

12115

No. _____

Supreme Court of Illinois

Strain.

vs.

Strain.

71641  7

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Given under my hand and the Seal of
said Court, at Bloomington this Twelfth
day of March A D 1853

Wm McCallough clerk

The following is the return on said Summons
served the within writ by reading the within writ
to Isaac H. Strain on the 23rd day of March 1853

Serving so of Wm Bolin Sheriff D C
Shffs fees } Returning 10
60 }

Here follows the Declaration to-wit,
State of Illinois

McLean Circuit & County S.S.

Isaac Strain plaintiff complains of Isaac H Strain
defendant being in the custody &c of a plea of
Trespass on the Case For that whereas heretofore
to-wit on Day of 1853 at Bloomington
city in the County of McLean in the State of
Illinois to-wit, at the Circuit, County aforesaid
before the committing of the grievances hereinafter
mentioned, plaintiff was the owner of a certain
Mare, of great value &c to-wit of the value of
one hundred dollars, and then and there kept
her in his own private stable, situate in said City
of Bloomington &c, and the said defendant, not
having obtained permission of the plaintiff, do so
do, and contriving and fraudulently intending
to damage said plaintiff, put and confined
his horse in said stable whilst the said mare of
the said plaintiff was so kept therein, to-wit
on the day & year aforesaid at the Circuit & County
aforesaid, and so carelessly and negligently
behaved and conducted himself that the said
mare of plaintiff, then and there became and
was greatly torn kicked, lacerated &c wounded

McCallough clerk
March 21 1853
State of Illinois

& hurt in so much that the said mare afterwards
to-wit on day of 1852 at the Circuit and
County aforesaid died and was wholly lost to plaintiff
And whereas ^{also} afterwards to-wit on the day and year
aforesaid at the Circuit & County aforesaid, the
said defendant confined and shut up his horse
in the stable of plaintiff situate in the City of Bloo-
ington & County of Meade in which a certain other
mare of plaintiff was then and there confined
of great value to-wit of the value of one hundred
dollars yet the said defendant not regarding
his duty in that behalf and then and there so
negligently carelessly and improperly behaved
and conducted himself that by reason of the
careless and said improper conduct of the said
defendant in that behalf the said mare of
plaintiff then and there became and was greatly
hurt and wounded and by means thereof afterwards
to-wit on the day and year aforesaid at the Circuit &
County aforesaid died and was wholly lost to
plaintiff. And whereas also afterwards to-wit
on the day and year aforesaid at the County &
Circuit aforesaid the said plaintiff was possessed
of a certain mare of great value to-wit of the
value of one hundred dollars then and there kept
in a stable situate in the County of Meade
yet the said defendant not regarding his duty
in that behalf then and there negligently carelessly
and improperly put and confined in said stable
with said mare his horse and by reason of the care-
lessness and improper conduct of the said
defendant in that behalf the said mare of
plaintiff then and there became and was greatly
hurt and wounded and by means thereof afterwards
to-wit on the day of 1852 died to-wit at the

Circuit & County aforesaid. And plaintiff
avies that he on the day of 1853 before the
Committee of said said several grievances and
ever since till the beginning of this suit he resided in
the County of Melean State of Illinois within the
jurisdiction of this Court that the cause of
action accrued in Melean County State of Illinois
and within the jurisdiction of this Court, and when
the plaintiff resides. Wherefore the said plaintiff
says that he is injured and hath and hath
sustained damage to the amount of three hundred
dollars and therefore he brings his suit &c

Tuesday April 12th 1853 } Tell & Walker
for plaintiff
Doane Strain }
204 102 }
Doane H Strain }

And now at this day comes the
said defendant, by C H Moore his attorney
and files herein his Demurrer to the declaration
of said plaintiff, and Plaintiff joins therein
Copy of Demurrer to-wit,

Doane H Strain }
Doane Strain } Melean Circuit Court
Doane Strain } April Term AD 1853

And the defendant comes and
defends the wrong & injury, when &c. & says that
said declaration and the things therein as therein
alleged are ~~insufficient~~ in Law, for him
further to answer herein wherefore he prays
judgment &c Moore for defendant

