

13031

No. _____

Supreme Court of Illinois

I. C R. R Co.

vs.

Palmer

165
STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 204.

1860

Central RR
vs

Palmer

Illinois Central
RR

Palmer

1303

STATE OF ILLINOIS---SUPREME COURT,
Third Grand Division thereof---April Term, 1860.

ILLINOIS CENTRAL R. R. Co. }
vs. } *Error to Lee.*
AARON PALMER.

POINTS MADE BY PLAINTIFF IN ERROR.

1st. It is conceded that the first instruction asked by defendant in error and given by the court below is not law, and that the 2d instruction asked by the plaintiff in error and which was refused by the Court below, is the law, and should have been given. (See written argument for defendant in error.)

The reason given why the judgment should not be reversed for these errors is that the questions are not served upon the record, because the bill of exceptions was filed some days after the trial of the cause, and it uses the words "defendant excepts," instead of the word, "excepted.

We admit that under the decisions of this court, this objection would be well taken, if it did not appear clearly from other portions of the record that the exception was actually taken upon the trial: But we can conclusively show from the record that the exception was taken on the trial. The bill of exceptions commences thus. Be it remembered that *on the trial of this cause*, plaintiff called a witness, &c.; then the evidence is recited; the bill of exceptions then proceeds; after the evidence was closed defendant asked the Court to instruct the jury; there follows, defendants instructions refused. Then the record says, *Whereupon* the plaintiff asked the Court to instruct the jury. Then follows plaintiff's instructions. The record then says (page 21), which instructions the court then gave to the jury, to the refusal of the court to give the instruction as asked by the defendant and to the giving by the court of those asked by the plaintiff, the defendant by his counsel excepts, and prays that this his bill of exceptions be allowed *which is done, and afterwards on the coming in of the verdict of the jury* in this cause, the defendant moved for a new trial.

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GLOVER, COOK & CAMPBELL.

244
Ill. Central R.R. Co.

Q 3

Asa Palmer

Plff. Print

Filed May 16. 1860
Deland
Ill

Supreme Court of the
State of Illinois -
April Term A.D. 1865
Acc. Cer. R. R. Co.
Plffs in error }
Aaron Palmer } Appellant per
Drft in error }
" }
" }

1st The Demurrer to the
2^d 3^d & 4th Pleas was properly
sustained by the Court
below - as the matters con-
tained in those pleas were
sufficiently & properly put in
issue by the plea of Not
guilty &c - 1st Chit. Read. 498 &
499 - (side page) 2^d Green. Ev. Sec. 648
& cases there cited - Chickering & Hol.
v. Raymond 15 W. 363-4
It is true that a different practice
has grown up in England under their
Hil. Term. Rules, 4, W. 4. - but
these rules are not in force in
this state.

Under the general issue,
in favor of the plaintiff must
prove property in himself - and
the defendant may disprove
plaintiff's title, or prove title
in himself, or show a lien upon
the property whereby he had a right
to claim the same - I have the
authorities above cited.

2^d. In certifying these views, we of course concede, that the first instruction given on the part of the plaintiff below, is not law; while the second instruction asked by defendant below, is the law, on the subject.

Yet the Plff in error, cannot now avail himself itself of any error which intervened in the Court below in the giving & refusal of instructions, ~~at that time~~, for the reason that no exception was taken at the time of the giving & refusal of such instructions.

The trial took place on the 13th of Decem^r 1859 at the November Term of Lee Co. Circuit Court.

Final judgment was rendered on the 14th of February 1860, at the February 1860 of said Court.

The Bill of exceptions was filed by leave of the Court on the 26th of March 1860 - and bearing date March 28th 1860. The introductory clause of the Bill is as follows:

Page 8 { "Be it remembered that on the trial of this Cause the said plaintiff called as a witness" &c &c

And after reciting the testimony of said witness, it proceeds thus:

Record" Whereupon the defendant after the
page 19 of evidence was closed asked the
Court to instruct the jury as
"follows" — reciting the in-
structions asked for on the
part of the defendant below,
& then proceeds as follows:

"Which instructions asked
"by the defendant were by
page 20 "the Court refused; whereupon
"the plaintiff asked the Court
"to instruct the jury as follows" —
reciting the instructions asked
by plaintiff below; and then
proceeds with this statement:

"Which instruction the Court
"then gave to the jury. To the
" 21 "refusal of the Court to give the
"instructions asked by the defen-
"dant, and to the giving by the
"Court of those asked by the
"plaintiff the defendant by his
"Counsel excepts"

In like manner the Bill of
exceptions does not show
that the decisions of the Court
below in imposing terms, viz:
the payment of costs as a condi-
tion to granting a new trial; &
finally overruling the motion for
a new trial & sending judge

-ment for plaintiff below up-
on the verdict, upon the
ground that costs had
not been paid - & defendant
refused to pay the same -
Decisions were excepted to at the
page 21/2 time such decisions were
respectively made.

There pre-
tended exceptions are noted in
the Bill of exceptions in the
same manner as the excep-
tions to the Instructions above
quoted - Showing in fact that
none of the exceptions were taken
at the time the Decisions
complained of were made.

Under the rule, then, repeatedly
acted upon by this Court, the
Bill of Exceptions in this case
cannot be regarded -

Dickhut v. Durrell 11th Ill. 72

Gibbons v. Johnson 3^d Scam. 63

Wise v. Bush " " 23

Laird v. Hodges " " 17

Moreover, this Bill of excep-
tions is dated & shows upon
its face that it was not
taken at the trial. It bears
date March 23^d 1860.

It is true, it was filed within

the time allowed by the Court.
But the rule upon this subject is: That if, for any cause, a Bill of exceptions is not signed & sealed at the trial, or at the time the decisions were pronounced or made, it should be rejected unless pro ture, so as to appear to have been then made. Evans & Fisher 5th Hen. 455.
Walton vs. United States of Wheat, 651.
Ex parte Bradstreet 4th Peters 107.
Law & Messills 6th Men. 268.

