

No. 8658

Supreme Court of Illinois

Presley C. Hankins, Admr.

vs.

Ohio & Mississippi R.R. Co.

1
State of Illinois } Pleas and Proceedings had in
Marion County } The Circuit Court in and for the
County of Marion and State of Illinois
in a cause heretofore pending in said
Court wherein Presley C. Harkins
Administrator of all & singular the goods & chattels, rights
& credits which were of Orville S. Kelly deceased
was Plaintiff and
The Ohio and Mississippi Rail Way Company Defendant

Be it Remembered that on the 7th day of September
A.D. 1864 the above named Plaintiff filed in the Office
of the Clerk of said Circuit Court his precept for summons
against said Defendant which is in words and
figures following to wit,

" State of Illinois } Of the March term A.D. 1865
Marion County } Marion Circuit Court

Presley C. Harkins Administrator of all & singular
The goods & Chattels, rights & credits which were
of Orville S. Kelly deceased

vs
The Ohio and Mississippi Railway Company

In a Plea of Trespass on the case
Damages \$5000

The Clerk will please issue

2

Summons as above returnable to the Sheriff of Marion County to execute.

D. J. Kagay
Plffs Atty

Whereupon summons issued in words and figures following to wit

"State of Illinois } The People of the State of
Marion County } Illinois to the Sheriff of
Said County Greeting

Ye Command You to summon the Ohio and Mississippi Rail Way Company if to be found in your County to appear before the Circuit Court of Marion County on the first day of the term thereof to be holden at the Court House in Salem on the third Monday in the month of March next to answer Presley C. Hopkins Administrator of all singular the goods & chattels rights & credits which were of Orville S. Kelly deceased to his Widow \$5000 as he says, and hereof make due return to our said Court as the Law direct

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

LD

Stamp
50 Cts

3 Which Summons was endorsed by the Sheriff
as follows to wit.

" I have served the within Summons by
delivering a true Copy of same to James B
Hart Agent of Ohio Mississippi Rail Way
Company President of said Company not
found in my County August 7th 1864
S B Carrigan
Shff "

And afterwards To wit March 10th 1865
Defendant filed their Declaration which is
in words and figures following To wit:

" State of Illinois }
Marion County } Presley C Hawkins Adminis-
trator of all and singular the
Goods and Chattels and Credits of Orville L
Kelly deceased the Plaintiff by B D Kagay his
attorney complains of the Ohio & Mississippi Rail
way Company Defendant in this suit who has
been summoned to answer the said Plaintiff in
an action of Trespas on the case.

For that Whereas
on the first day of October AD 1862 at the
County of Marion and State of Illinois the Defen-
dant was and still is a Rail Road Corporation owning
and possessed of and having 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 thereto attached, and the Plaintiff avers that said Rail road a portion of which is located in the Counties of Marion Clay Richland^{And} Lawrence in the State of Illinois and upon which Road the said Defendant did operate use & run upon track of their said Rail Road trains of Rail Road cars for the carriage & conveyance of Passengers through the State of Illinois for hire & reward to the said Defendant in that behalf to wit, at the Counties of Marion Clay Richland & Lawrence in the State aforesaid and the said Defendant being such owner & Proprietor of the said Rail Road cars as aforesaid thereupon heretofore to wit, at the Counties of Marion in the State of Illinois on the first day of October A.D. 1862, the said Orville L. Kelly in his life time at the special instance & request of the said Defendant, became and was a passenger on the said Defendants said cars to be safely & securely carried & conveyed thereby on a certain journey to wit from Marion County Illinois through Clay Richland & Lawrence Counties in said State for a certain fare & reward to the said Defendant then and there paid and the said Defendant then there

5

Received the said Orville S Kelly in his life
 time as such Passenger aforesaid & thereupon it
 became & was the duty of the said Defendants to
 use due & proper care that the said Orville S Kelly
 in his life time should be safely & securely
 carried and conveyed by and in the said
 Defendants said cars on the said journey from
 Marion County Illinois through the Counties of
 Clay Richland & Lawrence aforesaid yet
 the said Defendant not regarding its duty in that
 behalf did not use due & proper care that the
 said Orville S Kelly 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 cars in which the said Orville S Kelly
 in his life time was being carried & 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 that by reason whereof and
 while the said cars was proceeding with
 the said Orville S Kelly in his life time there-
 on along upon said Pine Road on the said jour-
 ney from & c aforesaid to & c aforesaid before
 said car had conveyed the said Orville S Kelly

