No. 11807

Supreme Court of Illinois

Ballance

vs.

Fischer

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Be it remembered that heretofore to wit; on the ninth day of November in the year of our Lord one thousand eight hundred and fifty nine there was filed in the office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois a declaration in the words and figures following, to wit;

"State of Illinois } ss.
Peoria County } In Peoria Circuit Court
Nov. Term A.D. 1859.

Hie Fischer
vs
Charles Balance

Charles Balance was summoned to answer Hie Fischer of a plea of trespass on the case and thereupon the said Hie Fischer by Manning & Merriman his attorneys complains;

For that whereas the said defendant heretofore to wit; on the first day of October A.D. 1859 and from thence for a long space of time, to wit, until and at the time of the damage and injury to the said Hie Fischer as hereinafter mentioned, to wit at the County of Peoria wrongfully and injuriously did keep a certain Elk, he the said defendant during all that time well knowing that the said Elk then was used and accustomed to attack and hook, stamp upon and bruise mankind to wit, at the county aforesaid, and which said Elk afterwards and

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whilst the said defendant so kept the same as afore-said on the first day of October A.D. 1859 at the County of Perna aforesaid, he the said defendant having neglected to keep said Elk properly secured and then and there, to wit, at the County aforesaid, said Elk did attack and hook, stamp upon bruise injure and cut said plain-tiff and tear the clothes of him said plaintiff, and did greatly lacerate, hurt and wound said plaintiff, and thereby he the said plaintiff then and there became and was sick, sore, lame and disordered and so remained and continued for a long space of time, to wit; from then until the commencement of this suit, during all which time he the said plaintiff, thereby suffered and underwent great pain, and was thereby then and there hindered and prevented from performing and transacting his lawful affairs and business, by him during that time to be performed and transacted, and also by means of the premises he the said plaintiff was thereby then and there put to great expense, costs and charges and suffered damage amounting to a large sum of money, to wit, the sum of two thousand dollars, in and about endeavoring to be cured of said wounds, sickness, lameness and disorder, and the loss of his time during which said plaintiff was unable in consequence thereof, to attend to business and in the soiling, tearing and spoiling of the clothes of said plaintiff, and hath been and is by means of the premises otherwise greatly injured and damnified, to wit,

at the County aforesaid,

And Whereas also the said defendant heretofore to wit, on the day & Year aforesaid, had in his possession and was keeping a certain Elk which said Elk was of a savage and mischievous disposition, to wit, at the County of Peoria aforesaid, and which Elk afterwards, to wit, on the day and Year aforesaid, at the County aforesaid and whilst the said defendant so kept the same as aforesaid did attack said plaintiff, and lacerate and wound him said plaintiff and tear and spoil the cloths of said plaintiff, whereby he the said plaintiff then and there became and was sick, sore lame and disordered and so remained and continued for for a long space of time, to wit, from then until the time of the commencement of this suit, during all which time ~~the~~ he the said plaintiff thereby suffered and underwent great pain and was thereby then and there hindered and prevented from performing and transacting his lawful affairs and business, by him during that time to be performed and transacted, and thereby ~~there~~ then and there suffered loss in consequence of the tearing and spoiling of the clothes of said plaintiff, so torn and spoiled by the Elk of said defendant, and also by means of the premises he the said plaintiff was thereby then and there put to great

expense, costs and charges and suffered damage amounting to a large sum of money, to wit, the sum of five thousand dollars, in and about endeavoring to be cured of said wounds, sickness lameness and disorder in the loss of his time during which said plaintiff was unable in consequence thereof to attend to business and in the soiling, tearing and spoiling of the clothes of said plaintiff and hath been and is by means of the premises otherwise greatly injured and damnified to wit, at the County aforesaid,

Wherefore the said Hei Fischer saith that he is injured & hath sustained damage to the amount of two thousand dollars and therefore he brings his suit &c.

O Manning & Merriman
Atty for Plf."

And afterwards to wit; on the Ninth day of March in the year of our Lord one thousand eight hundred and sixty there was filed in the Office of the Clerk of said Court in said Cause a Plea of the defendant in the words & figures following, to wit:

"Hei Fisher vs Charles Ballance } In Case — In Peoria Co. Circuit Court March Ter 1860.

And the said defendant comes & says that he is not guilty in manner & form as the said plaintiff has declared against him & puts himself upon the Country by Grove his atty."

