No. 8664

Supreme Court of Illinois

Ohio & Mississippi R.R.Co.

---

vs.

W. R. Williams

71641 7

Whereas at the June Term of the Richland Circuit Court, began and held at the Court House in Olney in the County of Richland and State of Illinois, on Monday the 12th day of June A.D. 1865, and at the 6th day of said Term, being the 17th day of June A.D. 1865. the following proceedings were had and determined, and made matter of Record, to wit:

On the 2nd day of June 1865. the plaintiff filed in said Court the following.

Declaration

In the Richland Circuit Court, June Term A.D. 1865.
State of Illinois }
Richland County } ss

Warren R Williams plaintiff in this suit, by John M Wilson his attorney complains of the Ohio and Mississippi Rail Way Company, Summoned &c to answer to the said plaintiff on a plea of Trespass on the Case for that whereas the said plaintiff, heretofore, to wit, on the 13th day of February 1865; at the County aforesaid was the owner of fifteen acres of hay, or meadow grass then growing, and then being of great value, to wit: of the value of $360.00 dollars and was likewise then and there the owner of 305 pannels of rail fence containing in all 24440 fence rails of great value, to wit: of the value of $112.00 dollars, situate growing, standing and being

[Page 4-17]

upon the farm of the said plaintiff adjacent to the Rail Road of the said defendants herein after mentioned, and the said defendants were then and there the owners of a Rail Road leading from East St. Louis in the State of Illinois to the City of Vincennes in the State of Indiana and passing through the said County of Richland adjacent to the fifteen acres of hay or meadow grass then growing and standing and the 305 pannels of fence then of the said plaintiff aforesaid upon the farm of the said plaintiff aforesaid on the day and year aforesaid, and the said defendants were then and there the owners of a certain strip of land, for the use of said Rail Road of said defts. for right of way for said Rail Road, one hundred feet in width then and there running adjacent to the farm of the said plaintiff, on which farm the aforesaid fifteen acres of hay and meadow grass, and 305 pannels of rail fence were situated, which said strip of land was then and there in charge of the servants of the said defendant, and by the said servants then and there should have been cleared of the rubbish, undergrowth and dry grass therein, and the said plaintiff avers that it became and was then and there the duty of the said defendants their servants and labourers in their employ so to perform their labors in the clearing off the said rubbish, undergrowth, and

dry grass upon the said right of way that fire should not be communicated from the said strip of land or right of way aforesaid to the said fifteen acres of meadow grass and hay, then and there being growing and standing in his field was so burned that the roots of said grass were wholy destroyed so that the crop for the present year was lost, and said meadow required seeding before any grass would grow thereon, and the 305 pannels of rail fence of the said plaintiff standing and being upon the farm of said plaintiff adjacent as aforesaid to the said right of way of the said defendants as aforesaid, yet the said defendants well knowing the premises and wholy disregarding their duty in this behalf did, on the day and year aforesaid at the County and State aforesaid by their said servants and laborers aforesaid then and there in the employ of the said defendants carelessly and negligently set fire to the dry grass, rubbish and undergrowth on the said strip of land of the said defendants, so by them used as right of way as aforesaid, by which carelessness and negligence of the said defendants the said fire was thence communicated from the said right of way into and upon the farm of the said plaintiff aforesaid, and then and there the said

[2214-2]

fifteen acres of meadow grass, then growing and standing in his field of the value of $360.00 three hundred and sixty dollars, and the 305 pannels of rail fence of the value of One hundred and twelve dollars of the said plaintiff so standing growing and being upon said farm of the said plaintiff, and adjacent to the said right of way of the said defendants as aforesaid, whereby the said fifteen acres of meadow grass and hay, and the said 305 pannels of rail fence were burned and wholy lost to the said plaintiff, to the damage of the said plaintiff of Five Hundred Dollars and therefore he brings his suit.

And whereas the said plaintiff afterwards to wit; on the day and year aforesaid, at the County aforesaid was the owner of fifteen acres of Meadow grass standing and growing on the ground then and there in said plaintiffs field, being of great value to wit; of the value of $360.00 dollars, and also then and there the owner of 2440 fence rails then and there being upon said plaintiffs farm of great value to wit; of the value of One hundred and twelve dollars, and the said defendants were then and there the owners of a Rail Road leading from East St. Louis in the State of Illinois to Vincennes in the State of

