

12525

No. _____

Supreme Court of Illinois

Chicago & Rock Island R. R. Co.

vs.

Whipple.

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In Supreme Court of Illinois.

APRIL TERM 1858.

THE CHICAGO AND ROCK ISLAND,
RAIL ROAD COMPANY. }

vs.

WARREN W. WHIPPLE, }

APPEAL FROM PEORIA CIRCUIT COURT.

This suit was commenced in the Circuit Court of La Salle county, and by change of venue removed to Peoria county.

On the 11th December, 1856, the plaintiff filed their petition in the circuit court of La Salle county, for a common law writ of certiorari against the defendant for the purpose of reviewing the decision and judgment of N. Duncan, a Justice of the Peace of said county, rendered in favor of the defendant against the plaintiff, on the 12th November, 1853, for \$71.20 and costs.

The petition states, in substance, that the "Chicago and Rock Island Railroad Company," were duly organized under an act of 27th February, 1847, and an act of February 7, 1851. That they, during the year 1853 were constructing and operating their said road by contractors.

That Whipple sued plaintiffs before N. Duncan, a Justice of the Peace of La Salle county, in November, 1853; upon the summons the constable returned, that had he served the same by leaving a copy with *George H. Buck*, an agent of said company, the president of said company not residing in his county, on the 7th November, 1853.

That the plaintiff's claim was for cattle killed upon the road before that time; that such action (trespass) would not lie against defendants in said suit, because they were not running, controlling or managing the road, but the same was run, controlled and managed by Farnham & Sheffield, contractors to build the same, for their own use and profit. That the Justice had no jurisdiction of the subject matter of the suit, or person of the defendant; that the said petitioners, nor any one for them, appeared before the Justice upon the day of trial, or any other time to answer to said suit; that Buck, on whom the process was served, was never their agent, and that there never was any service of process on petitioners, and they knew nothing of the suit until more than six months had elapsed after judgment was rendered against them, and not until they were again sued upon the same judgment about the middle of September, 1854. Petition further states that the judgment of the Justice is unjust and erroneous, and prays for a writ of certiorari to bring up the record to review the proceedings, &c.

The truth of the statements in the petition is verified by affidavit.

Bond of plaintiff to prosecute the writ and pay the judgment, in case of affirmance, filed December, 18, 1856.

Writ of certiorari was issued 27th December, 1856.

At the December Term, A. D. 1857, the defendant moved to quash the writ of certiorari and dismiss this suit for the following reasons:

1. No common law writ of certiorari lies in such case.
2. The facts appearing on the face of the petition in said cause do not authorize the issuing of any such writ.
3. The transcript and papers on file show that the Justice decided correctly in said cause.
4. By return of said Justice it does not appear that said Justice has committed any error in law.
5. The Justice had jurisdiction, and did not proceed illegally, so that no such writ lies.

Upon the hearing of this motion the defendant's counsel contended that the court could only examine into the regularity and legality of the writ, and offered to prove that the Chicago and Rock Island Railroad Company was not in existence at the time of the rendition of said judgment in the court below, and that the said judgment and all costs had been fully paid, since the rendition of said judgment, and also that another suit had been brought on said judgment below, and a new judgment rendered upon the said judgment before A. Putnam, a Justice of the Peace of La Salle county, on the 30th September, 1854, for the amount of the said judgment and costs, by which subsequent judgment the defendant insisted the said original judgment had been fully satisfied, and merged in said subsequent judgment.

The court rejected the evidence offered, dismissed the writ of certiorari, and plaintiff excepted, and tendered his bill of exceptions, which was signed and sealed by the court.

ERRORS ASSIGNED.

1. The court erred in sustaining the motion to dismiss the writ of certiorari.
2. The court erred in rejecting the evidence offered by the plaintiff.
3. The court erred in not reversing the judgment of the Justice of the Peace, and in not rendering judgment for the appellant.

N. H. PURPLE, Atty. for Appellant.

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The Chicago & N.W. R.R. Co.

vs

William W. Whipple

Filed Apr 20, 1858

L. Belmont

Clerk

12525

Prepared

IN SYSTEMS CONTROLLED BY THE

THE CHICAGO & N.W. R.R. CO.

AT THE CHICAGO & N.W. R.R. CO.

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N. H. PURPLE, Atty. for Appellant.

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The Chicago & B. I. R. R. C.

William W. Whipper

1858

Filed April 20, 1838

L. Leland
Clerk