Copy of answer as follows to-wit
And the plaintiff saith that said declaration

and the matters and things therein contained
in manner and form as the same are stated
and set forth therein are sufficient in Law for
him the said plaintiff to have and maintain
his aforesaid action thereof against the said
defendant and the plaintiff is ready to
verify and prove the same as the Court
shall direct wherefore in as much as the
said ~~case~~ defendant has not answered the
said declaration or in any manner denied
the same the said plaintiff prays judgement
v e
J. L. & Walker
for plaintiff

Tuesday April 14th 1882

Isaac Strain

vs

Isaac H. Strain

} In trespass on the case

This Cause came on to

be tried upon the demurrer of ^{the} said defendant
to the declaration of the said plaintiff, and
was argued by counsel, and the Court being
fully advised of the premises is of opinion
that the said declaration and the matters
therein contained, are not sufficient in Law
to maintain the action of the said plaintiff against
the defendant, and the said plaintiff not
asking leave to amend his declaration, it is
therefore considered that ^{the said demurrer is sustained and} the said Isaac H.
Strain go hence without day, and recover
of ^{the} said plaintiff his cost and charges by him
in this behalf expended.

State of Illinois of
Meclean County 388

I ~~do~~ McCallough clerk of the
circuit court in and for the county of Meclean
and State aforesaid do hereby certify that
the foregoing is a true copy of the Record
and all the papers pertaining to the foregoing
cause -

In Testimony Whereof I ~~do~~
McCallough clerk as aforesaid
have subscribed my name and
affixed the Seal of said Court
at Bloomington this 26th day
of April A D 1853

Wm McCallough clerk

Isaac Strain
vs ³
Isaac H Strain On Writ of Error to a judgement
of the McLean Circuit Court

The plaintiff in Error Isaac Strain assigns for Error herein that Circuit Court Erred herein to his prejudice in its judgement at the April Term 1862

1st In adjudging that the plaintiffs declaration and matters therein contained were not sufficient in law to maintain the action of plaintiff

2nd The Court below Erred in sustaining the defendants demurrer to plaintiffs declaration

3rd The Court below Erred in not overruling the defendants demurrer to plaintiffs declaration

4th The Court below Erred in rendering judgment in bar of plaintiffs action in favor of the defendant and for costs &c

5th The proceedings and judgement of the Court below are manifestly erroneous in every respect to the prejudice of plaintiff and should be reversed

Wherefore he prays a reversal &c

J. B. Walker

Attor for plff

And the defendants by C. H. Brown comes and defends and says that there are no such errors nor omissions nor any of them in the decision of the Court below as the plaintiff last above alleged wherefore he prays that the decision of the Court below may be affirmed and in all things sustained

C. H. Brown to d

No 384 C L
No. 33

Isaac Strain

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Isaac H Strain

Copy of Record

&

Papers

Record & Assignment
of errors -

Filed May 18th 1853.

L. Leland Clk.
By P. H. Leland Sry.

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *St. Clair* — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *McLean* — county, before the Judge thereof, between

*Isaac Strain Plaintiff, and
Isaac H. Strain* —

Defendant, it is said that manifest error hath intervened, to the injury of the said *Plaintiff*

as we are informed by *his* 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 *Isaac H. Strain*

that *he* be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said 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 *Isaac H. Strain* — notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *18th* day of *May* in the year of our Lord one thousand eight hundred and fifty *three*

L. Leland Clerk of the Supreme Court.

By P. K. Leland depy. Clk.



Served the within Writ by Handing the within writ
 To Isaac H. Strawn on the 28th day of May 1853
 Sheriff's
 Surviving
 Return

W^m Robin Sheriff of Ble

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McLean Co. 33.
 Isaac H. Strawn
 vs.
 Isaac H. Strawn
 Seie Jacob.

Filed
 June 17. 1853.
 A. H. Strawn



State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *McLean* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *McLean* county, before the Judge thereof, between

Isaac Strain — plaintiff, and *Isaac H. Strain*

defendant, it is said manifest error hath intervened, to the injury of the aforesaid *plaintiff*

as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected 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. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *18th* day of *May* in the year of our Lord one thousand eight hundred and fifty *three*.

L. Leland Clerk of the Supreme Court.
By P. H. Leland Dep. Clk.

M^c. Lean. No. 33.

Isaac Strain
as.
Isaac H. Strain
Writ of error.

