No. 8535

Supreme Court of Illinois

Ohio & Mississippi R.R.Co.

---

vs.

Lawrence County

Know all men by these presents that we the Ohio & Mississippi Railroad Company, principal & Andrew Darling & I. B. Watts.

securities, are held & firmly bound unto the People of the State of Illinois in the Sum of Ten Thousand Dollars, for the due & faithful payment of which we do hereby bind ourselves, our Successors, heirs, Executors & administrators for ever.

Witness our hands & seals, this Sixteenth day of August A. D. 1861

The condition of the above obligation is such that whereas the Ohio & Mississippi Railroad Company did appeal from an assessment of the property of said Company for the year 1859 made by the Board of Supervisors of Lawrence County & State of Illinois, & said appeal was made to the Circuit Court of said County, & whereas at the April term of said Court A. D. 1861 the Judge thereof did dismiss said cause for want of jurisdiction, from which judgment said Company has appealed & now asks for a writ of Error, & a Supersedeas, to the Supreme Court or a Judge thereof: Now therefore if said Company shall well & truly prosecute said appeal, or writ of Error, & shall pay whatever judgment shall be awarded upon trial of or dismissal of said Appeal or Writ of Error, then this obligation to be null & void, Otherwise

[illegible]

to remain in full force & effect.

The Ohio & Mississippi Railroad Company [Seal]
By William Homes, their Attorney in fact.

W. Darling [Seal]
D. S. Watts [Seal]

21

O & M R R Co

vs.

Laurens County

Bond for Supersedeas

Filed Sept. 25. 1861.

A. Johnston Clk

State of Illinois }
County of Lawrence }

The O. & M. R.R. Co. } Writ of Error
vs.
Lawrence County }

Statement of the Case

1. The O. & M. R. R. Co. filed with the Clerk of Lawrence Co. its Schedule of Property, with valuation, for the year 1859.

2. At the December 1859 term of the Board of Supervisors for that County, the Board, regarding the valuation by the Company as too low, increased it, & so notified the Company

2. The Company applied for a hearing & for a reduction, at a meeting of the Board granted for the purpose. The Board refused the reduction asked & affirmed the order increasing the valuation, whereupon the Company prayed an appeal to Circuit Court of Lawrence Co. & filed bond which was approved.

3. At the September 1860 term of the Circuit Court of Lawrence Co. the cause was tried by the Court, without a jury. The Court after hearing Evidence & argument of Counsel took the case under advisement, reserving its decision until the April 1861 term of the Court.

[R535-8]

4th At the April 1861 term motion was made by Counsel for the Board of Supervisors to dismiss the cause for want of jurisdiction, & thereupon the Court allowed the motion & dismissed the cause.

The Error assigned is this dismissal of the cause for want of jurisdiction.

Points.

1. The Circuit Court had jurisdiction. It is conferred by the 8th Sec. of Art. 5. of the Constitution. The Supreme Court of this State in Burns vs Henderson, 20th Ills. referring to this Section & Article of the Constitution say; "This confers jurisdiction in all appeals from all inferior Courts upon the Circuit Courts, independently of any legislative enactment on the subject." —

2. The Supreme Court in Morris v. the City of Chicago. 11th Ills. p 650. hold that even tho an act is silent in reference to right of appeal, yet the right may exist, since it may be conferred by General Statute — or, as above by Constitution. In this case in 11th Ills. the City of Chicago by Special act was empowered to condemn property & appropriate it. No right of appeal was conferred in the act & so far as that act was concerned the action of the City of Chicago seemed to be final. But the Supreme Court held that the right

of appeal
might exist, notwithstanding the silence of the
act in regard to it.

3. In 22 Ills. 175 the Supreme Court of this State entertained a cause, wherein an appeal had been taken from an order of the Board of Supervisors of Knox Co., from which there was no right of appeal conferred by Statute, or by the township organization law. But the right of appeal was not questioned by the Supreme Court, & the decision of the Board of Supervisors was reversed by this Court.

