No. 8449

Supreme Court of Illinois

Illinois Central R.R.Co.

vs.

R. S. Chamberlain

71641 7

1

State of Illinois }
Marion County } Pleas and proceedings had in the Circuit Court in and for the County of Marion and State of Illinois in a certain Cause heretofore pending in said Court between Robert S Chamberlin Plaintiff and The Illinois Central Rail Road Company Defendant.

Be it Remembered that on the 19th day of January AD 1860 James W Primmer Esq a Justice of the Peace within & for the County of Marion and State of Illinois filed in the office of the Clerk of the Circuit Court of said County the following papers Towit An Account in words & figures following Towit

"Robert S Chamberlin
vs
The Illinois Central Rail Road Company

The above Company
To R S Chamberlin Dr

21st Feby 1859

For Killing one mare by running upon injuring her

$100.00/100"

[8449-1]

Summons in words & figures following Towit

"State of Illinois
County of Marion } ss The People of the State of Illinois To any Constable of said County Greeting:

You are hereby commanded to Summon The Illinois Central Rail Road Company to appear before me at my office in Sandoval on the 6th day of August AD 18 at one Oclock P M, to answer the Complaint of Robert S Chamberlin for failure to pay him a Certain demand, not Exceeding One hundred Dollars. And hereof make due return as the Law directs.

Given under my hand and seal this 30 day of July AD 1859

J. W. Primmer J.P. (Seal)"

{Return of summons too dim to copy but faded}

Transcript in words & figures following Towit

State of Illinois }
Marion County } In Justice Court
Before J. W. Primmer J.P.

Robert S Chamberlin
vs
The Illinois Central Rail Road Company

Costs in Justice Court $3.50

Demand $100
For killing mare
Summons issued July 30th 1859 returnable on the 6th day of August ensuing at 1 Oclock P.M.

Summons returned served by reading to the agent of said Company also by leaving a Copy on the 3d of August 1859 the parties having appeared by their attorneys a motion to dismiss was made by Council for Defendants on account of insufficient service and return of service. a motion for Constable to amend return was made by Council for Plaintiff. objected to by Defendants Council and permitted by the Court then after hearing the evidence judgment was rendered against said Company for fifty Dollars and fifty cents and costs of suit

J. W. Trummer J.P.

State of Illinois }
Marion County } I J. W. Trummer a Justice of the Peace for said County do certify that the foregoing transcript and papers herewith transmitted contain a full statement of the proceedings had before me in said Cause

Given under my hand this 1st day of September 1859

J. W. Trummer J.P.

Copy of Appeal Bond

"Know all men By these Presents That We The Illinois Central Rail Road Company and J. N. Haynie of the County of Marion in the State of Illinois, are held and firmly bound unto Robert S. Chamberlin in the penal sum of One

4

hundred and thirty Dollars Lawful money of the United States for the payment of which, well and truly to be made, we bind ourselves our heirs, Executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals, this 15th day of August A.D. 1859

The Condition of the above obligation is such that Whereas the said Robert S Chamberlin did on the 5th day of August A.D. 1859 Before J.W. Prunner a Justice of the Peace for the said County of Marion recover a Judgment against the above bounden Illinois Central Rail Road Company for the sum of fifty seven Dollars and fifty cents and Costs from which Judgment the said Rail Road Company has taken an appeal to the Circuit Court of the County of Marion aforesaid and State of Illinois.

Now, if the said Rail Road Company shall prosecute their appeal with effect and shall pay whatever Judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Approved by me, at my office this 15th day of August 1859

J W Prunner
Justice of the Peace

The Illinois Central Rail Road Company
by Ellis Merritt Decedent Dew
J N Haynie (Seal)

Whereupon Summons issued in the words following Towit—

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

We Command You to summon Robert S Chamberlin if to be found in Your County, to appear before the Circuit Court of Marion County, on the first day of the next term thereof to be holden at the Court House, in Salem, on the third Monday in the month of March next, to answer The Illinois Central Rail Road Company in their appeal from the Docket of J W Primmer Esq a justice of the Peace in for said County and hereof make due return to our said Court as the Law directs

Witness H N Eagan Clerk of our said Court, and the Official Seal thereof at Salem, this 19th day of January AD 1860.