And unless this be done the Court will not regard the exceptions. (Some authorities look strict -)

These positions being correct - no error can be found in the Record; - at all events, no error can be discovered of which the Plaintiff in error can avail itself at this time.

3^d. There is still another complete answer to all of the objections now urged by the Plaintiff in error.

The Court below did grant the defendant (Plff in error) a new trial upon the usual terms,

viz: the payment of costs. This was done at the November term 1859 - the term at which the trial was had.

Afterwards at the February term 1860, the plaintiff in error declined to pay the costs - the Court then overruled the motion for a new trial, & then rendered judgment upon the verdict.

Now, in the first place, we have to say that that it is the usual practice of Courts to impose terms as a condition to granting a new trial.

2^d. That although ^{the payment of} costs may not always be imposed where a new trial is granted on the ground of an error in charging the jury on the part of the judge who tried the cause; yet this is wholly a matter of discretion with the Court below - with the exercise of which an Appellate Court will not interfere -

Drummery v. Reeder 1 Pennsylvania Rep. 399 - *Haggins v. Christian* 1st H. R. Marshall Rep. 579 - *Pixby v. Ward* 3. Rand. 52 - *Lafayette v. Gibbs* Litt. Sel. Cases 19. *Gra. & Waterman on New Trials* 1st vol. page 537.

It is even held in *Boswell vs. Jones* 1 Wash. Virginia Rep. 417 (tippling) to be error to grant a new trial - except upon the terms of paying costs -

But here this as it may, & conceding that this Court would not exercise its discretion upon the subject in the same manner that the Court below did in this case, - the mere matter of making the payment of costs a condition precedent to the allowance of a new trial, will not afford sufficient cause for the reversal of the judgment - even if the plaintiff in error had excepted to this decision at the time it was made - which we have shown he ^(A) did not do.

4th A reference to the evidence will show that in case more but proper instructions had been given to the jury - the evidence would have warranted, & the jury would have necessarily have found the same verdict.

The testimony of Austin is sufficient to have satisfied the

jury that the Reaper was the property of plaintiff below; that it was shipped from Joliet to LaSalle, Illinois, by itself as a distinct shipment of freight; that the agent of the Railroad Company when applied to by Austin the agent of plaintiff below, refused to state the amount of their charges for freight upon this Reaper alone, but claimed a general balance due on other freight previously shipped; that the agent of plaintiff below tendered the Railroad Company's agent \$15 (which was more than the usual charge for freight for similar shipments) which even the agent for the R.R. Co. refused to receive - & refused to deliver possession of the Reaper to the agent of plaintiff below - & that the Reaper was worth at the time \$150 - the amount of the verdict.

We repeat that the testimony of Austin is clearly sufficient. It has warranted the jury in finding the foregoing facts.

If no substantial justice has been done - and although the jury were erroneously instructed by the Court below - this Court will not reverse the judge.

-ment. Gillett v Sweet 1 Gilman. 475-
Greenup v Storer 3^d Gilman. 202 - Gish-
on v Schorr 19 Ill. 57. Newkirk v Cone
18 Ill. 443-

We may insist upon the point last
made with especial confidence,
when, as in this case, we have
it guarded by the fact that
none of the decisions & rulings
now complained of, were excep-
ted at the time they were
made - & the further fact that the
Bill of exceptions does not purport
upon its face to have been made
at the time of the trial.

The Points upon which we in-
sist, then, are in brief as
follows:

1st The demurrer to the 2nd &
& 4th pleas of defendant below
were properly sustained, in-
asmuch as those pleas amounted
to the general issue.

2^d The objections now urged to
the rulings of the Court below, in
giving instructions asked for by
plaintiff below, & refusing instruc-
tions asked by defendant below, as
well as to the decision of the
Court in making the payment
of costs a condition precedent

to the allowing of a new trial -
and finally at the next Term
of Court overruling Motion for
new trial because such costs
were not paid - Cannot now
avail the plaintiff in error
for the following reasons:

First, the exceptions were not
taken at the time such in-
structions were given & refusal
respectively & the decision complained of
was made. Second the Bill of Exceptions
does not appear on its face to
have been made at the time
of the trial, but bears date long
subsequent to the trial & the
time of rendering final judgment.
And therefore the Bill of
Exceptions cannot be regarded
by this Court.

3^d It was competent for the Court
below to impose terms, viz: the
payment of costs as a condition
precedent to permitting a new
trial - the same being wholly
a matter of discretion - with
the exercise of which an
appellate Court will not
interfere: And the fact that
the defendant below refused to
pay such costs justified the
Court in overruling the Motion.

for a new trial. & rendering
judgment upon the verdict.

4th The evidence shows
that substantial justice has
been done in this case; and
this Court, in such cases, will
not set aside the verdict;
although the Court below did
err in giving & refusing instruc-
tions to the jury.

All of which is respect-
fully submitted to the
Court.

Geo. K. Russell
Of Counsel for
Def. in Error

Ill. Cen. R.R.Co.

Plt. in Enr

as

Asa Palmer

Deft in Enr

Assignment
for Deft in Enr

Filed April 27 1860
L. Leland
clerk

Record not in
pigeon hole -

For K. Edsall
for Deft in
Enr

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

ILLINOIS CENTRAL R. R. COMPANY, }
vs. } Error to Lee.
AARON PALMER.

Suit commenced by Palmer against the company April 1st, 1859.

Page of Rec.

4 Declaration in Trover for one patent self raking reaper, value \$200, and one other reaping machine, value \$175.

6 First plea: general issue.

7 Second plea: that the property was the property of the defendant.

Third plea: that the property was not at the time when, &c., the property of the plaintiff.

Fourth plea: that the plaintiff was not at the time when, &c., lawfully entitled to the possession of the property.

8 Demurrer to 2d, 3d and 4th plea special. First cause, that they amounted to the general issue. Second cause, that ought to have concluded to the country and not with a verification.

10 Demurres sustained.

Trial, verdict for plaintiff \$150.