Indiana and running by said plaintiffs said farm and within one hundred feet of said hay and meadow grass, and rails, and the said defendants were also then and there the owners of a strip of land one hundred feet wide on each side of said rail road track, and plaintiff avers that it was then and there the duty of the said defendants to have kept their said strip of ground or right of way where the same adjoined the field of meadow grass and hay and rails of said plaintiff free from dry grass, rubbish and undergrowth, so that fire could not be communicated from the locomotives running on said Rail Road, or their right of way, and through and by the same to the said fifteen acres of meadow grass and hay or 2440 fence rails of said plaintiff, and thereby protect the property of the said plaintiff. Yet the said defendants well knowing the premises then and there omitted to do their duty in this behalf, and then and there negligently suffered said strip of land and right of way to become foul with dry grass so belonging to said defendants where the same adjoined the farm of said plaintiff, in and on which said meadow grass and hay and fence rails were situated, being in and upon said farm, and whilst a

[8044-3]

locomotive and train of cars belonging to said defendants, and in charge of the servants of said defendants were then and there being run along side the farm of the said plaintiff, on said Rail Road the fire communicated from said locomotive to the said dry grass on the said strip of land belonging to the said defendants as aforesaid, and through the same to the said plaintiffs said farm to the said fifteen acres of meadow grass and 2440 fence rails whereby the same was set on fire and consumed and totally lost to said plaintiff to wit: at the County aforesaid to the damage of the said plaintiff five hundred Dollars, and therefore he brings his suit.

John McWilson Atty for Plff.

Upon which was issued the following

Summons

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

We command you that you summon the Ohio and Mississippi Rail Way Company if they shall be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next Term thereof, to be holden at the Court

House in Olney on the 2nd Monday in the Month of June A.D. 1865. to answer Warren R Williams in a plea of Trespass on the Case to the damage of said plaintiff as he says in the sum of Five Hundred Dollars.

And have you then and there this writ, and make return thereon in what manner you execute the same. (Revenue Stamp 50 cts)

Witness C W. Cullen Clerk of our Circuit Court at Olney this 2nd day of June in the year of Our Lord One Thousand Eight Hundred and Sixty five.

Test: C W Cullen Clerk of the Circuit Court

Seal

By R S Thurman Dpty

Upon which the Sheriff of said County made the following return:

Served the within Summons by leaving a copy thereof with Pearson, Depot Station agent, at Olney the President not being found in the County. June 2nd 1865

William Coventry Sheriff R C.

On the 17th day of June 1865 the defendants filed in said Court the following

Plea

State of Illinois — Richland Circuit Court
Richland County } ss June Term 1865

(8464-4)

Warren R Williams
vs
O & M R R Co

Case

And the said defendants come and defend the wrong and injury when &c and say that they are not guilty in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the Country &c H P Buxton, Atty for defts.

And the plaintiff replies to said plea as follows: Replication.

And the said plaintiff doth the like. J M Wilson Pltffs Atty.

On the 17th day of June 1865. was made and entered of Record the following,

Judgment.

Warren R Williams
vs
Ohio and Mississippi
Rail Way Company

Trespass on the Case

Now at this day come the parties to this cause by by their attorneys. Issue being joined, let a jury come: therefore came a jury to wit: L W Mueller. William Philips Samuel F Warner, Willis Crary, Henry Poff

W. H. Morehouse, James Gardner, John Brinkley, John Adams, A. G. Moore, Charles Tracy and William Perry, twelve good and lawful men who being duly selected tried and sworn a true verdict to render ~~according to law~~ on the issue joined, after hearing the evidence and argument of Counsel retired to consider of their verdict, and afterwards returned into open Court the following verdict, to wit: We find for the plaintiff and assess his damages at Twenty five Dollars, and twenty six cents. Which said verdict being considered by the Court, it is ordered and adjudged that the plaintiff recover of and from the said defendants the sum of Twenty five Dollars and twenty six cents assessed as aforesaid by the Jury, and also his costs and charges by him about his suit in this behalf expended, and that he have Execution therefor. And now come defendants by their Attorney and move the Court for a new trial in this cause. Also in arrest of judgment, which said Motions are severally overruled by the Court. Thereupon defendants in motion pray an appeal to the Supreme Court of this State, which is allowed. On motion it is further ordered that thirty days be given said defendants

in which to file cost bond with A Darling as security thereon in the sum of Two Hundred Dollars

Whereupon the defendant on the 17th day of June 1865 filed the following

Bill of Exceptions.

