No. 12374

Supreme Court of Illinois

Honner.

vs.

Ill. Cent. R. R. Co.

71641 7

Cook County Circuit Court

of May Term in the year of our Lord
One Thousand Eight hundred & fifty four

State of Illinois
Cook County ss

Francis Hornor plff in this suit by Arnold Larned & Lay his attys. complains of the Illinois Central Rail Road Company Defts in this suit in a Plea of Trespass on the Case

For that whereas the sd defts heretofore to wit on the 11th day of Oct. A.D. 1853 in the County of Cook aforesd were possessed of a certain Iron Table with an Iron Bar thereto attached, used and employed at the City of Chicago in the County of Cook aforesd. with the purpose and with the intent that thereby they might turn the cars & locomotives used and employed by the sd. Defts. in their various works while the sd. Defts by their agts & servts., had the care direction, management & supervision of the sd. Iron Table & the sd. Iron Bar and all the appurtenances attached to said Iron Table & the sd. ~~Iron Bar~~ plff at the special instance & request of the said Defts. was employed and engaged in the assisting at the turning of the sd. Iron Table & thereupon it became the duty of the said Defts to use due & proper care that the sd. Iron Table & the sd. Iron Bar were each of them well and properly made, secured and guarded, yet the sd. defts. not regarding their duty in that behalf, then & there by their sd. agts & servts. so carelessly & improperly made, secured & guarded & managed the sd. Iron Table & the sd Iron Bar & the other appurtenances attached to the sd. Iron Table, that by & through the carelessness & improper conduct & management of the sd. Defts.

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by them sd agt. & servts. the sd. Iron Bar attached wood. Iron Table as aforesd. while the sd pltff. was engaged as aforesd. in turning the same broke & was then and there thrown with great violence upon and agt. the sd. pltff. whereby the thigh of the sd. pltff. was greatly bruised & injured & the sd. pltff. was otherwise greatly bruised & injured & the sd. pltff. was otherwise greatly injured wounded and cut in so much that the sd. pltff. then & there became sick sore and lame & greatly disabled for a long space of time, to wit from thence hitherto during all which time the sd. pltff suffered and underwent great pain & was hindered from carrying on transacting and proceeding in his lawful & necessary affairs and business by him during that time to be performed and transacted & thereby lost and was deprived of divers great gains and profits which had been accustomed to arise and accrue to the sd. pltff. from the transacting and carrying on of the same & also by means of the premises last aforesd. sd. pltff. was forced & obliged to & did then & there laydout and expend divers large sums of money, amounting in the whole to the sum of Five Hundred Dollars in & about the curing and endeavoring to cure the said last mentioned bruises, cuts & wounds to wit at Chicago aforesaid

And also for that whereas heretofore to wit on the 15th day of Oct. A.D. 1853, the sd. pltff. being in the employ of the sd. defts. and engaged and employed as a common laborer for and by the sd defts. in & about the works of the sd. defendants at Chicago in the County of Cook aforesd. & for that the sd defendants then and there at the time & place aforesd. were possessed of and were the owners of a certain Iron Table with an Iron Bar thereto attached used &

Employed at the works of the sd defts at Chicago aforesd for the purpose of turning the Locomotives & Cars used by the sd. Defts in their business, & while the sd. Defts. by their agt. & servts had the care management & control of the sd Iron Table with the Iron Bar & all the other appurtenances thereto attached, the sd. Plff at their special instance & request of the sd. Defts, on the day & year and at the place aforesaid was employed and engaged in turning the said Iron Table, with the Iron Bar thereto attached & thereupon it became the duty of the sd Defts to use due & proper care that the said Iron Table should be well and properly made, managed secured and fastened & thereupon it also became the duty of the sd. Defts that the sd. Iron Bar & all the appurtenances attached to the sd. Iron Table were well and properly made, managed, secured and fastened But the sd. Defts. not respecting their duty in this behalf then and there by their sd. Agt & servts so carelessly & improperly made, managed secured & fastened the sd. Iron Table & so improperly made managed, secured & fastened the sd. Iron Bar attached to the sd Iron Table & all the other appurtenances thereto attached, that by and through the carelessness, negligence and improvidence of the sd. Defts. by their sd. Agt & servts, the said Iron Bar attached to the sd. Iron Table as aforesd. broke while the sd. Plff. was so engaged as aforesd. in turning the sd. Iron Table & was then & there thrown with great force & violence against the sd Plff. whereby the thigh of the sd Plff was greatly bruised cut, bruised and wounded sore & the sd Plff was then & there otherwise greatly bruised, wounded cut & wounded sore, insomuch that the sd Plff

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the & there became sick and lame and disordered & so remained and continued for a long space of time to wit hitherto during all which sd. time the sd Plff suffered and underwent great pains and was hindered and prevented from attending to his necessary and lawful affairs and business by him during all that time to be performed & transacted and lost and has declined of divers great gains, profits and advantages which he might and otherwise would have earned and acquired from the same and that also the sd. Plff. was forced and obliged to and did then and there pay, laid out and expend divers other large sums of money amounting in the whole to the sum of Five hundred Dollars in and about the endeavoring to be cured of the sd last mentioned business, wounds, cuts and injuries to wit at Chicago aforesd.