It is admitted by plff. in Error that in the laws regulating Railroad assessments, & assessments generally, in organized Counties, there is no right of appeal specifically granted.

But regarding the municipal regulations of Counties under the Township organization as a substitute for the Government by County Commissioners, & County Court, & regarding the Board of Supervisors as the successors of the County Commissioners, it is not unreasonable to suppose that any privileges enjoyed under the Commissioners, the Legislature intended should be enjoyed under the Supervisors.

Keeping this in mind, it appears that by the Act of Feb. 17. 1851. Purples Statutes Chapter

L 8535-H

27, p. 295. appeals now allowed from any order of the Commissioners Court.

In Iowa Statutes. Chap. 89 p 899. Act of Feb 27th 1847. Appeals allowed to Circuit Court from order of County Court where parties now aggrieved by assessments.

(Sec 16. of the latter act repeals all others in conflict.)

As showing that the township organization is but a substitute & successor to the Commissioners Court, see Act of Feb 12. 1853, Chap. 89. whereby it appears that the first 23 Sections a verbatim repetition of the Act for Counties not organized.

And generally, it may be inferred that the right of appeal enjoyed under the Commissioners is not taken away under the Supervisors.

That the Legislature intended the Railroad Companies should not be at the mercy of the Board of Supervisors, is clearly to be inferred from the provision in the Act for assessing R. R. property, - Act of Feb 14. 1855, p. 99 & Pamphlet Statutes. to wit: that if the Board of Supervisors change the valuation of the property listed, notice shall be given to the R.R. Co. who give notice, unless the Legislature intended the Railroads should enjoy the necessary opportunity, by a hearing before the Board, or by appeal or otherwise, to escape an onerous or unjust assessment.

The case in 22d Del. of Worthington vs. Pike County, does not apply, as the facts are not analogous. In our own case, we do not claim that any property is exempt. but we complain of an assessment too high. Worthington complains that certain property of his was exempt from taxation & therefore was wrongfully assessed. He did not complain of too high assessment. For his case the Statute Expressly provided the steps to be pursued — if he claimed his property was exempt, his recourse was to the auditor & then to Supreme Court.

The case is not parallel to this of ours, & therefore the decision of the Supreme Court does not cover our case, & the principle involved here is not decided by that case —

Plaintiff in Error claims that the Railroad Company is Entitled to a writ of Error & that the Judgment of the Circuit Court of Lawrence, should be reversed.

William Stowers
Atty for Plaintiff in Error

[8535-5]

21

O. & M. R. R. Co.

vs

Laurence County

Points & Authorities

Filed Sept. 25. 1861

N. Johnston Clk

St Louis Sept 21. 1861

Mr Johnston – In a letter in same mail with this I enclose to you $5 – to settle with Procipe.

Yours truly

Wm Homes

Atty Office

Noah Johnston Esq

Clerk &c

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Lawrence 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* Lawrence *county, before the Judge thereof between*

Ohio and Mississippi Rail Road Company plaintiff and

Lawrence County defendant it is said manifest error hath intervened to the injury of the aforesaid Ohio and Mississippi Rail Road Company as we are informed by their complaint, and we being willing that error, if any there be, should be corrected 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 our 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 **Mount Vernon**, in the County of Jefferson, on the first Tuesday after the 2d Monday of November 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 the Supreme Court and the seal thereof, at MOUNT VERNON, this twenty-fifth day of September in the year of our Lord one thousand eight hundred and sixty-one

Noah Johnston

Clerk of the Supreme Court.

[9530-7]

21

SUPREME COURT.

First Grand Division.

O & M. R. R. Co.

Plaintiff in Error,

vs.

Lawrence County

Defendant in Error.

WRIT OF ERROR.

Issue. Made a Supersedeas and

FILED - Sept 25th

1861.

N Johnston Clk

This Writ of Error is made a Supersedeas Cause is to be adjourned accordingly.

North Johnston Jus

O & M R R Co.

vs

Supervisors of Lawrence Co.

