No. 8673

Supreme Court of Illinois

James Baker, Admx.

---

vs.

Ohio & Mississippi R.R.Co.

71641 7

State of Illinois } Pleas and Proceedings had
Marion County } ss in the Circuit Court in and for
the County of Marion and State of
Illinois in a cause heretofore
pending in said Court wherein
James Baker Sr Administrator of all and
singular the goods and chattels rights and
credits which were of Henry J Huff-
man deceased was Plaintiff and
the Ohio and Mississippi Railway Comp-
any Defendant

Be it Remembered that on the 7th day of September
AD 1864 the above named Plaintiff filed
in the office of the Clerk of said Circuit Court
his precipe for summons against said Def-
endant which is in words and figures foll-
owing to wit.

State of Illinois } Of the March term 1865
Marion County } Marion Circuit Court

James Baker Sr Administrator of all & singular
the goods & chattels rights & credits which were
of Henry J Huffman decd

vs

The Ohio and Mississippi Rail Way Company
In a Plea of trespass on the case damages $5000.

The Clerk will please

[8673-1]

2

issue Summons as above to the Sheriff of Marion County returnable &c

B. F. Kagay

Whereupon Summons issued in words and figures following to wit,

State of Illinois } ss } The People of the State
Marion County } of Illinois to the Sheriff
of said County Greeting

We Command You to summon the Ohio and Mississippi Railway Company, if to be found in your County to appear before the Circuit Court of Marion County on the first day of the next term thereof, to be holden at the Court House in Salem on the third Monday in the month of March next, to answer James Baker Sr Administrator of all & singular the goods Chattels rights & Credits which were of Henry J. Huffman decd in a Plea of trespass on the Case to his damages $5000, as he says, and hereof make due return to our said Court as the Law directs

Witness Jacob O Rance Clerk of our said Court and the Seal thereof at Salem this 7th day of September A.D. 1864

L S

J O Rance Clerk

Stamp 50cts

Which Summons was endorsed by the Sheriff

as follows to wit.

I have served the within Summons by delivering a true Copy of the Same to James R Hait agent of O & M R Rd Co President of said Company not found in my County August 7th 1864 S R Cangan Sheriff

And afterwards Term March 10th 1865 the Defendant filed their declaration which is in words and figures following to wit.

State of Illinois } of the March term of the
Marion County } Marion Circuit Court AD 1865

James Baker administrator of the estate of Henry P Huffman Deceased the Plaintiff in this suit by D H Kagay his Attorney Complains of the Ohio & Mississippi Railroad Company Defendant in this suit who has been summoned to answer the said Plaintiff on action of trespass on the case For that whereas on the first day of October AD 1862 at the County of Marion and State of Illinois the Defendant was and still is a Rail road Corporation owning and possessed of and having the Control of a certain Rail Road and also of a certain Locomotive Engine drawing a train of Cars thereto attached upon said Rail Road and had certain Servants of said

Defendant in its employment & which said Servants had the Care and Management of the said Locomotive Engine and Train of Cars thereto attached and the Plaintiff avers that said Rail Road a portion of which is located in the Counties of Marion Clay, Richland & Lawrence in the State of Illinois upon which Rail Road the said Defendant through its agents and Servants did operate use & run upon the Track of said Defendant Rail Road Trains of Rail Road Cars for the carriage and Conveyance of passengers, through the State of Illinois for hire & reward to the said Defendant in that behalf to wit, at the County of Marion & through the Counties of Marion Clay Richland & Lawrence in the State of Illinois, and the said Defendant being such owner & proprietor of the said Rail Road Cars as aforesaid thereof ~~on~~ heretofore to wit, at the County of Marion in the State of Illinois on the first day of October A.D. 1862, the said Henry J. Huffman in his life time at the special instance & request of the said Defendant through its agents & servants became & was a passenger on said Defendant ~~the~~ said Car to be safely & securely carried & conveyed thereby on a certain journey to wit from Marion County & State of Illinois through the Counties of Clay Richland