The plaintiff's instructions, which were each excepted to, were as follows:

18 On the trial plaintiff called *Elijah Austin*, who testified as follows: that he was acting as agent for the plaintiff in selling reapers in 1857. Plaintiff shipped reapers to witness at Sublette, sometime before the commencement of this suit. He called on the agent of defendant's at Sublette Station, at Defendant's freight house, for one of Palmer's reaping machines, which machine was consigned and shipped to witness at Sublette, by plaintiff. Witness demanded of the freight agent to know the amount of freight due on said reaper, that the agent claimed a charge for other freight which had been previously shipped on defendant's Road, and which was also at the freight house, and refused to state the amount of charges on this reaper only.—Witness tendered to the agent \$15, which was more than the regular freight charged by the company for similar shipments made by same parties. Witness, as the agent of plaintiff, deman-

Page of Rec. ded the reaper. The reaper was marked "Aaron Palmer, Sublette." It was plaintiff's reaper—the firm sold them at \$150.—
 19 The defendant's agent refused to deliver the reaper unless witness paid the whole bill, which included charges on parts of reapers shipped by same parties, but were not plaintiff's property.

On cross examination, witness stated that he had no personal knowledge of who owned the reaper, except as plaintiff had told him; never saw plaintiff in possession of it, and was never present when plaintiff purchased or made any bargain for it. The reaper was manufactured in Joliet, this state, by John Palmer & Co., and shipped by John Palmer to Sublette. John Palmer and plaintiff are brothers; witness, when he demanded the reaper, did so upon the written order of John Palmer.

Direct examination resumed—Witness had an arrangement with the plaintiff to sell reapers for him at Sublette, which reapers, plaintiff shipped to witness as his agent; that this reaper was sent to him under the same arrangements and in the same manner that other reapers were by the plaintiff, which witness was in the habit of selling. This was all the evidence.

20 The court, at the request of plaintiff, instructed the jury as follows:

1st. Under the pleadings in this case the defendant admits the plaintiff's property and right of possession to the extent required to maintain the action of Trover.

2d. If the jury believe from the evidence, that the defendant refused to deliver the property to plaintiff, or his agent, and did not claim at the time of the refusal to retain it for the charges thereon, that he is now estopped from setting up that claim as a reason for not delivering the property.

3d. That a common carrier has no lien upon or right to detain goods or merchandise shipped from one place, and at one time, for charges on other goods shipped at another place and at another time.

2 6th. That it is not necessary to make a formal tender of money for the charges of transportation, when the party declined stating the amount claimed for charges and refused to receive the money, provided there is a readiness to pay whatever is proved by the evidence. To the giving of these instructions, the defendant excepted.

19 The defendant asked the court to instruct the jury, as follows:

1st. The statements of the plaintiff, or John Palmer, in this case, not coupled with any acts, are not evidence going to show the plaintiff's title.

2d. That the plaintiff in this action must prove that he was

Page of Rec. *prima facie* the owner of the property claimed, or he cannot recover.

3d. That the fact, if proved that the property was demanded under an order from John Palmer by witness, is evidence tending to show that the property was the property of John Palmer.

20 4th. That the plaintiff must prove first, that the property was the property of the plaintiff. Second, that if the defendants were common carriers they are entitled to retain the property until their charges are paid, and the plaintiff must prove a tender of the charges.

Which instructions the court refused to give, and defendants excepted thereto.

22 Defendants move for a new trial. The court sustained the motion, upon the terms that the defendants should pay all the costs made by either party. To the refusal of the court to grant a new trial except upon the condition aforesaid, defendants excepted. Costs not being paid, judgment was rendered upon the verdict.

25 *Errors Assigned.*

1st. The court erred in sustaining the demurrer to the defendants' pleas, and each of them.

2d. The court erred in giving each of the instructions asked by plaintiff.

3d. The court erred in refusing to give the instructions asked by defendants severally.

4th. The court erred in refusing to grant a new trial unconditionally.

5th. The court erred in rendering the judgment in manner and form aforesaid.

POINTS.

1st. The plea of property in the defendant is a good plea in an action of Trover, or if not, the general issue puts that question in issue, and in that case the next point is well taken.

2d. The first instruction asked by the plaintiff is not law, and the second instruction asked by the defendants is law, the gist of the action of trover is that the property is the property of plaintiff. The plaintiff avers this in his declaration, and the general issue puts that fact in issue, or defendants has a right to plead specially that the property is not the property of the plaintiff.

3d. Each of the instructions asked by defendants are law.

B. C. COOK.

See Cen. R. R. Co
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POINTS MADE BY PLAINTIFF IN ERROR.

1st. It is conceded that the first instruction asked by defendant in error, and given by the court below is not law, and that the 2d instruction asked by the plaintiff in error and which was refused by the Court below, is the law, and should have been given. (See written argument for defendant in error.)

The reason given why the judgment should not be reversed for these errors is that the questions are not served upon the record, because the bill of exceptions was filed some days after the trial of the cause, and it uses the words "defendant excepts," instead of the word, "excepted.

We admit that under the decisions of this court, this objection would be well taken, if it did not appear clearly from other portions of the record that the exception was actually taken upon the trial. But we can conclusively show from the record that the exception was taken on the trial. The bill of exceptions commences thus. Be it remembered that *on the trial of this cause*, plaintiff called a witness, &c.; then the evidence is recited; the bill of exceptions then proceeds; after the evidence was closed defendant asked the Court to instruct the jury; there follows, defendants instructions refused. Then the record says, *Whereupon* the plaintiff asked the Court to instruct the jury. Then follows plaintiff's instructions. The record then says (page 21), which instructions the court then gave to the jury, to the refusal of the court to give the instruction as asked by the defendant and to the giving by the court of those asked by the plaintiff, the defendant by his counsel excepts, and prays that this his bill of exceptions be allowed *which is done, and afterwards on the coming in of the verdict of the jury* in this cause, the defendant moved for a new trial.