6 in his life time through the County of Lawrence
as aforesaid to wit. at the County of Marion & State
of Illinois the said Car then & there became & was
overturned broke & fell to pieces and by means
whereof the said Orville S. Kelly 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 said Orville S. Kelly was killed as
aforesaid at &c aforesaid he the said Orville
S. Kelly was using all due & ordinary care &
prudence & while so in the exercise of such
care & prudence he the said Orville S. Kelly was
so killed as aforesaid, and Plaintiff avers
that said Rail Road of said Defendant so causing
the death of said Orville S. Kelly as aforesaid
was used in the said County and State in
which this action is brought, and Plaintiff
further avers that the said Orville S. Kelly at the
time of his death as aforesaid left one
Elizabeth Kelly his widow to whom the damages
recovered can be distributed and that
afterwards the said Plaintiff was duly
appointed by the County Court of Effingham
County State of Illinois the administrator of
all and singular the goods and chattels rights
and credits which were of the said Orville

L Kelly deceased at the time of his death and
 the Plaintiff brings here 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 likewise also the said Defendant
 before and at the time of committing the grievance
 hereinafter mentioned were owners and Proprietors of
 a certain Railroad known and called the Ohio
 and Mississippi Rail way 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 ~~expended~~ paid Toll, at the
 County of Marion and State of Illinois and
 the said Defendant being such owner and
 Proprietor of the said Railroad Locomotive
 Engine and Train of Cars as aforesaid thereupon
 heretofore Toll. On the first day of October
 AD 1862 at the County of Marion and State of
 Illinois the said Justice L Kelly in his life
 time at the special instance and request

of the said Defendant became and was a
Passenger on 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 Counties of Clay, Richland & Lawrence in
the State of Illinois aforesaid for a certain
fare and reward to the said Defendant in
that behalf. And the said Defendant then
and then received the said Orville S. Kelly in
his life time as such Passenger as aforesaid
and thereupon it then and then became and
was the duty of said Defendant to use due and
proper care that the said Orville S. Kelly in his
life time should be safely and securely carried
and conveyed by and upon the said Rail Road
Locomotive Engine and Train of cars on
the said journey as aforesaid from ~~to~~ aforesaid
said (yet the said Defendant not regarding his
duty in that behalf, did not use due and
proper care that the said Orville S. Kelly in his
life time should be safely and securely carried
and conveyed by and in the said Car on the
said Rail Road from ~~to~~ aforesaid ~~to~~ aforesaid
but wholly neglected so to do and therefore 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 thereon

9

Attached securely locked and fastened so that no accident or injury might accrue to the said Orville S. Kelly in his life time as aforesaid By reason of neglect on the part of said Defendant to keep said Rail Road switches aforesaid securely 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 switches aforesaid that the said Orville S. Kelly in his life time should be safely and securely carried and conveyed by the said last mentioned Car on the said journey from & aforesaid to & aforesaid upon said Rail Road but wholly neglected so to do and said Defendant carelessly left the switch apart of said Rail Road at the said Town of Bridgeport in the County of Lawrence & State of Illinois loose & unlocked and unintended by any person and not regarding its duty in this behalf did not use due and proper care that the said Orville S. Kelly in his life time should be safely and securely carried and conveyed by the said last mentioned Car on the Rail Road aforesaid on the journey aforesaid from & aforesaid to & aforesaid but wholly neglected so to do and by reason thereof afterwards and whilst the said last mentioned