Supreme Court, First Judicial Division Nov Term 1861

Writ of Error

Noah Johnston Esq
Clerk Supreme Court
Washington

Dear Sir

Please issue process according to law in the above entitled cause & oblige

Yours truly
I F Holmes
Atty O & M R R Co.

Easton

C. & M. R. Road

vs

Laurens County

Pumper –

Julius. Sept. 25. 1861.

N. Johnston Clk

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Sheriff of Lawrence *County.*

Because, *In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of* Lawrence *county, before the Judge thereof between*

The Ohio and Mississippi Rail Road Company *plaintiff and*

Lawrence County *defendant it is said that manifest error hath intervened to the injury of said* Ohio and Mississippi Rail Road Company *as we are informed by their complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at* Mount Vernon, *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* County of Lawrence — to the Supervisors of the said County of Lawrence — — — —

that they be and appear before the justices of our said Supreme Court, at the next term of said Court, to be holden at **Mount Vernon,** *in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said* Supervisors *notice together with this writ.*

WITNESS, *the Hon.* John D Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* twenty-fifth *day of* September *in the year of our Lord one thousand eight hundred and* sixty-one

Noah Johnston
Clerk of the Supreme Court.

[8535-97]

I have served the within writ by reading the same to the Supervisors of Lawrence County as follows to wit to John M D Chenoweth Supervisor of Allison Town on the 30th Sept 1861 and to Wm M Carlyle Supervisor of Bond Town & John Holton Supervisor of Russell Town on the 3d Oct 1861 & to Richard L Judy Supervisor of Petty Town on the 7th Oct 1861 & to J. L. Flanders Supervisor of Lukin Town on the 11th Oct 1861 & to John Seed Supervisor of Lawrence Town on the 11th Oct 1861 & to Samuel Thorn Supervisor of Christy Town on the 12th Oct 1861 & to Alfred M Grass Supervisor of Denison Town on the 23 Oct 1861 G. M. Whittaker Sherf Lawrence Co

SUPREME COURT.

First Grand Division.

21

A. M. R. R. Co

Plaintiff in Error,

vs.

Lawrence County

Defendant in Error.

To Sheriff

SCIRE FACIAS.

FILED.

To Serving	4.00
" 80 Miles travel	4.00
" Returning writ	10
Postage	3
	$8.13

The writ of error which is issued and filed in this cause, is made a Supersedeas and as such, is to be obeyed by all concerned.

Noah Johnston Clk

State of Illinois,
CLERKS OFFICE OF THE SUPREME COURT,
First Grand Division. } SS

I hereby certify that a writ of error hath issued from this Office for the reversal of a Judgment obtained by Lawrence County Against The Ohio & Mississippi Rail Road Company in the Circuit Court of Lawrence County at the April Term, in the year of our Lord one thousand eight hundred and Sixty-One in a certain action of Appeal which writ of error is to operate as a Supersedeas, and as such is to be obeyed by all concerned.

Given under my hand, and the seal of the said Supreme Court, at MOUNT VERNON, this twenty fifth day of September in the year of our Lord one thousand eight hundred and Sixty-One

Noah Johnston
Clerk of the Supreme Court.

L 8535-10

I have served the within writ by delivering a Copy of the same to Silas A Miller Clerk of the Circuit Court of Lawrence County Illinois on the 3rd day of October 1861

E. McMullen
Sheriff Lawrence
County Ills

2/

SUPREME COURT.

First Grand Division.

O & M. R. R. Co.

Plff in error

vs

Lawrence County

Deft in error

WRIT OF SUPERSEDEAS.

To Sheriff 25
" Ret 111
35

FILED.