And afterwards, to wit; on the twenty fifth day of March in the year of our Lord one thousand eight hundred and sixty there was filed in the office of the clerk of said court in said cause a Bill of Exceptions in the words and figures following, to wit;

" In the Circuit Court of Peoria County
March Term A.D. 1860

Hiri Fisher
vs
Charles Ballance
} In Case

Be it remembered that on the trial of the above entitled cause the plaintiff to maintain the issue on his behalf, proved by Joseph Strickfadden that he lives five miles East of Peoria — was at the Peoria fair last fall; and when on his way home and opost Mr Rymans house, on the 23rd day of September A.D. 1859 about thirty rods and about fifty or sixty rods East of Ballances Elk Park, in the highway, he saw an Elk having a man down who called for assistance, as one in distress, witness was on a horse and endeavored to charge on the elk, but the horse was afraid and would not go to him, Witness then called on Mr Ryman to shoot the elk, Ryman brought his gun out of the house but instead of shooting, knocked on the fence of his inclosure. As soon as this was done, the elk left the man on the ground and went to Mr Ryman, The latter walked along the fence, to some

distance, and the Elk walked along out side of the fence, as if following him. Mr Leadly and others came along and the man the elk had had down got up, Witness saw him standing up, but did not see him walk, his clothes were considerably torn, and there was blood on his face, This man was the plaintiff in this suit, There were several other Elk present, but they were doing nothing, He never knew the Elk to escape but the one time, He ~~said~~ saw said Elk on Exhibition, at the Peoria fair, The horns of that Elk are three or four feet apart at top and the animal about four feet and a half high.

He saw the same Elk in the road next morning, saw no wounds, but the man's face was bloody, and his clothes torn, He was about three rods from the Elk when he had the man down, The man was down when I first saw him he tried to escape, but the elk would not let him, he would draw back to get a good push at him, It took place in a ditch at the side of the road, Ryman was on the other side of the fence, and when he rapped on the fence, the elk came out of the ditch, up the bank to him, there were four or five elk there and they were eight or ten rods East of Ryman's house, The Elk park is enclosed with a pailing fence.

Michael Ryman being called by Frick Fadden, ran out with his gun but did not shoot, saw the man down, and the Elk holding him down with his horns, He rapped

on the fence, with a stick, and the elk left the man he had down, and came towards Witness, When he had got the elk away, he returned and the man had arisen, and got over the fence, there was blood on his face, There was no harm done to his clothes except that on his back his clothes were torn to pieces, Witness brought the man over to Peoria, he walked over, Witness brought his gun along and left him on this side of the bridge, Saw him about a month after, Met with Mr Ballance at the bridge about 8 or 9 o'clock, going over to see about the Elk, and passed over with him, Witness lives about one hundred rods beyond the Elk park as you go from Peoria, Knew of Elk being out of the park before, but know not whether Mr Ballance knew it, Saw said Elk pitch into another man, the same day, The man passed by the Elk without being troubled by him but after passing the man struck at him, with an umbrella, and the elk knocked him out of the road with his horns, and tore his coat, The elk scared horses as people travelled along, Do not know whether the park fence is sufficient or not, but the Elk once got into my Corn field, which adjoins, The fence is a common post and board fence, with four foot railings nailed on it, Mr Ballance had a Park Keeper, Patrick Divine who lived near by and fed and took care of the Elk, but he is now dead. The Elk were very gentle, and kind to him — Often saw persons

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plague the elk by poking sticks through the fence. Never saw said Elk attack any one else.

Charles Fender saw said Elk in the road, and heard the man hollow, He was living near Rymans and went down with Ryman, Took the man to Rymans house, his face was bloody and his clothes were torn, but saw no hurts - Saw the elk in the corn field, but never saw them in the road before. — Saw said Elk on the same day attack the other person spoken of. The fence where Ryman was was about five feet high

David Farrell was a keeper of the bridge across the river, at Peoria and about three o'clock P. M. of the day of the injury, he went to Mr Ballance's house and told a person he supposed to be his daughter, that the elk were out, She said Mr Ballance was not at home, He left no word, but that the elk were out, He had seen Mr Ballance drive the elk across the bridge and they behaved quietly and harmed no one.

