

12383

No. _____

Supreme Court of Illinois

^G
Halli~~man~~an.

vs.

Chicago & R. Island R. R. Co.

71641  7

State of Illinois ³² Pleas before the Honorable Edwin
LaSalle County vs. S. Seland Presiding Judge of the
north judicial District of the
State of Illinois at a Circuit Court Commenced and
held in and for the County of LaSalle at the Court house
in Ottumwa in said County on Monday the 7th day of
May in the year of our Lord one thousand eight hundred
and fifty three

Present the Honorable Edwin S. Seland Presiding Judge
Phil Lindley Clerk
W. H. L. Wallace States Atty.
Richard Thorne Sheriff

On the 5th day of April 1853 a process was filed in
the office of the Clerk of the Circuit Court for said
County in the words and figures following viz:

State of Illinois LaSalle County & Circuit Court
Sherrif to the May term A.D. 1853

Patrick Malligan

vs. Joseph Luan Chairman Freight
Chicago & Rock } Damages \$5000
Grand Rail Road Company

Summons as above

Dickay, Champion & Wallace
Atty for Plff

And thereupon on the same day a summons was
issued in said cause in the words & figures following
that is to say

The people of the State of Illinois, to the
Sheriff of said County - Greeting:

We command you that ^{you} summon the
Chicago & Rock Island Rail Road Com-
pany, if they shall be found in your county
personally to be and appear before the Cir-
cuit Court of said County, on the first day of
the next term thereof, to be holden at the Court
House in Ottawa, in said county, on the ninth
day of May next, to answer unto Patrick
Halligan in a plea of Trespass quare clau-
sam fregit to the damage of the said
plaintiff as he says, in the sum of Five thousand
dollars.

And have you then and there this writ,
with an endorsement thereon, in what man-
ner you executed the same.

Witness, Philo Lindley Clerk of our said Court
and the seal thereof, at Ottawa this fifth
day of April Anno Domini 1853

P. Lindley Clerk

for J. F. Nash Deputy

On the back of said Summons the Sheriff made
the following return viz:

"Executed this writ of
wading, the same to Thomas D. Brewster and
leaving a copy of the same with him

"April 12th 1853

R. Thomas Sheriff

Sun & wt 60

Coff 50

16 miles 80

$\$1.90$ "

"Filed April 16. 1853"

"Hindley Clk"

On Monday May 9th the same being one
of the days of said term of said Court the
following order was entered of record in said
Cause to wit:

"Petition of William

Chicago & Rock 3
Island Rail Road Company

Trustees of said Company
Freight

On motion of
defendants of Chimmarren & Taylor their attorneys
it is ordered that this cause be continued
for want of declaration, at plaintiffs costs"

~~Said judgments on the 18th day of November 1853
the same being one of the days of the November
term 1853 of said Court, a summons was
filed in and signed following viz:~~

State of Illinois
La Salle County, and Circuit Court thereof. -
to the November term A.D. 1853

The Chicago and Rock Island Rail Road Company was summoned to answer unto Patrick Halligan in a plea of trespass, and thereupon the said Patrick Halligan by Dickey, Wallace & Eastman his Attorneys complains.

For that the said Chicago and Rock Island Rail Road Company, on the first day of January A.D. 1853 and on divers other days and times between that day and the commencement of this suit, with force and arms, ~~it~~ broke and entered divers, to wit, two certain places, the property of the said Patrick Halligan, situate in the city of Peru in the County of La Salle aforesaid, and described as follows, to wit, the west half of ~~block~~ number ten, (10.) in block number one hundred and fifty two, (152,) in the ~~Vincennes~~ addition to the town of Peru, and lot number three (3) in block number sixteen (16) in the town of Peru, and then and there, broke down and destroyed certain fences thereon standing, and thereunto appertaining, of great value, to wit, of the value of two hundred dollars, and also then and there pulled down, prostrated, and destroyed, divers, to wit, two houses, the property of the said Patrick Halligan, then and there erect and standing on said premises, of great value, to wit, of the value of five thousand dollars, in the county of La Salle aforesaid, and to the damage of the said Patrick Halligan of five thousand dollars.

