00

\$ 5.00

June 26th 1855 Q. Ott appeared and filed a bond in behalf of the company and ordered an appeal to the County Court from appeal .75

State of Illinois
LaSalle County } &

I hereby certify that the above transcript contains a true statement of the proceedings in the premises before me -
given under my hand and Seal this 10th day of July 1855

W. H. Gilman J.P. *W.H.G.*

Endorsed, "Filed Aug 11th 1855"

"Wm Raymond clk"

Bond = Know all men by these presents, that we the Illinois Central Rail Road Company principals and Q. Ott of the County of LaSalle and State of Illinois as security are held and firmly bound unto Henry Reedy of the County & State aforesaid in the penal sum of seventy three dollars lawful money of the United States

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for the payment of which well and truly to be made we bind ourselves, our heirs, executors, & administrators, jointly, severally, and firmly by these presents - witness our hands and seals this twentieth day of June A.D. 1855

The Condition of the above obligation is such - that whereas the said Henry Reedy died on the thirty first day of May A.D. 1855 before Charles H. Gilman a Justice of the peace for said County of LaSalle, recover a judgment against the above named Illinois Central Rail Road Company for the sum of twenty five dollars & costs - from which judgment the said Illinois Central Rail Road Company have taken an appeal to the County Court of LaSalle aforesaid and State of Illinois - Now if the said Illinois Central Rail Road Company shall prosecute their 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 -

Illinois Central Rail Road Company

By Oran Att agent

Approved by me at my J. C. Att

Office this 20th day of June
A.D. 1855

C. H. Gilman

Endorsed "Filed Aug 11th 1855

J. W. Raymond att

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Be it also remembered that on the 11th day of August A.D. 1855 a Summons was issued out of the Office of the Clerk of the Said County Court, which Summons is in the words and figures following, to wit =

Summons =

 The People of the State of Illinois. To our Sheriff of our County of LaSalle - greeting
Whereas, in a certain Cause, lately pending in our Court held before Charles H. Gilman Esquire one of the Justices of the Peace in and for our County of LaSalle, wherein Henry Reedy was Plaintiff and the Ill. Cent. Rail Road Company was defendant, Judgment has been rendered by Said Justice, against the said Defendant from which the said Defendant has appealed to our LaSalle County Court, We Therefore Command You, that you summon the said Henry Reedy that he personally, he and appears in our LaSalle County Court, before our Judge thereof, on the first day of the next term of said Court to be held at the Court House in Ottawa, on the first Monday in September next, at ten o'clock in the forenoon and abide by and perform the judgment of our said Court in the premises -

In Witness Whereof, we have caused the Seal of our said Court to be hereto affixed and attested by Samuel W. Raymond our Clerk thereof at Ottawa 11th day of August 1855.

S. W. Raymond Clerk
Endorse "Not found in my County"
"September 1st 1855"

H. Warner Sheriff

Returning 11 - L. S. Harris Deputy -

"Filed Sept 3rd 1855"

S. W. Raymond Clerk
C. L. Perick Deputy

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Be it also remembered that on the 3^d day of September 1855 the same being one of the days of said term of said County Court the following order was made and entered of record in said Court. to wit;

Henry Reedy	}	appeal
47 vs		
Illinois Central Rail Road Co.	}	This day comes

the Plaintiff by Chumars his attorney, as well as the defendants by Hough their attorneys, whereupon the plaintiff by his said attorney enters his motion to dismiss the appeal herein for want of sufficient bond - which motion after hearing the arguments of counsel - is overruled by the Court.

On Wednesday Sept. 5th 1855 the same being one of the days of said term of said County Court the following order was made and entered of record in said Court, to wit;

Henry Reedy	}	appeal
47 - vs		
Illinois Central Rail Road Co.	}	This day comes the

Plaintiff by Chumars his attorney - and the defendants by Hough their attorney. Thereupon by agreement of parties a jury is waived and the Cause submitted to the Court for trial -

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after hearing the evidence and arguments of counsel and due deliberation thereon had the Court finds the issues herein for the Plaintiff and assess his damages at thirty dollars -

Thereupon the defendants by their said attorney enters a motion ~~for~~ herein for a new trial - which motion is overruled by the Court, to which ruling of the Court the defendants by their said attorney then and there excepted.

