

No. 12519

Supreme Court of Illinois

C.B. & Q. R. R. Co.

vs.

Carter.

Chicago, Burlington & Quincy Railroad Company } State of Illinois
vs } Supreme Court - 3^d Division
Adolphus Carter } April Term AD 1858
Appeal from Cass County Court

And now comes the said plaintiff in error, by D. L. Bough, its attorney, & says that in the record & proceedings in said cause there is error in this - to wit -

1st The Court erred in overruling, demurrer of defendant below to declaration of plaintiff below.

2^d The Court erred in rendering judgment for plaintiff below.

And these other errors apparent on the face of the record, the said plaintiff prays that the judgment of the Court below herein may be reversed, annulled, & aside, & wholly for nothing, & steamed.

D. L. Bough
Attorney for Plaintiff

Chicago B & O R.R.
Company

vs

Adolphus Carter

— " —

Assignment of Endors

— " —

Filed Apl. 27. 1858.

Adams Ck.

1.
Saball County Court

September Term 1857

State of Illinois
Saball County

Plas. Proceedings and
Judgments held and taken in and before
the Saball County Court in the state of
Illinois at the Court House in Ottawa
in the county of Saball of September Term
thence to wit: of the Seventh day of Septem-
ber A.D. 1857 and of the Independence of
the United States of America the Eight Second

Now John C. Champlin pro.

Be it remembered that hereunto to
wit, on the first day of August 1857 a sum-
mons was issued out of the office of the
Clerk of the Saball County Court, in the
words and figures following to wit:

"The people of the State of Illinois

To our sheriff of our county of Saball
Greeting

We command you, that you summon
Chicago, Burlington & Quincy Railroad Company
if it shall be found in your county, perso-
nally to be and appear in our Saball County
Court, before our Judge thereof, on the first

And on the same day - to wit, the 1st day of August 1857 - a declaration was filed with the clerk of said Court in the words and figures following to wit.

"State of Illinois

"LaSalle County

And hereby certify thereof
September Term Ad. 1857

Adolphus Wenter plaintiff in this suit
vs
Glenn Clerk his attorney, complainant of
the Chicago, Burlington and Quincy Rail
Road company defendant, summoned &c
of a plea of trespass on the case. Now
that the said defendant heretofore to
wit on the 6th day of June Ad. 1857 did
at the County of said was an incorpora-
ted company and was possessed of and
was then and there operating a certain
rail road known as the Chicago Burling-
ton and Quincy rail road, which rail road
has been opened and operated for more
than six months before the committing
of the grievous wrongs aforesaid mentioned
and was then and there ~~possessed~~ ^{possessed} of and
was then and there moving certain
trains of cars on said rail road and by
reason of the premise it then and there
became and was the duty of said defendant
to keep and maintain fences on the sides
of its said rail road, suitable and

sufficient to prevent cattle, horses, sheep and hogs from getting on the said rail road - Yet the said defendant disregarding its duty in that behalf did not nor would keep & maintain fences on the sides of its road, but neglect, negligently & carelessly omitted to do so by reason whereof three colts of the plaintiff of great value to wit of the value of three hundred & fifty dollars went upon said rail road of said defendant and the car of said defendant then & there running upon said rail road ran against the said colts of the said defendant and killed two of said colts and greatly damaged and injured the other of said colts so that said last mentioned colt now and now is greatly decreased in value to wit in the sum of fifty dollars

And for that the said defendant heretofore to wit on the 6th day of July A.D. 1857 to wit at the county aforesaid was and incorporated company and was possessed of & was then and there operating a certain rail road known as the Chicago Burlington and Quincy rail road - which rail road has been opened and operated for more than six months before the