State of Illinois ss
Lawrence County

Personally appeared before me the undersigned Clerk of the Circuit Court of said County and State. Isaac B. Watts and after being duly sworn according to law deposeth on his oath & saith that he is worth in real Estate the sum of three thousand Dollars all of which is unincumbered and further deponent saith not

Isaac B. Watts

Sworn to and subscribed to before me this 17th August 1861

Witness my hand and seal of Office in Lawrenceville this day & year last aforesaid

S. J. Stiles Clerk

[P-535-11]

21

Os Mr. R R Co

480
65
545
2180

St Lawrence County

480
43
1440
1920
20640

Affidavit to Bond
of J. B. Watts

Filed Sept. 25. 1861
N. Johnston Cl

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

ABSTRACT AND BRIEF.

THE OHIO & MISSISSIPPI RAILROAD COMPANY
vs.
LAWRENCE COUNTY.
} Error to Lawrence.

1—2] Transcript from Records of Board of Supervisors in reference to valuation of taxable property of the Ohio and Mississippi Railroad Company, showing an increase of the valuation as estimated by the Company, from $82,063,75 to $200,000.

3] Application for reduction. Board adhere to their valuation of $200,000.

4—6] Schedule of property and valuation by Board of Supervisors.

7—11] Schedule and valuation by the Company.

11—13] Appeal from excessive valuation by Board of Supervisors. Appeal Bond.

14—18] Affidavits and notices to take depositions.

19] Summons to Board of Supervisors to appear in Circuit Court.

20] Case called up at April term, 1860.

Motion by defendant below to dismiss the appeal of the Company.

21—22] New Bond filed. Cause continued.

23—24] At the September term, 1861, trial, evidence and argument had before Judge Kitchell. By agreement of parties the cause was taken under advisement by the Court until the next term.

24] At the April term, 1861, defendant below renewed the motion to dismiss the cause for want of jurisdiction. Motion allowed, and cause dismissed. Plaintiff excepted.

25] Certificate of Clerk.

ERROR ASSIGNED.

The Court erred in allowing the motion to dismiss, and in dismissing said cause, and said judgment should be reversed.

WILLIAM HOMES, *for Plaintiff in Error.*

BRIEF.

STATEMENT OF THE CASE.

1. The Ohio and Mississippi Railroad Company filed with the Clerk of Lawrence county, Illinois, its schedule of property, with valuation, for the year 1859.

2. At the December, 1859, term of the Board of Supervisors for that county, the board, regarding the valuation by the company as too low, increased, by more than doubling the valuation, and so notified the company.

3. The Company applied for a hearing and for a reduction, at a meeting of the Board granted for the purpose. The Board refused the reduction asked, and affirmed the order increasing the valuation; whereupon the Company prayed an appeal to the Circuit Court of Lawrence county, and filed bond, which was approved.

4. At the September term, 1860, of the Circuit Court of Lawrence county, the cause was tried by the Court without a jury. After hearing evidence as to value of property, and argument, the Court took the case under advisement, reserving its decision until the April, 1861, term of the Court.

5. At the April, 1861, term, motion was made by counsel for the Board of Supervisors to dismiss the cause for want of jurisdiction, and thereupon the Court allowed the motion and dismissed the cause. It should be stated that counsel for the Board at the first term of the docketing of the cause, moved to dismiss for want of jurisdiction; which motion, after protracted argument, and time taken for deliberation by the Court, was overruled and the cause set down for trial.

The error assigned is, the dismissal of the cause for want of jurisdiction.

POINTS.

1. The Circuit Court had jurisdiction. It is conferred by the 8th Sec. Art. 5 of the Constitution. The Supreme Court of this State in Burns vs. Henderson, 20th Ill., referring to this section of the Constitution, says: "This confers jurisdiction in all appeals from all inferior Courts upon the Circuit Courts, independently of any Legislative enactment on the subject.

2. This Court in Morris vs. The City of Chicago, 11th Ill., p. 650, held that even though an act is silent in reference to right of appeal, yet the right may exist, since it may be conferred by general statute, or, as above, by the Constitution. In the case of Morris, the City of Chicago, by special act, was empowered to condemn property and appropriate it. No right of appeal was conferred in the act, and so far as that act was concerned, the action of the City of Chicago in condemning and appropriating property seemed to be final and without recourse. But this Court held that the right of appeal existed, notwithstanding the silence of the act in regard to it.