It is therefore considered by the Court that the Plaintiff have and recover of the said defendants the said sum of thirty dollars for his damages and also his costs and charges by him herein expended - and that he have execution therefor -

x Be it also remembered that on the 14th day of September 1855 a Bill of exceptions was filed in this Cause which is in the words and figures following - to wit -

Henry Reedy;	} appeal
vs	
The Illinois Central Railroad Company	
	} LaSalle County Court September Term A.D. 1855

Be it remembered that on the trial of this Cause, at the September Term A.D. 1855, of the said LaSalle County Court, the said Henry Reedy to maintain the issue on his part gave in evidence to the Court, both plaintiff and defendants having waived a jury, the testimony of one William Hotchkiss, who

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testified that on the 5th day of May A.D. 1855 he was ploughing in his field, about three miles South of Mendota, when he heard freight-train coming on Illinois Central Railroad - witness stopped to look at it, & saw a lot of cattle on the track, all of which left the track except one steer, he ran before train about twelve paces, when Locomotive caught him & shoved him along track & then upon one side - both of his hind legs were broken & his fore legs severely wounded, steer died of his wounds - Henry Reedy the Plaintiff in this suit, was the owner, & the value of the steer was thirty dollars, no further evidence was given or offered in this case - ^{the} Counsel for the Illinois Central Railroad Company, moved the said Court, upon the evidence aforesaid, to dismiss the said suit, for want of jurisdiction in the Justice of the peace before whom the said suit was originally commenced - which motion was overruled by the said Court, to which decision of the said Court in overruling said motion to dismiss, the Counsel for the Illinois Central Railroad Company then assented.

And thereupon the said Court found the issue in favor of the plaintiff, assessed his damages at thirty dollars, whereupon the Counsel for the said Illinois Central Railroad Company moved the said Court to set aside the aforesaid finding & for a new trial, by reason of the said finding being against the law of the case and also against the evidence - But the Court overruled the said motion & gave judgment against the said Illinois Central Railroad Company.

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To which decision of said Court in overruling
the said motion to set aside the aforesaid finding
& to grant a new trial, & giving a judgment
against the said Illinois Central Railroad
Company the counsel for said Company
then & there excepted, & prayed that this bill of
exceptions may be signed, sealed, & made a
part of the record - which is done -

H. G. Cotton *Clk*

State of Illinois

Sasale County } p

I Samuel W. Raymond
Clerk of the County Court of said County do hereby
certify that the foregoing is a true correct
and complete copy of the record and proceed-
ings in the case of Henry Reedy against
The Illinois Central Railroad Company
in said County Court

In Testimony whereof I have
hereunto set my hand and
affixed the Seal of said Court
at Ottawa this 6th day of December
A.D. 1855

S. W. Raymond Clerk

Fees for Record \$4.00

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The plaintiff in Error herein, alleges
the following errors in this record

1st
The Court erred in overruling the
motion of defendant to dismiss the writ
for want of jurisdiction in the justice
of the peace before whom said writ was
originally commenced

2^d
The Court erred in overruling the motion
of defendant to set aside the finding of said
Court because the said finding was against
the law of the case, & also was against the
evidence

3^d
The Court erred in overruling the motion
of defendant for a new trial

4th
The Court erred in reversing the
motion of ~~defendant~~ in rendering judgment
against defendant

J. S. Hoag
Att'y for plff in Error

Let a supersedeas issue on the above
record upon the Plaintiff in Error filing
the same with the Clerk of the Supreme Court
together with a bond in the usual form in the
penal sum of two hundred dollars with
Samuel L. Haugh surety

Dec 7. 1857

J. S. Hoag

Henry St Reedy
By
Illinois Central Rail
Road Company

Certified Copy of Record

Filed May 24 1886
S. Leland Clerk.

Hough

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of La Salle — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the ~~court~~ ^{County} court of La Salle county, before the Judge thereof, between Henry Reedy Plaintiff & The Illinois Central Rail Road Company

defendant; it is said that manifest error hath intervened, to the injury of the said Illinois Central

Rail Road Company

as we are informed by the complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

the Justices of our said Supreme Court, at the next term of said court, in the state, on the second Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Henry Reedy

notice, together with this writ.

Walter B. Scates

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 21st day of May in the Year of Our Lord One Thousand Eight Hundred and Fifty-six

L. Leland

Clerk of the Supreme Court. Dr.
By J. B. Rice Deputy

June 5th
Received By
to the With
H. Keedy

Services
25 Milag

J. W. Ware Sheriff
By S. Clark Deputy

Filed June 10 1856
L. Leland
Clerk

noted, together with this note.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the *County* Circuit Court for the county of *La Salle* Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~circuit~~ *County* court of *La Salle* county, before the Judge thereof, between *Henry Reedy*

plaintiff, and *The Illinois Central Rail Road Company*

defendant it is said manifest error hath intervened, to the injury of the aforesaid *Illinois Central Rail Road Company* as we are informed by *their* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of *La Salle*, on the *second Monday in June* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. *Walter B. Seates* **SAMUEL H. TREAT**, Chief Justice
of our said Court, and the Seal thereof, at Ottawa, this *21st* day of *May*
in the Year of Our Lord One Thousand Eight Hundred and Fifty-six.