committing of the grievous larcin after
 mentioned and was then and then poss-
 essed of and was then and then moving
 certain trains of cars upon said rail
 road. And the said plaintiff was then
 and then possessed of three colts each of
 great value to wit of the value of two hun-
 dred dollars, and the said defendant
 had not then and then in the sides of
 its said rail road, fences suitable and
 sufficient to prevent cattle and horses
 from getting on the said rail road
 and the said colts of said plaintiff in
 consequence of the want of such fence
 went on to the said rail road and the
 said cars of the said defendant were
 then and then being run on said
 rail road by the said defendant by its
 agents and servants, and the said cars
 of the said defendant were then and then
 by the said agents and servants of the said
 defendant, so negligently and carelessly
 governed operated & driven, that by and
 through the ~~xxxx~~ mere carelessness and
 negligence of the said agents and servants
 of said defendant were driven against
 the said colts of the said plaintiff and
 two of the said colts were then & then thereby
 killed and the other of said colts was

then & then thereby greatly damaged and injured

Whereby the plaintiff hath sustained damages of two thousand dollars & therefore he brings his suit

Glenn & Cook

Plaintfs Atty.

Afterswards to wit, on the 10th day of September 1857 a return was filed with the clerk of said Court in the words and figures following to wit.

Adolphus Cortis	}	Ladalle County Court
"		September Term
The Chicago, Burlington		Ad. 1857
& Quincy Rail Road Company		

And the said defendant comes & says that the said plaintiff, ought not to have his action aforesaid against them because they say that the several counts of the declaration aforesaid are not sufficient in law nor are either of the counts in said declaration sufficient in law to maintain the action aforesaid & that he is not bound by law to answer the same wherefore the said defendant prays judgment & that the said plaintiff

may be ~~heard~~ barred of his said action
against said defendant

And for special causes of demurrer
to said counts in said declaration
& to each of them, the said defendants
shows to the court here the following - Don't
set

1st In neither of said counts is there
any averment that the colts in said
counts mentioned were not killed within
the limits of any town, city or village
& did not come upon ^{the} rail road of said
defendant, within the limits of such town
city or village

2nd In neither of said counts is there
any averment that said colts were
killed through the wanton, or wilful &
gross negligence of the agents or servants
of said defendant

3rd In neither of said counts is there
any averment that said colts were killed
through the gross & culpable negligence
or wanton recklessness of the agents or
servants of said defendant

4th And also that said declaration
is in other respects uncertain, inform-
al, and insufficient

David L. Wough
Deft atty

And afterwards on the same day - the same being one of the days of the September term of said court 1857, the following proceedings were had and entered for record & int.

Adolphus Cantor

///

m.

Chicago, Burlington &
Quincy Rail Road Company

vs. Insuper

This day came the defendant by David S. Blough its attorney, and files a demurrer to the declaration of plaintiff filed herein, which demurrer, after hearing the arguments of counsel, is overruled by the Court, to which ruling of the Court the defendant by its attorney then and there excepted

And afterwards to wit, on the 11th day of September 1857 being one of the days of the September term of said court - the following proceedings were had and entered for record & int.

Adolphus Cantor

///

m.

Chicago, Burlington &
Quincy Rail Road Company

vs. Insuper on the case

This day again comes the defendant by its attorneys and

9.

says it will abide the decision of the Court
in annulling his demurrer to plaintiffs dec-
laration - and excepts to the decision of the
court in annulling his said demurrer
And prays an appeal to the Supreme
court thereon - which is granted on his
filing an appeal bond, within thirty days
from the last day of this term of this court
in the penal sum of Four hundred
dollars with David L. Dough as security

Afterwards to wit on the 14th day of September
1857 being one of the days of the September
term of said court - the following pro-
ceedings were heard and entered for record
to wit.

Adolphus Clark

///

Chicago Burlington
Quincy Rail Road Company

Transpass on the case

This day comes
the plaintiff by Glendon
Clark his attorney - whereupon comes the
following jurors of a jury to wit, Lidian Mace
Blatt Thorne, C. W. Allen, Addison B. Lyon,
A. W. Smith, Darwin Thompson, Amasa Foster
Thomas S. Wade, J. D. Pennell, Wm J. Smith
C. H. Raymond and C. S. Beardsley who
now duly sworn to assess the damages here-
in according to the evidence - and after

hearing the evidence and arguments of counsel, and after due deliberation thereon had returned into court the following verdict to wit, "We the jury assess the plaintiffs damages at Two hundred dollars."

