

No. 12786

# Supreme Court of Illinois

Ill. Cent. R. R. Co.

vs.

Kämpler, Admr.

71641  7

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Ed. C. C. C. C.

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Ed. C. C. C. C.

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12786

1859

Jasalle County Court September term 1855

State of Illinois }  
Jasalle County } ss

These Proceedings and judgments  
and taken in and before the Jasalle County  
Court in the State of Illinois at the Court House  
in Ottawa in the County of Jasalle of September  
Term Third - to wit of the third day of Septe-  
mber in the year of our Lord one thousand &  
eight hundred and fifty five and of the  
Independence of the United States of America  
the eightieth

Hon. H. G. Cotton Presiding

Be it remembered that heretofore to wit on the 1st  
day of August A.D. 1855 a transcript and bond was filed  
in the office of the clerk of the County Court of said  
County which was in the words and figures following  
to wit

Peter Kimpfer Administrator of the estate of Jacob  
Enebach deceased vs The Illinois Central Railroad  
Company for Killing an ox Damage \$20.  
May 21<sup>st</sup> 1855 issued writ Ret on the 31<sup>st</sup> inst at  
3 o'clock P.M. one Subpoena for pl<sup>ff</sup>.  
Summons returned by S. Clark Constable endorsed  
Served May 24<sup>th</sup> 1855 by leaving a copy with C. A. M.  
agent of the I.C.R.R. Co at Mendota the President of  
the Company not residing in the County

2.

May 31<sup>st</sup> 1855 after hearing the proof and allegations of the parties it is decided that the said plaintiff have a judgment against the said company for the sum of Fifty Dollars and costs of suit Constables fee on summonses & Subpoenas \$1.52

Joshua Brown H. Clark C. Merrill & J. Wignall the witnesses in the case having been sworn and claimed their fee fifty cents each \$2.50

Justices fees Docketing Suit 13<sup>th</sup> Summons 1854 "31

5 oaths 3/4 on Trial &c. entering judgment "25 3.56

1 Subpoena 1854 and Official 25, Bond & Transcript 75 10.00  
\$3.87

June 20<sup>th</sup> 1855 O. C. T. filed Bond and entered an appeal to the County Court

State of Illinois

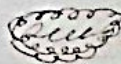
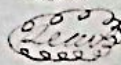
LaSalle County

I hereby certify that the above Transcript contains a correct statement of the proceedings had in the premises before me as appears by my Docket given under my hand and seal this 9<sup>th</sup> day of August 1855-

C. H. Gilman J. P. Clerk

Know all men by these Presents that we the Illinois Central Rail Road Company and O. C. T. of the County of LaSalle in the State of Illinois are held and firmly bound unto Peter Wampler Administrator of the estate of Jacob Emmebach deceased in the penal sum of one hundred and thirty five dollars

lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and Administrators jointly severally and firmly by these presents. Witness our hands and seals this Twentieth day of June A.D. 1885. The condition of the above obligation is such that whereas the said Peter Kempler administrator of the estate of Jacob Emmerbach Deceased died on the Thirty-first day of May A.D. 1885 before Charles N. Lillman a Justice of the Peace for the said County of LaSalle received a judgment against the above mentioned Illinois Central Railroad Company for the sum of Fifty Dollars & costs for which judgment the said Illinois Central Railroad Company has taken appeal to the County Court of the County of LaSalle aforesaid and State of Illinois, Now if the said Illinois Central Railroad Company shall prosecute their appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void & otherwise to remain in full force and effect.

Approved by one of my Illinois Central Rail Road  
 Officer this 20<sup>th</sup> day of June 1885 by C. Ott agt.   
 C. Ott. 

C. N. Lillman  
 Justice of the Peace

4.

Afterwards to wit on the same day a summons was  
issued out of the office of said clerk in the words and  
figures following to wit.

The People of the State of Illinois & our Sheriff of our County  
of LaSalle greeting.

Whereas in a certain cause lately pending in our court  
held before Charles C. Gilman Esquire one of the  
Justices of the Peace in and for our County of LaSalle  
wherein Peter Kimpfer claimant of Jacob Erenbach was  
plaintiff and the Ill. Cent Rail Road Company was  
defendant. Judgment has been rendered by said  
Justice against the said Defendant from which the  
said Defendant has appealed to our LaSalle County  
Court. We therefore command you that you summon  
the said Peter Kimpfer that he personally be and  
appear in our said LaSalle County Court before our  
Judge thereof on the first day of the next Term of  
said court to be held at the Court House in Ottawa  
on the first Monday in September next at two  
o'clock in the forenoon and abide by <sup>and</sup> ~~the~~ perform the  
Judgment of our said Court in the premises.

In witness whereof we have caused the seal of our  
said Court to be hereunto affixed and attested by  
Samuel W. Raymond our clerk thereof at Ottawa 11<sup>th</sup>  
day of August 1855

Endorsed D. W. Raymond clerk

Not found in any County  
September 1<sup>st</sup> 1855

Return 10

Wm. H. H. H.  
J. S. H. H. H.