L. Leland
Clerk of the Supreme Court.
By J. B. Rice Dep't

Ill. Cen. R.R. Company
vs
Henry Reedy
Writ of Error

This Writ of Error is made
a Superseas and as
such is to be obeyed by
all concerned

L. Leland Clerk

Filed May 21. 1885.

L. Leland Clerk

STATE OF ILLINOIS
CLERK OF THE SUPREME COURT

Know all men by these presents, that we, the Illinois Central Rail Road Company, as principal, & David S. Hough as security, are held & firmly bound unto Henry Reed in the good sum of Two hundred dollars, lawful money of the United States, for the payment of which, well & truly to be made, we bind ourselves, our heirs & administrators, jointly, severally, & firmly by these presents.

As witness whereof, the President of the said Illinois Central Rail Road Company has hereunto set his hand, & affixed the corporate seal of said Company, & the said David S. Hough has hereunto set his hand & seal, this 3rd day of January A.D. 1856.

The condition of the above obligation is such that whereas the above named Henry Reed, did at the September Term A.D. 1855, of the La Salle County Court recover a judgment against the above bounden Illinois Central Rail Road Company, in said Court, for the sum of Thirty dollars damages, & costs of suit; - To reverse which said judgment the said Company has since out a writ of error from the Supreme Court of said State of Illinois, which said writ is made a supersedeas. Now if said Company shall duly prosecute said writ of error, & pay whatever judgment may be rendered by said Supreme Court against said Company, & abide the order & judgment of said Court in the premises, then this obligation to be void, otherwise to remain in full force & effect.

The Illinois Central R.R. Co

by W. S. Weston

President

David S. Hough {Seal}



Wm. Ben. R. Co. Company

vs

Henry Rudy

Bond.

Filed May 21, 1886,

L. Seland Clerk.

State of Illinois Supreme Court
To June Term A.D. 1836

Illinois Central R.R. Co. v.

vs

Chief of plaintiff in error

Ernest R. R. Co.

1st Where the injury committed is caused by the immediate act of the party complained of, the action must be tried; if the injury be merely consequential upon some act of the party complained of, an action on the case is the proper remedy. 11 Mass Reps 39.

1 Chitty on Pleading 11 Am Ed page 133. & cases there cited.

If any blame is imputable to defendants below, it must be for the employment of mischievous,

or careless servants or agents, & the plaintiff will not be answer-
called there cited the company for acts of their servants. 2 American R.R. Cases 454 &

so far as they are concerned, the injury arose from that cause, & it was in its nature merely consequential.

The remedy of the defendants in error, therefore, if any, was by an action on the case, in which actions justices of the peace have no jurisdiction.

2nd Proof shows that the train was killed May 3. 1833.

Plaintiffs in error were not required by statute to fence road until August 15. 1833.

Session Laws 1833. page 173.

3rd The proof simply shows the killing of the steers, which does not make out a case of wilfulness, or even negligence, on the part of the railroad. 16 Illinois Reps 203.

Without proof of wilfulness or gross negligence on the part of the employees on railroad, the company cannot be held accountable. Chicago & Mississippi R.R. Co vs Patchin 16 Ills. 198

Supreme Court
"

U.S. Sen. R. A. Co
18

Henry Reed
"

Points of Plaintiff in error
"

State of Illinois Supreme Court - June Term 1856.

~~And Chancery~~
The Illinois Central Rail Road Company
Plffs in Error

vs
Henry Rudy. - Deft in Error.

~~And Chancery~~
affirmed to wit on the 14th day of June
1856, in this same term, the said
Henry Rudy Deft. in Error by Chancery
& Eldredge his attorney and says there is
no error either in the Record and proceedings
aforesaid, or in giving the judgment
aforesaid ~~He~~

Chancery & Eldredge

Atty for Deft in Error

57
The Ill. Central Rail
Road Company

Offs in Error

or

Henry Rudy
Dept in Error

=

finds in Error
=

Filed July 14 1854

L. Leland

clerk.

Thomas & E. Hudson
attys for Dept in Error

Illinois Supreme Court

The Illinois Central Railroad Company

Plffs in Error

Henry Rudy - Deft in Error

Points in part of
Deft in Error

II. The Bill of Exceptions does not affirmatively appear to have been made and signed at the trial or during the same term.

