

No. 12694

Supreme Court of Illinois

Chicago & Rock Island R.R.Co.

vs.

Fell

~~#24~~

33-6

The Chicago & Rock Island
Rail Road Company

vs
Harry Fell.

33

1859

1859

12694

Repaired

33 - 6
The Chicago &
R. I. R. R. Co
~~1874~~ 73

Mary Felt

Arguments

M. P. Felt

Be it remembered that heretofore to wit: on the thirtieth day of July in the year of our Lord one thousand eight hundred and fifty six there was filed in the office of the clerk of the Circuit Court of Peoria County in the State of Illinois a Petition for certiorari, Bond in certiorari, writ of certiorari & Record in the words and figures following, to wit:

"State of Illinois

La Salle County

And Circuit Court thereof

To Nov. Term 1854.

To the Honl C. J. Leland Judge of the 9th Judicial Circuit

Your Petitioner the Chicago & Rock Island Rail Road Company respectfully represent that they are an incorporated Company under and by virtue of an Act of the General Assembly of the State of Illinois entitled an Act to incorporate the Rock Island and LaSalle Rail Road Company approved February 27th 1847 And an Act to Amend an Act to incorporate the LaSalle & Rock Island Rail Road Company approved February 7. 1851 that they were so incorporated and were acting & constructing & operating their Rail Road from Rock Island to Chicago in the year A. D. 1854 That on the 21st day of August 1854 one Mary Fell procured a summons to be issued by one ^{Nicholas} ~~Stephen~~ Duncan against your Petitioner at the suit of said ^{Fell} which summons was in substance as follows

State of Illinois,

La Salle County, ss. The People of the State of Illinois To any Constable of said County Greeting: You are hereby Commanded to summon the Chicago & Rock Island Rail Road Company to appear before me at my office in LaSalle in said County on the 28th day of August instant at 9 o'clock A.M. to answer the Complaint of Mary Fell for a failure to pay her a certain demand not exceeding one hundred dollars and thereof make due return as the law directs Given under my hand and Seal this 21st day of August 1854.

Nicholas Duncan J. P. Seal

Which Summons was ^{returned} afterwards, with an endorsement thereon in substance as follows:

Executed the within Summons by leaving a true copy of the same with Rollin G. Parks an Agent of said Company this 22^d day of August A.D. 1854 the President of said Company not residing in my county

(signed) R. J. Cogswell Constable

Your petitioner shows that the only cause of action claimed or concerning which proof was introduced or heard before said justice on the trial of said suit was as follows: Said Mary Fell claimed that a certain Cow belonging to her had been killed on the Rail Road of your petitioner by the Cars of your petitioner regularly running on said road and said Mary Fell introduced proof tending to show that "certain" Cow owned by her had been killed by being run over by the Cars of your petitioner on said Rail Road of your petitioner by the persons who were then running said Cars and also introduced proof tending to show what the value of the milk of said Cow was from the time it was so killed until the issuing of said Summons by said Nicholas Duncan which was all the proof in the case except the value of the said Cow.

And your petitioner shows that said Justice rendered a judgment against your petitioner in said suit for the sum of sixty four dollars and sixteen cents damages and one dollar & thirty seven & one half cents costs.

And your petitioner shows that they did not appear before said Justice or any one for them for the reason hereinafter stated. The Summons in this cause was served on Rollin G. Parks who was at the time the agent of your petitioner for the purpose of receiving and sending out freight at La Salle. Said agent was not authorized to attend to the law business of the Company - it was no part of his business to attend to the law business of your petitioner or defend suits brought against said Company. Said agent was instructed to send a copy of any process served on him as agent of the Company to John C. Berry Superintendent of the Rail Road of your petitioner. Said Parks immediately upon being served with process in said cause as your petitioner have been advised did enclose and

transmit to said Henry a copy of the summons served on him with a statement that it had been so served.

Your petitioner further shows that although said copy was duly sent to said Henry in the same manner and with the same care that the other papers pertaining to the business of your petitioner were sent which was with the greatest care to prevent any failure. Yet for some reason which the said Parks & the said Henry are unable to explain said copy was never received although another copy of a summons sent in the same way about the same time was duly received so that the Agents of your petitioner whose business it was to attend to such matters did not know of the pendency of said suit or of the judgment aforesaid until more than twenty days after said judgment was rendered.