Be it remembered that at the June Term 1865 of the Richland Circuit Court on the trial of the case of Warren R Williams vs the Ohio and Mississippi Rail Way Company, the plaintiff to support the issue joined offered the following testimony:— C B. Hopper says. I was passing down the road about the 14th of February 1865 and saw the plaintiffs fence burning. The fire was coming from the direction of the rail road. The fire burned over some ten or twelve acres of meadow, One hundred and ninety four rails were burned. Rails were then worth about four dollars per hundred. I think the meadow would have to be reseeded before it would be worth any thing. It would take a bushel to every ten acres to reseed it, worth four dollars per bushel. It would take a man one day to sow it, worth one dollar and a half per day. It would be worth two dollars per acre to break up the ground. The meadow was so destroyed by the fire that it would not raise a full crop this year. I think, Such a meadow ought to raise one and a half tuns of hay to the acre. Good meadow ought to raise two tuns.

I do not know whether there has been any thing raised on the meadow this year. I think the roots of the grass were destroyed by the fire. I do not know where the fire came from, but suppose it came from the rail road or very near there. There was a great deal of coal and ashes thrown out on the Rail Road from the Engine. It was in the morning. I do not know of any other fire along there that could have started it except from the locomotive. I went down to see where the fire had started, and found it had come from one side of the rail road, A train had passed an hour or two before I saw the fire. I could not say what caused the fire The fence of plaintiff that was burned and was on fire when I first saw it was about Eighty rods from the rail road. The grass was burned over from the railroad to the fence. The first fire was ten feet from the railroad, and run from there in a narrow strip through the meadow to the fence, and gradually grew wider as it approached the fence. The meadow ought to produce one and one half tuns of hay to the acre.

+ Ex. I do not know whether the meadow was hurt by the fire or not. I have not seen it from that day to this. I do not know how much hay was ever raised on the meadow

[DLC4-L]

I do not know but there is as much grass on the meadow to day that was burned over as there is on that which was not burned. I have not seen the meadow since the day it was burned over. All I know about the roots of the grass being burned ~~over~~ is from the looks of it after the fire. I do not know that a meadow can be burned over and not injure it any.

James Payne, testified. I have not noticed the meadow since the fire. I cant say whether the meadow was burnt or not. The meadow ought to bring one and one half tuns per acre this year. Hay is worth eighteen to twenty dollars per tun. I dont know what set the fire. I saw the smoke rise from the grass twelve or fifteen feet from the road shortly after the train passed. I suppose the fire caught from the embers from the smoke stack of the engine. There was nothing else there that could possibly set the fire. The pltff. seeded the land this Spring, at least I saw him sowing something there. The train that passed had a coal burner locomotive.

Cx. I dont know as I ever ~~knew~~ that coal burner to set any thing on fire, but it would be more apt to do so than a wood burner. I saw the fire within a minute after the coal burner had passed the place. It had burned over an acre at that time.

Samuel Hutchinson, testified I saw a fire in the meadow. I was standing on the platform at Noble and heard the train, and when I looked that way I saw the fire burning as the train approached. The fire lasted some time after that. I did not go down to it. I do not know how much meadow, or how many rails were burned. I do not know what was the cause of the fire.

This was all the testimony given in the case. On the jury bringing in a verdict for the plaintiff the defendants moved the Court for a new trial, and in arrest of judgment, which motions were overruled by the Court, to which ruling of the Court in overruling said motions for new trial and in arrest of judgment the defendants at the time by their Counsel excepted, and the defendants present this bill of Exceptions and pray that the same may be signed and sealed by the Court, and made a part of the record in this cause which is done. Aaron Shaw (Seal)

25th Judl Cirt Ills

On the 22d day of June 1865. the defendants filed the following

Appeal Bond

[8644a]

Know all men by these presents, That we the Ohio and Mississippi Rail Way Company, principal and Andrew Darling Security are held and firmly bound unto Warren R Williams in the Penal Sum of Two Hundred Dollars current money of the United States for the payment of which well and truly to be made, we bind Ourselves, our heirs and Administrators, jointly, severally and firmly by these presents.

Witness our hands and seals this 19th day of June 1865.

The condition of the above obligation is such that whereas the said Warren R Williams did on the 17th day of June A.D. 1865, in the Circuit Court of the County of Richland, recover a judgment against the above bound Rail Way Company for the Sum of twenty ~~Hundred~~ Five Dollars, twenty six cents from which judgment the said Railway Company hath taken an Appeal to the Supreme Court of the State of Illinois

Now if the said Railway Company shall prosecute his said appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dis-

missal or trial of said Appeal, then the above obligation to be void otherwise to remain in full force and effect.