H N Eagan Clerk."

On the Reverse of which is the following indorsement by the Sheriff Towit "Served by reading to R S Chamberlin Joe Shultz Shff

By A. W. Jennings Dpty

And afterwards at the March term of the Marion County Circuit Court Towit—

[8449-3]

6

Robert S. Chamberlin

135

vs

The Illinois Central Rail Road Company } Appeal

This Cause being now called for Trial Came the parties by their attorneys, and on their Consent this Cause is submitted to the Court for trial without a Jury and the Court having heard the evidence, arguments of Counsel and being fully and sufficiently advised of and Concerning the premises finds its verdict for the Plaintiff for $71 and costs.

It is therefore ordered and adjudged that the Plaintiff do have and recover of and from the Defendants the said sum of $71 together with his costs in this behalf expended and may have execution therefor &c.

Came the Defendants by Haynie their Attorney and pray an appeal which is granted on filing Bond in $200 in 30 days, Security to be approved by the Clerk. Bill of Exceptions to be presented at this term of this Court."

Thereupon said Defendant by its attorneys on the 30th day of March AD 1860 filed in the office of the Clerk of said Circuit Court its appeal Bond which is the words and figures following Bowit

7

"Know all Men By these Presents, that we the Illinois Central Rail Road Company and Isaac N Haynie are held and firmly bound unto Robert S Chamberlain in the penal sum of two hundred Dollars Lawful 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 31st day of March AD 1860. The Condition of the above obligation is such, Whereas the said said Robert S Chamberlain did on the twenty sixth day of March A D 1860 before the Circuit Court for the County of Marion State of Illinois recover a judgment against the above bounden Illinois Central Rail Road Company for the sum of seventy dollars and costs of suit from which judgment the said Illinois Central Rail Road Company have taken an appeal to the Supreme Court of the State of Illinois. Now if the said Illinois Central Rail Road Company shall prosecute their appeal with effect and shall pay said judgment costs costs interest and Damages in case said judgment shall be affirmed then the above obligation to be void; otherwise to remain in full force and effect.

In presence of
Approved by me
at my office this
March 31st 1860
W Eagenden
Clk

Illinois Central Rail Road Company
per I N Haynie atty in fact
I N Haynie (Seal)

Also on the date last aforesaid Defendant filed its Bill of Exceptions which is words & figures following to wit "

Be it Remembered that at the March term A.D. 1860 of the Marion Circuit Court a certain Cause hereinafter described wherein Robert S. Chamberlin was Plaintiff & the Illinois Central Rail Road were Defts. Cause on to be tried was then and there tried by and before his Hon H. S. O'Melveny without a Jury the same having been submitted to him by consent. On the trial of said cause the following proceedings were had to wit

" R. S. Chamberlain
vs
Ill Central Rail Road } Appeal.

Christopher Louke. Was standing on the platform at the eating house – said the train start South and shortly after saw the mare break loose about fifty or sixty yards from the track on the West side and saw the horse run down the side of the track – train seemed to run at at speed of 15 or twenty miles an hour. saw the horse jump on the track and then afterwards saw that two legs were broken

Horse worth $80 or $90 Dollars.

Cross Examined

The horse broke loose some distance West of the Central Rail Road track and ran towards the track — The train was then under way — The train ran at a rate of 15 or twenty miles an hour I was situated behind the train or the train was between me and the horse when it struck — It happened at the cattle guards about one fourth mile from where I stood The horse jumped on the track at about that place. The fence of the Rail Road obtruded the horse from running any further down the track.