And also for that the said Chicago and Rock Island Rail Road Company, on a certain other day, to wit, on the day and year aforesaid, with force and arms broke and entered the aforesaid places, the property of the said Patrick Halligan, and then and there pulled down, demolished, and carried away, and converted and disposed of to its own use and benefit, divers, to wit, two certain other buildings of great value, to wit, of the value of five thousand dollars, the property of the said Patrick Halligan, then and there on the aforesaid premises, standing and being, in the County of La Salle aforesaid, to the damage of the said Patrick Halligan of five thousand dollars.

And also for that the said Chicago and Rock Island Rail Road Company on a certain other day, to wit, on the first day of January A.D. 1853 with force and arms, broke and entered the aforesaid places, the property of the said Patrick Halligan, and then and there took possession thereof, and from thence hitherto hath wrongfully and without the consent, license, or permission of the said Patrick Halligan, kept possession thereof, and occupies and converts the same to its own use. By means of which said several premises, he the said Patrick Halligan, during all this time hindered and prevented from carrying on, and transacting thereon, his lawful and necessary affairs and business, to wit, at the county of La Salle aforesaid, to the damage of the said Patrick Halligan of five thousand dollars.

And also for that the said Chicago and Rock Island Rail Road Company on a certain other day, to wit, on the day and year aforesaid with force and arms broke and entered the aforesaid closes of the said Patrick Halligan, and then and there ejected, expelled, put out, and removed, the said Patrick Halligan and his family and servants, and divers other persons, to wit, Michael Pendergast and Alexander Frinkles tenants of the said Patrick Halligan, (said tenants then and there using and occupying said premises for him, and paying unto the said Patrick Halligan therefor at the rate of one thousand dollas per annum,) from the possession, use, occupation, and enjoyment of the said premises, and kept and continued the said Patrick Halligan and his family and servants, and also his said tenants so ejected, expelled, put out, and removed, for a long space of time, to wit, from thence hitherto, whereby the said Patrick Halligan for and during all that time, lost, and was deprived of the use and benefit of his said premises, and of the rents, issues, and profits thereof, accruing to the said Patrick Halligan from said tenants, to wit, at the county of La Salle aforesaid, to the damage of the said Patrick Halligan of five thousand dollars; - And other wrongs then and there did, against the peace of the people of the State of Illinois, and to the damage of the said Patrick Halligan of five thousand dollars, and therefore he brings this suit.

Dickey Wallace Eastman
Atty for Plff.

The defendants Demurrer to Plaintiffs
disavowal was filed on the 18th day of
November 1883 in the words & figures following
viz:

State of Illinois } In the Circuit Court
La Salle County ss } November Term 1853

Chicago and Rock-Island

Rail Road Company }

vs

Trespass

Demurrer to Dec.

Patrick Halligan }

And now comes the said
Chicago and Rock-Island Rail Road Com-
pany by Chumars & Taylor, & B. C. Cook
their attorneys, and as to the said Declaration
of the plaintiff and each count thereof, says
that the same is insufficient in law, wherefore
they pray judgment &c. State for reasons
1st Each count in said Declaration is for two
causes of action.

2nd As to the last or 4th count is bad for Dupli-
city - and bad for that it represents the locus
in quo to have been in the possession of other
parties - And for other reasons

Chumars & Taylor &
B. C. Cook - Defts Attys

And afterwards to wit: on the 23^d day of November
1853 the said being one of the days of the
November Term 1853 of said Circuit Court
the following further order appears of record in
said Court viz:

Patrick Halligan 3
103 as 3 Tinsap Lucan Chumman
Chicago & R. I. R. R. Co 3 Freight

This day comes the plaintiff of Dickey
Wallace & Eastman his attorneys and the
defendants of Chumman & Taylor their
attorneys and after hearing the arguments
of counsel on the demurrer filed by
defendants counsel to plaintiffs declaration
the Court do sustain said demurrer as to
the last count in said declaration, and
overrule as to the balance

And again on the 5th day of December 1833
the same being one of the days of said term
Term the following further order appears of record
to wit;

Patrick Halligan 3
as 3 Tinsap Lucan Chumman
Chicago & R. I. R. R. Co 3 Freight

This day the defendants
of A. Ross Esq. moves a motion for a rule upon
the Clerk to produce papers in this cause

And finally on the 6th day of Dec. 1883 the same
being one of the days of said November term of
said Circuit Court, the following final order
appears of record in said Cause to wit:

Patrick Malligan 3
Chicago & C. I. R. R. Co 3
Jusap Luan Chaum
Freight

This day again comes the
plaintiff by his attorney who say they will abide
by defendants demurrer to last Court in plaintiffs
declaration and enter a Nolle Prosequi herein as
to the first three Counts in said declaration
set forth.