10 Car was proceeding with the said Orville S. Kelly in his life time as a passenger thereby in and along said Rail Road track of the said Defendant on the journey from & aforesaid to & aforesaid and before said journey had been completed through the County of Lawrence aforesaid to wit on the day and Year aforesaid at Lawrence County aforesaid to wit at Marion County aforesaid the said last mentioned car was overturned and broken and by means whereof the said Orville S. Kelly 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 said Orville S. Kelly was killed as aforesaid at & aforesaid he the said Orville S. Kelly was using all due and ordinary care and prudence & while so in the exercise of such care and prudence he the said Orville S. Kelly was killed as aforesaid that Plaintiff avers that said Rail Road of said Defendant so causing the death of said Orville S. Kelly as aforesaid was used in the said County and and State in which this action is brought and Plaintiff further avers that the said Orville S. Kelly at the time of his

Death as aforesaid left Sumner his one
 Elizabeth Kelly his widow to whom the damages
 recovered can be distributed, and that after-
 wards the said Plaintiff was duly appointed
 by the County Court of Effingham County
 & State of Illinois the Administrator of all
 and singular the goods and Chattels rights
 and Credits which were of the said Oliver
 S. Kelly deceased at the time of his death and
 that Plaintiff brings here 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 said} the Defendant before
 the Court ^{of the premises} hereinafter mentioned took
 on the first day of October AD 1862 to wit
 at the County of Marion in the State of
 Illinois was the 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
 & Lawrence in the State of Illinois with
 Trains of Cars running thereon and by them the
 said Defendant used and employed for the
 carriage and conveyance of passengers and
 for a certain hire and reward to the said
 Defendant in that behalf paid To wit at
 the County of Marion To wit at the County

12. State aforesaid and the said Defendant being said owner and Proprietor of the said last mentioned Rail Road Car as aforesaid the said Orville S. Kelly in his life time at the County & 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 Clay, Richland and Lawrence aforesaid for a certain hire and reward to the said Defendant in that behalf paid and although the said Orville S. Kelly in his life time was then & 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 last mentioned Car was proceeding with said Orville S. Kelly in his life time as such passenger as aforesaid on the said journey from said Marion County through

Said Clay Richland and Lawrence Counties
 Towns, on the day and year aforesaid went
 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
 thrown off the Rail Road
 track of the said Defendant as aforesaid
 and broken by means whereof the said
 Orville S. Kelly was then and there killed
 to wit at the Town of Bridgeport in the
 County ~~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 said
 Orville S. Kelly was killed as aforesaid at
 &c aforesaid he the said Orville S. Kelly was
 using all due & ~~proper~~ ordinary care and
 prudence & while so in the exercise of such
 care & prudence he the said Orville S. Kelly
 was so killed as aforesaid and Plaintiff
 avers that said Rail Road of said Defendant
 so causing the death of said Orville S. Kelly as
 aforesaid was used in the said County
 and State in which this action is brought
 and Plaintiff further avers that the said
 Orville S. Kelly at the time of his death as
 aforesaid left one Elizabeth Kelly his widow

to whom the Damages recovered can be distributed
 And that afterwards the said Plaintiff was
 duly appointed by the County Court of
 Effingham County State of Illinois the
 Administrator of all and singular the
 goods and Chattle rights and Credits which
 were of the said Orville S. Kelly deceased at
 the time of his death and Plaintiff brings
 here into Court the letter of Administration
 as aforesaid which give sufficient evidence
 to the Court here of ^{the grant of} Administration to the
 Plaintiff aforesaid

To the Damages of the ^{said}
 Plaintiff Five thousand Dollars \$5000.00
 And therefore he sees B. J. Kagay Atty
 For Plaintiff

And the said Plaintiff on the date last
 aforesaid Four March 10th 1865 filed in
 said Court a certified Copy of Letter of
 Administration in words and figures
 following To wit:

Letter of Administration
 State of Illinois Set
 Effingham County The People of the State
 of Illinois to all to whom
 these presents shall come Greeting
 Know Ye that whereas Orville S. Kelly of
 the County of Effingham and State of

Illinois died intestate as it is said on or about the 8th 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 Presley C. Hankins of the County of Ceffingham and State of Illinois Administrator of all and singular the goods ^{and} Chattels rights and Credits which were of said Orin S. Kelly 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 ~~may be~~ hereafter ^{required} may be, of him by Law.