Samuel Fast is keeper of the Peoria Bridge and one day during the Peoria Fair, he sent the witness Farrell to tell Mr Ballance that the elk were out scaring peoples horses. He saw said Elk driven across said bridge, in a large crowd, during the great democratic Convention, and they behaved quietly and never attempted to hurt any one. He has seen them taken across said bridge three times, and they were every time, gentle and inoffensive

John Holms told Mr Ballance, afterdark, of the

day that the elk ~~were~~ were out, that they were out, And had hurt a man, Witness saw the man four or five weeks afterwards, but saw no hurts on him.

Dr Studor is a physician, and in that capacity visited the plaintiff last fall, He was too unwell to labor for two months, he was sick enough to require his attention for two weeks, visited him every day for two weeks, Services worth $14 or 15 — He have not been paid by any one A gentleman told me Mr Ballance would pay, Plaintiff had a wound near the hip between one inch and one and a half inches long and four or five inches deep, his legs and shins were bruised, but he was not bruised or cut on the back.

Mr Witt is brother in law to plaintiff, The latter was sick two weeks, he is a laborer, his wages were then worth a dollar a day his clothes were torn to pieces and were worth $14 or $15.

Whereupon defendant to maintain the issue on his part, introduced the following witnesses

John Deng proved that he was well acquainted with said Elk, that he had often taken food into the park for them and had given them food and salt out of his hand, and that he had often cut and hauled wood out of the park and that said Elk are

entirely inoffensive. That he was at Mr Ballance's house when the witness Webb came and informed him that the elk were out, and that Mr Ballance, Mr Webb, and I went at once across the river to put them in the park, shortly before reaching the bridge we met Mr Fisher, the plaintiff, who complained of having been hurt by one of his elk said Ballance expressed his sincere regret at the accident and offered to send witness (who was then in said Ballance employment) to get his horses and carriage, to take plaintiff home, but plaintiff objected to the proposition, saying he was able to walk home, Witness went over the river with Messrs Ryman, Ballance & Webb. The large buck elk was down and unable to get up, he helped Mr Webb lift him up, and get him into the park, he walked on three legs, one thigh was broken, he appeared to have been shot, it was two or three months before he could walk with all his legs, he came near dying, Mr Ballance told the witnesses Raymens and Holms that night that the elk had been shot — he had assisted to drive said elk ten or twelve miles and they were docile and attempted to hurt no one.

Robert Colbert has been acquainted with said elk three or four years — has assisted in repairing the park fences and has been engaged in chopping wood in said park and always found the elk gentle and peaceable. They would feed around like sheep, without disturbing any one.

Orhard Nroom is well acquainted with said elk, has haltered both of said bucks, and led them through the city of Peoria, has had them both at Mr Ballance's house for the amusement of his children, has often tied them to the shade trees about his house and gone away for some time, One of them I have ridden. I took them all to the Peoria Agricultural fair and had them there on exhibition, two or three days and they were entirely harmless, The park fence was about seven feet high, and it had one gate, which was kept locked.

Samuel Voris thinks the Elk park is fenced in ~~of~~ with a fence seven feet high, have been among the elk often and seen the boys of Mr Ballance and others gathering walnuts in the said park without being molested by the elk. Never knew said elk to be vicious, Mr Ballance used reasonable diligence in keeping the park fences up.

Lysander R Webb proved that he was well acquainted with said Elk, had often been in the park among them in company with ladies, had about the time of the Peoria fair seen the boys gathering walnuts in the park and hired men cutting and hauling wood out of the park, He had also ~~feed~~ fed the elk salt and corn out of his hand and considered them entirely harmless, he had assisted in driving them through the city of Peoria to a place several miles in the country and

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back again and found them docile and inoffensive, they attempted to hurt no one, he knew of them getting out of the park once into the adjoining corn field and assisted in getting them back again, this is the only time he ever knew of them escaping from the park previously to the day on which plaintiff was hurt and from his position of agent and son-in-law of Mr Ballance he believes he would have known it had they escaped. The fence of the Elk park is about seven feet high, too high for the elk to jump over it, but on the day the injury was done to the plaintiff, a pannel of the fence was broken down and it was through that breach that he and others drove them in again.

Here defendant rested and plaintiff recalled William Wiltz who testified that he called on the defendant, on behalf of plaintiff to settle this controversy and in that conversation plaintiff proposed to to pay the doctors bill and the worth of the coat, that had been torn and that he replied that that proposition would not do Mr Fisher — The he himself would not have been so hurt for a thousand dollars, witness is and then was the brother-in-law to plaintiff.