The bill of exceptions purports upon its face to have been taken at the time of the trial, and at the time the motion for a new trial was overruled, and that is in apt time.

It would seem from analogy that the rule in pleading should be the same in trover and in replevin, the one action lying to recover damages for the wrongful taking and conversion of a chattel, and the other for the thing so wrongfully taken and converted. In replevin of course the special pleas filed in this cause would be good.

Simpson vs. McFarland, 18 Pick. 427
Lucky vs. McDermot, 5 Serg. & Raiole 331.
Bemis vs. Beekman, 3 Wendell 446.
1 Massachusetts 152.
Martin vs. Ray, 4 Blackford 291.
Harrison vs. Mackintosh, 1 John. 380.

GLOVER, COOK & CAMPBELL.

165
Ill. Central R.R.
vs
Asaon Palmer

Paid for
P. L. Hoff

Filed May 16, 1840
L. L. Palmer
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

ILLINOIS CENTRAL R. R. COMPANY, }
vs. } Error to Lee.
AARON PALMER.

Suit commenced by Palmer against the company April 1st, 1859.

Page of Rec.

4 Declaration in Trover for one patent self raking reaper, value \$200, and one other reaping machine, value \$175.

6 First plea : general issue.

7 Second plea : that the property was the property of the defendant.

Third plea : that the property was not at the time when, &c., the property of the plaintiff.

Fourth plea : that the plaintiff was not at the time when, &c., lawfully entitled to the possession of the property.

8 Demurrer to 2d, 3d and 4th plea special. First cause, that they amounted to the general issue. Second cause, that ought to have concluded to the country and not with a verification.

10 Demurres sustained.

Trial, verdict for plaintiff \$150.

The plaintiff's instructions, which were each excepted to, were as follows :

18 On the trial plaintiff called *Elijah Austin*, who testified as follows : that he was acting as agent for the plaintiff in selling reapers in 1857. Plaintiff shipped reapers to witness at Sublette, sometime before the commencement of this suit. He called on the agent of defendant's at Sublette Station, at Defendant's freight house, for one of Palmer's reaping machines, which machine was consigned and shipped to witness at Sublette, by plaintiff. Witness demanded of the freight agent to know the amount of freight due on said reaper, that the agent claimed a charge for other freight which had been previously shipped on defendant's Road, and which was also at the freight house, and refused to state the amount of charges on this reaper only.— Witness tendered to the agent \$15, which was more than the regular freight charged by the company for similar shipments made by same parties. Witness, as the agent of plaintiff, deman-

Page of Rec. ded the reaper. The reaper was marked "Aaron Palmer, Sublette." It was plaintiff's reaper—the firm sold them at \$150.—
 19 The defendant's agent refused to deliver the reaper unless witness paid the whole bill, which included charges on parts of reapers shipped by same parties, but were not plaintiff's property.

On cross examination, witness stated that he had no personal knowledge of who owned the reaper, except as plaintiff had told him; never saw plaintiff in possession of it, and was never present when plaintiff purchased or made any bargain for it. The reaper was manufactured in Joliet, this state, by John Palmer & Co., and shipped by John Palmer to Sublette. John Palmer and plaintiff are brothers; witness, when he demanded the reaper, did so upon the written order of John Palmer.

Direct examination resumed—Witness had an arrangement with the plaintiff to sell reapers for him at Sublette, which reapers, plaintiff shipped to witness as his agent; that this reaper was sent to him under the same arrangements and in the same manner that other reapers were by the plaintiff, which witness was in the habit of selling. This was all the evidence.

20 The court, at the request of plaintiff, instructed the jury as follows:

1st. Under the pleadings in this case the defendant admits the plaintiff's property and right of possession to the extent required to maintain the action of Trover.

2d. If the jury believe from the evidence, that the defendant refused to deliver the property to plaintiff, or his agent, and did not claim at the time of the refusal to retain it for the charges thereon, that he is now estopped from setting up that claim as a reason for not delivering the property.

3d. That a common carrier has no lien upon or right to detain goods or merchandise shipped from one place, and at one time, for charges on other goods shipped at another place and at another time.

2 6th. That it is not necessary to make a formal tender of money for the charges of transportation, when the party declined stating the amount claimed for charges and refused to receive the money, provided there is a readiness to pay whatever is proved by the evidence. To the giving of these instructions, the defendant excepted.

19 The defendant asked the court to instruct the jury, as follows:

1st. The statements of the plaintiff, or John Palmer, in this case, not coupled with any acts, are not evidence going to show the plaintiff's title.

2d. That the plaintiff in this action must prove that he was

Page of Rec. *prima facie* the owner of the property claimed, or he cannot recover.

3d. That the fact, if proved that the property was demanded under an order from John Palmer by witness, is evidence tending to show that the property was the property of John Palmer.

20 4th. That the plaintiff must prove first, that the property was the property of the plaintiff. Second, that if the defendants were common carriers they are entitled to retain the property until their charges are paid, and the plaintiff must prove a tender of the charges.

Which instructions the court refused to give, and defendants excepted thereto.

22 Defendants move for a new trial. The court sustained the motion, upon the terms that the defendants should pay all the costs made by either party. To the refusal of the court to grant a new trial except upon the condition aforesaid, defendants excepted. Costs not being paid, judgment was rendered upon the verdict.

25 *Errors Assigned.*

1st. The court erred in sustaining the demurrer to the defendants' pleas, and each of them.

2d. The court erred in giving each of the instructions asked by plaintiff.

3d. The court erred in refusing to give the instructions asked by defendants severally.

4th. The court erred in refusing to grant a new trial unconditionally.

5th. The court erred in rendering the judgment in manner and form aforesaid.

POINTS.

1st. The plea of property in the defendant is a good plea in an action of Trover, or if not, the general issue puts that question in issue, and in that case the next point is well taken.

