

12317

No. _____

Supreme Court of Illinois

Reed

vs.

Peoria & Oquax^U~~X~~ka R.R.Co.

71641  7

93

John Reed Exr. &c.

vs

The Peoria & Ogawla
Rail Road Company

93

~~12317~~

1857

12317

XX

State of Illinois } ss
Peoria County } Pleas in the Circuit Court
in and for the County of Peoria and State of Il-
linois before the Honorable Judge of the six-
teenth judicial Circuit in said State, presiding
therein according to law:-

To all whom it may concern, Know Ye,
that the records of said Court being inspected
and examined, there appears of record among the
records and proceedings of said Court the follow-
ing matters and things, to-wit:-

Be it remembered that on the twelfth
day of June A.D. 1855, there was filed in the
office of the clerk of said Court a "declara-
tion and precept" in words and figures fol-
lowing to-wit:-

"In the Circuit Court of Peoria Coun-
ty, November Term A.D. 1855

State of Illinois }
Peoria County } ss

Andrew Seed, the plaintiff
in this suit complains of the "Peoria and
Oquawka Rail Road Company" defendant in this
suit of a plea of trespass. For that the said
defendant heretofore to-wit: on the first day of
January A.D. 1855 at the County aforesaid with
their horses, cattle, teams and servants, agents
and workmen, with force and arms broke and
entered the close to-wit: the south west quarter

of section twelve in township eight north of range seven east of the fourth principal meridian in the county aforesaid. of the said plaintiff, and then and there threw down, broke and destroyed the fences of the plaintiff of great value to-wit: of the value of five hundred dollars; and then and there broke down, trod down, eat up, carried away & destroyed the oats to-wit: one hundred acres of oats of the said plaintiff, of great value to-wit: of the value of five hundred dollars; And then and there drove off and carried away and caused to be driven off and carried away, dispersed and lost the hogs, to-wit: one hundred hogs of the said plaintiff, of great value to-wit: of the value of five hundred dollars, and other wrongs to the said plaintiff then and there did, to the damage of the said plaintiff one thousand dollars.

And for that the said defendant on the day and year and at the county aforesaid, broke and entered a certain other close of the said plaintiff, situate in said county, and then and there threw down, broke down and destroyed certain other fences of the said plaintiff of great value to-wit:- of the value of five hundred dollars, and then and there broke down, trod down and destroyed the oats to-wit-

One hundred acres of oats the property of the said plaintiff of great value to-wit: of the value of five hundred dollars, and then and there drove off and carried away & caused to be driven off and carried away, dispersed and lost the hogs to-wit: one hundred other hogs of the said plaintiff of great value to-wit: of the value of five hundred dollars; and other wrongs to the said plaintiff then and there did, to the damage of the said plaintiff, one thousand dollars & therefore he brings suit &c.

Purple, Langer & Pratt
Pltfs. Atty's

Andrew Seed	}	In the Circuit Court
vs.		of Peoria County
Peoria & Aquawka		Nov. Term 1855
Rail Road Company		

Issue summons - Trespass
Quare Clausum fregit - to the sheriff of Peoria
County - returnable to next term - dam. \$1,000

Purple, Langer & Pratt
Pltfs. Atty's

June 12th 1855

Jacob Gale, Esq., Clerk

And on the same day to-wit: the twelfth day of June A.D. 1855, there was issued from the clerk's office aforesaid, a summons, in words and figures following to-wit: -

The People of the State of Illinois, To the Sheriff
of Peoria County, Greeting: We command you to sum-
mon Peoria and Oquawka Rail Road Company if it
may be found in your County, to appear before
our Circuit Court on the first day of the next
term thereof, to be held at Peoria, within and
for the said county of Peoria, on the third Mon-
day of November next, then and there in our
said court, to answer unto Andrew Seed, of
a plea of trespass quare clausum fregit, to his
damage one thousand dollars as he says, and
make return of this writ, with an endorse-
ment of the time and manner of serving
the same, on or before the first day of
the term of the said Court to be held as
aforesaid.