Your petitioner further shows that said justice had no jurisdiction of the subject matter which he then & there attempted to adjudicate. That an action of trespass ought not to have been maintained against your petitioner for injuries to cattle caused by the running of the cars on their Rail Road in the care and custody of their servants, nor for the supposed quantity of milk the cow would have given between the time of her being so killed and the issuing of said summons.

Wherefore your petitioner shows that said justice erred in rendering any judgment whatever in said suit and was wholly ^{without} jurisdiction of the subject matter he attempted to adjudicate.

Forasmuch as your petitioner hath sustained wrong and is manifestly aggrieved and injured by the errors and illegal proceedings of said justice of the Peace and for as much as your petitioner had no opportunity to take an appeal in the ordinary way and could not successfully maintain a writ of certiorari under the statute Your petitioner prays that a writ of certiorari according to the course of the common law be issued out of and under the Seal of this Honorable Court directed to said Nicholas Duncan Justice as aforesaid commanding him to certify to this Court a statement under his hand and Seal of the proceedings had before him in said suit and a statement of the particulars of the claim of said plaintiff and which was adjudicated on before him stating

For what acts of trespass the Plaintiff claimed to recover for
and whether said acts of trespass included said claim for the
milk of said deceased cow & whether it was for the trespass of
your Petitioner or for the acts of their servants and agents
And that this Court will review the said proceedings of
the said justice and correct the errors therein and that
said erroneous judgment may be annulled set aside
and wholly for nothing esteemed

The Chicago & Rock Island
Rail Road Company
by Cook & Chumaceiro
their attorneys

State of Illinois,

La Salle County, p.

Rollin G. Parks being duly sworn says
that he is agent of the Chicago & Rock Island Rail Road
Company, that he has diligently sought to ascertain the truth
of the facts stated in the above petition that the statements of
said petition are true to the best of his knowledge information
and belief in substance & in fact, that the information
that said summons mentioned in said petition was never
received by said John E. Henry and which was sent to said
Henry by affiant - was derived from said Henry - affiant
believes that no agent of the Rail Road Company could
from the nature of the case have personal knowledge of all
of the facts stated, and affiant believes that an agent of said
Company has more numerous or correct sources of information
than affiant in relation to the statements of the petition

Affiant further states that from his own knowledge and
from credible sources of information he verily believes all
of the statements of said petition to be true.

Dec. 1854
Subscribed & sworn to before me at ^{Dec. 1854} Alfred Putnam ^{L.C.}
Justice of the Peace.

[Bond in Certiorari]

"I now all Men by these presents that we The Chicago & Rock
Island Rail Road Company as principal and Benton E. Cook as
surety are held and firmly bound unto Mary Sell in the penal
sum of one hundred and fifty dollars lawful money for the payment

of which well and truly to be made we bind ourselves our heirs
executors and administrators jointly severally firmly by these
presents.

Sealed with our Seals and dated this 15th day of December
A.D. 1854.

The condition of this obligation is such that whereas the
said Mary Tell did on the 28th day of August 1854 before
Nicholas Duncan a Justice of the Peace in and for La Salle
County Illinois recover a judgment against the said
Rail Road Company for the sum of Sixty four dollars and
Sixteen Cents damages besides costs and whereas said Rail Road
Company have presented a petition to the Circuit Court of said county
alleging that said justice had no jurisdiction to render the
judgment aforesaid & whereas said Circuit Court has
granted a writ of Certiorari to said justice requiring him
to certify to said Court the record & copy of the proceedings
in said cause before him to the end that the same may be
inspected & reviewed in said Circuit Court & the errors of said
justice therein corrected. Now if said Rail Road Company
shall prosecute the said writ of Certiorari with effect without
delay & shall pay said judgment with all damages interest
& costs in case the same shall be affirmed in said Circuit
Court then this bond to be void otherwise in force.