It is therefore considered by this Court that the
defendants have and receive of the plaintiff their
Costs and charges of their herein expended and that
they have no return therefor.

And now the plaintiff's Counsel come and
pray an appeal herein to the Supreme Court, which
is granted by this Court upon condition that
plaintiff, in full day from this date give bond
in the sum of one hundred dollars with the
Honorable Lucius Campbell as his security.

On the 21st day of January 1884 the plaintiff
filed his appeal and herein in the words and
terms following, that is to say:

Know all men by these presents, that we Patrick Halligan and Alexander Campbell, are held and firmly bound unto the Chicago and Rock Island Rail Road Company in the penal sum of one hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made we bind ourselves, our heirs and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this twentieth day of January, A.D. 1854.

The condition of the above obligation is such, that whereas the said Chicago and Rock-Island Rail-Road Company did, on the sixth day of December, A.D. 1853, before Edwin S. Leland, judge of the Ninth Judicial Circuit of the State of Illinois, and then presiding judge of the Circuit Court then in session at the Court House in Ottawa, in the County of La Salle in the aforesaid Circuit, of the November term of said Court, recover a judgment against the above bounden Patrick Halligan, for the costs and charges by the said Chicago and Rock Island Rail-road company expended, in a suit of *Traspas quare clausam fregit*, wherein the said Patrick Halligan was plaintiff, and the said Chicago and Rock-Island Rail-road Company was defendant, from which judgment the said Patrick Halligan has taken an appeal to the Supreme Court of the Third Grand Division of the State of Illinois: — Now if the said Patrick

Halligan shall prosecute his said appeal with effect, and in case the said judgment shall be affirmed, shall pay such judgment, costs, interest, and damages, as the said Supreme Court shall, on the trial of said appeal, adjudge him to pay, then the above obligation to be void, otherwise to remain in full force and effect.

J. Halligan *Pro*

A. Campbell *Pro*

State of Missouri
Gallatin County. I, **Thos Lindsay Clerk**
of the Circuit Court of
said County do hereby certify that the
above and foregoing is a true full
and complete copy of all the proceedings
in the foregoing case as the same appears
of record and on file in my office
In Testimony Whereof I have
hereunto set my hand and
the Seal of said Court this 13th
day of June A.D. 1854
Thos Lindsay Clerk

Supreme Court, Third Grand Division,
of the June Term, A.D. 1854, at Ottawa, Illinois.

Patrick Halligan

v.

Chicago & Rock Island
Rail-road Company

Appeal from the Circuit Court.

And now, in this same term, before the
Justices of the Supreme Court aforesaid, comes the said
Patrick Halligan, by Dickey, Wallace & Eastman, his
attorneys, and says, that in the record and proceed-
ings aforesaid, and also in giving the judgment a-
foresaid, there is manifest error in this: The Court erred,
1st In sustaining the aforesaid demurrer to the fourth Count
of the aforesaid Declaration, whereas it should have been overruled.
2nd In giving judgment against on said Demurrer to said
fourth count in the Declaration aforesaid, in favor
of the said Defendant for costs.

And the said Patrick Halligan prays that the
judgment aforesaid, for the errors aforesaid, and for
other errors in the said record and proceedings being,
may be reversed, annulled, and altogether holden
for naught, and that he may be restored to all
things which he hath lost by occasion of said
judgment.

Dickey, Wallace & Eastman
Att^ys. for Appellant.

And the said Defendant comes and
says that in the record of judgment
aforesaid there is no error - wherefore
By Chumaseo & Taylor
Defts Att^ys.

Patrick Halligan
R.
Chie. & R. Y. R. R. Co.

Sup Court.
Assignment of Errors.

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[12-383]

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Patrick Mulligan
Chicago & Rock
Island Rail Road
Company

84

~~12395~~

Filed June 19. 1854.
L.eland Clk.

12383

1854

Copy
of the 35th

Supreme Court, Third Grand Division
of the June Term, A.D. 1854, — At Ottawa Illinois

Patrick Halligan v.
Chicago & Rock Island
Rail-road Company

Appeal from LaSalle Co. Circuit Court
Action, — Trespass, Larceny, &c. Freight.