Witness, Jacob Gale, Clerk of our said
court, and the seal thereof, at Peoria, this
twelfth day of June in the year
of our Lord one thousand eight
hundred and fifty-five

Seal

Jacob Gale, Clerk

Which said summons was afterwards
returned to the office of the clerk, aforesaid,
endorsed in words and figures fol-
lowing to-wit:- "Served on George C. Bestor, the
President and Henry Natter the secretary of the
Peoria and Oquawka Rail Road company by
reading and giving to each of them a copy

of this writ - June 15th 1855 - D. D. Irons,
sheriff by A. R. Kidwell, deputy."

Proceedings at a term of the circuit court be-
gun and held at the Court house at the city of
Peoria in and for the county of Peoria in the
state of Illinois on the third Monday of Nov-
ember in the year of our Lord one thousand
eight hundred and fifty-five, it being the nine-
teenth day of said month - Present the Hon-
orable Ouslow Peters, Judge of the six-
teenth judicial circuit in the state of Il-
linois, to-wit;

Tuesday, November 20th A.D. 1855.

Andrew Leed,

vs.

Excess.

The Peoria and Oquawka
Rail Road Company

The plaintiff by Purple & Pratt
his attorneys moves for a rule to plead by
Thursday morning next.

And afterwards, to wit:- on the twenty-first day
of November A.D. 1855, there was filed in the
clerk's office of the circuit court aforesaid, a
plea in words and figures following to-wit:-

State of Illinois	} Peoria circuit court
Peoria county	

P. & O. Railroad Co.

ads

Seed

Trespass.

And the said defendant comes and says said defendant is not guilty of said several supposed trespasses above laid to said defendants charge nor any nor either of them nor any part thereof, and of this defendant puts itself upon the country &c.

Manning, for deft.

And on the same day, to-wit:- on the twenty-first day of November A.D. 1855, there was filed in the clerk's office aforesaid a plea in words and figures following to-wit:-

Peoria & Oquawka

Rail Road Company

ats.

Andrew Seed

Circuit Court Peoria

County, November Term

A.D. 1855.

And the said Peoria and Oquawka Rail Road Company by Powell & Hopkins its attorney comes and defends the force and injury, when &c., and say that the said Peoria and Oquawka Rail Road Company is not guilty of the said trespasses in the said declaration mentioned nor either of them in manner and form as the said plaintiff hath declared against it and of this it puts itself upon

the country &c.

Parwell & Hopkins
atty for deft.

Proceedings at a term of the circuit Court began and held at the court house, at the city of Peoria, in and for the county of Peoria, in the state of Illinois, on the third Monday of November in the year of our Lord one thousand eight hundred and fifty-five, it being the nineteenth day of said month. Present the Honorable Ouslow Peters, judge of the sixteenth judicial circuit in the state of Illinois - to-wit:-

Saturday, December 1st A.D. 1855.

Andrew Reed

vs.

Taspass.

Peoria and Oquawka
Rail Road Company

The judge of this court being interested in the result of this suit, it is ordered that the venue in this cause be changed to the county of Woodford and that the clerk of this court transmit to the clerk of the circuit court of Woodford county the papers in this cause, and a transcript from the record of the proceedings in this court therein duly certified according to law.

And afterwards to-wit:- On the twenty-eighth day

of March A.D. 1856, a certified copy of the proceedings of the Peoria County Circuit Court in this cause was transmitted by the clerk of said court to the clerk of the circuit court in and for the county of Woodford, in the state of Illinois, which said certified copy is in words and figures following, to-wit:-

Proceedings at a term of the circuit court begun and held at the court house, at the city of Peoria in and for the county of Peoria in the state of Illinois, on the third Monday of November in the year of our Lord one thousand eight hundred and fifty-five, it being the nineteenth day of said month. Present the Honorable Ouslow Peters, judge of the sixteenth judicial circuit in the state of Illinois, to-wit:-

Tuesday, November 20th A.D. 1855.

Andrew Leed

vs.

Trespass

The Peoria and Oquawka

Rail Road Company

The plaintiff by Purple & Pratt
his attorneys moves for a rule to plead by
Thursday morning next.

Saturday, December 1st A.D. 1855.

Andrew Leed

vs.