The Chicago and Rock Island R.R. Company
By Thos: Mc Ferris Jr
Attest Sec

B. C. Cook Seal



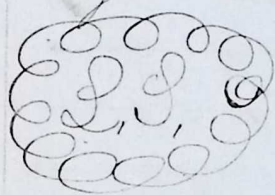
Endorsed "Filed Dec. 18 1854 P. Linsly Clk"

[Certiorari]

"State of Illinois }
La Salle County, ss }

The People of the State of Illinois
To Nicholas Duncan Justice
Whereas it has been represented by the
Petition and affidavit of the Chicago & Rock Island Railroad
Company that in a certain suit lately depending before you
wherein Mary Tell was Plaintiff and the said Chicago & Rock

Illand Rail Road Company were defendants and wherein judgment was rendered in favor of said Tell and against the said Chicago & Rock Island Rail Road Company that manifest injustice has been done to the said Chicago & Rock Island Rail Road Company in the rendition thereof as aforesaid and we being willing for certain causes in said petition stated herewith that the said judgment and the matters and things in controversy between the said Henry Tell and the said Chicago and Rock Island Rail Road Company should be re-examined in the circuit court of said county, Do hereby Command and require you that you do forthwith without excuse or delay certify to the said circuit court a transcript of the said judgment with the proceedings thereon and all things touching the same by whatever names the parties aforesaid or any or either of them are or is set down truly, fully and exactly as in your custody they now remain under your hand and seal together with this writ, That further thereof the said circuit court may do that which of right ought to be done



Witness Philo Lindley Clerk of said Circuit Court and the Seal of said Court at my office in Ottawa this 27th day of December A.D. 1854,
P. Lindley Clerk,

Endorsed "C" — Executed this writ by reading the same to Nicholas Duncan and leaving a copy of the same with him
Jany 12th 1855
J. Warner Shff."

"Served 60
Copy 50
15 miles 75
\$1.85"

"Filed May 11, 1855 J. F. Nash, Clerk."

[Record]

"State of Illinois, }
La Salle County, } 3

Now before the Honorable Edmund P. Leland presiding Judge of the Ninth Judicial Circuit of the State of Illinois as a circuit Court commenced and held in and for the County and State of Illinois at the Court House in Ottawa on the Second Monday of November in the year of our Lord one

And afterwards to wit on the twenty seventh day of February 1857 there was filed in the office of the Clerk of said Circuit Court of Peoria County in said cause a Transcript in the words & figures following, to wit:

"No 40 Mary Flee

vs

The Chicago and Rock Island

Rail Road Company

Justices fees

Docket entry 12 1/2

Summons 18 3/4

Copy 18 3/4

Oaths 12 1/2

Entry judgment 25

Execution 12 1/2

Entering appeal 25

Transcript 25

do 20

Certificate 25

Constable's fees on summons 20

{ 1854. 21st day of August, Summons issued, returnable on the 28th instant
9 o'clock A.M. delivered to R.B. Cogswell constable

{ Demand - Treasures on personal property viz (warming Engine &c over one cow

{ holding same -

\$75.00

1854, 28th day of August - said summons returned, endorsed
"Executed the within summons by leaving a true copy of the same with
with Rollin S. Parks, an agent of said Company this 22nd day of
August 1854 - The President of said Company not residing in
my county (by) R.B. Cogswell constable" The Plaintiff (by her attorney
H David L. Hough Esq) appeared at the time appointed for trial -
no appearance was entered on behalf of Rail Road Company, Anthony Cor-
gan and David L. Hough testified on part of plaintiff, and examining
the proofs and allegations, it was adjudged and determined that said plaintiff
have and recover of said Chicago and Rock Island Rail Road Company
the sum of sixty four dollars and sixteen cents debt, and one dollar

and thirty seven & one half cents costs —

1854, 30th day of September — Execution issued, delivered to R. S. Cogswell
Constable

1854. 2nd day of October — Notice of appeal by certiorari — by plaintiffs — Execution
recalled and papers sent up — Further order of circuit court dated
December 27th 1854 — to send up a transcript of judgment with the proceedings thereon
rc, served by Sheriff, and (this) transcript (and said mandate) are sent in
obedience thereto

State of Illinois } ss.

