

No. 13219

Supreme Court of Illinois

Galena & Chicago Union R. R.

vs.

Larkin

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 25.

*Gerra & Co
vs*

Larkin

1861.

13219

The Galena & Chicago
Union Rail Road Company
25th St ~~St~~

Aldrich Larkin

Writ of Error

This writ of Error is made
a supersedeas and as
such is to be obeyed
by all concerned.

L. Leland Clerk
by J. B. Kim Deputy

Filed December 15th 1889

L. Leland Clerk



Know all Men by these Presents, That we the Galena
and Chicago Union Rail Road Company
as principal, and Walter
L. Newberry as security, are held and firmly bound
unto Aldrich Larkin

in the penal sum of five hundred dollars
good and lawful money of the United States, for the payment of which, well and truly
to be made, the said Galena & Chicago Union Rail Road
Company binds itself and the said Walter L. Newberry
binds himself & his heirs, executors and administrators,
jointly, severally and firmly by these Presents.

Witness, the hand & seal of Walter L. Newberry and
the corporate seal of the Galena & Chicago Union Rail
Road Company this 14th day of December A. D. 1889

The Condition of the above Obligation is such, That, whereas the above named
Aldrich Larkin

did, at the October Special Term of the Court of Common Pleas of the County, City of Elgin held
at the city of Elgin ~~held in and for~~ the County of Kane in the
State of Illinois, A. D. 1888 recover a judgment against the above bounden Galena
& Chicago Union Rail Road Company

for the sum of one hundred
and thirty seven dollars and cost of suit
to reverse which said judgment, the
said Galena & Chicago Union Rail Road Company

has sued out a Writ of Error from the Supreme Court, within and for the Third
Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the
said Galena & Chicago Union Rail Road Company

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said
judgment, and all judgments, costs, interest and damages which the said Supreme Court
shall adjudge against said Galena & Chicago Union Rail Road Company
and abide the order and judgment of said Su-
preme Court in this behalf, then this obligation is to be void, otherwise to remain in full
force and effect.

W. L. Newberry - President

[SEAL.]

W. L. Newberry

[SEAL.]

[SEAL.]

Wm. L. Larrabee
Secretary.

Dec 10

No. ~~74~~ 25

SUPREME COURT,

THIRD GRAND DIVISION.

Galena & Chicago Union T. & Co.

vs.

Aldrich Larkin

SUPERSEDEAS BOND.

Filed December 15th 1888

L. Leland Clerk.

United States of America }
State of Illinois Kane County, } 3

Pleas before the Honorable
Benjamin F. Parks Judge of the Court of Common
Pleas of the City of Elgin in the County of Kane
and State of Illinois and sole presiding Judge
of said Court at a Special Term thereof began
and held at the Court room in the City of
Elgin on the 10th day of October in the year
One thousand & Eight hundred and fifty
nine - In pursuance of an Order made and
Entered of record at a former term of said
Court which said Order is in the words
and figures following: to wit:

It is Ordered
that a Special term of the Court of Common Pleas
of the City of Elgin be holden on the second
Monday of October AD 1859, for the dispatch
of Civil, Criminal and Chancery business
at the Court room in the City of Elgin. To
which Special term the Clerk is hereby Ordered
to issue a Venue directed to the Sheriff to
summon a Grand and Petit Jury pursuant
to the Statute in such case made and pro-
vided. Elgin September 12th 1859

Present Honorable Benjamin F. Parks Judge

Ethan Allen Sheriff of Kane County

E. S. Joslyn State Attorney

Attorn R. W. Padelford Clerk

Be it remembered that heretofore, to wit: on
the second day of September AD 1859. there
was filed in the Office of the Clerk ^{of the Court}, aforesaid
a certain precept which said precept was in the
words & figures following to wit:

State of Illinois	{ ss	September Term. of the Court
Kane County		of Common Pleas of the City
City of Elgin		of Elgin AD 1859

Aldrich Larkin	{	Respect on the case	
vs			
The Galena & Chicago			Damages \$200.
Union Rail Road Company			