11. D. C. R. 5 Gil 453

II II. At the time the injuries complained of in this case were committed (it is conceded) the General Railroad Law requiring Plffs in Error to fence against cattle was not in force.

II II II. The question then is - How were the relative rights of Rail Road Companies affected by the laws then applicable to them?

(1) our answer - that Rail Road Companies were then subject to the same rules & regulations, & liable to the same consequences under the statute and General Law upon the subject of fencing against cattle that private persons were.

See Saratoga & Plns. RR Co 2. Am. Rail Co. 362

Rever vs The Sullivan RR Co. 11 " 214

G. Mass. R 101,

12) It could not have been the intention of the Legislature when incorporating the R.R. in 1850, with the right to build their road through the State, while they imposed no express obligation on them to inclose their Road with fences to exempt them from the operation of the Statutes upon the subject of enclosures here, they fell within the provisions of the R.R. 14, 28, 31, 5, 16, 17 justice and public policy alike require this -

IV. The Occupation of the Railroad Company to inclose their Road with a good & sufficient fence, while they directed or permitted their Agents & servants to run their trains over the Road, while cattle were or might come ~~in~~ on it, became an unlawful omission, if the Cattle were killed by being thus run down by the train while thus running on the Road, and the killing in such case is the direct consequence of the acts of the Company, hence, they are liable in negligence, and the case falls clearly within the rule in Smith vs Webb, 16 Id., 103, & authorities therein cited.

(1) But, if it is said that ~~if~~ the Cattle were killed by the negligence of the servants the action should ^{have} been case, or if wilful the servant only is liable in trespass, - we reply, it is neither the one or the other but the damage resulting was the direct consequence of the act of the principal -

(2) The Court say in the Case above
Cited - "If a log is cast into the
"highway, and while in motion,
"it hits another, the injury is immediate
"and the trespass is the remedy;

Now, suppose the Master directs
the servant to cast the log into the
highway, would the Case be changed?
Is not the injury still the immedi-
ate consequence of the Principal's
act? certainly it must be so.

(3) For if the act done by the
agent is in pursuance of the authority
of the Principal &c. (the Principal) is
as directly liable as if he had done
it himself - And thus, though some-
thing may have intervened to render
the consequences of the act differ-
ent from those anticipated by either
Principal or agent - For it would
be absurd to assert that the
Master set the dog on the horse
anticipating the precise result,
viz: that the horse would jump a
fence and break his leg, nevertheless
the result which actually occurred
was the direct consequence of
the act, which in itself
became a trespass.

V But if it can be said that the provision
after R.S. in reference to 'inclosures and
fences', did not apply to the Pkts in Error
(conceding this for the purpose of the argu-
ment) and then the liability of the
Pkts in Error would not be changed;
because, because the common law rule requiring
the owners of cattle to keep them on their
own land is not in force in this
State - 13. Ill. 609. 5 Gil 131.

(1) The owners of cattle had as much
right to let them run at large as
Rail Road Company had to run their
trains - which placed the Parties in
the same relative position, as in the
case where the man cast the log
into the Highway, whereby another
was injured - as suggested by the
Court in Smith vs Webb note

(2) The adjudications of the Mass., N.Y. and
English Courts in one respect - as to whether
the action should be case or trespass
under particular circumstances - are not
applicable to the case at bar, because (1)
in Mass., N.Y. & Engl. Britain the Common
Law rule prevails - that Cattle are
not permitted to run at large - (2) The
statute is in force & apply regarding
Rail Road Company, liability against
Cattle (as in this State at the present
time) hence the parties do not stand

in the same relative position to each
other, that the parties occupy in
the case at bar or in the case
suggested by the Court, in
Smith vs Webb.

(3) That it has been held that
under some circumstances, ~~the~~^{R.R.} Companies
are liable in case for one committing
to force against cattle, but the
adjudications in such cases are
based upon ^{the existence of} two concurrent cir-
cumstances, (1) that the Com. law
rule provides that cattle cannot
lawfully run at large, & (2) the
express provision of the Statute
requiring the Co. to force against
cattle - (Smith of which exist in
the case at bar) - then case lies
in such cases for consequences flowing
indirectly & remotely from the
omission to perform a duty expressly
imposed by statute - but it is
respectfully submitted, that this
cannot militate against the
foregoing positions -

✓ II The Record shows that Plffs in error
were liable in trespass, and the judgments
of the Justice to Co Court should
be affirmed

J. H. Eldredge for Defendant in Error

Supreme Court
The Illinois Central
Rail. Road Company
App in Error

vs

Henry Rudy
Def in Error

—

Comes on part of
Def in error

Filed June 16, 1886
L. S. Leland
Clerk

W. H. Rudy
for def in error