Reexamined

This was February or March 1856

Cross — The first he saw was the horse running from the West side of the Central Rail Road track towards the track — The horse run down by the side of the track several Hundred yards and jumped on the track about when the cattle guards are situated. I then saw no more until I saw the horse — look like it was pitched up by the car — it broke two legs — The horse was a pony worth $75 or $80 Dollars — I heard the car whistle about the time it struck the horse, it was about 1/4 mile from where I was standing

Wileow Martin. I saw the horse running towards the track from the West side of track — It turned and ran down the track in the direction that the train was running There was no fence on the East side or any thing to prevent its running off from the prairie on the West side. When the horse first saw in upon the track the train was 50 or 60 yards behind the mare — My position was behind the train when the horse was struck but on the west of the Road. The train was between me and the horse when struck — The horse ran upon the track about 100 yards — I think there was no effort on the part of the cars to prevent an accident the cars were running at the rate of 20 miles per hour. Dont Know who owned the horse — think he was worth 70 or 80 Dollars.

W Volk. Saw the horse run on the West side of the road towards the track then turn and jump on the track and was struck — The cars struck the horse about where the cattle guard is located. There is a fence runs out from the Road at the cattle guards at Right angles — about at that point the horse jumped on the track — there is no fence nor other obstruction west of the Road where the horse ran to prevent the horse

from running out on to the prairie

George Conover. The Train was running at its usual speed – say 15 or 20 miles per hour – heard them whistle several times while the horse was running and before it jumped on the track – think if they had put down brakes could have prevented the accident.

The horse jumped on the track and was struck

Cross Exam

I ~~cannot~~ am considerably experienced in Rail Roading – a person cannot tell with any accuracy what the Rate of speed of a train is when they are situated behind it and are 1/4 mile from it I was situated at the crossing standing on the platform and the cars were 1/4 mile from me when they struck.

Leatherbury. – Was standing on the platform at the crossing near the door of the eating House when cars started – Saw the horse break loose from where he was hitched several Rods/ about 20/ from the track on the West side – he started to run towards the track and down it ran in that manner with the cars until he got to about where the Cattle guards are and then the horse jumped

on the track and the cars struck him. The rate of speed at which the cars were running was about 15 or 20 miles. The horse was a pony worth from $70 to $90 the cars were between me and the horse when they struck the horse – There was no fence or other obstruction on the West side of the track to prevent the horse from running out in to the prairie. Saw the horse turn into the direction of the track & the next I saw was the mare fly up before the Locomotive.

Here the evidence closed for Pltff – and this was all the testimony introduced by either party – Whereupon the Court to whom said Cause was by Consent submitted – rendered a verdict in favor of the Plaintiff for the sum of Seventy Dollars /70$/ and Costs – and the Deft thereupon moved for a New trial in said Cause – for the following Reasons

First. The Court heard improper testimony

The testimony is insufficient to support the verdict –

The weight of testimony is in favor of Defendant

But the Court overruled the motion for new trial to which Deft then and there excepted & rendered judgment for the Plaintiff on said finding to which Deft then & there excepted & now prays his Bill of Exceptions signed & sealed & it is done –

H N S O Melveny Judge &c

State of Illinois
Marion County } ss I A W Egan Clerk
of the Circuit Court of
said County do hereby Certify the foregoing to
be a true and Complete transcript of the
Records and all the proceedings had in our
said Court in the above named Cause as
the same remains on file in my office

Given under my hand and seal
of office this June 20th 1869

A. W. Egan Clk
By L. O. Hause
Dept

47

J. C. Chamberlain

vs

J. C. R. R. Co

Record

Filed Nov. 15. 1860.

N. Johnston Clk

Paid by Haynie $5.00

Hurrah for the Baltimore Nominee

J. K.

Errors Assigned.

1st. The court erred in admitting improper evidence against defendant below.

2d. The court erred in excluding proper evidence offered by defendant below.

3d. The court erred in refusing a new trial.

4th. The court erred in rendering judgment for plaintiff below.

5th. The court erred in rendering judgment against defendant below.

6th. ~~The court gave improper instructions for plaintiff below~~.

7th. ~~The court refused proper instructions for defendant below~~.

HAYNIE, for Plaintiff in error.

Pleas in the Marion Circuit Court.

STATE OF ILLINOIS,
Marion County. } Pleas and proceedings had in the Circuit Court in and for the county of Marion and State of Illinois, in a certain cause heretofore pending in said court between Robert S. Chamberlin, Plaintiff, and the Illinois Central Railroad Company, Defendant.