Filed May 18th 1853.
L. Leland Clk.
By P. N. Leland Depy.

Isaac Strain

Plff in Error

vs $\frac{2}{3}$

Isaac H Strain

Defendant in Error

The form of action in this case was appropriate see 2 Chittys Pleading 679 side page 4 form of Count. The first Count in the declaration sets out an injury to the plaintiff substantially to a certain intent and the demurrer to it like that to evidence admits the same with every inference to be drawn from it. It clearly shows that the plaintiff has sustained serious injury resulting to him from the act ~~of the~~ of the defendant and that the alleged damages are a clear and necessary consequence of that act" - see Lamb vs Stone 11 Pickering 526. It is laid down as a general rule that "when one does an illegal act or a mischievous act which is likely to prove injurious to others and when he does a legal act in such a careless and improper manner that injury to third persons may probably ensue he is answerable in some form of action for all the consequences

Strain Isaac

vs $\frac{2}{3}$ Brief of Hff

Strain Isaac H

Filed July 11. 1853.
Scland Cld.

Isaac Strain } Appeal from the Court
vs } Action upon the case
Isaac H Strain } appellee

The defendant in this Court below by C H Moore
his atty submits this case upon the following points, arguments

That the declaration is insufficient in Law for the following
reasons

1st The cause of action is not stated with sufficient certainty
in any Count of the declaration. (True) was it the defendant's
acts or the acts of his horse that injured plaintiff's mare,
does not aver that deft negligently tied ^{or negligently} his horse
in consequence of such negligent tying or confining deft's
mare got loose injured plaintiff's mare. See 1 Chitty 232

2^d The first Count is in trespass. alleges that defendant not
having permission, put his horse in stable ^{of plff.} and so carelessly & neg-
ligently conducted himself that, plff's mare was injured. It is an
act of deft that is complained of in this Count not his horse.

The facts stated in a Count, must be the manner in which they are
stated make it a Count in trespass ~~not~~ or Case. If this
is a Count in trespass it cannot be joined with Case
1 Chitty 201 16 Johnson 147

3^d The 2^d & 3^d Counts defective, does not show the manner in
which or by which plff's mare was injured. (True) was it the
acts of the deft while tying his horse, or after the horse was tied
or the acts of the horse while being tied or after he was tied
that injured mare. Certainty required in declaration see Chitty
232. Will this Court encourage such a vague & uncer-
tain manner of pleading? Is it a plain logical legal
statement of the facts that constitute the plff's cause of action
action? Was it not the confinement of the mare the cause of injury?

4th If injury complained of was the direct result
of defendant's acts trespass is the only remedy. 2 vul Dig
am Law page 461 see 16 1 Chitty 127 2 Greenleaf 224

3rd In this action on the case the p^l must aver that
defendant negligently tied or fastened his horse that
by reason of such negligent & careless tying & fastening
the horse got loose and injured p^l or that the
horse was a vicious animal so known to the def.
P^l does not state either, ~~the horse was known to be vicious~~
~~as to the latter~~ As to Scientia see 1 Chitty 82. 12 Johnson
337, 2 Chitty 597 Notes n to 1 Scammon 338. 492. 5841
& vol 12 of Am Law 486.

But it may be said that by p^l that this is
an action on the case for negligence, true, but is that
negligence set out with certainty. If it
was defendant who kicked hit then that p^l must
trespass is only remedy.

If defendant's horse does injury
can is remedy & declaration must show that def neg-
ligently tied or confined his horse that by reason of such
negligent tying or confining the horse got loose & done
injury or that horse was vicious animal & defendant
knew it. P^l does not pretend in 2nd & 3rd counts that def
had no right to put horse in stable. In 1st count
p^l says def had no right ^{or permission} to enter stable of p^l. This
with the statement of cause of action makes that count intestate

Will this court compel the pleader for def to join
issue and go to trial upon so loosely & uncertain statement
of a cause of action?

C H Brown p d

Isaac Strain

vs

Isaac H Strain

appeal from Du Lac

agreement for
left in error by
CH Strain

Filed June 16th 1853.

L. Leland Clk.

By J. N. Leland Depy.

McLean No. 33.

Isaac Strain

^{vis.}
Isaac H. Strain

33

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Refilled

1853