

8534

No. _____

Supreme Court of Illinois

Illinois Central R.R.Co.

vs.

A. Williams

71641  7

Brief

IN THE SUPREME COURT OF ILLINOIS,

FIRST GRAND DIVISION-----NOVEMBER TERM, 1861.

The Illinois Central Railroad Co., Appell'ts }
VS.
Abner Williams Appellee. }

The Declaration in this case fails to negative the fact that the heifer of Plt'ff below might have been killed within the "limits of a town or village," or "at a crossing." This omission makes the Declaration bad. Plaintiff demurred to defendants' pleas, which demurrer should have been carried back to the Declaration.

The Declaration is also bad because it does not allege that the road had been in use for six months previous to the time when the heifer was killed.

It clearly appears, from the evidence, that the heifer was killed at the town or village of "St. Johns." It is in proof, by witness of Plt'ff below, that "St. Johns" was a regular station, and had a "steam-mill, grocery, store, blacksmith shops, and dwelling-houses."

But the jury were misled by the following erroneous instruction, asked by, and given on behalf, of, Plt'ff below, to wit:—

"To constitute a town, city, or village, there should be something more than simply a place or point at which people live. There must be a dedication of the streets, alleys, &c., to the public."

A village is defined by Worcester, to be "a small collection of houses in the country," and by Webster to be a "small assemblage of houses, inhabited principally by farmers and laboring people."

Both instructions given for plaintiff below, were erroneous. The instruction asked by defendant below, and refused, should have been given, under the state of the pleadings. The plaintiff below did not count under the Statute of 14th Feb., 1855; and if he showed any cause of action in his Declaration, Defendant below was entitled to the benefit of the instruction which he asked: See abstract for instruction.

—VIDE.—Chic., Bur. & Q. Railroad Co. vs Carter, 20th Ill. R. p. 391; O. & M. Railroad Co. vs. Brown, 23d Ill. R. p 95.

WM. H. GREEN,
Attorney for Appellant.

ABSTRACT.

ILLINOIS CENTRAL R. R. CO.

vs.
ABNER WILLIAMS.

} Appeal from Perry.

Summons by deft in error and plaintiffs below, against plaintiffs in error in his action on the case issued September 4th, 1856, returnable to October term, 1856. Served September 10th, 1856.

Declaration in Case.

- 1st Count. That defts (below) were the owners &c. of the I. C. R. R. on 23d day of July, 1856, and by running their cars killed plff's (below) heifer, valued at \$50—Averment. "That it was in consequence of the negligence of the said defendant (below) in not keeping the fence which inclosed the track of said Railroad in good repair, and permitting gates and cattle guards to remain open, that said heifer entered on said R. R. track and was killed." No averment that she was not killed "within a city" or "at a crossing."
- 2d Count. Same as first count. Averment that on the day, &c., aforesaid, "deft's did contrary to the etatute, &c., carelessly and negligently suffer and permit the fence of defendant inclosing the track of said R. R., and also gates to remain open and out of repair for five days so that cattle did pass on to said R. R., that the heifer of plaintiff of \$50,00 value entered through said places so carelessly left open and was then and there killed. No averment that it was not "in a city" or "at a crossing."
- 3d Count. That on the 23d July, 1856, defendants owned the I. C. R. R. &c., and on &c., had "carelessly and negligently neglected" to fence the same in consequence of which the heifer of plaintiff of value of \$50,00, went onto the track and was then and there killed. Averment that the *Locus in quo* "was within the settlement upon the line of said road, and not five miles beyond and out of the settlement. No averment that it was not "within a city, or village, or at a crossing."
- 4th Count. That defendants on 23d July, 1856, were the owners I. C. R. R.; that it was their duty to keep the track inclosed by good fences, gates, &c. That said defendants, not "minding their duty," did carelessly permit the fences, &c., to remain broken down and open, and that a certain heifer of plfff, of value of \$50, did enter on said rail road and was there killed. No averment that the place was "not within a city or at a crossing."
- 5th Count. That def'ts with great violence ran upon and threw off the track of their R. R. and instantly killed the plfff's heifer, valued at \$50,00. Averment that it was through deft's neglect in not keeping in good repair their fences. No averment that it was "not within a city or at a crossing."
- 6th Count. Same as the Third Count.
- 7th Count. Same as the Fourth Count.
- Ad damnum \$100 and Common Conclusion.
Demr. to plfff's Declaration and to each count and *overruled* as to all except 1st, 3d & 5th Counts and sustained to them.

PLEAS OF DEFT'S.