3. In 22d Ills., 175, this Court entertained a cause wherein an appeal had been taken from an order of the Board of Supervisors of Knox county, from which there was no right of appeal conferred by statute or by the Township organization law. But the jurisdiction of the Circuit Court, or the right of appeal were not questioned by the Supreme Court and the

decision of the Circuit Court on trial of the appeal from the Board, was considered and sustained in part, and reversed in part.

also 25 Ill. Kimball vs Rutz - 276

It is admitted by plaintiff in error that in the law regulating Railroad assessments in organized Counties there is no right of appeal specifically granted.

But, regarding the Municipal regulation of Counties under the Township organization, as a substitute for the government by County Commissioners or County Courts, and regarding the Supervisors as the successors of the Commissioners, it does not appear unreasonable to suppose that any privileges enjoyed under the Commissioners, the Legislature intended should be enjoyed under the Supervisors.

Keeping this in mind, it appears that by the act of February 17th, 1851, Purples Stat., ch. 27, p. 295, appeals were allowed from *any order* of the Commissioners Court.

In same Statutes, ch. 89, p. 899, act of February 27th, 1847, appeals allowed to Circuit Court from order of County Court where parties were aggrieved by assessments. (Sec. 16 of this act repeals all others in conflict with it.)

As showing that the Township organization, or Board of Supervisors, is but a substitute and successor to the Commissioners or County Court, see act of February 12, 1853, ch. 89, wherein it appears that the first 23 sections are a verbatim repetition of the act for Counties not organized.

And, generally, it may be assumed that the right of appeal enjoyed under the Commissioners is not taken away under the Supervisors. Color is given to this presumption by the fact that the 12th Sec. of the act of February 14, 1855, Scates' Stat., p. 1109, respecting assessment of Railroad property in organized Counties, makes the mode of listing, valuation and assessment, in such Counties, applicable to Counties not organized. But in the latter it is not denied by any that the right of appeal exists. It would be singular, if, in the same State, property running through six Counties, of the same nature in each, and no more valuable for use in one County than another, and having no greater merchantable value in one than another, should be left in any County to the irresponsible and unintelligent valuation of an arbitrary Board, while in the adjoining County the owner of the property had full protection against such valuation, by right of appeal. If it is true that such right does exist in the one and not in the other, then the door is open for the most unequal and unjust valuation of property, which in its whole extent is a unit, and whether for use or sale has no greater value in one County than another.

But the fact suggested that the mode of listing, valuation and assessment of Railroad property is made the same in all Counties, organized and unorganized, raises the presumption that the rights enjoyed in one County as incident to the ownership of property, including the right of appeal, were intended to be enjoyed in any other, even though there be no letter of the law conferring the right, especially in the absence of any prescribed mode of redress.

That the Legislature intended Railroad Companies should not be at the mercy of Boards of Supervisors, is clearly to be inferred from the provision in the act of February 14, 1855, Purples Statutes, p. 994, to wit: That if

the Board of Supervisors change the valuation of the property listed, notice shall be given to the Railroad Company.

Why give notice, unless the Legislature intended the Railroads should enjoy the necessary opportunity by a hearing before the Board, or by appeal or otherwise, to escape an onerous or unjust assessment?

The case of Worthington vs. Pike County, in 22d Ill., does not apply, as the facts are not analagous, and that decision is based upon a statute which prescribes the very mode to be pursued by one aggrieved by an assessment.

Railroad companies stand in sore need of the protection of the Courts in this matter of assessment of property, for, as citizens of Counties and owners of property therein, they stand in an isolated position, the victims of popular prejudice, and not regarded as possessing that community of interest with the entire people, which is felt to exist between the Board of Supervisors, and each of them, and the districts or townships of which they are the representatives. It is in fact the interest of Boards of Supervisors to value exorbitantly Railroad property, since thereby the taxes of residents of the County are proportionably diminished—their own as well as the taxes of their neighbors.