2d. The first instruction asked by the plaintiff is not law, and the second instruction asked by the defendants is law, the gist of the action of trover is that the property is the property of plaintiff. The plaintiff avers this in his declaration, and the general issue puts that fact in issue, or defendants has a right to plead specially that the property is not the property of the plaintiff.

3d. Each of the instructions asked by defendants are law.

B. C. COOK.

²⁰⁴
Ill Cen. R.R. Co
✓
Aaron Palmer

Filed April 19, 1860
L. Leland
Clerk

State of Illinois } ss
Lee County } Pleas in the Lee County
Circuit Court in the 22^d Judicial
Circuit of the State of Illinois in the
matter of
Aaron Palmer
against
Illinois Central Railroad Company
in an action on the case

Be it remembered
that on the 27th day of December A.D. 1858
the above named Plaintiff filed in the
Office of the Clerk of the Circuit Court within
and for said County of Lee, his precise con-
viction in the words following that
is to say:

" Aaron Palmer

Illinois Central Railroad Company

In the Lee
County Circuit
Court of the
1st Term A.D. 1859

Jeopardies on the case

Damages \$200.

The Clerk will please give summons in the
above entitled cause returnable to said Term
of said Court & oblige

Wm E Sheffield
Att'y

And upon the filing of said process
a summons issued in the words
following that is to say

State of Illinois, } ss
LEE COUNTY.

The People of the State of Illinois to the Sheriff of said County, GREETING:

We command you that you summon Illinois Central Railroad
Company

if it shall be found in your County, personally to be and appear before the Circuit
Court of said County, on the first day of the next Term thereof, to be holden at the
Court House in Dixon, in said County, on the second Monday
of April next to answer unto Carroll Palmer

in a plea of Trespass on the Case
to the damage of said plaintiff, as he says in the sum of Two Hundred
dollars.

And have you then and there this writ, with an en-
dorsement thereon, in what manner you shall have ex-
ecuted the same.

Witness, ISAACS. BOARDMAN, Clerk of our said
Court, and the Seal thereof, at Dixon aforesaid, this
2nd day of September A. D. 1858.

Isaac S. Boardman CLERK.

Wm Joseph Bull D. Co.

Which said summons on its return
was returned as follows, that is to say:-
"I have executed the within writ by
" reading the same to, and in the hearing
" of John C Jacobs, the General Superintendent
" of said Company in said County & also
" by delivering to him a true copy of the
" within writ to him said Jacobs. The
" President of said Company not being

" found & not residing in said County
 " this 10 day of January AD 1859
 Lester Homing Jr
 By E W Snow Dep "

Service 50

Gravel 65

Retn 10 + 125 }

And afterwards to wit on the Twenty
 first day of April AD 1859, the Plaintiff
 in said Cause filed his Declaration
 herein, which said Declaration is in
 the words following, that is to say:—

Declaration

State of Illinois }
 Sec County } ss
 Of the May Term 1859
 of the Sec County Circuit Court

Clara Palma Plaintiff in this suit
 by James R. Edsall his Attorney, Complainant of
 the Illinois Central Rail Road Company, Defen-
 dant etc which was summoned etc in a plea of
 trespass on the Case

That whereas the said
 Plaintiff had before to wit. On the first day of June
 A.D. 1857 at Sublette, to wit at Dixon in said
 Sec County was lawfully possessed and his own
 property of certain goods & Chattels to wit. One
 Palma & Williams Patent Self Binding Reaping
 Machine of great value to wit. of the value of Two
 Hundred dollars, & also of One certain other Reaping
 Machine of great value to wit. of the value of \$150;
 & being so possessed, the said Plaintiff, to wit. On the
 day or year first above mentioned casually lost the
 said goods & Chattels to wit. the said Reaper & Reaping
 Machine, out of his possession; & the same afterwards
 to wit on the same day & year aforesaid at the place
 aforesaid came to the possession of ~~the~~ said defendant
 by finding; yet the said defendant well knowing
 the said goods & Chattels & every of them to be the prop-
 erty of the said Plaintiff, & of right to belong & apper-

5

lain to him, but continuing & fraudulently intending
 craftily & subtly to deceive & defraud the said
 Plaintiff in this behalf hath not as yet delivered
 the said goods & chattels or any of them or any part
 thereof to the said Plaintiff although often requested
 so to do; & hath hitherto wholly refused so to do;
 And afterwards to wit, on the day & year last aforesaid
 to wit, at the place aforesaid converted & disposed
 of the said goods & chattels to its own use. To the
 damage of the said Plaintiff of Five Hundred
 Dollars & therefore he brings Suit &c

Ja^s. H. Edsall

Atty for P^l

(Endorsed)

" Filed April 21st 1859

J. S. Boardman Clerk "

And at a regular Term of the Lee County
 Circuit Court begun and holden at the
 Court House in the City of Dixon on the
 first Monday of May in the year of our
 Lord One Thousand Eight Hundred and
 Fifty Nine

Present

Hon^{ble}: John V. Eustace Judge of
 said judicial Circuit

Robert C. Barrell State Attorney
 of said judicial Circuit

James S. Bondfrown Clerk
 of said Lee County Circuit Court

Lester Harding Sheriff of Lee Co

6

Dr. It remembered that on one of the regular
days of said May Term to wit on the
ninth day of May AD 1859, the following
record appears as in this behalf:—
"Aaron Palmer."