To this testimony defendant objected, because it was evidence in chief, and not rebutting testimony and because it was a proposition by way of compromise, and that not accepted, but the Court

Overruled said objection and said evidence went to the jury, to which decision of the Court, defendant then and there excepted.

Plaintiff then asked the Court to instruct the Jury as follows

"Instructions for Pltff

If the Jury believe from the evidence that the defendant kept a viscous animal and had notice of such viciousness, then if they further believe from the evidence that such animal escaped from the defendants control and injured the defendant then the jury will find for the plaintiff whatever damages they believe from the evidence the plaintiff is entitled to on that account.

Given

In this case if the jury find for the plaintiff they are not confined in assessing the damages to the exact amount proved in dollars and cents

Given

If the Jury believe from the evidence that the elk alleged to have committed the injury on the plaintiff was viscious at certain seasons on the year then the plaintiff was bound to confine him at such seasons or he would be responsible for the damages done by such animal."

Given

Defendant then asked the Court to instruct the jury as follows

To all of which opinions and decisions of the Court in permitting said evidence and in giving and refusing instructions defendant then and there, at the time of said decisions excepted and prayed that this his bill of exceptions be sealed, signed and made of record which is done.

Be it further remembered that after the verdict herein was rendered and before any judgement herein was entered defendant filed the following motion

"Charles Ballance
ads
Hiei Fisher
} In the Peoria Circuit Court of the March Term 1860

Said defendant moves the Court herein to set aside the verdict herein and grant him a new trial because

1st The Court erred in the instructions given to the jury at the instance of plaintiff

2nd The Court erred in refusing said instructions asked by said defendant

3rd Said verdict was made without the necessary evidence to sustain it

4th Said verdict is in direct conflict with all

the evidence in the case

5th There was no evidence given to the jury conducing to prove that said Elk was in the habit of doing mischief or that defendant had any information to that effect.

6th The proof of the case was that said Elk was up to the day of said injury a gentle & harmless creature. "Grove & Ballance."

but the Court overruled said motion, to set aside said verdict and grant a new trial, and entered judgment on said verdict, to which opinion and decision of the court in refusing to set aside said verdict, and grant a new trial and entering said judgement said defendant then and there excepted and prayed that this his bill of exceptions may be sealed, signed and made of record, which is done.

E. N. Powell, Seal

State of Illinois }
Peoria County } ss

I, Enoch D Sloan clerk of the circuit court in and for said county and state do certify that the foregoing is a full, true and complete transcript of the papers and proceedings of said court, appertaining to the cause wherein Ace Fisher is plaintiff and Charles Ballance is defendant, as the same appears of record and on file in my office. Given under my hand and seal of said court at Peoria, this 7th day of May AD 1860.

Enoch D Sloan, Clerk

Said defendant in proper person comes whence and says that in the foregoing record and proceedings there is manifest error in this to wit

1st Said court erred in giving said instructions asked for by said plaintiff

2nd Said court erred in refusing to give instructions asked for by defendant

3rd Said verdict was contrary to the evi-

dence in the cause.

4th Said Judgement ought to have been in favor of said defendant, and not for said plaintiff.

5th Said court erred in refusing to set aside said verdict.

C. Ballance

Set a supersedeas upon $300 bail Harry Grove Security

J D Caton

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6 Ballance
vs
Hei Fischer
Transcript of the
Record

Ballance
vs
Hei Fischer

Affidavit

~~Filed June 1st 1862~~
~~L Lehmann~~

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Charles Ballance
vs } Error to Peoria
Hei Fisher

I Charles Ballance do solemnly swear that I am well acquainted with Henry Stone and consider him a prudent money making man and out of debt or if he owes any I do not know it He owns some valuable real estate in Peoria and would be ample security for several thousand dollars

C. Ballance

Subscribed & Sworn before me this 1st day of June A.D. 1860
L. Leland Clerk
by J. B. Bier

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C D Ballance

vs } Error to Peoria

Hei Fisher

The affidavit in this case other than the one as to the sufficiency of the security is not usual in such occasions but it becomes necessary to account for the imperfect state of the record It is the best record I could procure and I was apprehensive without such explanation the court would consider the ~~court~~ record insufficient

C D Ballance

Hon I D Caton

Present

[11807-11]