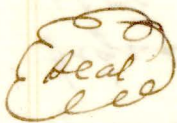
Trespass

Peoria & Oquawka
Rail Road Company

The judge of this court
being interested in the result of this suit,
it is ordered that the venue in this cause
be changed to the county Woodford and that
the clerk of this court transmit to the clerk
of the circuit Court of Woodford County
the papers in this cause, and a transcript
from the record of the proceedings in this court
therein duly certify according to law.

State of Illinois

Peoria County, } ss J. Jacob Gale, clerk of
the circuit court within and for the said
county of Peoria in the state of Illinois
do hereby certify, that the foregoing is a full
and correct transcript from the records of the
proceedings in said court in a certain cause
of Andrew Seed, plaintiff against the Peoria
& Oquawka Railroad Company, defendant
and that the accompanying papers marked
(A) (B) (C) (D) (E) (F) (G) (H) (I) & (K) respec-
tively are all the papers in said cause filed
in my office. In testimony whereof I
hereto set my hand and affix the
seal of said ^{circuit} court at my office
in Peoria this 28th day of March
A. D. 1856.



Jacob Gale, clk

Which said transcript was indorsed by the clerk of Woodford County Circuit Court in words and figures following, to-wit:- "Filed March 31, 1856, P. Doty, clerk."

And afterwards to-wit:- on the nineteenth day of June A.D. 1856, there was filed in the clerk's office of the Peoria County Circuit Court in the state aforesaid, a transcript of the records of the Woodford County Circuit Court, in words and figures following to-wit:-

Proceedings at a term of the circuit court began and held at the Court house in Metamora in and for the county of Woodford in ~~an~~ the state of Illinois on the third⁽³⁾ Monday of April in the year of our Lord one thousand eight hundred and fifty-six (A.D. 1856) it being the 21st day of said month - Present - the Honorable David Davis, judge of the eighth judicial circuit in the state of Illinois, A. McWilliam, states attorney, George Ray, sheriff, and Peter Doty, clerk, to-wit:-

Tuesday April 22^d 1856, the following proceedings were had.

Andrew Leed	{	Jacobus quain Clausum frigit
vs		
Peoria & Aquawake R.R. Co.		

On this day this cause coming

on to be heard plaintiff by Purple & Pratt ap=
peared as well the defendant by their attorney,
Powell & Hopkins, on motion it is suggested
to the court the death of the plaintiff and
that this suit progress in the name of J.
Reed the executor, and by agreement of counsel
it is ordered that this cause be remanded to
Peoria county for further proceedings

State of Illinois }
Woodford County } ss

I, Peter Doty, clerk of
the circuit court do hereby certify that the
foregoing is a full and correct transcript
from the records of the proceedings in said court
in the cause of Andrew Reed, plaintiff, against
the Peoria and Aquanoka Rail Road company, defend=
ant and that the accompanying papers marked
A, B, C, D, E, F, G, H, I & K, are all the papers in said
cause filed in my office and are the same as
received of Jacob Gale, clerk circuit court
Peoria on change venue. In testimony where=
of I have hereto set my hand and af=
fixed the seal of said court at my of=
fice in Metamora this 17th day of June
A. D. 1856. Peter Doty, clerk

Seal

Proceedings at a term of the circuit court
began and held at the court house, at the city
of Peoria, in and for the county of Peoria and

state of Illinois, on the first Monday of March
in the year of our Lord one thousand eight
hundred and fifty-seven, it being the second day
of said month. Present, at the time of this pro-
ceeding, the Honorable David Davis judge of
the Eighth judicial circuit by interchange
with the judge of the sixteenth judicial cir-
cuit, in the state of Illinois, presiding, to wit:-

Tuesday, March 10th A.D. 1857.

Andrew Leed

vs.

Isaacs.

Peoria and Ogawka
Rail Road Company

It having been heretofore
before the Honorable the judge of the circuit
court of Woodford County, at a term of said court
held in and for said county, suggested that the plain-
tiff in this cause had become deceased, the defend-
ant herein by its attorney, Julius Manning, en-
ters a motion to abate this suit for the rea-
son that the plaintiff had become deceased since
the commencement of this suit. On hearing the
argument of counsel, and the court being satis-
fied in the premises, do order that this suit a-
bate; To which ruling of the court, N. H.
Purple, attorney for the plaintiff, then and
there excepted.