The order of Circuit Court dismissing the cause should be reversed and said cause should be remanded for such further proceedings as to this Court may seem proper.

WILLIAM HOMES, *for Plaintiff in Error.*

Guardian Office print, Mt. Vernon.

21-20

The Ohio & Miss R.R. Co

vs

Lawrence County

Abstract & Brief

Ironton Nov. 11- 1861.

N. Johnston Atty

State of Illinois }
Richland County }

Alfred Kitchell of said County being duly sworn deposes & says that he is acquainted with Andrew Darling one of the securities named in the Appeal Bond Executed August 16th A.D. 1861 by the Ohio & Mississippi Railroad Company in the matter of the dismissal by the Circuit Court of Lawrence County of said State, of the appeal taken by said Company from the assessment by the Board of Supervisors of said Lawrence County of the property of said Company for the year 1859, & he knows that said Darling is worth in real Estate the sum of Ten Thousand Dollars mentioned in said Bond, & that said bond with the name of said Darling thereto attached, is reliable & sufficient bail for said amount,

A. Kitchell

Subscribed & Sworn to before
me this 16th day of August
A.D. 1861

John Wolf Clerk
by C. R. C

[853546]

21

Atm R R Co.

vs

Sawyer & Co.

Affidavit & Bond

of A. Darling

Filed Sept. 25. 1861.

S. Johnston Clk

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

ABSTRACT AND BRIEF.

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vs.
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21—22] New Bond filed. Cause continued.

23—24] At the September term, 1861, trial, evidence and argument had before Judge Kitchell. By agreement of parties the cause was taken under advisement by the Court until the next term.

24] At the April term, 1861, defendant below renewed the motion to dismiss the cause for want of jurisdiction. Motion allowed, and cause dismissed. Plaintiff excepted.

25] Certificate of Clerk.

ERROR ASSIGNED.

The Court erred in allowing the motion to dismiss, and in dismissing said cause, and said judgment should be reversed.

WILLIAM HOMES, *for Plaintiff in Error.*

[8336-17]

BRIEF.

STATEMENT OF THE CASE.

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2. At the December, 1859, term of the Board of Supervisors for that county, the board, regarding the valuation by the company as too low, increased, by more than doubling the valuation, and so notified the company.

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also. 25 Ill Kimball vs Ritz 276

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And, generally, it may be assumed that the right of appeal enjoyed under the Commissioners is not taken away under the Supervisors. Color is given to this presumption by the fact that the 12th Sec. of the act of February 14, 1855, Scates' Stat., p. 1109, respecting assessment of Railroad property in organized Counties, makes the mode of listing, valuation and assessment, in such Counties, applicable to Counties not organized. But in the latter it is not denied by any that the right of appeal exists. It would be singular, if, in the same State, property running through six Counties, of the same nature in each, and no more valuable for use in one County than another, and having no greater merchantable value in one than another, should be left in any County to the irresponsible and unintelligent valuation of an arbitrary Board, while in the adjoining County the owner of the property had full protection against such valuation, by right of appeal. If it is true that such right does exist in the one and not in the other, then the door is open for the most unequal and unjust valuation of property, which in its whole extent is a unit, and whether for use or sale has no greater value in one County than another.

But the fact suggested that the mode of listing, valuation and assessment of Railroad property is made the same in all Counties, organized and unorganized, raises the presumption that the rights enjoyed in one County as incident to the ownership of property, including the right of appeal, were intended to be enjoyed in any other, even though there be no letter of the law conferring the right, especially in the absence of any prescribed mode of redress.

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The order of Circuit Court dismissing the cause should be reversed and said cause should be remanded for such further proceedings as to this Court may seem proper.

WILLIAM HOMES, *for Plaintiff in Error.*

Guardian Office print, Mt. Vernon.

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Ohio & Miss RR Co.

vs

Lawrence County

Abstract & Brief

Filed Nov. 11 - 1861 -

W. D. Johnston Clk

21 - 20

O. & A. R. R.

vs

Sumner County

[illegible]

1861

Cost bill on 493

8525

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