Witness D. R. Rinehart Clerk of County Court in and for the said County of Ceffingham at his office in Ceffingham this 22^d day of October AD 1862 and



Probate Seal of said Court hereunto affixed

D. R. Rinehart
Clerk of the County Court

16. State of Illinois) S.S.
Effingham County) J. D. Rinchart Clerk
of the County Court within
and for the County and State aforesaid do hereby
Certify that the within is a true Copy of the
Letters of Administration granted by the Court
to Presley C. Hawkins on the estate of Orville
S. Kelly deceased as appears of Record in my
said Office.

In Witness whereof I have hereunto
set my hand and affixed my seal
of our said Court at Effingham
this 9th day of March 1865.
J. D. Rinchart Clerk

And afterwards at the March term of said Court
to wit on the 22^d day of March 1865 the Defendant
filed his plea herein in words and figures following
to wit.


State of Illinois)
Marion County)
March term 1865

Presley
The Ohio and Mississippi
Rail Way Company
vs
Presley C. Hawkins Adm^r
of Est of Orville S. Kelly dec^d

Trespass on the Case
And the said Defendant

19 Comes and says that this Court ought not to have or
take further Cognizance of the action aforesaid because
it says that the said 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 Lawrence in the State of Illinois
and not at and in the County of Marion aforesaid
or elsewhere within the jurisdiction of this Court
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 the action aforesaid

The Ohio Mississippi Raid Dry Company
By H P Buxton its atty in fact

State of Illinois
Marion County  Harvey P Buxton Attorney
for the above named Defendant
being duly sworn deposes and says that the
above plea and the facts therein stated are
true in substance and fact

Harvey P Buxton
Subscribed ^{and sworn to}
before me this 22^d day of March 1865
H C Moore Clerk
By J O Chance Dep't

And afterwards To wit March 31st 1865 the

18 Defendant Replied their Plea, Amended in words and figures following To wit,

" And Deft avers that there is a circuit Court regularly held in and for said County of Lawrence which has complete Cognizance of the Action aforesaid and that Defendant has agents in said County of Lawrence on whom service can be had "

Whereupon Plaintiff on the 31st day of March 1865. filed Demurrer to Defendants Plea in words and figures following To wit,

" Presley C Hawkins Admoral Plff

vs

Ohio & Mississippi Railway Co Deft

And the said Plaintiff comes and says that the said Defendants Plea & the matters & things therein contained are insufficient in law & this he is ready to verify whereupon he prays that the Court will take Cognizance of the action aforesaid & that the said Defendant may answer over "

Cooper Plffs Atty

19 found in Demurrer

H P Duxson Atty for Deft "

Whereupon the following order is entered of

Record in said Court Term

"

"Presley C. Hankins Administrator of all
And Singular the goods & Chattles rights & credits
which are of Orin S. Kelly Decd.

vs

The Ohio And Mississippi
Rail Way Company



Trespap on
the Case



Afterwards Term on
Friday April 7th the Judgment herein is set
aside and this Cause is taken under Adversment"

And afterwards Term at the August Term 1866
the following order appears of Record

" Thursday

August 24th Cause called and by Consent
Continued until the next term of this Court "

And afterwards Term at the March Term 1866
the following order appears of Record.

" Wednesday

March 28th 1866 this Cause is called and the
Court having at the previous term heard
Arguments of Counsel on Plaintiff Demurrer
to Plea and having taken same under ad-
versment doth now give Judgment for
Defendant and Plaintiff elect to stand
by their Demurrer. Whereupon the Courts

Thursday March 30th 1866. Comes the Defendant by J. B. Dunton Esq. in answer and on his motion
leave of court by Nathan and assigns the Plea made March 27th being the Plaintiff by
J. B. Dunton Esq. his Attorney and answers 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 they must be quashed and that the Court shall
assign to further order that Plaintiff pay the costs herein accrued in that event may issue
thereof.

gives Judgment for the Defendants for Costs
 It is therefore ordered and adjudged by the
 Court that said Defendants do have and
 Recover ~~from~~ and ~~of~~ from said Plaintiff
 their Costs in this behalf expended and that
 execution may issue therefor &c