And afterwards to-wit: On the fourteenth day of

March A.D. 1857, there was filed in the office of the clerk of the circuit court in and for the county of Peoria in the state aforesaid, a 'bill of exceptions & stipulation' in words and figures following, to wit:

John Reed, Executor of
Andrew Reed

vs.

The Peoria & Oquawka
Rail Road Company

In the Circuit Court of
Peoria County.

Be it remembered that on this day this cause came on to be heard upon the motion herein before entered to abate this suit for the reason that the plaintiff had become deceased since the commencement of this suit. It being admitted that said plaintiff Andrew Reed had died since the commencement of this suit it was ordered and adjudged by the court that the said suit abate, to which order and decision of the court the plaintiff then and there excepted and requested the court to seal this bill of exceptions which is done. David Davis, (Seal)

March 14. 1857

John Reed, Executor of Andrew Reed

vs.

The Peoria & Oquawka
Rail Road Company.

The parties to this suit stipulate that the plaintiff may file the record in this case in the Supreme Court at next term and that defendants appearance shall be entered in said cause & the same shall stand for trial in said court at next term in the same manner as though a writ of error had been duly issued and served upon the defendants, the Peoria & Oquawka Rail Road company.

Manning & Merriman,

March 14, 1857.

N.H. Purple, plff's atty

State of Illinois }
Peoria County } ss

I, Enoch Sloan, clerk of the circuit court in and for said county and state, do certify that the foregoing is a full and complete transcript of the proceedings in said court and of the papers in the cause wherein Andrew Seed is plaintiff and the Peoria & Oquawka Rail Road company is defendant as the same appears of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court in Peoria this twentieth day of March A. D. 1857.

Enoch Sloan, Clerk

John Rud Esq.
Auditor Genl

Plff in Error

^{vs}
Poria R. R. Co
Company

Def in Error

Error to Poria County

And now comes the Plaintiff and says that in the Record and proceedings and in the rendition of the Judgment against him there is error in this to wit.

1st The Circuit Court erred in ordering and adjudging that said Sent abate

2. The Court erred in giving Judgment against the Plaintiff

For these and other Errors said Plaintiff prays that said Judgment may be reversed set aside and wholly for nothing Estimated.

W. C. Triple
Plff's atty.

John¹³ Rud Exp, on
Audum's Seed
ns

The Iowa & Agnara
Rail Road Company.

Records

Filed April 9, 1857
S. Leland
Clerk

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Peoria* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Peoria* County, before the Judge thereof, between *John Reed executor of Andrew Reed*

plaintiff, and *the Peoria & Oquawka Railroad Company*

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

plaintiff as we are informed by *his* complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *this Tuesday in April A.D. 1857* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *9th* day of *April* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Seven*

S. Leland

Clerk of the Supreme Court.

By J. B. Rice Deputy

John⁹³ Reed exr.
vs
The Peoria & Ogawaoka R.R. Co.

Writ of Error

Filed April. 1857
L. Leland
Clerk



Clerk of the Supreme Court.

Wm. H. Rice

of Our Lord One Thousand Eight Hundred and Fifty-Seven
day of *April* in the Year
Justice of our said Court, and the Seal thereof at O-

Witness The Hon. WALTER B. REYNOLDS, Chief

as we are informed

to the injury of the aforesaid

plaintiff and *The Peoria & Ogawaoka R.R. Co.*

the Judge thereof, between *John Reed exr. of Adams*
of a plea which was in the Circuit Court of *Peoria* County, before
JUDGE, in the record and proceedings, as also in the rendition of the judgment
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Peoria*,
SUPERIOR COURT, *Illinois* GREETING:
STATE OF ILLINOIS, The People of the State of Illinois,

JOHN REED, Executor of ANDREW SEED, } Plaintiff in Error.
 vs. }
 PEORIA & OQUAWKA RAILROAD COMPANY. } Defendant in Error.

ERROR TO PEORIA.

Seed sued the defendant in an action of trespass. Suit brought to November term, 1855. The declaration contained two counts.

1. For breaking and entering plaintiff's close. Throwing down fences, breaking and treading down, eating up, destroying, and carrying away the oats of the plaintiff—one hundred acres. Driving off and carrying away, and causing to be driven off, carried away and dispersed and lost, one hundred hogs of the plaintiff, and other wrongs, &c.