The Clerk will please issue
summons in the above entitled ~~suits~~ returnable
at the next term of the said Court directed
to the Sheriff of said County & oblige
Joshua T. Riddle

Plff Atty

And whereas afterwards to wit on the 2nd day
of September AD 1859 there was issued a
summons from said Clerk's office under the hand
an official seal of the Clerk thereof. which is
in the words and figures following & wit:

State of Illinois	{ ss	The People of the State of
Kane County		
City of Elgin		

Illinois to the Sheriff of said County
Greeting:

We command you, that you summon the
Galena and Chicago Union Rail Road
Company if they shall be found in the
City of Elgin, in your County, personally to
be and appear before the Court of Common
Pleas of the City of Elgin, in said County on
the first day of the next term thereof,
to be holden at the Court House in Elgin
in said County, on the second Monday of
September inst. to answer unto Aldrich
Larkin in a plea of Trespass on the Case
to the damage of the said Plaintiff as he
says in the sum of two hundred dollars

And have you then & there this writ,
with an indorsement thereon, in what
manner you shall have executed
the same. Witness Rodolphus W. Padelford

Seal) Clerk of our said Court, and the Seal
thereof, at Elgin, in said County this 2^d
day of Sept A.D. 1859

R. W. Padelford Clerk

upon the back of which summons is the
following return to wit: Served this writ
September 2. 1859 by delivering a copy thereof
to R. H. Adams Agent of the Galena & Chicago Union
Rail Road Company- E. J. Allen Sheriff of Kane Co

For Service 50
Sept 2 1859 40
Filed Sept. 3 1859 R. W. Padelford Clerk

And whereas afterwards to wit: On the second day of September AD 1859 there was filed in the office of the Clerk of said Court a declaration which said declaration was in the words and figures following to wit:

State of Illinois	{ 00	The Court of Common Pleas of the City of Elgin September Term AD 1859. -
Kane County		
City of Elgin		

Aldrich Larkin plaintiff in this suit by Joslyn & Riddle his Attorneys Complain of the Galena & Chicago Union Rail Road Company defendant in this suit which has been summoned &c of a plea of trespass on the Case -

And that whereas heretofore to wit on the sixth day of June AD Eighteen hundred and fifty nine at the Town of St Charles to wit at the City of Elgin in said Kane County, the said plaintiff before and at the time of the committing of the grievances by the said defendant as herein after mentioned was the owner of a certain Colt of great value to wit of the value of seventy five dollars which said Colt was then & there on the premises of the said Plaintiff and the said defendant was then & there the owner of a certain Rail Road track & Steam Engines & Cars used and propelled by steam and running on its said track & passing over

the same with great speed in the day time & night time, and the said defendant was also the owner of the fences along on the sides of its said track which said Rail Road passed along and adjacent to the premises of the said plaintiff & divided them from by the defendant's said fences -

And it became and was the duty of the said defendant on the day & year & at the place aforesaid to keep & maintain good & sufficient fences along & on the sides of its said Rail Road to prevent sheep, cattle, colts & horses from getting in & upon its said Rail Road track -

Yet the said defendant not regarding its said duty in that behalf but so carelessly & negligently & insufficiently kept and maintained its said fences along & adjoining the premises of the said plaintiff and allowed and suffered the same to become wholly insufficient to prevent the Colt of the said plaintiff from going out of the premises of said plaintiff in and on to the defendant's said Rail Road track - that by the carelessness & negligence of the said defendant in not keeping & maintaining its said fence in a good & sufficient manner the said Colt went directly from the premises of the said plaintiff in and on the track of the said defendant, and was then & there struck & run upon by the said Steam Engines & Cars of the said defendant & greatly