The Ohio & Mississippi Railway Company
by H. P. Buxton their atty
in fact
A. D. Carling

Seal
Seal

Taken and entered into before me at my office this 22nd day of June 1865
C W Cullen Clerk

State of Illinois
Richland County } ss

I, C W Cullen Clerk of the Circuit Court in and for the County of Richland aforesaid do hereby certify that the foregoing is a true and complete Copy of the Record in said cause as appears from the original record and files now in my said office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Olney this 9th day of August A D 1865

C W Cullen Clerk
By R S Thurman Dept Clerk

Assignment of Errors

The court erred in overruling appellants motions for new trial.

The court erred in overruling appellants motion in arrest of judgment

H. P. Buxton Atty for appellants

32. Record

~~Warren R. Williams~~

~~vs~~

~~O. & M. R.R. Co.~~

Clerk's fees for Rec. 6.10
" " " Partage 18
$6.28

O & M R R Co
Appellants
Defendants below
vs
Warren R Williams
Appellee

Appeal from Richland

Filed Nov-7-1865.
A. Johnston Clk

Supreme Court of Illinois; First Grand Division.

NOVEMBER TERM, 1865.

THE OHIO & MISSISSIPPI RAILWAY COMPANY, Appellants (Defendants below) *VS.* WARREN R. WILLIAMS, Appellee.	Appeal from Richland County.

ABSTRACT OF THE RECORD.

This is an action of trespass on the case.

The Declaration alleges that appellee, on the 15th of February, 1865, was owner of fifteen acres of hay or meadow grass, then growing, worth three hundred and sixty dollars, and was likewise the owner of three hundred and five pannels of rail fence, containing in all two thousand four hundred and forty fence rails, worth $112, situate upon farm of appellee adjacent to railroad of appellants; that appellants were owners of a railroad leading from St. Louis to Vincennes, and passing through Richland county adjacent to said grass and fence, and owner of a strip of land, for right of way, 100 feet wide, in charge of the servants of appellants, which ought to have been kept clear of rubbish and dry grass by said servants, so that fire should not be communicated from said right of way to appellee's hay, grass and rails; yet appellants, disregarding their duty, carelessly and negligently set fire to the dry grass and rubbish on the right of way, which fire was thence communicated from said right of way to said meadow grass and fence of appellee, whereby the same were burned and destroyed, to appellee's damage $500.—*Record, pp.* 1, 2, 3 *and* 4.

The Second Count alleges, that on the day and year aforesaid, the appellee was owner of fifteen acres aforesaid of grass, worth $360, and 2440 fence rails, worth $112, and appellants were the owners of railroad running by appellee's farm, within 100 feet of said grass and rails; also the owners of a strip of land 100 feet wide on each side of the railroad track, and that it was appellants duty to keep said right of way, adjacent to said grass and rails, free of dry grass, &c., so that fire could not be communicated from the locomotives running on said railroad to said grass and rails, yet appellants negligently suffered said right of way to become foul with dry grass, &c., and whilst the locomotive and cars of said appellants was being run along said right of way, the fire communicated from said locomotive to the dry grass on said right of way and through the same to the appellee's said grass and rails, whereby the same were consumed and totally lost, to the damage of the said appellee of $500.—*Record, pp.* 4, 5, 6.

The appellants filed a general issue.- -*Record, p.* 8.

This cause was tried June Term, 1865, of the Richland Circuit Court, on the trial of which appellee introduced the following evidence:

C. B. Hopper says: Saw appellee's fence burning Feb. 14, 1865. The fire was coming from the direction of the railroad. The fire burned over some 10 or 12 acres of meadow. 194 rails were burned, worth $4 per hundred. Think the meadow would have to be re-seeded before it would be worth anything. It will take a bushel to every ten acres, worth $4 per bushel. It would take a man one day to sow it, worth $1 50 per day. It would be worth $2 per acre to break up the ground. The meadow was so destroyed by fire that it would not raise a full crop this year, I think. Such a meadow ought to raise one and one-half tons of hay to the acre. I think the roots of the grass were

destroyed by the fire. I do not know where the fire came from but suppose it came from the railroad or very near there. There was a great deal of coal and ashes thrown out on the railroad from the engine. It was in the morning. I do not know of any other fire along there that could have started it except from the locomotive. I went down to see where the fire had started and found it had come from one side of the railroad. A train had passed an hour or two before I saw the fire. I could not say what caused the fire. The fence of appellee that was burned was on fire when I first saw it. It was about 80 rods from the railroad. The grass was burned over from the railroad to the fence. The first fire was ten feet from the railroad and run from there in a narrow strip through the meadow to the fence, and gradually grew wider as it approached the fence.