& Lawrence in said State for a certain fare & reward to the said Defendant, then & there paid and the said Defendant then & there through its agents and servants received the said Henry J Huffman in his life time as such passenger as aforesaid & thereupon it became & was the duty of the said Defendant through its agents and servants to use due & proper care that the said Henry J Huffman in his life time should be safely & securely carried & conveyed by and in the said Defendants said cars on the said journey from Marion County and State of Illinois through the Counties of Clay Richland & Lawrence aforesaid. Yet the said Defendant not regarding its duty in that behalf did not use due and proper care that the said Henry J Huffman in his life time should be safely & securely carried & conveyed by & in the said cars of the said Defendant aforesaid on the said journey from &c aforesaid to &c aforesaid but wholly neglected so to do & suffered & permitted the said car in which the said Henry J Huffman in his lifetime was being carried and conveyed to be so weather beaten rotten & insufficient that the same then & there at the County of Lawrence aforesaid to wit, at the County of Marion in the State of Illinois aforesaid broke crushed & fell to pieces

[Pl 72-3]

6 That by reason whereof and while the said Car was proceeding with the said Henry J Huffman in his life time thereon along & upon said Rail Road on the said journey from & aforesaid to & before the said Car had conveyed the said Henry J Huffman in his life time through the County of Lawrence aforesaid to wit, at the County of Marion and State of Illinois the said Car then & there became & was overturned broken & fell to pieces and by means whereof the said Henry J Huffman was then and there killed to wit at the Town of Bridgeport in the County of Lawrence and State of Illinois to wit at the County of Marion and State of Illinois and the Plaintiff avers that at the time when Henry J Huffman was killed as aforesaid at & he the said Henry J Huffman was using all due & ordinary care & prudence & while so in the exercise of said care & prudence he the said Henry J Huffman was killed as aforesaid, and the Plaintiff avers that said Rail Road of said Defendant so causing the death of said Henry J Huffman as aforesaid was used in the County and State in which this action is brought & Plaintiff further avers that the said Henry J Huffman at the time of his death aforesaid left a Mother brothers and Sisters to whom the

4

Damages recovered can be distributed and that afterwards the said Plaintiff was duly appointed by the County Court of Effingham County and State of Illinois the Administrator of all and singular the goods and Chattles rights and Credits which were of the said Henry Huffman deceased at the time of his death and plaintiff brings into Court the letters of administration as aforesaid which give sufficient evidence to the Court here of the grant of administration to the Plaintiff aforesaid. And whereas also the said Defendant before and at the time of committing grievances hereinafter mentioned were owners and proprietors of a certain Rail Road known and called the Ohio and Mississippi Railway for the carriage and conveyance of passengers and upon which Road the said Defendant did operate use and run upon the said track of said Road a certain Locomotive Engine drawing a train of Cars thereto attached for the carriage and conveyance of Passengers from Marion County and State of Illinois through the Counties of Clay Richland and Lawrence in the State of Illinois for hire and reward to the said Defendant in that behalf paid to wit at the County of Marion and State of Illinois

[PC73-4]

and the said Defendant being such owner and proprietor of the said Rail Road Locomotive Engine and Train of Cars as aforesaid thereupon heretofore to wit on the first day of October AD 1862 at the County of Marion and State of Illinois the said Henry J Huffman in his life time at the special instance and request of the said Defendant became and was a passenger in one of said Cars to be safely and securely carried and conveyed thereby on a certain Journey to wit. from the County of Marion and State of Illinois through the County of Clay Richland & Lawrence in the State of Illinois aforesaid for a certain fare and reward to the said Defendants in his behalf paid and the said Defendant then and there received the said Henry J. Huffman in his life time as a passenger as aforesaid and thereupon it then and there became and was the duty of said Defendant to use due and proper care that the said Henry J Huffman in his life time should be safely carried and conveyed by and upon the said Railroad and train of cars on the said journey as aforesaid from &c to &c aforesaid. Yet the said Defendant not regarding its duty in that behalf did not use due and proper