And also for that whereas, heretofore to wit on the 11th day of Oct. AD. 1850 the sd Plff. being in the employ of the sd. Defts & engaged and employed as a common laborer by the said defts in and about the moving the Iron Table of the sd. Defts at Chicago in sd. County of Cook aforesd. and the sd. Defts. by their Agts & Servts then and there had the control, management & supervision of the sd Iron Table & of a certain Iron Bar attached to the sd Iron Table & thereupon it became the duty of the sd Defts to use due and proper care that the sd Iron Table & that the sd. Iron Bar thereto attached and all the other appurtenances of the sd Iron Table were sound & safe of their, were well and properly secured made and guarded. Yet the sd Defts. not regarding

the duty in this behalf then & there by the sd Agt & Servts, so carelessly & improperly made, managed secured & fastened the sd Turn table & so carelessly & improperly made managed secured & fastened the sd. Iron Bar attached to sd Turn Table & the other appurtenances thereto attached, that by & through the carelessness, negligence & improper conduct by the sd. Defts. by their sd Agts & Servants the said Iron Bar attached to the sd. Turn Table as aforesd. broke while the sd. pltff. was so engaged as aforesaid in turning the same & the said Iron Bar was then & there thrown with great force & violence against the sd pltff. which the thigh of the sd. pltff. was then & there greatly injured, cut, bruised & wounded & rendered sore and the sd. pltff. was then & there otherwise greatly injured, wounded cut & rendered sore, lame so much that the sd. pltff then & there became sick, sore lame and disordered and so remained & continued for a long space of time, to wit from thence hitherto during all which said time the said pltff suffered and underwent great pain & was hindered and prevented from transacting & attending to his lawful & necessary affairs and business by him during all that time by him to be performed & transacted & lost and was deprived of divers great gains profits & advantages which he might & otherwise would have derived & acquired from the same and also the sd. pltff. was also forced and obliged to & did then and there pay lay out and expend divers other large sums of money amounting in the whole to the sum of Five Hundred Dollars in & about the endeavoring to be cured of the said last mentioned

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bruises, wounds, cuts and injuries, to wit at Chicago aforesaid

To the damage of the said Plaintiff of three thousand dollars and therefore he brings suit &c

Arnold Larned & Long

Pltffs Attys

And afterwards on the ~~first~~ sixth day of May ~~January~~ A D 1854 came the said Defendants by Blackwell and Beckwith their attorneys and to the said declaration of the said plaintiff filed their said Demurrer, which is in the words and figures following,

Francis Homer
vs
The Illinois Central
Rail Road Company

Cook County Cir Court
May Term A.D. 1854

And the said Illinois Central Rail Road Company by Blackwell & Beckwith their attys come and defend the wrong and injury when &c and say that the said Declaration and the matters therein contained in manner and form as the same are stated and set forth are not sufficient in law for the said Francis Homer to have or maintain his aforesaid action thereof against them the aforesaid Defendants and that they the said Defendants are not bound by the law of the land to answer the same, and this they are ready to verify, wherefore for want of a sufficient declaration in this behalf the said defendants pray judgment and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against them

Blackwell & Beckwith
Defts attys

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And afterwards on the thirtieth day of May A.D. 1854 came the said Plaintiff, Francis Horner by his said Attorneys Arnold Larned & Lay and then, and there also came the said Defendants The Illinois Central Rail Road Company by their attorneys messrs Blackwell & Beckwith and it was then and there considered by the said Court that the said Demurrer of the said Defendants to the Plaintiffs declaration as is hereinbefore more fully set forth and shown, was sufficient in law to bar the said Declaration of the said Plaintiff and it was also then and there considered by the said Court that the said complaint of the said Defendants Plaintiff be dismissed. from which decision of the said Court the said Plaintiff then & there appealed to this Court

It is agreed & stipulated by & between the parties hereto that the above ~~[illegible]~~ shall be deemed & taken as a full & sufficient copy of the Record in the above entitled Cause & that no exceptions shall be taken thereto for the want of any formality in the making up of the same.

Chicago June 17 1857.