Miss Central Railroad Company } Surpass on the Case
On this day comes
the Defendant by Stratton & Atherton its Attorneys
and enters its motion to quash the Sheriff's return
on the writ, whereupon comes the Plaintiff by
his Counsel, and enters his cross motion for
leave to amend the return, which said leave
is granted, "

And afterwards to wit on the tenth day
of May aforesaid, the said Defendant files
its plea which are in the words following
to wit:—

" See County Circuit Court
May Term AD 1859
Miss Central Railroad Company }
vs
Aaron Palmer }

And the
said Defendant by Stratton & Atherton its
Attorneys comes and defends the wrong &
injury when &c and says that it is not guilty
of the said supposed wrong & injuries as in said
Plff's declaration is alleged and of this it puts
itself upon the Country—

7
2
" And for a further plea in this behalf said
Defendant says actio non because it says
that at the said goods & chattels in said Plaintiff's
Declaration mentioned, were the goods & chattels
of the said Defendant, and not the property of
said Plaintiff as in said plea is alleged to
not at the time when &c at the County of Lee
aforesaid in said Plaintiff's declaration men-
tioned & of this it puts itself upon the Country &c

3
" And for further plea in this behalf said
Defendant says actio non because they say that at
the time & when &c in said Plaintiff's declaration
mentioned, said goods & chattels were not the
property of said Plaintiff as in his Declaration
is alleged, & this they are ready to verify, wherefore
they pray judgment &c

4
" And for further plea in this behalf said Defen-
dant says actio non because they say that
said Plaintiff, at the time when when &c in
his said declaration mentioned was not
lawfully entitled to the possession of said
goods and chattels in said Declaration
mentioned & this they are ready to verify
wherefore they pray judgment &c
Horton & Asherson
Def's Attys -

And afterwards, to wit on the 24th day of
November A.D. 1859, the said Plaintiff
filed his replication & Denial to the Defen-
dant's pleas, in the words following to wit:-

Aaron Palmer

The Illinois Central
Railroad Company

And the said Plaintiff as to the
plea of the said Defendant by it first above pleaded
and whereby it has put itself upon the Country
doth the like etc.

And the said Plaintiff, as to the said Pleas of the said
Defendant by it secondly, thirdly, and fourthly
above pleaded, said that the same, and each of them
and the matters contained, and each of them
in manner and form, as the same are pleaded
and set forth, are not sufficient in law, to bar
or preclude him the said Plaintiff, from having
or maintaining his aforesaid action thereof
against the said Defendant, and that the said
Plaintiff is not bound by law to answer the same
and thus the said Plaintiff is ready to verify
therefor by reason of the insufficiency of the
said Pleas and each of them in this behalf
the said Plaintiff prays judgment, and his damages,
by him sustained on the occasion of the
committing of the said grievances to be
judged to him etc.

And the said Plaintiff avers
and to the Statute in such case made and
provided states and shews to the Court here
the following causes of Demand to the said
second, third, fourth pleas respectively, that
is to say; for that the said pleas are not special

pleas, but amount to the generally same informally
pleaded;— and for a further cause of demurrer
to the third and fourth pleas respectively, that
the said pleas ought to have concluded to the
County + not with a venue, and
also that the said second, third and fourth
pleas are each in other respects uncertain
informal and insufficient &c

Wm E Sheffield
Attys "

And at a regular Term of the said Sec County
Circuit Court, begun and holden at the Court
House in Dixon in said Sec County, on the
fourth Monday of November in the year
of our Lord, One Thousand Eight Hundred and
Eighty nine

Present

John D. Cuyler Judge

Robert C. Lynch States Atty

Isaac S. Hammond Clerk

Sister Harding Sheriff

It is remembered, that on the seventh
day of December A D 1859, the same being
one of the regular days of said November
Term, the following entry appears to us of
Record in said cause, that is to say:—

"Dixon Term

Wm E Sheffield Plaintiff & Company,

vs
Thompson the lease

Now on this

day comes the Plaintiff by Edmund & Sheffield his
Attorneys, also comes the Defendant by H. H. H.

and Goodwin its Attorneys, and thereupon the Defendant to the second, Third & fourth pleas herein is sustained, and the said Defendant now asks leave to amend the Third and fourth pleas herein, which said leave is granted.

and afterwards on another regular day of the said November Term Court on the 13th day of December Anno Domini 1859 the following entries appear to us of record therein to wit:—

" Aaron Palmer

Missouri Central Railroad Company

Defendant in the Case

On this day again comes the Plaintiff by Edsall & Sheffield his Attorneys, also come the Company Defendant by Hutton & Goodwin its Attorneys, & the issues being joined also come a jury of good and lawful men to wit: James H. Preston, William Hawley, Philip Moore, Jonathan Hyde, Nathan Hill, Daniel Morgan, C. J. Quokins, William Sutton, Daniel Barton, Benjamin A. Weston, John Seak & R. D. Foster who were duly sworn, tried and sworn, and after having heard the evidence, and the argument of counsel, retire to consider of their verdict:—and afterwards on this day the said jury return into Court the following verdict to wit: "We the jury find the issues for the Plaintiff and award damages at each hundred and fifty dollars." & thereupon comes the Defendant &

enters its motion for a new trial herein."

And afterwards at another regular day of the said November Term the next on the 22^d day of December aforesaid the following record entry appears to us in this behalf: to wit:

"Arrow Sulmer

Illinois Central
Railroad Company

Defendant the Case

On this day again came the said parties by their respective Counsel, and the said Defendant's motion for a new trial heretofore made herein, is now by the Court sustained; on this condition however that the said Defendant pay all the costs herein hitherto made by either party."

And the Instructions asked in said cause are in the words following: that is to say: the Instructions given by the Court, & so marked by the Court "given"

12 "

Charles Palmer

vs
The M. & E. R. R. Co

The Plaintiff asks the Court to instruct the jury that under the Pleading in this case the Defendant admits the Plaintiff

Given Property and right of possession to the extent required to maintain the same

Given That if the jury believe from the evidence that the Defendant refused to deliver the Property to the Plaintiff or his agent and did not claim at the time of the refusal to retain it for the charges thereon that he is now estopped from setting up that claim as a reason for not delivering the Property

Given That a common carrier has no lien upon or right to detain Goods or Merchandise shipped from one place and at one time for the charges upon other goods or Merchandise shipped at another place at another time

Given That a common carrier has no right to detain property shipped by and belonging to one person for the charges upon other property shipped by & belonging to another person although consigned to the same person as agent or consignee

Given That the measure of damages is the value of the property at the time of the loss

found
 That it is not necessary to make a formal tender of money for the charges of Transportation, when the party declines stating the amount claimed for charges and refuses to receive the money - Provided there is a readiness to pay whatever is due found by the Evidence