State of Illinois }
 Marion County } ss

J. H. C. Moore
 Clerk of the Circuit Court in and
 for the County and State aforesaid
 do hereby certify that the foregoing
 is a true and correct copy of the pleas
 and proceedings had in the above en-
 titled cause as appears of Record in
 my Office

Witness my hand and seal
 this 24th day of September
 A. D. 1866

J. H. C. Moore Clerk



State of Illinois Supreme Court
 1st Grand Division. Nov Term 1856
 Reily v. Hawkins Adm'r
 Orville Kelly dec'd. Plff in Error

The Ohio & Mississippi Rail Way Co. Defts in Error

But now comes the Plff in Error & says that there is manifest error in the record of proceedings aforesaid in this

- 1st - The Court erred in allowing amended plea in abatement to be filed
- 2^d The Court erred in overruling Plff's demurrer to Defts plea in abatement
- 3^d The Court erred in quashing the writ
- 4th The Court erred in abating the suit
- 5th The Court erred in rendering judgment in favor of Deft vs Plff for costs
- 6th The Court erred in awarding execution for costs in favor of Deft vs Plff

W. B. Cooper

Atty for Plff in Error

Trusby C. Hankins Adm.
vs.
O & M. R. R. Co

Per \$650 per Harmon
Clerk

Filed Oct. 18. 1866.

N. Johnston Clerk

Paid by Coupon \$5.00

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

Presley H. Haustaris Administrator of Orville
L. Kelly deceased

plaintiff and

The Ohio & Mississippi Railway Company

defendant it is said manifests 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 October 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. J. 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.

A. Johnston

Clerk of the Supreme Court.

SUPREME COURT.
First Grand Division.

Pusley & Heanhuiss & Co

Plaintiff in Error,

vs.

The C & M Railway Co

Defendant in Error.

WRIT OF ERROR.

Issued & FILED.

Oct 18, 1866

N. Johnston

State of Illinois,
Supreme Court,
First Grand Division.

In the Court of the Circuit Court for the County of ...

Because, ...

... of a ...

... of the ...



Supreme Court of Illinois
First Grand Division: November Term 1866.
Presley G. Hawkins Adm: 3
of Orville L. Kelley deceased 3 Off in Error
vs 3 Error to Marion.
Chic. & N. W. Railway Co 3 Dept in Error

By agreement this suit is
dismissed at the plaintiffs costs.

M. B. Cooper Atty. Plein Error
H. D. Dutton
Atty. Dept in Error

Agreement

Presley C. Hawks
Adm^r: Croille S. Kelley

or
Or W R W Co

Filed Nov 7. 1866

N. Johnston cly

ABSTRACT.

PRESLEY C. HANKINS, Adm'r of } PLAINTIFF IN ERROR.
ORVILLE L. KELLY, dec'd., }
vs. } **Error to Effingham.**
THE OHIO & MISSISSIPPI } DEFENDANT IN ERROR
RAIL WAY COMPANY. }

Placita & Precipe,
Summons directed to Sheriff of Marion County, returnable to
March Term, A. D. 1865, Marion Circuit court.
Return of Sheriff of Marion County served on Agent of
said Company.

Page 1

" 2

3

DECLARATION that Deft. was Corporation owning and running Railroad
trains through Marion and Lawrence Counties; that deceased at Marion County
became a passenger, and at Lawrence County was killed by negligence of
Defendants, etc.

Page.
3, 4, 5, 6, 7, 8, 9, 10,
11, 12, 13, & 14,

COPY of Letters of Administration

14, & 15

PLEA In Abatement by Defts. that the supposed causes of action, and
each and every one of them (if any such have accrued to said Plaintiff) accrued
to said Plaintiff within the jurisdiction of this Court; that is to say, in the County
of Lawrence, and State of Illinois, and not at and in the County of Marion
aforesaid, or elsewhere within the jurisdiction of this Court, etc. Filed March
22, 1865.