- 1st. Not guilty.
- 2nd. Special plea, setting up their charter and denying the obligation to erect fences, and that the heifer was killed without deft's neglect.
- 3d. Plea. Avcrs the defts are a *private* corporation, and that by their charter nor by any amendment thereof *accepted by them* they were never bound to erect fences, &c., and that the plffs cow entered from the uninclosed adjacent lands upon their road and was there killed without their neglect. The 2nd and Third Pleas were to the *whole Declaration*.
Dem'r to 2nd & 3d Pleas—Sustained.
Issue found and jury and verdict for plfff below for \$20. Motion for new trial overruled and judgment for plfff on the verdict.

BILL OF EXCEPTIONS.

Sets forth and shows the filing of the 1st, 2nd & 3d Pleas above, and are set out in full; that a Gen'l Demurer was filed by plffs to 2nd & 3d Pleas and *sustained* and decision then excepted to, and issue and trial had on first plea, defts standing by their 2nd and 3d Pleas.

EVIDENCE.

Shows the killing of plfff's heifer and value, fences were down and gate open at divers times at the mill at St. Johns, and South at a pond 300 yds or fourth of mile from there. But it *does not show* that at the POINT where the heifer was killed there was not a town, city or village or a public crossing.

INSTRUCTIONS FOR PLTFES BELOW EXCEPTED TO.

1st. The first question for you to determine in this case is this: Was the plaintiff's heifer killed by the Locomotive or Cars of defendant? If you find that she was thus killed, then in the next place you should inquire from the evidence whether the heifer was upon the track of the road by reason of the insufficiency of the fences upon either side of the road at a place or point where the company were bound to make and keep fences in repair. Upon this point the court instructs the jury that if the Company had such road open and were using, "and had been running their cars upon said road for six months before the act complained of (if committed) they were bound to erect and maintain on the sides of the road in use suitable and sufficient fences to prevent cattle from getting on the road, except at the enclosing of public roads and highways, and without the limits of towns, cities and villages. If you find that the heifer was killed by the cars of defendants by reason of the insufficiency of the fences which defendants were bound to erect and maintain, according to the law here laid down, you should find for the plaintiff and assess damages to the value of the heifer," &c.

Given.
2nd. To constitute a town, city or village there should be something more than simply a place or point at which people live. There must be a dedication of the streets, allies &c. to the public.

Given.
Defendants asked the following instruction, which was refused by Court, and excepted to then and there:

"If the plaintiff was guilty of ordinary negligence in not using due caution to prevent his stock from going on the road of defendants, and by reason thereof the cow in question went on to the road of defendants and was killed, then the defendants are not liable, and the verdict should be for defendants, unless it be also shown that defts killed the cow on purpose or through the grossest negligence."

Motion for new trial overruled and excepted to.

ERRORS ASSIGNED.

- 1st. The court erred in sustaining plfff's dem'r to deft's 2nd & 3d pleas below.
- 2nd. The court erred in not rendering judgment for defts on plfff's dem'r to deft's pleas.
- 3d. The court erred in not carrying plfff's demurer back to his declaration, and then rendering judgment thereon for defts.
- 4th. The court erred in giving the instruction one and two to plfff as asked and given.
- 5th. The court erred in refusing instructions to defts, as asked.
- 6th. The court erred in overruling deft's motion for new trial and refusing the same.
- 7th. The court erred in rendering judgment for plfff below and not for defendant.
- Wherefore plfff in error prays that the judgment below be set aside, reversed, &c.

HAYNIE, for Plff in Error.

Al Green

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W. C. Nail Road

in

A. J. Williams

Abstracts

Office

Filed Nov. 1859-

A. J. Williams C.M.

74
<u>20</u>
14.8 ⁰
<u>20</u>
28.7
<u>19.6⁰</u>

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WM. H. GREEN,
Attorney for Appellant.

W. H. C. R. Co.

1861

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Between the said W. H. C. R. Co. and the said J. C. R. R. Co. Defendants

Plaintiff vs. Defendants

Case No. 1000

W. H. C. R. Co.

vs. J. C. R. R. Co.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Filed Nov. 15. 1861
A. Johnston Clk

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

J. C. R. R. Co
vs
Henry Williams

Brief of P. G.

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HAYNIE, for Plff in Error.

H. Green

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U. S. Mail Room

M

A. J. Williams

Abstract

Julia Nov. 1859

A. Johnston M

Division in Case

WB24KWCJ

No 3

11

St. Louis Road

J.
Allwellman

~~St. Louis~~

Centbill on 496

1859 & continued
to

1861

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