La Salle County }

I the subscriber a Justice of the Peace in & for said County, do
certify, that the above transcript is a full and perfect copy (from my docket) of the
proceedings and judgment before me in the above entitled cause fully and exactly as
in my custody they now remain Given under my hand and seal this 3rd
day of February 1855.

Nicholas Duncan J. P. *(Signature)*

thousand eight hundred and fifty four and of the Independence of the United States the twenty eighth

Present

The Honorable Edwin S. Leland

Presiding Judge

Phil. Lindsey

Clerk

Or. H. S. Wallace

States Attorney

Richard Thome

Sheriff

On Monday the 18th day of December 1854 the same being one of the days of the said November term of said Court the following order was entered of record in said court to wit:

"The Chicago & Rock Island
Rail Road Company

^{vs}
Mary Fell

Appeal by Certiorari.

On application of petitioners it is ordered that a common law writ of certiorari issue herein upon petitioners filing bond herein payable to the defendant in the penal sum of one thousand and fifty dollars with Denton C. Cook as security."

On Wednesday June 1st 1856 the same being one of the days of the May term of said Court for the year 1856 the following writ order was entered of record in said cause, to wit:

"The Chicago and Rock Island
Rail Road Company

^{vs}
Mary Fell

Appeal by Certiorari

It is ordered by the Court that a change of venue be had herein to Peoria County Circuit Court the Presiding Judge of this Court having been of counsel in the subject matter of this cause.

State of Illinois, I John H. Nash clerk of the Circuit Court in LaSalle County, and for said County and State do hereby certify, that the above foregoing comprises a true, full, for full and complete record of all the orders of said Court in the above entitled cause as the same appear of record in my office and that the

Papers herewith transmitted marked from letter "A" to "D" inclusive.
Are all the papers in my office on file in said cause.

E. J. D.

In Testimony whereof, I have subscribed my
hand and the Seal of said Court at Ottawa
this 7th day of July A.D. 1856.

J. F. Spack, Clerk.

Proceedings at a term of the Circuit Court begun and held
at the Court House in 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
six, it being the seventeenth day of said month.

Present the Honorable Elisha W. Powell Judge of the Sixth
Judicial Circuit in the State of Illinois, David D. Bond
Sheriff and Enoch P. Sloan, Clerk, to wit:

Monday December 2nd A.D. 1856
Chicago & Rock Island Rail Road Company

vs

Appeal from J. F.

May Fee

By agreement of parties this cause is continued
to next term of court.

Proceedings in the Circuit Court at a term thereof begun and held
at the Court House in the City of Peoria in and for the County
of Peoria and State of Illinois on the second Monday of
May in the year of our Lord one thousand eight hundred
and fifty seven, it being the eleventh day of said month.

Present the Honorable Elisha W. Powell Judge of the
Sixth Judicial Circuit in said State, Francis W. Smith Sheriff
and Enoch P. Sloan, Clerk, to wit:

Friday May 29th 1857
Chicago & Rock Island
Rail Road Company

vs

Appeal from L. D.

May Fee

This day came the defendant by attorney
her attorney and moved the Court to quash the writ of certiorari
issued in this cause.

Proceedings in the Circuit Court at a term thereof
began and held in the Court House in the City and
County of Peoria in and for said county and State of
Illinois on the third Monday of November in the
Year of our Lord one thousand eight hundred and
Eighty Seven, it being the sixteenth day of said
month, Present the Honorable Elisha H. Powell
Judge of the 16th Judicial Circuit in the State
of Illinois, Francis W. Smith Sheriff and Cook P.
Moore, Clerk, to wit;

Wednesday December 2^d A.D., 1887
Chicago & Rock Island
Rail Road Company

vs Appeal - Venus Jones La Salle
Mary Zell

This day came on this cause to be heard,
on the motion of Morrison, defendants attorney, to
quash the writ of Certiorari herein and to dismiss this
appeal, and the court being satisfied in the premises,
sustained said motion and ordered that proceedings
be issued herein. Thereupon came the plaintiff
by Purple & Pratt its attorneys and prayed an
appeal to the Supreme Court of this State
which prayer was allowed on condition that the
said Chicago & Rock Island Rail Road Com-
pany file ~~an~~ a bond with the clerk of this
Court, in the penal sum of three thousand dol-
lars, conditioned as the law directs, with Washington
Cockle as security: Said bond to be filed
within thirty days from this date

And on the same day to wit: the second day of December
in the year of our Lord one thousand eight hundred and fifty seven
there was filed in the office of the Clerk of the said Circuit Court
of Peoria County in said cause the plaintiffs Bill of Exceptions
in the words and figures following to wit:

"The Chicago and Rock
Island Rail Road Company
vs
Mary Felt

In the Circuit Court of Peoria County
Nov. Term 1857.