6 Ballance
vs
Hei Fischer

In the Supreme Court of Illinois

Hei Fisher
vs
Charles Ballance } Error to Peoria

1 One count in the declaration charged that defendant "wrongfully and injuriously did keep a certain elk, he the said defendant during all that time well knowing that the said elk then and there was wild and accustomed to attack and hook, stamp upon and bruise mankind ~~to wit at the county aforesaid~~ and that "he the said defendant having neglected to keep said elk properly secured and then and there to wit at the county aforesaid said elk did attack and hook, stamp upon and bruise, injure and cut said plaintiff and tear the clothes of him the said plaintiff and did greatly lacerate hurt and wound
3 said plaintiff" &c. The second count was similar except that it charged the elk to be previous but did not charge knowledge of the fact on defendant. That part of the count was in these words, "had in his possession and was keeping a certain elk which said elk was of a savage and mischievous disposition" and then a similar charge of damage

4 To this declaration defendant plead not guilty

5 There was a jury sworn and and plaintiff proved by one Strickfaden that he had been to the Peoria fair and on his way home near Mr. Ryman fence he saw an elk have plaintiff down who cried for help as one in distress. This was on the 23rd day of September last and it was in the highway that this took. Witness called to Ryman to shoot the elk. Ryman came with his gun but instead of shooting knocked on the fence. As soon as this was done the elk left plaintiff and went to Mr. Ryman. Ryman walked along the fence on the inside to some distance and the elk walked along out side as if following him.

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Mr. Leadley and others came along and plaintiff got up. Witness saw him standing but did not see him walk. His clothes were considerably torn and there was blood on his face. Several other elk were present but they were doing nothing. He never knew the elk to escape but the one time. He saw said elk on exhibition at the Peoria fair. It was a large elk with big horns. He saw the same elk in the road next morning. Saw no wounds on plaintiff but his face was bloody and his clothes torn. Plaintiff was down when I first saw him. He tried to escape but the elk would not let him. The elk park is enclosed with a pailing fence.

6 Michael Ryman gave the same account of the affair that Shickpaden had given but that when he returned from taking the elk away plaintiff had arisen and got over the fence. "There was no harm done to his clothes except that on his back his clothes were torn to pieces. Witness came with plaintiff across the bridge and left him on this side. Plaintiff walked over. Saw defendant at the bridge going over to see about the elk and passed over the bridge with him. Witness resides about one hundred rods ~~from the~~ beyond the elk park as you go from Peoria. The elk got out of the park before but he does not know that Mr. Ballance knew it. Saw said elk "pitch into" another man that day. The man passed by the elk without being troubled but after passing the man struck at him with an umbrella and the elk knocked him out of the road with his horns and tore his coat. The elk scared horses as people traveled along. The fence is a common post and board fence with four foot pailings nailed on it. Mr. Ballance kept a park keeper who lived near by and fed and took care of the elk but he is now dead. The elk were very gentle and kind to

him Often saw persons plague said elk by poking sticks through the fence but never saw them attack any one before

8 Charles Fender lives at the place of the transaction and gives substantially the same account of it

Saw the elk in the cornfield but never saw them in the road before

8 David Farrell was a keeper of the bridge across the river About 3 o'clock P.M. of the day of the injury he went to Mr. Ballance's house and told a person he supposed to be his daughter that the elk were out She said Mr Ballance was not at home He left no word but that the elk were out He had seen the elk driven over the bridge and they behaved quietly and harmed no one

8 Samuel Tart is keeper of the Peoria Bridge and one day during the Peoria fair he sent the witness Farrell to tell Mr. Ballance that the elk were out scaring people horses He saw said elk driven across said in a large crowd during the great Democratic at Peoria and they behaved quietly and never attempted to hurt any one He ~~has~~ seen them taken across said bridge three and they were every time gentle and inoffensive

8 John Holms told Mr Ballance after dark of the day the elk were out that they were out and had hurt a man Witness saw the man four or five weeks afterwards but saw no hurts on him

9 Dr Studer is a physician and in that capacity visited plaintiff For two months he was too unwell to work Witness services were worth $14 or $15. They have not been paid by any one A gentleman told me Mr. Ballance would pay me Plaintiff had a wound near the hip between one inch and one and a half inches long and four or five inches

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deep His legs and shins were bruised but he was not bruised or cut on the back.