16 & 17

Amended plea in Abatement, stating in addition to above that there was a
Court in Lawrence County having cognizance of said causes of action, and that
Defendant had agent in Lawrence County, on whom service could be had.
Filed March 31, 1865.

18

18

Plaintiff's demurrer to Defendant's plea and joinder. Filed March 30, '65.
Order of Court, March Term, 1865. On motion of Defendant leave given
to withdraw and amend plea. Demurrer overruled and Exception by
Plaintiff. Judgment for Deft. on Demurrer and Plff. standing by demurrer.
Ordered that writ be quashed and suit abate. Plaintiff pay Cost and Execution
awarded.

19

19

Order set aside, and Case taken under advisement and continued.
Order of Court, March Term, 1866. Judgment for Defendant on demurrer,
and Plaintiff standing by demurrer. Judgment for Defendant against Plff.,
for Costs and Execution awarded

19 & 20

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. Plaintiff.

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.

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 Presley C. Hauseris Administrator of Orville S. Kelley deceased

plaintiff and

The Ohio & 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. P. 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. A. Johnston

11 Clerk of the Supreme Court.

ABSTRACT.

PRESLEY C. HANKINS, Adm'r of } PLAINTIFF IN ERROR.
ORVILLE L. KELLY, dec'd., }
vs. } **Error to Effingham.**
THE OHIO & MISSISSIPPI }
RAIL WAY COMPANY. } DEFENDANT IN ERROR

Placita & Precipe, Page 1
Summons directed to Sheriff of Marion County, returnable to
March Term, A. D, 1865, Marion Circuit court. " 2
Return of Sheriff of Marion County served on Agent of
said Company, 3

DECLARATION that Deft. was Corporation owning and running Railroad Page.
trains through Marion and Lawrence Counties; that deceased at Marion Coun- 3, 4, 5, 6, 7, 8, 9, 10,
ty became a passenger, and at Lawrence County was killed by negligence of 11, 12, 13, & 14,
Defendants, etc.

COPY of Letters of Administration 14, & 15

PLEA In Abatement by Defts. that the supposed causes of action, and
each and every one of them (if any such have accrued to said Plaintiff) accrued
to said Plaintiff within the jurisdiction of this Court; that is to say, in the Coun-
ty of Lawrence, and State of Illinois, and not at and in the County of Marion
aforesaid, or elsewhere within the jurisdiction of this Court, etc. Filed March
22, 1865. 16 & 17

Amended plea in Abatement, stating in addition to above that there was a
Court in Lawrence County having cognizance of said causes of action, and that
Defendant had agent in Lawrence County, on whom service could be had.
Filed March 31, 1865. 18

Plaintiff's demurrer to Defendant's plea and joinder. Filed March 30, '65. 18

Order of Court, March Term, 1865. On motion of Defendant leave given
to withdraw and amend plea. Demurrer overruled and Exception by
Plaintiff. Judgment for Deft. on Demurrer and Plff. standing by demurrer.
Ordered that writ be quashed and suit abate. Plaintiff pay Cost and Exe-
cution awarded. 19

Order set aside, and Case taken under advisement and continued. 19

Order of Court, March Term, 1866. Judgment for Defendant on demur-
rer, and Plaintiff standing by demurrer. Judgment for Defendant against Plff.,
for Costs and Execution awarded 19 & 20

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. Plaintiff. 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.

34

Presby. C. Haun's Adm^r
v
The C & M Railway Co

RAILWAY COMPANY,
THE OHIO & MISSISSIPPI
ORVILLE F. KELLY, adm^r,
ERNEST C. HARKINS, adm^r, of

DEPENDANT IN ERROR
Error in Assignments
PLAINTIFF IN ERROR

Abstract of Brief

Filed Oct 16, 1888
N. Johnston City

REGISTER

Illinois Central Railroad Company v. Haun, et al. 200 Ill. 200

W. R. CROSBY, JR.

Chicago, Ill.

Hankins - Debt of
Kelley - Debt in sum
by

Q. M. Railway -
Debt in sum

Debt to Marine -

Dismissed by Agreement -
at Cost of Plaintiff in sum -

Corrected on Page 16 of
subbook "B"

Nothing issued hereon

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