9 Case that the said Henry J Huffman in his life time should be safely and securely carried and conveyed in the said car on the said Rail Road from &c aforesaid to &c as aforesaid but wholly neglected so to do and thereupon it was the duty of said Defendant to keep the said Rail Road track and the switches connected therewith in good repair and keep the switches thereto attached securely locked and fastened so that no accident or injury might accrue to the said Henry J Huffman in his life time as aforesaid. By reason of neglect on the part of said Defendant to keep said Rail Road switches aforesaid securely ~~[illegible]~~ locked and fastened on the journey aforesaid, yet the said Defendant not regarding its duty in this behalf did not use due and proper care in locking and securely fastening the said switch aforesaid that the said Henry J Huffman in his life time should be safely and securely carried and conveyed by the said last mentioned car on the said journey from &c to &c aforesaid upon said Rail Road but wholly neglected so to do and said Deft carelessly left the switch a part of said Rail Road at the Town of Bridgeport in the County of Lawrence State of Illinois loose & unlocked

[8173-8]

10 and unkeeded by any person and not regarding
its duty in this behalf did not use due and
proper care that the said Henry J Huffman
in his life time should be safely and securely
carried on said Rail Road as aforesaid but
neglected so to do and by reason whereof
afterwards and whilst the said last menti-
oned car was proceeding with said
Henry J Huffman in his life time as a
passenger thereby in and along said Rail
Road track as aforesaid and before said
journey had been completed through the
County of Lawrence aforesaid to wit on the
day and year aforesaid at the Town of
Bridgeport in said County of Lawrence
to wit at the County of Marion and State
of Ills the said last mentioned car was
overturned and broken and by means
whereof the said Henry J Huffman was then
and there killed and the Plaintiff avers
that at the time when said Henry J Huff-
man was killed as aforesaid at &c as
aforesaid he was using all due and ordinary
care & prudence & while so in the exercise
of such care and prudence he the said Henry
J Huffman was killed as aforesaid and
Plaintiff avers that said Rail Road of
Deft so causing the death of said

11 Henry J Huffman, as aforesaid was used in the County and State in which this action is brought and Plaintiff further avers that the said Henry J Huffman at the time of his death as aforesaid left surviving him a widow Mary Huffman to whom the damages recovered can be distributed and that afterwards said Plaintiff was duly appointed by the County Court of Shelby County and State of Illinois the Administrator of all and singular the goods and Chattles rights and Credits which were of the said Henry J Huffman dec at the time of his death and the Plff brings here into Court the letters of admin as aforesaid which give sufficient evidence to the Court here of the grant of Admn to the said Plff And whereas also the said Defendant before and at the time of committing the grievances hereinafter mentioned were owner and proprietor of a certain other Rail Road known and called the Ohio & Mississippi Rail way leading through the Counties of Marion Clay Richland and Lawrence in the State of Illinois to wit at the County of Marion and State of Illinois to wit on the first day of October AD 1862 with trains of Cars running thereon and by the said Defendant used and employed for the Carriage and Conveyance of

[8173-1]

12 Passengers at and for a certain hire and reward to the said Defendant in that behalf paid to wit at the County of Marion and State of Illinois and the said Defendant being said owner and Proprietor of the said last Mentioned Rail Road Car as aforesaid the said Henry J Huffman in his life time at the County and State aforesaid at the special instance and request of the said Defendant became and was a passenger on the said last mentioned Car used upon said last mentioned Rail Road of the said Defendant to be safely and Securely carried and Conveyed thereby on a certain journey to wit from Marion County aforesaid through the said Counties of Marion Clay Richland and Lawrence aforesaid for a certain hire and reward to the said Defendant in that behalf paid and although the said Henry J Huffman in his life time was then and there received by said Defendant as such Passenger on the said last Mentioned Car as aforesaid. Yet the said Defendant not regarding its duty in that behalf, so carelessly negligently and unskillfully and improperly loaded down managed and Conducted said last mentioned Car that afterwards and while the said mentioned Car was proceeding with said Henry J Huffman