Cross Examined.—I do not know whether the meadow was hurt by the fire or not. I have not seen it from that day to this. I do not know how much hay was ever raised on the meadow. I do not know but there is as much grass on the meadow to-day that was burned over as there is on that which was not burned. All I know about the roots of the grass being burned is from the looks of it after the fire. I do not know that meadow can be burned over and not injure it any.—*Record, pp.* 10, . 11, 12.

James Payne testified: I have not noticed the meadow since the fire. I can't say whether the meadow was burned or not. The meadow ought to bring one and one-half tons per acre this year. Hay is worth $18 to $20 per ton. I don't know what set it on fire. I saw the smoke rise from the grass 12 or 15 feet from the road shortly after the train passed. I suppose the fire caught from the embers from the smoke stack of the engine. There was nothing else there that could possibly set it on fire. Appellee re-seeded the land this spring, at least I saw him sowing something there. The train that passed had a coal-burning locomotive.

Cross Examined.—I don't know as I ever knew that coal-burner to set anything on fire, but it would be more apt to do so than a wood-burner. I saw the fire within a minute after the coal burner had passed the place. It had burned over an acre at that time.—*Record, p.* 12.

Samuel Hutchinson testified: I saw a fire in the meadow. I was standing on the platform at Noble and heard the train and when I looked that way I saw the fire burning as the train approached. The fire lasted some time after that. I did not go down to it. I do not know how much meadow or how many rails were burned. I do not know what was the cause of the fire. —*Record, p.* 13.

This was all the testimony given in the case.

On the jury bringing in a verdict for the appellee, the appellants moved the court for a new trial and arrest of judgment, which motions were overruled by the court, to which ruling of the court in overruling said motions for a new trial and in arrest of judgment the appellants, at the time, by their counsel excepted.—*Record, p.* 13.

The court entered judgment on the verdict for appellee for $25 26 and costs.—*Record, p.* 9.

Appeal bond.—*Record, p.* 14.

ASSIGNMENT OF ERRORS.

The court erred in over-ruling appellants' motion for a new trial.

The court erred in over-ruling appellants' motion in arrest of judgment.

H. P. BUXTON,
Attorney for Appellants.

Brief.

A new trial should have been granted because;

1st There is no proof that appellants ever operated or owned any railroad whatever.

2d There is no proof that they suffered dry grass &c to accumulate on their right of way or that they ever had a right of way.

3d There is nothing in the evidence to connect them in any manner with the injuries complained of.

H. P. Buxton
Atty for appellants.

[9664-11]

32

Abstract

O & M R R Co

vs

Warren R Williams

Filed Nov. 7 1865.

N. Johnston Clk

The Ohio & Mississippi Railway Co
To Zophar Case
Publisher "Constitution & Union" Dr

1865
Nov For printing Abstracts O&M R.W. Co
vs Warren R. Williams
1800 Words @ 30¢ pr 100 — $5.40

Received Payment Nov 18. 1865
Zophar Case

[Rec'd-P.]

O & M Railway Co
vs
Warren R Williams

Plaintiffs fees $5 40

Supreme Court of Illinois; First Grand Division.

NOVEMBER TERM, 1865.

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The Second Count alleges, that on the day and year aforesaid, the appellee was owner of fifteen acres aforesaid of grass, worth $360, and 2440 fence rails, worth $112, and appellants were the owners of railroad running by appellee's farm, within 100 feet of said grass and rails; also the owners of a strip of land 100 feet wide on each side of the railroad track, and that it was appellants duty to keep said right of way, adjacent to said grass and rails, free of dry grass, &c., so that fire could not be communicated from the locomotives running on said railroad to said grass and rails, yet appellants negligently suffered said right of way to become foul with dry grass, &c., and whilst the locomotive and cars of said appellants was being run along said right of way, the fire communicated from said locomotive to the dry grass on said right of way and through the same to the appellee's said grass and rails, whereby the same were consumed and totally lost, to the damage of the said appellee of $500.—*Record, pp.* 4, 5, 6.

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This was all the testimony given in the case.

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H. P. BUXTON,
Attorney for Appellants.

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2d There is no proof that they suffered dry grass &c to ~~grow~~ accumulate on their right of way or that they ever had a right of way.
3d There is nothing in the evidence to connect them in any manner with the injuries complained of.

H. P. Buxton
Atty for appellants.

[8614-14]

32

Abstract

O & M R R Co

vs

Warren R Williams

Filed Nov. 7. 1865.

N. Johnston Cl

32

C & M. R. R. Company

vs

W. R. Williams

Remanded for nonjoinder -

Cost bill on Page 632 -

Execution for costs

out. Dec. 15. 1865 -

8664