Arnold Larned & Lay Plfs Atty

Blackwell & Beckwith Defts Atty

Supreme Court

Circuit Court

Francis Horner

vs

The Illinois Cent. R. R. Co

Agreed

Arnold Larned & Lay

Blackwell

Beckwith

Cook Circuit Court

Francis Homer

vs

The Illinois Central
Rail Road Company

It is hereby stipulated and agreed, by and between the parties to the above entitled suit, that the Demurrer now on file in this cause, shall be sustained pro forma; and that the same shall be argued at the next term of the Supreme Court to be held at Ottawa, commencing on the second week of June next, and that the same shall be ~~argued at the opening of the Court or as soon thereafter as Counsel may be heard~~ argued at said term in its order when the docket or before if counsel shall so agree, & it is also stipulated that the Defendants shall raise no objection on account of the shortness of time & all objections on account of time are hereby waived

Chicago May 30th 1854

Blackwell & Beckwith
Attorneys for Defts

Arnold Larned & Sayre
Atty's for Plff

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Cook Circuit Court

Francis Hanna

vs

Illinois Central

Rail Road

State of Illinois
Supreme Court } At June term, in the year of our Lord, one thousand eight hundred and fifty four.

Francis Hornor
vs } In Error
The Illinois Central Rail Road Company

Afterwards, to wit, on the day of June A.D. 1854, at this same term of the Court before the justices thereof, comes the said Francis Hornor by Arnold Tamed & Lay his attorneys, and says that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, are sufficient in law, for the said Francis Hornor to have and maintain his aforesaid action thereof against the said The Illinois Central Rail Road Company, There is also error in this to wit, That by the record aforesaid it appears, that the judgment aforesaid in form aforesaid given, was given for the said The Illinois Central Rail Road Company, against the said Francis Hornor, whereas by the laws of the Land, the said judgment ought to have been given for the said Francis Hornor, against the said The Illinois Central Rail Road Company. There is also error in this to wit that by the record aforesaid it appears, that the, the Demurrer aforesaid was sustained in favor of the said The Illinois Central

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Rail Road company, whereas by the laws of the land the said Demurrer aforesaid ought to have been overruled in favor of the said Francis Stormer.

And the said Francis Stormer prays that the judgment aforesaid, for the errors aforesaid and for other errors apparent in the record and proceedings, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c

Arnold, Tanner & Lay
Attorneys for Plaintiff

And now comes the said defendants by Blackwell & Beckwith their attorneys and say that in the record of the proceedings and in the rendition of the judgment aforesaid there is no any error in manner and form as the said plaintiff in error hath above alledged and this they are ready to verify by the said record &c. wherefore they pray judgment &c

Blackwell & Beckwith for d

95.

Supreme Court

Francis Hosmer
vs
The Illinois Central Rail Road Company

Record error & joinder —

Filed July 6th 1854.
L. Leland Clk.
By P. K. Leland Dep.

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Francis Bowen
vs
Ill. Central R.R. Co. } This is an action against the Ill Cent. R.R. Co not, merely for the negligence of one of its servants by another in the same general employment - In which case it has been held in England Mass. N.Y. & S.C. that the principal is not liable to one of his servants for the negligence of others in the same general employment - Cases cited by Defendants Counsel -

But even this is not without question to the contrary that is claimed for those cases - 20 Ohio 415 Little Miami R.R. Co vs Stevens - 14 How U.S. 468 Phil & Reading R.R. Co vs Derby -

But this case is plainly distinguishable from use of the cases cited on the other side -

This action is for ~~[illegible]~~ ~~[illegible]~~ ~~for~~ "an omission to do what was the "duty of the corporation to the persons "employed by it" The gist of the complaint is the culpable omission of the corporation to provide ~~properly~~ safe implements &c - Field 15 Barb S.C. 577 = 4 Met. 62 = 1 McMullan 401 = 1 Georgia 198 where these restrictions & qualifications are recognized - 50 Law Library p 160 - top paging -

Corporations are liable for the acts of their agents, 9 Humph 761

It is the well established rule, that if an agent, without his own default, has incurred loss or damage in transacting the business of his principal, he is entitled to full compensation. Story on Agency § 339 - 6 Shepl - 9 - 4 Binghm 66 19 Johns 284 1 Days Cases 522 =

A corporation is liable whenever an individual under like circumstances would be liable for the acts of his servants - 5 Barb S.C. 79 - 6 id 231 =

Francis Homer
v
Illinois Central Rail Co

Supreme Court Ottawa
June Term 1854

The single question presented by the record in this case, is whether the Master is liable to his servant for an injury arising from the carelessness of his fellow servant when both are engaged in the same employment —

The question has been so elaborately discussed, and so often determined, that it is only necessary to refer to the cases, where it will be found that upon principle and authority such an action cannot be sustained —

3 Mo & W 1
5 N H & G 343
5 Ibid 345
6 Barb 231
1 Sold 492 SC
4 Mart 49
3 Cush 270
1 McMul 385
6 Hill 594
15 Barb 574

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Brief 95

Francis Hamer

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Ill Cent R Co

Blackwell & McKinstry

for Deft

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Francis Horner
vs
Ill. Cent. R. R. Co.

1854