Appellant's Authorities

1. An allegation of a trespass on two or more
clases, is not duplicity, and is allowable.

Precedents — 2 Swifts Digest 430 — 2 Hum-
phreys's precedents 226. — 2 Chitty's Precedents,
722, 723, 509 — 2 Chit. Pl. 866, 872. —

Cases — Pythian v. White, 1 Mus. & M. 106 pa-
ging 216. — Tapley v. Wainwright 27 Eng. C.L.R. 99 —
Richards v. Peake, 9 Eng. C.L.R. 394 —

Definition of Dup. — Gould's Pl. Ch. 8, §§ 1, 3, 4, 5 &
Ch. 4, §§ 99, 100 — Steph. Pl. 293 — 1 Chit. Pl. 226 —

2. If the allegation of the expulsion of the tenants
be an impertinent allegation, it does not vitiate the
count, nor render it obnoxious to special demurrer, — but
only to a motion to strike out, — The demurrer, in
such case, should have been overruled, and ^{such} ~~the~~ sur-
plusage, (if any,) stricken out or disregarded — Salim v.
Johnston, 1 Bas. & Pul. ^{top} pagging 60 — Lord v. Tyler 14 Pick 156 —
Wyatt v. Aland 1 Salk. 324-5 — 1 Chit. Pl. 229 — Steph.
Pl. 421, 466

An impertinent allegation

3 ~~Superfluous~~ only vitiates a count when it shows that no cause of action exists. — Goulds Pl. Ch. 3, §§ 171, 172, 173 — 1 Chit. Pl. 231, 232 — Steph Pl. 420, 421

4 Two or more separate, or several closes, may exist in one general close; and proof of entry upon, or expulsion from, any portion of a several parcel, in the possession of the plaintiff will support ~~an~~ ^{this} action. —

Tapley v. Wainsight 27 Eng. C. L. R. 99 — Richards v. Peake, 9 E. C. L. R. 394 — Stephens v. Whistler, 11 East, (top) 51 — Croker v. Grompton, 8 Eng. C. L. R. 207 — Bapett v. Mitchell 22 E. C. L. R. 34

5 Any special right of use, however small, in a close, being in the possession of the plaintiff — even if a third party hold a general right over the entire close subject to the special right. — if invaded gives the right of action in Tr. Ins. Cl. Fugit. — 1 Chit Pl. 174, 178 — 3 Steph. N. P. 2634.

6 When, from any cause whatever, the ~~the~~ particular estate of Reversion determines, the reversion is extinguished, by merging in the title or possession of the ~~particular~~ grantor of the particular estate. — 49 Law Lib. (Whar. Con.) top page, 69, and 70, note. — ~~X This case is to be found in 20 E. C. L. R. 204~~ — 5 Bac Abr. top pa. 676 — Daniels v. Bond, 21 Pick. 367 ~~W. L. R. 16, 17, 18, 19, 20~~ — Parker v. Gibbins, 41 Eng. C. L. R. 607 2 Black. Com. 177

7 When there is a tenancy at will, and the close

be broken by a stranger, ~~both~~ ^{realty,} ~~land~~ and permanent injury be done to the ~~freehold~~, both landlord and tenant have their actions of Tro. D. Cl. Trespass, and will recover according to their respective losses.

1 Thos. Coke, top page 504 note 21 - Daniels v. Pond 21 Pick 387 - Davis v. Nash 32 Maine (2 Pick 411) - Curtis v. Hopkins, 19 Conn. 154 - Starr v. Jackson, 11 Mass. 519 -

8 If a tenant at will commit waste ~~commit waste~~, the landlord has his action of Trespass D. Cl. Tro against him,

1 Thos. Coke, top page 503 & 504 - Starr v. Jackson, 11 Mass. 519 - 4 Kent's Com. 111 note b. - 3 Steph. N. P. 2634 - 1 Greenl. Cruise, page 287 (top page) § 11 - 5 Conn. Rep. page 287. - ~~Curtis v. Hopkins~~ ~~4 Conn. Dig. page 101~~

9 But the allegation of the expulsion of the tenants ^{as stated in the Dec.} is not mispleading; but is clearly an overment in aggravation of damages, and merely shows a portion of the injury and damages sustained; and the allegation, - "Rising and occupying," &c. - "at the rate of," &c., shows clearly that the tenancy was only at will, - or tolerated, which does not in law create any ^{prospective} ~~estate~~ in the ^{premises} ~~freehold~~, and the proper ratio of rent is therefore payable from day to day. 2 Sel. N. P. "Use & Occupation." - 16 Brit. Pl. 344 - 1 Mac. Ab. page 510 note - Parker v. Gibbins 41 E. G. L. Rep. 607. - Stout v. Whitney 12 Ill. 210 (on page 227)