9 Mr Witty is brother-in-law to plaintiff Plaintiff was sick two weeks His time was worth a dollar per day His clothes were torn to pieces and worth $14 or $15

Here plaintiff rested and defendant proved by John Derig that he was well acquainted with Ballance's elk Had often taken food into the park for them. Had given them food and salt out of his hand. Had often cut and hauled wood out of the park and that said elk are entirely inoffensive. He was at Mr. Ballance's house when witness Holmes came and informed him that the elk were out and that Mr. Ballance Mr. Webb and witness went at once across the river to put them in the park shortly before reaching the bridge we met the plaintiff who complained of having been hurt by one of the elk Mr. Ballance expressed his sincere regret at the accident and offered to send witness (who was then in Mr. Ballance's employment) to get his horses and carriage to take plaintiff home, but plaintiff objected to the proposition saying he was able to walk home. Witness went over the river with Messrs Rymer, Ballance and Webb The big buck elk was down and unable to get up He was one of the men who lifted him up and got him into the park He walked on three legs One thigh was broken He appeared to have been shot It was two or three months before he could walk with all his legs He came near dying Mr. Ballance told said Rymer and Holmes that night that said elk had been shot He had assisted to drive said elk ten or twelve

miles and they were docile and attempted to hurt no one

10 Robert Colbert has been acquainted with said elk three or four years. Has assisted in repairing the park fences and has been engaged in chopping wood in said park and always found the elk gentle and peaceable they would feed around like sheep without disturbing any one

11 Erhard Kraus is well acquainted with said elk Has haltered both the big bucks and led them through the city of Peoria Has had them both at Mr. Ballance's for the amusement of his children Has often tied them to the shade trees about his house and left them there for some time I have rode one of them. I took them all to the Peoria agricultural fair and had them there on exhibition two or three days and they were entirely harmless the park fence was about seven feet high and it had one gate which was kept locked

11 Samuel Voris proved the park fence to be seven feet high He had been among the elk often and had seen Mr. Ballance's boys and other gathering walnuts in the park among the elk without being molested by the elk

Never knew said elk to be vicious Mr Ballance used reasonable dilligence in keeping the park fences up

L R Webb proved that he was well acquainted with said elk Had often been in the park among them in company with ladies Had about the time of the Peoria fair seen the boys gathering walnuts in the park and hired men cutting and hauling wood out

of the park He had also fed the elk with salt and corn out of his hand and considered them entirely harmless He had assisted in driving them through the city of Peoria & to a place several miles in the country and back again and found them docile and inoffensive They attempted to hurt no one He knew of them of them getting out of the park once into the adjoining corn field ~~and~~ and assisted in getting them back ~~back~~ again This is the only time he knew them to escape from the park previously to the day on which plaintiff was hurt and from his position as agent and somewhat of Mr. Ballance he believes he would have known it had they escaped The fence of the park was about seven feet high too high for the elk to escape over it but on the day the injury was done to plaintiff a panel of the fence was broken down and it was through that breach that he and others drove them in again

Here defendant closed and plaintiff recalled said Witty again who testified that he called on defendants in behalf of plaintiff to settle this controversy and that conversation defendant proposed to settle it by paying the doctors bill and worth of the clothes that had been torn and that witness replied that that would not do Mr. Fisher That he would not have been so hurt for a thousand dollars Witness is brother-in-law to plaintiff

Defendant objected to said evidence be-

ing giving to the jury because it was evidence in chief and not rebutting testimony and because it was a proposition to compromise not excepted but the court overruled said objection and said evidence was given to the jury to which opinion of the court ~~said~~ defendant ~~then and there~~ excepted ~~and filed his bill of exceptions~~

~~Plaintiff~~ The court then on motion of the plaintiff instructed the jury among other things that "If the jury believe from the evidence that the elk alleged to have committed the injury to the plaintiff was vicious at certain seasons of the year then the plaintiff was bound to confine him at such seasons or he would be responsible for the damages done by such animal"

The court then refused to give the following instructions on motion of defendants

The verdict having brought in defendant moved to set it aside because 1st The court erred in giving said instruction asked by said plaintiff 2nd The court erred in refusing said instructions asked for by defendant 3rd The verdict was given without the necessary evidence to sustain it 4th The verdict is in direct conflict with all the evidence in the case 5th There was no evidence condueing to prove said elk was in the habit of doing mischief or that defendant had any information to that effect 6th The proof of the case was that said elk was up to the day of said injury a gentle harmless creature but the court overruled said motion and defendant excepted

C D Ballance
vs
Geo Fischer
" " " "
Abstract of Record