in his life time as such passenger as aforesaid on the said journey from Marion County aforesaid through the Counties of Clay Richland and Lawrence as aforesaid on the day and year aforesaid at the Town of Bridgeport in said County of Lawrence the said last mentioned car was by and through the carelessness and improper conduct of the said Defendant therein as aforesaid thrown off the Rail Road track of the said Defendant as aforesaid and broken by means whereof the said Henry J Huffman was then and there killed to wit at the Town County and State last aforesaid to wit at the County of Marion and State of Illinois and the Plaintiff avers that at the time when said Henry J Huffman was killed as aforesaid at &c as aforesaid he the said Henry J Huffman was using all due & ordinary care and Prudence & while so in the exercise of said care & prudence he was killed as aforesaid, And the Plaintiff avers that said Rail Road of said Defendants so causing the death of Henry J Huffman as aforesaid was used in the County of Marion & State of Ills, and Plaintiff further avers that the said Henry J Huffman left Mary Huffman as his widow at the time of his death to whom the damages recovered can

[p.173-7]

be distributed, and that afterwards said Plaintiff was appointed Administrator of all and singular the goods and Chattels rights & Credits which were of the said Henry J Huffman Deceased at the time of his death by the County Court of Effingham County Ills and the grant is here brought into Court as aforesaid which give sufficient evidence to the Court here of the granting of the same to said Plaintiff To the Pltffs damage of Five Thousand Dollars & therefore he sues.

B F Kagay
Pltffs atty

And the said Plaintiff on the date last aforesaid To wit March the 10th 1865 filed in said Court his Letters of Administration in words and figures following To wit

Letters of Administration

State of Illinois
Shelby County } sct The People of the State of Illinois to all to whom these Presents shall come Greeting

Know ye that Whereas Henry J Huffman of the County of Shelby and State of Illinois died intestate as it is said on or about the Eighth day of September AD 1862 having at the time of his Decease personal property in this State

which may be lost destroyed or diminished in Value if Speedy Care be not taken of the same

To the end therefore that said Property may be collected and preserved for those who shall appear to have a legal right or interest therein we do hereby appoint James Baker Sr. of the County of Shelby and State of Illinois Administrator of all and singular the goods and Chattels rights and Credits which were of the said Henry J. Huffman at the time of his decease with full power and Authority to secure and Collect said property and debts wheresoever the same may be found in this State and in general to do and perform all other acts which now are or hereafter may be required of him by Law.

Witness Burrel Roberts Clerk of County Court in and for the said County of Shelby at his Office in Shelbyville this 2nd day of September AD 1864

(L S)

And Probate seal of said Court hereunto affixed

Burrel Robert

Clerk of the County Court

Stamp 50ct

[8473-B]

16 and afterwards at the March term of said Court to wit on the 31st day of March 1865 the Defendant filed his plea herein in words and figures following to wit"

State of Illinois } Marion Circuit Court
Marion County } March term 1865

The Ohio and Mississippi Rail Way Company
vs
James Baker Sen Admr Estate of Henry J Huffman decd
} Trespass on the Case

And the said Defendant comes and says that this Court ought not to have or take further Cognizance of the action aforesaid because it says that the supposed causes of action and each and every of them (if any such have accrued to the said Plaintiff) accrued to the said Plaintiff out of the jurisdiction of this Court that is to say at and in the County of Laurence in the State of Illinois, and not at or in the County of Marion aforesaid or elsewhere within the jurisdiction of this Court and ~~Defendant~~ avers that there is a circuit Court regularly held in and for said County of Laurence which has Complete PLAINTIFF

Cognizance of the action afsd and that Defendant has agents in said County of Lawrence on whom service can be had. and this the said Defendant is ready to verify wherefore the said Defendant prays Judgment whether this Court can or will take further Cognizance of this action aforesaid

The Ohio and Mississippi
Rail Way Company
By H P Burton its atty in fact

State of Illinois } ss
Marion County }

Harvey P Burton attorney for the above named defendant being duly sworn deposes and says that the above Plea and facts therein stated are true in substance and fact

Harvey P Burton

Subscribed and sworn to before me this 22d day of March 1865

H C Moore Clerk
By J O Hance Dept

Thereupon Plaintiff on the 31st day of March 1865 filed Demurrer to defendants Plea in words and following to wit

[page 9]

18

James Baker Admr &c Plff.
vs
Ohio & Mississippi Railway Co Deft

And the said Plaintiff Comes and says that said Defendants plea and the matters and things therein contained are insufficient in law and this he is ready to verify wherefore he prays that the Court will take cognizance of the action aforesaid and that the said Defendant may answer over

Cooper Plffs Atty

Joined in Demurrer
H P Burton Atty for Deft.