Endorsed "Filed Dec 13th 1859
 J S Brandman Clerk"

And the Instructions 'refused' and so marked by the Court, are in the words as follows to wit: -

"
14
Referred

That the statements of the Plaintiff or John Palmer in this case not lawful with any act. are not evidence going to show the Plaintiff title

Referred

That the Plaintiff in this action must prove that he was prima facie the owner of the Property claimed or he can not recover

Referred

That the fact if found that the property was demanded under an order from John Palmer by the witness is evidence tending to show that the property was the property John Palmer

The Defendant asks the Court to instruct the jury that the Plaintiff must prove, first that the property was the property of the Plaintiff

Referred

Second that if the Defendants are shown to be common carriers they were entitled to retain the property until their charges are paid and the Plaintiff must prove a tender of the charges

Entered Filed Dec 13th 1859
J S Boardman Clerk

And at another regular Term of the Lee
County Circuit Court begun and holden
at Dixon aforesaid on the second Monday
of February A.D. 1860

Present

Hon John S. Easture Judge

Robert C. Churchill State Attorney

Isaac J. Boardman Clerk

Lester Handing Sheriff

Be it remembered that on the fourteenth
day of February A.D. 1860, the same being one
of the regular days of said February Term
the following record entry appears to us in
said Court to wit:—

"Aaron Palmer

Illinois Central Railroad Company

Respondent the Case

On this day coming
the Plaintiff by Colwell & Sheffield his attorneys
and it appearing to the Court, that the Defend-
ant has failed to pay the costs herein, upon
which condition it was to have a new trial,
the Court now proceeds to render judgment
upon the Verdict: It is considered, and
adjudged by the Court that the Plaintiff
be and he recover of the Defendant the sum
of One Hundred and Fifty Dollars (\$150⁰⁰)
his damages by him in this behalf sustained
together with the costs and charges by him in

and about this suit expended & that he have Execution therefor —

And afterwards to wit — on the eighteenth day of February, A.D. 1860, the same being one of the regular days of said February Term the following record entry appears to us: that is to say:—

"Aaron Palmer

Illinois Central Railroad Company

} Case

On this day comes the Defendant by Matouk Goodwin its attorney and on its motion, it has leave to file a Bill of exceptions:—

And on another regular Day of said Term to wit on the 25th day of February A.D. 1860 the following entry appears to us of Record in said court that is to say:—

"Aaron Palmer

Illinois Central Railroad Company

} Case

On this day again comes the Company by its attorney and asks, and obtains leave to have the Bill of exceptions signed in writing days from the date hereof —

And afterwards to wit on the
26th day of March A.D. 1860 the
Defendants in said cause filed
the Bill of Exceptions, which said
Bill of Exceptions so filed is in the
words and figures as follows to wit:

18 " State of Illinois } Lee County Circuit Court of
Lee County } ss the November Term AD 1859

Aaron Palmer

vs

Illinois Central Rail
Road Company

}
}
} Traver
}
}

Be it remembered that on the trial of the above entitled cause the said plaintiff called as a witness one Elijah Austin who testified that he knew the plaintiff, that he was acting as the agent of the plaintiff in selling Reapers for him during the year 1857. That the plaintiff shipped Reapers to witness at Soublette, that some time before the commencement of this suit he called on the agent of the defendants at Soublette Station in said County at the Defendants freight-house for one of Palmer & Williams Reaping Machines, which machine was shipped and consigned to witness at Soublette by plaintiff and demanded of the freight agent to know the amount of freight due on said reaper, where where that the agent claimed a charge for other freight, which had been previously shipped on Defendants Road, and which was also at the freight house and refused to make out a Bill or state the amount of charges on this Reaper only, that witness then tendered to the agent about fifteen dollars which was more than the amount regularly charged by the Company for similar shipments made by the same parties, and demanded the reaper, - witness was acting as the agent of the plaintiff at his request. The reaper was marked Aaron Palmer Soublette, was the plaintiffs reaper, was sold at retail by the firm at one hundred and fifty dollars (\$150) the

Agent of the Defendants refused to deliver reaper unless Plaintiff would pay the whole bill which included the charges on parts of reapers shipped by the same parties but were not the plaintiffs property - on cross examination Witness testified that he had no personal knowledge of who owned the reaper except as plaintiff had told him, never saw the plaintiff in possession of it and was never present when plaintiff purchased or made any bargain for it. The Reaper was manufactured at Joliet in this State by John Palmer ^{of Company} and shipped to LaSalle, John Palmer and the plaintiff are brothers - witness when he demanded reaper of Defendants agent did so upon the written order of John Palmer - Direct resumed - Witness had an arrangement with the plaintiff to sell reapers for him at LaSalle, which reapers plaintiff shipped to witness as his agent, that this reaper was sent under the same arrangement and shipped to him in the same manner that other reapers were by the plaintiff which witness was in the habit of selling for plaintiff, which was all the testimony offered in this case, whereupon the Defendants after the evidence was closed asked the Court to instruct the jury as follows, to-wit: -

Refused "That the statements of the plaintiff or John Palmer in this case not coupled with any act are not Evidence going to show the plaintiffs title"

Refused "That the Plaintiff in this action must prove that he was prima facie the owner of the property claimed or he can not recover,"

Refused "That the fact, if proved, that the property was demanded under an order from John Palmer by the

witness is evidence tending to show that the property was the property of John Palmer"

Refused
 "The Defendant asks the Court to instruct -
 "the jury. that the plaintiff must prove, first;
 "that the property was the property of the plaintiff -
 "Second - that if the defendant is shown to be
 "Common Carrier they were entitled to retain the
 "property until their charges are paid and the plaintiff
 "must prove a tender of the charges"

Which instructions asked by the Defendant were by the Court refused, Whereupon the plaintiff asked the Court to instruct the jury as follows