Be it remembered that on this day
the motion to quash the writ of Certiorari in this cause came on to
be heard upon the reasons stated herein which said motion and
reasons are as follows

"Peoria Circuit Court
March Term A.D. 1857

Chicago & Rock Island Rail
Road Company
vs
Mary Felt

Certiorari

Defendant moves that we
to quash the writ and dismiss said writ for reasons

1st 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 of
the peace decided correctly in said cause

4 By the 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

Manning & Merriman
for doct "

Endorsed "Filed March 6, 1857 Enosh F. Howard, Clk."

And the Court being satisfied in the premises ordered and adjudged
that the said motion be sustained and that said writ be quashed

And that a *Procedendo* issue to the Justice of the Peace
in this cause to which decision of the Court the Plaintiff by
its attorney then and there excepted and requested the Court
to give this bill of Exceptions which is done
C. H. Powell Seal

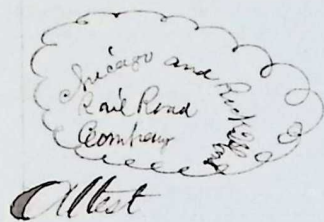
And afterwards to wit; on the Nineteenth day of
December in the year of our Lord one thousand eight
hundred and fifty seven there was filed in the office
of the Clerk of said Circuit Court of Peoria County
the plaintiff's Appeal Bond in said cause in
the words & figures following, to wit;

"I know all Men by these presents that we the
Chicago and Rock Island Rail Road Company as
Principal and Washington Cook as security
are held and firmly bound unto Mary Felt with
penal sum of three hundred dollars lawful
money of the United States, to which payment well and
truly to be made and done we do bind ourselves our
Heirs, Successors, executors and Administrators jointly
and severally by these presents. Witness our Hands and
Seals and the official Seal of the said Company this
19th day of December A.D. 1857.

The Condition of this bond is this Whereas on the
second day of December A.D. 1857 in a certain suit
then pending in the Circuit Court of Peoria County Illinois
upon a Change of Venue from LaSalle County wherein
the said Chicago and Rock Island Rail Road Com-
pany was Plaintiff in the prosecution of a certain writ
of Certiorari and the said Mary Felt was defendant,
as by the papers and Record in said cause will fully
appear, a judgment was then and there rendered
by said Court dismissing said writ of Certiorari and
ordering a *Procedendo* to issue to the Justice of
the Peace to; from which said judgment of said Circuit
Court the said Plaintiff made an appeal to the
Supreme Court which has been allowed.

Now if the said Plaintiff shall duly prosecute

their appeal in said Supreme Court and shall pay the
costs, judgment, interest and damages in case the said
judgment shall be affirmed by said Supreme Court,
then this bond shall be void otherwise in force.



Chicago & Rock Island
Rail Road Company
by Henry Tarnam Best
Washington Cockle

Secretary "

State of Illinois, 3rd J. Crook, P. Sloan, Clerk of the
County of Peoria, 3rd Circuit Court in & for the County of Peoria
in the State of Illinois do hereby
certify that the foregoing is a true and
correct transcript from the files and
the Records of my office

In witness whereof I have set my hand and have affixed the
Seal of said Court this twenty second day of March in the year
of our Lord one thousand eight hundred and fifty eight.
Crook, Sloan, Clerk

The Chicago & Rock
Island Rail Road
Company

My Supreme Court
April Term 1858.