Whereupon the following order is entered of Record in said cause to wit.

James Baker Sen Administrator of all & singular the goods & Chattels rights & Credits which were of Henry D Huffman Deed
vs
The Ohio and Mississippi Rail way Company

Trespass on the Case

Thursday March 30th 1865

Comes the Defendant by H P Burton Esqr its Attorney and on his motion leave is

granted to withdraw and amend the Plea
Friday March 31st comes the Plaintiff by
H B Cooper Esq his Attorney and demurs
to Plea and the Court hearing Argument
on said Demurrer overruled same and
Plaintiff excepts to the ruling of the Court
and stands by his Demurrer. Ordered that
the writ be quashed and that the Suit
abate. And it is further ordered that Plaintiff
pay the Costs herein accrued and that
execution may issue therefor &c

Afterwards To wit on Friday April 7th the
Judgment herein is set aside and this
Cause is taken under Advisement.

And Afterwards To wit at the August
Term 1865 the following order appears of
Record To wit.

Thursday August 24th Cause
Called and by Consent Continued until
the next Term of this Court.

And Afterwards To wit at the March Term 1866
the following Order appears of Record to wit

Wednesday March 28th 1866 this Cause is called
And the Court having at the previous Term heard

20

Argument of Counsel on Plaintiffs Demurrer to Plea and having taken same under advisement doth now give Judgment for the Defendant and Plaintiff elect to stand by their Demurrer whereupon the Court gives Judgment for the Defendants for costs. It is therefore ordered and adjudged by the Court that said Defendant do have and recover of and from said Plaintiff their costs in this behalf expended and that execution may issue therefor &c

State of Illinois
Marion County } ss

I, H O Moore Clerk of the Circuit Court in and for the County and State aforesaid do hereby that the foregoing is a true and correct copy of the pleas and proceedings had in and the above entitled cause as appears of Record in my Office

Witness my hand and the seal of said Court this 24th day of September AD 1866

H O Moore Clerk

21

State of Illinois } Supreme Court
First Grand Division } Nov Term AD 1866

James Baker Admr
Henry J Huffman dec'd Pltff in Error

vs

The Ohio & Mississippi Rail Way Company Deft in Error

And now comes the Pltff in Error & says that there is manifest error in the record & proceedings aforesaid in this

1st pt

The Court erred in allowing amended plea in abatement to be filed

2d The Court erred in Pltffs Demurrer to overruling Defts Plea in Abatement

3d The Court erred in quashing the writ herein

4th The Court erred in abating the suit herein

5th The Court erred in rendering judgment in favor of Defts vs Pltff. for Costs

6th The Court erred in awarding execution in favor of Deft vs Pltff for Costs

Cooper
Atty for Pltff in Error

[BL73-11]

32

Jas. Baker Sr. Admr
vs.
O. & M. R. R. Co

Fee $6.50 Pd H. Crooon
Clk

Filed Octr. 18. 1866.
N. Johnston Cl
Paid by W. B. Cooper. $5.00

STATE OF ILLINOIS, }
SUPREME COURT, } ss.
First Grand Division.

The People of the State of Illinois,

To the Sheriff of Marion *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 Marion county, before the Judge thereof between James Baker Sen. Administrator of Henry H. Hoffman deceased

plaintiff and The Ohio and Mississippi Railway Company

defendant it is said that manifest error hath intervened to the injury of said Plaintiff as we are informed by his 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 Ohio & Mississippi Railway Company

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 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 O & M Railway Company notice together with this writ.