Tamir;
 "Caron Palmer }
 " do }
 "The Ill. Cent R R Co }
 " }

The plaintiff asks the Court -
 "to instruct the jury that under the pleadings
 "in this case the Defendant admits the plaintiffs
 "property and right of possession to the extent required
 "to maintain the action of Trover,

"That if the jury believe from the evidence that the
 "defendant refused to deliver the property to the
 "plaintiff as his agent; and did not claim at the
 "time of the refusal to retain it for the charges
 "thereon that he is now estopped from setting up
 "that claim as a reason for not delivering the
 "property,

"That a common carrier has no lien upon or right
 "to detain goods or merchandise shipped from one
 "place and at one time, for the charges on other goods

2/ .. or merchandise shipped at another place and
.. another time --

" That a common carrier has no right to detain
.. property shipped by and belonging to one person
.. for the charges upon other property shipped by
.. and belonging to another person although consigned
.. to the same person as agent or consignee, --

That the measure of damage is the value of the property
at the time of the conversion,

" That it is not necessary to make a formal tender
.. of money for the charges of transportation when the
.. party declines stating the amount claimed for charges
.. and refused to receive the money - provided there is
.. an readiness to pay whatever is due, proved by the
.. evidence --

" Which instruction the Court then gave to the jury -
.. to the refusal of the Court to give the instruction
.. as asked by the defendant and to the giving by the
.. Court of those asked by the plaintiff the defendant
.. by his Counsel excepts and prays that this his
.. bill of exceptions be allowed which is done, and
.. afterwards on the coming in of the verdict of the jury
.. in this cause the said defendant enters his motion
.. herein for a new trial in this cause, which motion
.. the Court refuses to grant except upon the terms
.. that the Defendant pay all costs up to this time
.. which order is in the modes following to wit;

" And on this day again comes the said
.. parties by their respective Counsel and the

22 "Said defendants motion for a new trial heretofore
"made herein is now by the Court sustained, on this
"condition however that they pay all the costs herein
"hitherto made by either party"

To which refusal of the Court to grant a new trial
except upon the condition aforesaid and to making
the defendants right to a new trial to depend upon
the payment of costs. The defendant by his Counsel
excepts and prays that his said exception be allowed,
which is done.

And he is remembered that afterwards to wit, - at
the February Term of said Court AD 1860. said costs
being unpaid by the defendant the said plaintiff
enters his motion that the application of said
defendant for a new trial be overruled, and the
said plaintiff have judgment upon the verdict
heretofore rendered in this case which motion
is by the Court sustained and said motion for
a new trial is overruled by the Court and judgment
entered upon the verdict. To which ruling of the
Court in overruling said motion for a new trial
said defendant by his Counsel excepts and prays
that this his bill of exceptions may be signed
sealed and made a part of the record in this case,
which is done accordingly.

March 23^d 1860

John V. Eustace *Seal*

Judge 22nd J. C.

Bill of Costs in said Cause

Amos Palmer

Miss Central Railroad Company

Dec case 3rd 30

30

Mrs East } 2 copies 40 appts 25, Fil 9 pas 45 Sumus & Fil 40 1.50
 3 pas & Fil 1.20 - 20 atts 10 appt 10 Ent on dmo 20 1.60
 Ent leave to amend etc 20, Ent out demurrage 20 40
 Ent call for, 25; Ent ruling 15 Ent Verdict 45
 Ent fillet 20 - 2nd pas 20, Ent for Gas 20 65
 Ent for cost 20 Ent for Ex 20 satisfaction 15 55
 Bill of Cost 30 Copy of Cost 20 Cert & Seal 35 85
 Sheriff's Fee (Holding Sumus) 125 Sps 135 2.60
 Recd 1 Sps 135 (Baker Sps 135 1.70
 Witness, Elijah Minton 14 Days 25 miles 15.25
 Jury Fee 300 3.00
 \$ 28.85

Let's cost } appt atts 25 Fil 2 pas 10 Ent on to grand 20 55
 Ent for leave to amend 20 - Ent amend 20 45
 Ent on for new trial 20 Ent for new trial 20 40
 Ent as to cost of new trial 20, 2 orders as to Bill Ex 40 60
 Bill of Cost 30 2 copies of Cost 40 90
 Transcript etc - 7.50 Docket Fee 125 8.75
 \$ 11.65
 28.85
 \$ 40.50

State of Illinois
 Lee County

I certify the foregoing to be a correct copy of costs in said cause

J. S. Boardman Clk
 W. Joseph Bull D. C.

State of Illinois }
 Lee County } ss.

I Isaac J. Bondman
 Clerk of the Circuit Court, in & for the County
 of Lee in the State aforesaid do hereby
 certify that the foregoing is a full and
 complete transcript of all the proceedings
 of records in said Cause, and of the findings
 appertaining to the same as appears by the
 Records & files in my office

In witness whereof I have
 hereunto set my hand and
 the seal of said Court at Dixon
 this 16th day of April A.D. 1861

Isaac J. Bondman Clerk
 Wm Joseph Ball D. C.

And now come the said
 Illinois Central Rail Road
 Company Plaintiff in Error in
 this Cause and say that in the
 Record & Judgment aforesaid
 there is manifest Error in this
 to wit

- 1st The Court Erred in Sustaining
 the demurrer to the defendants
 pleas and each of them
- 2^d The Court Erred in giving each
 of the instructions asked by the
 Plaintiff

2³^d The Court Erred in refusing to give the instructions asked by the defendants, severally

4th The Court Erred in refusing to grant a new trial unconditionally

5th The Court Erred in rendering judgment in manner of form of our said

Glover, Leody

Hampden

And now comes Aaron Palmer the said defendant in Error by James H. Edwell his attorney & says that there is not any Error in the Record & proceedings aforesaid

James H. Edwell
for Defendant in Error

204
Central R. R. Co.

St. Palmer

Record

Filed April 17. 1860.
L. Deland
Clerk.

Printed by W. H. Bond

Entered in Error
Filed April 20. 1860
L. Deland Clerk