It is therefore considered by the court that said plaintiff have and recover of said defendants the said sum of Two hundred dollars for his damages and also his costs and charges of him herein & found and that he have execution therefor

Affirmed to wit, on the 5th day of October 1857 an appeal bond was filed with the clerk of said court in the word & figures following to wit

Know all men by these presents, that we the Chicago, Burlington & Quincy Rail Road Company, as principal & David L. Hough as security, are held & firmly bound unto Adolphus Center, in the penal sum of Four hundred dollars, good & lawful money of the United States, for the payment of which well & truly to be made we bind ourselves, our heirs, executors & administrators, jointly, severally, & jointly by these presents

In witness whereof the secretary of the

said company has hereunto set his hand & affixed the corporate seal of said company & the saidburgh has hereunto set his hand & seal this 29th day of September A.D. 1857.

The condition of the above obligation is such that whereas the above named Adolphus Castro did at the September Term of the said County Court, held in and for the county of Dallas in the state of Illinois A.D. 1857 receive a judgment against the above named Chicago Burlington & Quincy Rail Road company for the sum of Two hundred dollars & costs of suit, to reverse which said judgment the said company has taken an appeal to the Supreme Court of said state of Illinois.

Now if the said Chicago, Burlington & Quincy Rail Road Company shall duly prosecute said appeal & pay or cause to be paid, all judgments, costs, interest & damages which the said Supreme Court shall adjudge against said company & abide the order of judgment of said Court in this behalf then this obligation to be void otherwise to remain in full force & effect.



Chicago, Burlington & Quincy Railroad Company
By Amos J. Wall Secretary
Daniel L.burgh

State of Illinois }
 LaSalle County } p.

J. Philo Lindley, clerk
 clerk of the County Court of said county,
 hereby certify the foregoing to be a full
 true and complete record of all the
 proceedings had in the LaSalle County
 Court in a case wherein Adolphus
 Centis is plaintiff and the Chicago
 Burlington & Quincy Rail Road Company
 is defendant. as appears from the
 records and files in my office.

Witness my hand and seal
 of said court at Ottawa this
 6th day of February A.D. 1885
 Philo Lindley, clk
 E. H. Smith, Clk.

Dec 2. 85

137

The Chicago Burlington and
Quincy R.R. Company

by
Adolphus Carter

Record

Filed April 17, 1858

Adelard
Clerk

The Chicago Bur. &
Quincy R.R. Co

137-

vs

Adolphus Barton

} Brief for Appellant

The second count
in this declaration is a good one
irrespective of the question of the
force the Statute provides that
when the fences have been made
safe in good repair the Rail
road shall not be liable for
damages unless negligently or
willfully done

This Court in the case of the Cent.
M. & T. R.R. Co. v. Rockafellow

17. Dec 541 -

and in Ch & Miss R.R. Co. v. Patchin

16. Dec - 198 -

decide that Railroad companies
are liable for gross negligence in
killing stock on their roads -

This is all that is necessary
to sustain this count -

The Court says, "the said de-
fendant by its agents or servants

so negligently & carelessly governed
operated & drove their cars that
by & through the mere carelessness
negligence of the said
agents & servants of the said de-
fundants "the colts were killed
Gross negligence could be
proved under that allegation
If this is so the count is good

Glover & Co
for Appellants

Thos Chis, Dur
& Quincy R R Co -

Carton -

argument
for
appeal

Geo -

[12519-10]

STATE OF ILLINOIS, SUPREME COURT,
TO APRIL TERM, A. D., 1858.

APPEAL FROM LA SALLE.

CHICAGO BURLINGTON & QUINCY RAILROAD COMPANY, APPELLANT,
vs. ADOLPHUS CARTER, APPELLEE.

Abstract of Record.

This was an action of Trespass on the case brought in the La Salle County Court at the September Term, 1857, by plaintiff below, to recover damages from defendant below, for killing three colts of plaintiff on Railroad of defendant.