Mary Hall

And now comes the said
Appellant and says, that in the Record
and proceedings and in the rendition
of the Judgment aforesaid, there
is manifest Error in this to wit

1st. Said Court Erred in sus-
taining the Motion to dismiss the
Writ of Certiorari in this Cause

2. In not reversing the Judgment of
the Justice of the Peace, and in not
rendering judgment for the Appellant

3. The Judgment of the Justice
ought to have been reversed because
the Suit was for a trespass to person-
al property and the Judgment was in
debt.

For these and other Errors
in said Record Appellant prays that
the said Judgment may be reversed
annulled and wholly for nothing Estimated

The Chicago & Rock Island Supreme Court
Rail Road Company April Term 1858
Mary Hall

And now comes the said Appellee

42-114-7
It says there is no error in the record
of proceedings and rendition of the
Judgment aforesaid.

D. J. Wright Atty for Appellee

Atty for Appellant

~~84~~ 33.-6

The Chicago & Rock Island
Rail Road Company

vs

Mary Felt

Transcript of Record
& Argument of Errors.

Filed April 15, 1888.
Leland
clerk

The Chicago & Rock Island
Rail Road Company
vs
Mary Felt

In the Supreme
Court - of
Illinois
April Term 1859

On the 12th. December 1854 appellants presented to the Circuit Court of LaSalle county their petition for a writ of Certiorari for the purpose of reviewing the records and proceedings in a certain suit in which Mary Felt was plaintiff and appellants defendants, which suit was commenced before a Justice of the Peace of La Salle County on the 21st. August 1854, and judgment rendered against appellants August 28. 1854 for \$64.10 debt & \$1.37 1/2 costs Costs.

The writ was issued December 27. 1854.

On the 4th. of June 1856 the venue in the cause was changed to Peoria County.

At the December Term 1857 the defendant moved to quash the writ & dismiss the suit

which motion the Court sus-
tained and ~~reversed~~ proceedings
to the justice. The cause
was brought to this Court
by appeal.

The motion to quash the writ
was properly sustained

- 1 Because the facts appearing
on the face of the petition in
said cause do not authorize
the issuing of any such writ.
The only cases in which the pro-
ceedings of an inferior Tribunal
can be reviewed on the common
law writ of certiorari are those
where they have either exceeded
their jurisdiction or ~~acted~~ proceeded
illegally in the case. [#] This petition
sets forth neither of those facts.
The only question raised by the
petition is whether or not the
justice had jurisdiction over the
subject matter of the suit. The
suit was brought for trespass
to personal property over which
the statute expressly gives the
justice jurisdiction. Rev. Stat. Chap 57 § 17

14. Ill. 38. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

The petition sets forth a number of facts which in a court of equity might entitle the petition to some further consideration, but which do not make a case at law sufficient to entitle the appellant to the writ. A number of circumstances are adduced to show that the person served was not the proper representative of the company for that purpose - The statute in such cases made and provided requires that process shall be served upon the president of the Company if he reside in the County, but if such president be absent from the County the process may be served by leaving a copy with any agent of the Company. 2. Pur. Stat. 1261. As no objection is taken to the return and the return shows that the person on whom it was served was an agent of the Company, and that the president was a non resident of the County, we can see no illegality in the justice proceeding to judgment in the case.

2 The return of the justice shows no illegality in his proceedings, neither does it show a want of jurisdiction either over the person or subject matter of the suit. The suit was commenced for damages resulting from trespass to personal property. Summons was issued August 21st. 1854, some days before the return day. On the day following the officer charged with the execution thereof served the summons "by leaving a true copy of the same with Rollin B. Parks an agent of said Company; the president of said Company not residing in my County" and made his return to that effect. On the return day the defendant not appearing the justice proceeded to examine witnesses and having heard the evidence proceeded to render judgment against appellants. In all this we can see no illegality. The return of the summons executed according to the provisions of the statute was sufficient to warrant his proceeding to judgment

The court must determine from the face of the record whether there was an excess of jurisdiction or any irregularity in the course of proceeding. No question can arise upon the evidence or upon any decision made thereon.
14. Ill. 583.

The last assignment of error cannot be sustained. The justice was required to render judgment for "so much money in dollars and cents". Rev. Stat. Chap. 59. §. 28.