injured and wholly lost and destroyed to the said Plaintiff -

And also for that whereas thereafter to wit on the day & year and at the place aforesaid the said Plaintiff before and at the time of the committing of the grievances by the said Defendant as herein after mentioned was the possessor & bailee of a certain other Colt of the great value to wit of the value of One hundred & fifty dollars - which said Colt was then & there on the premises of the said Plaintiff and the said Defendant was then and there the owner of a certain Rail Road track & Steam Engines & Cars used & propelled by Steam and running on its said Rail Road track passing over the same with great speed in the day & night time and the said Defendant was also the owner of the fences along on the sides of its said Rail Road which said Rail Road passed along & adjacent to the premises of the said Plaintiff & was divided therefrom by the Defendants said fences & it became & was the duty of the said Defendant on the day & year & at the place aforesaid to keep & maintain good & sufficient fences along & on the sides of its said Rail Road to prevent sheep, Cattle, horses & Colts from getting through & over its said fences in & upon its said Rail Road track

Yet the said defendant not
regarding its said duty in that behalf but
so carelessly negligently & insufficiently kept
& maintained its said fences along & adjoining
the premises of the said plaintiff and
allowed & suffered the same to become wholly
insufficient to prevent the said Colt of
the said plaintiff as bailee from going out
of the premises of the said plaintiff in and on to
the defendant's said Rail Road track, that
by the carelessness and negligence of the said
defendant ~~in not~~ in not keeping and
maintaining its said fences in a good and
sufficient manner the said Colt went directly
off from the premises of the said Plaintiff
in and upon the Rail Road track of the said
defendant and was then & there struck by
the said engine and cars of the said defen-
dant and so greatly injured bruised and
damaged, and became & was wholly lost
and destroyed to the said plaintiff as
bailee - at the town of St Charles to wit: at
the city of Elgin. - And to the damage
of the said plaintiff of Two hundred
dollars and therefore he brings his suit
etc

Joslyn & Riddle

Plffs attys -

And whereas afterwards to wit on
the 12th day, of September AD 1859 there was
filed in the office of the Clerk of said Court
a demurrer which said demurrer was
in the words & figures following to wit:

Court of Common Pleas of the City of
Elgin September Term AD 1859.

Galena & Chicago Union
Rail Road Company }
 ads
Aldrich Larkin }

And the said defendant
by Elliott Anthony its Attorney comes
and defends the wrong and injury
when he and says that the said
Declaration & the matter therein contained
in manner & form as the same are above
stated and set forth, are not sufficient
in law for the said plaintiff to have or
maintain his aforesaid action thereof
against the said defendant, and
the said defendant is not bound by
law to answer the same. And thus
the defendant is ready to verify, wherefore,
by reason of the insufficiency of the said
Declaration in this behalf, the said defendant
prays judgment that the said

plaintiff may be barred from having or maintaining his aforesaid action thereop against him.

And the said defendant further states and shows to the Court here the following causes of demerence to said declaration

1st In neither of said Counts of the said declaration is there any averment that the Colts mentioned were not killed within the limits of any town, city or village and did not come upon the Railroad of said defendants within the limits of such town or village.

2 In neither of said Counts is there any averment that said Colts were killed through the wanton or wilful and gross negligence of the agents or servants of said defendants.

3. In neither of said Counts is there any averment that the place where the Colts were killed was within the City limits of the City of Elgin -

4. There is no averment in either of the Counts that the premises of the plaintiff were within the City limits of the City of Elgin

on County of Kane -

The said declaration is in other respects uncertain informal and insufficient -

Elliott Anthony
Atty for Defs

And whereas afterwards to wit on the 12th day of October ^{AD 1854} the same being one of the days of the aforesaid Court of Common Pleas of the City of Elgin at the October Special Term thereof

The following among other proceedings were then & there had & entered of record to wit:

Aldrich Larkin	{	Respect on the Case
or		
The Galena & Chicago Union Rail Road Company		
		This day come the Defendant by E Anthony

their attorney and files demurrer to the Plaintiffs declaration in which the plaintiff joins after argument of counsel the Court being fully advised overrules the demurrer and on motion of Plaintiff leave is given to plead by Friday morning next -