2. Same in substance.

Defendant pleaded the general issue.

After the commencement of the suit Seed died.

His death was suggested by his council, and Reed, his executor, substituted as plff.

The defendant entered a motion that the suit abate, which the court sustained. Plaintiff's attorney excepted.

The only question in the case is, whether the cause of action survives in favor of the executor or heirs or not.

N. H. PURPLE, Plaintiff's Attorney.

~~4~~ 93
 Reed

Revised & Enlarged N.R.C.

JOHN REED, Executor of ANDREW SEED,
vs.
PEORIA & OQUAWKA RAILROAD COMPANY. } Plaintiff in Error.
Defendant in Error.

ERROR TO PEORIA.

Seed sued the defendant in an action of trespass. Suit brought to November term, 1855. The declaration contained two counts.

1. For breaking and entering plaintiff's close. Throwing down fences, breaking and treading down, eating up, destroying, and carrying away the oats of the plaintiff—one hundred acres. Driving off and carrying away, and causing to be driven off, carried away and dispersed and lost, one hundred hogs of the plaintiff, and other wrongs, &c.

2. Same in substance.

Defendant pleaded the general issue.

After the commencement of the suit Seed died.

His death was suggested by his council, and Reed, his executor, substituted as plff.

The defendant entered a motion that the suit abate, which the court sustained. Plaintiff's attorney excepted.

The only question in the case is, whether the cause of action survives in favor of the executor or heirs or not.

N. H. PURPLE, Plaintiff's Attorney.

Reed
 vs
 P. O. R. R. Co } abstracts

W. H. FURBER, Plaintiff's Attorney.

executor or heirs or not.
 The only question in the case is whether the cause of action survives in favor of the
 and a judgment executed.

The defendant entered a motion that the suit should, which the court sustained. Plain-
 tiff's death was suggested by his counsel and freely his executor substituted as plaintiff.
 After the commencement of the suit died.

Defendant pleaded the General issue.

It came in substance.

They had gathered and had one hundred bags of the plaintiff's and other wrongs for
 hundred acres. Driving off and carrying away, and causing to be driven off carried
 weighing down cutting up fencing and carrying away the oats of the plaintiff—one
 1. For trespass and entering plaintiff's close. The wrong done fence breaking and
 1890. The vegetation contained two oaks.

Died and the defendant in an action of trespass. Suit brought to November term

WILFORD T. O. FURBER.

INDIANA & CANTAWAY RAILROAD COMPANY. } Defendant in Error.

JOHN REED, Executor of WILLIAM REED. } Plaintiff in Error.

John Rudg Executor
Audune Sude

^{vs}
The Peoria & Ogwaka
Rail Road Company

The Supreme
Court.

At Common Law no action
Survives in favor of or against
any deceased persons their Execu-
tors or administrators

All abated by the death
of the Party. Actions Survive only
by positive Statutes and enactments

If the action of Ejectment
Survives when there is but one
defendant, it is alone by virtue
of the 8th Section of the Abatement
Act. If the action of Ejectment Sur-
vives, the action of Trespass to real es-
tate Survives also by the same rule
and under the same authority the
7th 8th Section of the Abatement Act.

In either case the Executor or
heir have no interest title or claim
until the death of the ancestor—

Both actions are founded on torts
or wrongs which cannot be committed
in the life time of the ancestor, so as
amount an injury to the heir or Executor or administrator

But in this case the decla-
ration is for injury to real and
personal property both— Do for

as that portion of the declaration
is concerned which charges an
injury to, or the taking away of per-
sonal property the cause of action
survives and the Plaintiff was en-
titled to recover at least the dam-
ages for injuries to such personal
property.

The authorities are clear that
you may include both trespass to
real and personal property in
the same Count - and recover for either
according to the evidence.

Might vs Chandler. 4. Bibb. 422.
Sammis on Plead, Ev. Vol 2. part 2. p. 1096.
1 Chittys Plead, p 410.

Hawley vs Clerk Esob. 2 Tyler's Vermont
Rep. p 20

93
John Rud Episcopo
Annual Seed
P.M.R.R Co

Argument

Purple

Filed May 4, 1857
L. Seland
Clerk