Whether he calls it debt, or damages, in the eyes of the law immaterial. It has been repeatedly decided that mere error in form is not sufficient cause for quashing the proceedings. In *Satterthwaite vs Morgan* 2. Rev. 962 it was decided that it was not cause for quashing the proceedings that the action was trespass when it should have been trespass on the case -

Horton vs Critchfield 18 Ill. 135

Pennington vs City of Peru 20 Ill. 52
Manning & Morrison
Sept 10th

C & N. J. R. R. 33 & 34
vs 347

Mary Fell

Argument
of
Manning & Merriam
advised kept in error
33. & 34

C & N. J. R. R.

vs
Manning Whipple

Filed April 27, 1859
L. Leland
Clerk

The Chicago Rock Island
Rail Road Company } Appeals from
(124) vs } Peria -
Mary Hill

This case in many of its fea-
tures is similar to the case of Piff
vs Wrenn Whipple No. 123. and the
argument in that case so far as applicable
to this is referred to.

In addition to the error in that
record it appears from this, that the
Suit was trespass for killing a cow
and for the value of her milk -
and the Judgment rendered by the
Justice was in debt for \$64.16 and
\$1.37 1/2 cents costs. I insist that for
this error alone the Judgment of the
Justice should have been reversed
in the Circuit Court

And I insist again that the
Court could not dismiss the suit
without giving the parties a hearing
upon the Motion of the defendant - and
that the proper method of proceeding
is a stated in my argument in No 123

J. H. Apple

In Supreme Court of Illinois.

APRIL TERM 1858.

THE CHICAGO AND ROCK ISLAND,
RAIL ROAD COMPANY.

vs.
MARY FELL.

APPEAL FROM PEORIA.

On the 12th December 1854, the appellants presented to the circuit court of La Salle county their petition for a writ of certiorari, for the purpose of reviewing the records and proceedings in a certain suit in which Mary Fell was plaintiff and appellant was defendant, which suit was commenced before a justice of the peace of La Salle county on the 21st August, 1854, and judgment rendered against the defendant on the 28th August, 1854, for \$64.16 debt, and \$1.37½ costs. The cause of action as stated in the transcript, was "trespass on personal property."

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 7th, 1851. That they, during the year 1854 were constructing and operating their said road.

That a suit was commenced against the said company as before stated: That summons was returned served as follows:

"Executed the within summons by leaving a true copy of the same with Rollin G. Parks, an agent of said company, this 22d day of August, A. D. 1854, the president of said company not residing in my county."

That the plaintiff's claim was for a cow killed by the cars of said company, regularly running on said road, of the value of which, and also the value of the milk of said cow, from the time she was killed until the commencement of the suit. Proof was introduced.

That the defendants did not appear before the justice, and the plaintiff recovered a judgment as before stated.

That the summons was served on Parks, who was freight agent at La Salle, and who had nothing to do with the law business of the company.

That as soon as the summons was served he enclosed a copy to John E. Henry, superintendent of the road, which was not received; so that the agent of the company whose business it was to attend to the law business of the company, nor the company had any notice of the suit or judgment until more than twenty days after it was rendered.

That the justice had no jurisdiction of the subject matter of the suit.

That such action of trespass for killing a cow, and for the milk of such cow, could not be maintained against the said company.

That appellant had no opportunity to take an appeal in the ordinary way, and could not successfully prosecute a certiorari under the statute, and concludes with a prayer for a common law writ of certiorari.

The petition is verified by affidavit.

A bond in due form of law, conditioned for the due prosecution of the suit, was filed the 18th of December, 1854.

The writ was issued on the 27th December, 1854.

On the 4th June, 1856, the venue in the cause was changed to Peoria county.

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.
- The court sustained the said motion, and ordered a procedendo to the justice, and the appellant then and there excepted.

ERRORS ASSIGNED.

1. The court erred in sustaining the motion to dismiss the writ of certiorari.
2. The court erred in not reversing the judgment of the Justice of the Peace, and in not rendering judgment for the appellant.
3. The judgment of the Justice ought to have been reversed, because the suit was for a trespass to personal property, and the judgment was in debt.

N. H. PURPLE, Atty. for Appellant.

~~774~~ 83-6

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

vs

Mary Hill

Filed ^{April} ~~May~~ 20th 1838
L. Seeland
Clerk