WITNESS, the Hon. S. H. Walker Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this Eighteenth day of October in the year of our Lord one thousand eight hundred and Sixty-Six

Sis. N. Johnston
Clerk of the Supreme Court.

[8673-13]

32

SUPREME COURT.

FIRST GRAND DIVISION.

Jno Bathurst Appt

PLAINTIFF IN ERROR.

vs.

O & M Railway Co

DEFENDANT IN ERROR.

Scire Facias.

Ret'd & FILED Nov. 6. 1866.

A. Johnston Cl

I hereby return the within writ having served the same by reading the same to Wade Hampton President of the Ohio & Mississippi Railroad Company at Salem Marion County Illinois and by leaving with the said Jno Bathurst a true copy of the within writ as required by law. The president of said Railroad Company not having any land in Marion County

Oct 27th 1866

Jas Hughes

Jail Bridge Sheriff

Marion County

Ill

ABSTRACT.

JAMES BAKER, Adm'r of HENRY T. HUFFMAN, dec'd., vs. THE OHIO & MISSISSIPPI RAIL WAY COMPANY.	PLAINTIFF IN ERROR. **Error to Marion.** DEFENDANT IN ERROR

Assignment of Errors.

That Court erred in allowing amended plea in abatement to be filed; in overruling demurrer to plea in abatement; in quashing the writ and abating the suit; in rendering judgment in favor of Defendant vs. Plaintiff for costs and awarding Execution therefore vs. Planitiff. 21

BRIEF.

Session Laws 1853. Page 65.

Illinois Central Rail-Road Company vs. Swearingen, 33d Ill. Page 289.

W. B. COOPER.

Attorney for Plff. in Error.

Effingham Gazette Print.

32

Baker - Admr &c

vs

O. & M. Railway Co

Abstract & Brief

Filed Oct 18th 1866.

M. Johnston Clk

Supreme Court of Illinois

First Grand Division = November Term 1866

James Baker Admr of Est of } Pltff in Error
Henry T. Huffman deceased }

v. } Error to Marion

The Ohio & Mississippi Railway Co. Deft in Error

By agreement this case is dismissed at the plaintiffs costs.

W. B. Cooper
Atty for Pltff in Error

W. O. Buxton
Atty for Deft in Error

[8673-14]

32.

Agreement

James Baker
Admr. Wm. T. Huffman
vs
O & M R R Co

Filed Nov 8. 1866
A. Johnston Clk

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 Marion 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* Marion *county, before the Judge thereof between* James S Foster Ben. Administrator of Henry S Huffman deceased *plaintiff and* The Ohio and Mississippi Railway Company *defendants it is said manifest error hath intervened to the injury of the aforesaid* Plaintiff *as we are informed by* his *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 in November ~~xx~~ *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.* S. H. Walker *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* Eighteenth *day of* October *in the year of our Lord one thousand eight hundred and* Sixty six

Clerk of the Supreme Court.

[8673-15]

32

SUPREME COURT.

First Grand Division.

Jas Baker Admrx

Plaintiff in Error,

VS.

C & W Railway Co

Defendant in Error.

WRIT OF ERROR.

Issued & FILED.

Octr. 18. 1866

N. Johnston Clk

ABSTRACT.

JAMES BAKER, Adm'r of HENRY T. HUFFMAN, dec'd., vs. THE OHIO & MISSISSIPPI RAIL WAY COMPANY.	PLAINTIFF IN ERROR. **Error to Marion.** DEFENDANT IN ERROR

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BRIEF.

Session Laws 1853. Page 65.

Illinois Central Rail-Road Company vs. Swearingen, 33d Ill. Page 289.

W. B. COOPER.

Attorney for Plff. in Error.

Effingham Gazette Print.

[8673-16]

32

Baker Adams & c

vs

O & M Railway Co

Abstract & Brief

8673

Filed Oct 18th 1866

J. Johnston Clk

Baker - Admr - of
Hoffman - Pltff in Error
vs
O & M Railway -
Deft in Error

Error to Marion

Dismissed by Agreement -
at Cost of Pltff in Error

Costbill on Page 14 -
of fee book "B"

Nothing issued in this
case.