And afterwards to wit on the 14th day of October AD 1854 the same being

one of the days of the aforesaid Court of
Common Pleas of the City of Elgin at the ^{October} Special
Term thereof. The following among other
proceedings were then and there had and
Entered of record to wit:

Aldrich Larkin
vs
The Galena & Chicago
Union Rail Road Company } Trusses on the Case
This day comes the Plaintiff
by Joslyn & Riddle his attorneys

and the defendants having been duly served
with process and having also been three times
specially called come not nor any one for
them which is ordered by the Court to be
Entered of record and that said plaintiff have
judgment by default and on motion of the
plaintiff that a jury be empannelled to assess
the damages. It is ordered by the Court that
a jury come, whereupon come a jury of good
and lawful men to wit: Asa Merrill 2^d. NE
Daggett, John Hunter, A Chandler, Francis Wright
James Cassidy, Henry Garwood, S. E. Gregory, W. A.
Carpenter, R. S. Tickner Edward Little Samuel A Campbell
being personally elected and sworn also come, and
after hearing the evidence argument of counsel
and instructions of the Court, retire under the
charge of a sworn officer of the Court to

consider of their verdict: subsequently return
into Court and for a verdict upon their oaths,
say that we the jury find the issues joined
in favor of the plaintiff and assess the dam-
ages at one hundred and thirty seven
dollars - It is therefore considered by
the Court that the plaintiff have and recover
from the defendant the sum of one hundred
and thirty seven dollars and his costs about
his suit expended and have execution there-
for -

State of Illinois
Kane County

City of Elgin

} 00
I Rodolphus W Padelford Clerk
of the Court of Common Pleas of

the City of Elgin in the County of Kane aforesaid do hereby certify
that the above foregoing to be a true perfect & complete copy
of the papers & proceedings in a certain Cause lately pending
in said Court on the law side thereof wherein Aldrich
Larkin was plaintiff and The Galena & Chicago
Union Rail Road Company defendant -

In witness whereof I have hereunto
set my hand and affixed the
seal of our said Court at Elgin
this 24th day of October AD 1859

R. W. Padelford

Clerk

State of Illinois } April Term in the 2nd Year
Supreme Court } of Our Lord One Thousand
Eight Hundred and Sixty.

~~Aldrich Larkin~~

~~Galena & Chicago Union~~
Rail Road Company
vs
Aldrich Larkin.

In Error.

And now comes the said
Galena & Chicago Union Rail Company
by Elliott Anthony its attorney and
says that in the record & proceedings
aforesaid and also in the rendition
of the judgment aforesaid manifest
error hath intervened in his belief
First - that the declaration aforesaid and
the matters therein contained, are
not sufficient in law for the said
Aldrich Larkin to have or maintain his
aforesaid action, hence against
the said Galena & Chicago Union
Rail Road Company

Second. That by the record aforesaid it
appears, that the judgment aforesaid
in form aforesaid given was given
for the said Aldrich Larkin against
the said Galena & Chicago Union Rail Road
Company, whereas by the laws of the land

the said judgment ought to have been given for the said Galena & Chicago Union Rail Road Company against the said Aldrich Larkin.

Third - The judgment upon the demurrer filed to the plaintiffs ^{Aldrich Larkin} Declaration, was given by the court for Aldrich Larkin whereas by the law of the land it should have been for the Galena & Chicago Union Rail Road Company.

See 2d Ill p 391. And the said Galena & Chicago Union Rail Road Company prays that the judgment aforesaid for the errors aforesaid & for other errors apparent in the record & proceedings aforesaid may be reversed, annulled & altogether held for nothing & that the said Galena & Chicago Union Rail Road Company may be restored to all things which it hath lost by occasion of the said judgment.

Attest authority

Atty for Plaintiff in error.

Let a supersedeas issue in this cause bond five hundred dollars & Moller & Newberry Securit;

J. H. Eaton

Record & Certified
Filed December 15, 1839
J. H. Eaton

Supreme Court
Galena & Chicago Union
Rail Road Company
vs
Aldrich Larkin

E. A. Anthony
Atty for Plaintiff in Error