Afterwards to wit on the 3<sup>d</sup> day of September A.D. 1853  
the same being one of the days of the September Term  
thereof of the LaSalle County Court the following  
proceedings were had and entered of record to wit

Peter Kinsler Adm<sup>r</sup>  
of Jacob Emmbach dec<sup>d</sup>

vs

Illinois Central Rail Road Co.

Appeal

This day comes the plain-  
tiff by Chummasse his attorney - as well as defen-  
dants by Hough their attorney - whereupon the plaintiff  
by his said attorney, enters his motion herein to  
dismiss the appeal for want of sufficient bond.  
Which motion after hearing the arguments of  
counsel - is overruled by the court

Afterwards to wit on the 5<sup>th</sup> day of September A.D. 1853  
the same being one of the days of the September Term  
thereof of the LaSalle County Court the following  
proceedings were had and entered of record to wit

Peter Kinsler Adm<sup>r</sup>  
of Jacob Emmbach dec<sup>d</sup>

vs

Illinois Central Rail Road Co.

Appeal

This day comes the plaintiff  
by Chummasse his attorney and the defendants by

6.

Though their attorney. Whereupon by agreement of parties a jury is waived and this cause submitted to the court for trial. After hearing the evidence and arguments of counsel and after due deliberation thereon had the court finds the issues for the plaintiff and assesses his damages at the sum of Fifty dollars.

Thereupon the defendants by their said attorney enter their motion herein for a new trial - which motion is overruled by the court. To which ruling of the court the defendants then assent and excepted. It is therefore considered by the court that the plaintiff have and recover of the said defendants the said sum of Fifty dollars for his damages and also his costs and charges by him herein expended and that he have execution therefor.

Afterwards to wit on the 14<sup>th</sup> day of September A.D. 1855 - the same being one of the days of the September term thereof of the Laballe termity court the following Bill of exceptions was filed which are in words and figures following to wit -

Peter Wampler

Administrator of Escoth

Emmrich

of Union Central Rail Road Co

Appeal

Laballe termity court

September Term 22<sup>nd</sup> 1855

Be it remembered that on the trial of this cause at the September Term of the said LaSalle County Court A.D. 1855 the said Peter Kisspler to maintain the issue on his part gave in evidence to the Court both plaintiff & defendant having waived a jury, the testimony of one Ashua Brown who testified that he saw plaintiff or killed a year ago this summer on the Illinois Central Rail Road. a gravel or construction train left Mendota run three or four miles towards LaSalle not loaded. Then it met the passenger train from Morris station. The gravel train in backing to Mendota when opposite my house run over and killed the or known the or was owned by the deceased or was worth \$60 or \$65-

on cross examination said I saw the transaction. the or was a good fair working or. The defendant introduced H. Boone as a witness who testified that he is acquainted with cattle a single good working or worth from \$60 to \$63-

Also Men. Deriglass who testified that he is in the butchering business- buys cattle- has paid from \$30 to \$40 for seven or eight years old. Last year paid from \$30 to \$35 & paid about \$40 for an ordinary or last. Also Men. Hill who testified that one or was worth \$30 has bought and sold also Men. Mann who testified that one or was

about  
 worth \$50 = Which is all the evidence given in the  
 case = the counsel for the said Illinois Central  
 Railroad Company moved the said court upon  
 the evidence aforesaid to dismiss the said suit  
 for want of jurisdiction in the justice of the  
 peace before whom the said suit was origi-  
 nally commenced which motion was overruled  
 by the said court to which decision of the said  
 court in overruling said motion to dismiss the  
 counsel for the said Illinois Central Railroad  
 Company then & there excepted. And thereupon the  
 said court found the issue in favor of the  
 plaintiff & assessed his damages at sixty dollars.

Whereupon the counsel of the said Illinois  
 Central Railroad Company moved the said  
 court to set aside the aforesaid finding & for  
 a new trial by reason of the said finding  
 being against the law of the case and also  
 against the evidence. But the court overruled  
 the said motion & gave judgment against  
 the said Illinois Central Railroad Company.  
 To which decision of the said court in overruling  
 the said motion to set aside the aforesaid finding  
 & to grant a new trial & giving a judgment  
 against the said Illinois Central Railroad  
 Company the counsel for said company then  
 & there excepted and prayed that this bill

about  
 worth \$50 = Which is all the evidence given in the  
 case = the counsel for the said Illinois Central  
 Railroad Company moved the said court upon  
 the evidence aforesaid to dismiss the said suit  
 for want of jurisdiction in the justice of the  
 peace before whom the said suit was origi-  
 nally commenced which motion was overruled  
 by the said court to which decision of the said  
 court in overruling said motion to dismiss the  
 counsel for the said Illinois Central Railroad  
 Company then & there excepted. And thereupon the  
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 against the evidence. But the court overruled  
 the said motion & gave judgment against  
 the said Illinois Central Railroad Company.  
 To which decision of the said court in overruling  
 the said motion to set aside the aforesaid finding  
 & to grant a new trial & giving a judgment  
 against the said Illinois Central Railroad  
 Company the counsel for said company then  
 & there excepted and prayed that this bill