10. When the tenant ^{at will} abandons the premises, for any cause; ~~and~~ the relation of landlord and tenant ceases ~~and~~, and the rents cease; for the tenants estate (such as he had) is terminated, ^{by his own act} and the constructive possession is then in him in whom the title exists. - Wilcox

4283-11
v. King 3 Scam. 210 - 4 Law Lib. (Proc. on R. A.) § 472, bottom of page - Belasis v. Burbick, 1 Salk. 20849 (top p.) Archb. L. & Rem 70 (top 93) 2 Law Lib. 3 - 2 Archb. N. P. 391 (top 370) (2d. law lib.) - 2 Black. Com. 1461 (over)

3 Steph. N. P. 2722-3 — 2 Black. Com. 177.

11. It may well be questioned whether a tenant at will has ~~that~~^{such} degree of estate in the premises, ~~as you~~^{as you} creates a reversion. — Med. Star v. Jackson, 11 Mas. 519 — 4 Kent's Com. 111 note b. — 1 Thos Rake, top paying 503, 504 & note 21 — 3 Steph. N. P. 2634 — Rous. on Re. Ac. 663, 113. — Daniels v. Pond 21 Pick. ⁴⁰ ^{also} Adams on Eject. 31. — 1 Sel. N. P. 36 — 1 Green Cruise ¹⁰⁷ page 26 ~~45~~ ^{reg. title 7 - Estates, at will} ~~260, better included~~ Adams on Eject. by Til. page 54 notes — 4 Com. Dig. "Estates," F 2 (page 67) 1 Sel. N. P. 585 (Ejectments) 4 Dana's Dig. 748, § 20 —

Patrick Halligan

Chas. W. R. R. C. 2

Joseph J. C. C. Wright

Supreme Court, June term 1879

Brief

Supreme Court, Third Grand Division
of the June term, A.D. 1854, at Ottawa Illinois

Patrick Halligan }
vs }
No }

Appeal from La Salle Co. Circuit Court.

Chicago & R. I. R. R. Co. } Action, — In re, Prop. B. C. Freight.

{ Appellants' Abstract }

The Declaration consists of four counts,

- 1st Count — Alleges that the defendant, Jan. 1st 1853, broke &c, two closes of the plaintiff, to wit, the west half of lot no. 10, in block No 152, in the Minerva addition to Peru; — and lot No 3, in block No 16, in the town of Peru; and ^{pulled down} destroyed the fences, and two houses, standing on said premises
- 2nd Count — Alleges, that defendant broke &c, the said closes, & pulled down, carried away, & converted &c, two certain other buildings.
- 3rd Count — Alleges, that defendant broke &c, the said closes, and without the consent of plaintiff &c, took and kept possession of the same.
- 4th Count — Alleges, that ^{on the day of year of seizure,} defendant broke &c, the aforesaid closes, of the plaintiff, and ejected &c, the plaintiff, his family, & servants, — and certain two other persons, "tenants of the said Patrick Halligan," ("said tenants then and there using and occupying said premises for him, and paying unto the said Patrick Halligan therefor at the rate of one thousand dollars per annum") "from the possession, use, occupation, & enjoyment &c. — And kept & continued said Halligan, his family, & servants, and also his said tenants," so ejected &c, "from thence hitherto" — "whereby the said Patrick Halligan for and during all that time, lost, and was de-

prived of the use and benefit of his said premises, and of the rents, issues, and profits thereof, accruing to the said Patrick Halligan from said tenants"—to wit at &c. to the damage &c.

All the counts were demurred to. — The first three for duplicity, — for alleging the trespass to have been committed on two closes, — or as stated "for reasons" — "for two causes of action".

The fourth demurred to for the same reason, and also, "for that it represents the locus in quo to have been in the possession of other parties," &c.

The Circuit Court overruled the demurrer as to the first three counts, and sustained it as to the fourth.

The plaintiff entered a Mol. Pros. as to the first three counts; and there was a joinder, and judgment, on demurrer, on the fourth count, and an appeal taken: —

W. H. Walling Eastman
Att'y. for Appellant.

Patrick Halligan
49,
Chief U.S. Mail Road Co.

Appellants Abstract.
Supreme Court

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1854

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