I. Copy of Summons from the County Court.

II. First count of plaintiff's declaration.

III. Second count of Declaration.

IV. Demurrer by defendant as follows:

And the said defendant comes and says that the said plaintiff ought not to have his action aforesaid against them, because they say that the several counts of the declaration aforesaid are not sufficient in law, nor are either of the counts in said declaration sufficient in law, to maintain the action aforesaid, and that they are not bound by law to answer the same, whereupon the said defendant prays judgment and that the said plaintiff may be barred of his said action against said defendant.

And for special cause of demurrer to said counts in said declaration, and to each of them, the said defendant shows to the Court here the following, to wit:

1st. In neither of said counts is there any averment that the colts, in said counts mentioned, were not killed within the limits of any town, city, or village, and did not come upon the Railroad of said defendant, within the limits of such town, city, or village.

2d. In neither of said counts is there any averment that said colts were killed through the wanton or wilful and gross negligence of the agents or servants of said defendant.

3d. In neither of said counts is there any averment that said colts were killed through the gross and culpable negli-

Pages 1 and 2.
Pages 3, and 4.
Pages 4, 5 and 6.
Pages 6 and 7.

gence or wanton recklessness of the agents or servants of said defendant.

4th. And also that said declaration is in other respects uncertain, informal and insufficient.

V. Demurrer overruled, to which ruling defendant excepts and prays an appeal, which is granted.

6th. Assessment of appellee's damages by jury.

7th. Court render judgment for appellee.

8th. Bond on appeal from judgment of County Court.

187

Chicago, Bue & Linn
R.D. Company

ms

Adolphus Carter

21. Bond of the Court of the County of Cook.

22. Court of the County of Cook.

23. Court of the County of Cook.

24. Court of the County of Cook.

25. Court of the County of Cook.

26. Court of the County of Cook.

27. Court of the County of Cook.

28. Court of the County of Cook.

29. Court of the County of Cook.

Chicago, Burlington & Quincy Railroad Company } State of Illinois
vs } Supreme Court 3rd Division
Adolphus Carter } April Term AD 1858
Appeal from Federal Court

Appellant's Brief

1st The defendant below, was not bound to fence its road, as charged in declaration of plaintiff below,

2nd Purples Statutes - Page 1077

2^d The act requiring railroad corporations to fence their roads, contained exceptions in the enacting clause, which exceptions plaintiff below was bound to negative in his declaration
2 Purples Statutes Page 1077 - 1 Chittys Pleading 223
4th Johnson Rep 304 - 12 Illinois Rep 238

3^d The demurrer to declaration of plaintiff below should have been sustained, because said declaration contained no averment to negative the presumption that the costs of said plaintiff may have gone upon defendant's road, within the limits of a town, city, or village, & were billed within such limits

D. L. Wright
Atty for appellant

137
C.B. & L.R.C.
vs

Adolphus Carter

Appellants Brief

Filed May 22 1858
L. Leland
clerk

Chicago & Burlington &
Annapolis Railroad Company
vs
Adolphus Carter

State of Illinois
Supreme Court. 3^d Division
April Term AD 1858
Appeal from Sabatka's Court

State of Illinois }
Sabatka County } ss

David L. Strong being
first duly sworn, deposes & says that he
is attorney for appellants in the above intitled
Cause. That early in the present term
of this Court he handed to the clerk
of this Court printed abstracts of the records
in this Cause to be filed, & was never with-
drawn said abstracts from the files of this
Court, & until this morning supposed
that they were on said files.

And affiant further says that
he also furnished B. C. Cook Esq., the attorney
for appellee with a copy of said abstract
subscribed & sworn to before

me this 22^d day of May } David L. Strong
AD 1858 }

I. Seland clk
by J. B. Rice Deputy

137

T. B. & J. N. R. Co

Carted

App'd.

Filed May 22. 1888
L. Leland
clerk

151 = ~~162~~ 155

re Chicago Burlington
& Quincy R.R. Company

Adolphus Carter

1858

137

12519

1858

~~151~~
Prepared