9.

of exceptions may be signed sealed & made a part of the record in this case which is done

H. G. Cotton *clerk*

State of Missouri  
Linn County

I Philo Pirkey Clerk of  
The County Court in & for Linn County  
do hereby certify that the above and  
forgoing is a true full and complete  
copy of all the orders of Court findings  
and bill of Exceptions in said case  
as the same appear of Record and  
on file in my office

Wm. Estlinson Sheriff of  
Linn County do hereby  
have hereunto set my  
hand and the seal of said  
County this 12<sup>th</sup> day of February  
AD 1858

Recd Feb 25

Philo Pirkey Clerk

The Illinois Central } State of Illinois  
 Railroad Company }  
 vs }  
 Peter Winkler, administrator }  
 of Jacob Greenback, dec'd } Grand Division  
 } Error to Sadatle  
 } County Court

And now comes the said  
 plaintiff in error, by D. L. Bough, its attorney  
 & says that in the record, & proceedings, & in  
 attending the judgment aforesaid,  
 there is manifest error in this, to wit:-  
 1<sup>st</sup> The Court below erred in refusing to  
 dismiss the case for want of jurisdiction  
 in the justice of the peace before whom it  
 was originally brought

2<sup>d</sup> The Court below erred in rendering  
 the judgment aforesaid, in manner  
 aforesaid

And the said plaintiff in error,  
 prays that the said judgment for the  
 errors aforesaid, & for other errors in the  
 said record & proceedings being, may  
 be reversed, annulled, set aside, & held  
 for naught.

David L. Bough  
 Attorney for plaintiff in error

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the *County* —

Court for the County of *La Salle* Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the County Court of La Salle County, before the Judge thereof, between Peter Kimpler administrator of Jacob Emenbach deceased plaintiff, and The Illinois Central Rail Road Company

fest error hath intervened, to the injury of the <sup>4</sup> aforesaid <sup>1</sup> defendant

as we are informed by the complaint of said defendant 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 first Tuesday after the third Monday in April 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. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 8<sup>th</sup> — day of March — in the Year of Our Lord one thousand eight hundred and fifty-nine.

Clerk of the Supreme Court.  
By J. B. Rice Deputy

<sup>125</sup>  
The Illinois Central  
Rail Road Company  
vs  
Peter Kimples admr.  

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Writ of Error

Filed March 8. 1858  
L. Leland Clk

The Illinois Central  
Rail Road Company

Peter Kimples admr.

Filed March 8, 1859  
L. Leland  
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,  
SUPREME COURT,

To the Sheriff of the County of

*La Salle*

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *County* Court of *La Salle* County, before the Judge thereof, between *Peter Kimpler administrator of Jacob Eusenbeck deceased*

plaintiff, and *The Illinois Central Rail Road Company*

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

*Defendant*

as we are informed by *the* complaint, of said defendant the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

*Peter Kimpler*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said ~~*Peter Kimpler*~~ *Peter Kimpler* notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice  
of our said Court, and the Seal thereof, at Ottawa,  
this *8<sup>th</sup>* day of *March* in the  
Year of Our Lord One Thousand Eight Hundred  
and Fifty-*nine*.

*L. Leland*  
Clerk of the Supreme Court.

*J. B. Rice Deputy*

The Illinois Central  
Rail Road Company  
vs 123

Peter Kimpler adms.  
vs  
Sei fee

Not found

Thy within named  
Peter Kimpler not  
found in my County  
April 16<sup>th</sup> 1859  
J Warner Shff

A. + 10

Filed April 16. 1859

David L. Hough  
Att. atty.

STATE OF ILLINOIS, } ss. The People of the State of Illinois,  
SUPREME COURT,

To the Sheriff of the County of Lee

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the County Court of LaSalle County, before the Judge thereof, between Peter Kimpler administrator of Jacob Buehbach deceased plaintiff, and The Illinois Central Rail Road Company

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

as we are informed by the complaint, of said Defendant the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Peter Kimpler

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Peter Kimpler

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice  
of our said Court, and the Seal thereof, at Ottawa,  
this 8<sup>th</sup> day of March in the  
Year of Our Lord One Thousand Eight Hundred  
and Fifty-nine

L. Leland  
Clerk of the Supreme Court.  
By J. B. Rice Deputy

The Central Rail Road  
 Company. 12.51  
 vs  
 Peter Kimples Admors  
 Sheriff  
 Lee County

Filed April 12. 1859  
 L. Leland  
 Clerk

D. L. Hargrave  
 Plaintiff.

Proceed the within by reading the same to  
 and in hearing of the within named Peter  
 Kimples this 14th day of April A.D. 1859

Service 80  
 Travel 12.5-  
 Return 10  
 1.85-

Jester Harding Clerk  
 By E. A. Snodgrass Deputy