Be it remembered that on the 19th day of January, A. D., 1860, James W. Primmer, Esq, a Justice of the Peace, within and for the county of Marion and State of Illinois, filed in the office of the Clerk of the Circuit Court of said county, the following papers, to wit: An account in words and figures following, to wit

Robert S. Chamberlin,
vs.
Illinois Central Railroad Company. }

The above Company, To R. S Chamberlin, Dr.

21st February, 1859.—For killing one mare, by running upon and injuring her.....$100 00

[Page 2.] Summons in words and figures following, to wit:

STATE OF ILLINOIS,
County of Marion. } SS.

The people of the State of Illinois, to any Constable of said County, Greeting:

You are hereby commanded to summon the Illinois Central Railroad Company to appear before me at my office in Sandoval, on the 6th day of August, A. D., 18—, at 1 o'clock, P. M., to answer the complaint of Robert S. Chamberlin, for failure to pay him a certain demand not exceeding one hundred dollars; And hereof make due return as the law directs.

Given under my hand and seal this 30th day of July, A. D., 1859.

J. W. PRIMMER, J. P., {SEAL}

Transcript in words and figures following, to wit;

STATE OF ILLINOIS,
Marion County. } In Justice's Court, before J. W. Primmer, J. P.

Robert S. Chamberlin,
vs.
Illinois Central Railroad Company. } Demand, $100 00, for killing mare. Summons issued July 30th, 1859, returnable on the 6th day of August ensuing, at 1 o'clock P. M.

Costs in Justice's Court, $3 50.

[Page 3.] Summons returned; served by reading to agent of said company: also by leaving a copy on the 3d of August, 1859: the parties having appeared by their attorneys, a motion to dismiss was made by counsel for defendants, on account of insufficient service, and return of service: a motion for constable to amend return was made by counsel for plaintiff, objected to by defendant's counsel and permitted by the court. Then, after hearing the evidence, judgment was rendered aginst said Company for fifty dollars and fifty cents, and costs of suit.

J. W. PRIMMER, J. P.

STATE OF ILLINOIS,
Marion County. }

I, J. W. Primmer, a Justice of the Peace for said county, do certify that the foregoing transcript and papers herewith transmitted, contained full statement of the proceedings had before me in said court.

Given under my hand, this 1st day of of September, 1859.

J. W. PRIMMER, J. P.

(COPY OF APPEAL BOND.)

Know all men by these presents, that we, the Illinois Central Railroad Company and I. N. Haynie, of the county of Marion, in the State of Illinois, are held and firmly bound unto Robert S. Chamberlin, in the penal [Page 4] sum of one hundred and thirty dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals, this 15th day of August, A. D., 1859.

The condition of the above obligation is such, that whereas, the said Robert S. Chamberlin, did, on the 6th day of August, 1859, before J. W. Primmer, a Justice of the Peace of said county of Marion, recover a judgment against the above bounden Illinois Central Railroad Company, for the sum of fifty-seven dollars and fifty cents, and costs, from which judgment the said Railroad Company has taken an appeal to the Circuit Court of the county of Marion aforesaid, and State of Illinois.

Now, if the said Railroad Company shall prosecute the appeal with effect, and shall pay whatever judgment may be rendered by the court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Approved by me at my office, this 15th day of August; 1859.

J. W. PRIMMER, Justice of the Peace.

ILLINOIS CENTRAL RAILOAD COMPANY,
by E. R. DEEDA, {SEAL}

I. N. HAYNIE, (SEAL.)

[8449-8]

[Page 5.] Thereupon summons issued in the words following, to wit:

STATE OF ILLINOIS, } SS.
County of Marion.

The people of the State of Illinois, to the Sheriff of said County, Greeting:

We command you to summon Robert S. Chamberlin, if to be found in your county, to appear before the Circuit Court of Marion county, on the first day of the next term thereof, to be holden at the Court House in Salem, on the third Monday in the month of March next, to answer the Illinois Central Railroad Company, in their appeal from the docket of J. W. Primmer, Esq, a Justice of the Peace in and for said county, and hereof make due return to our said court, as the law directs.

{SEAL} Witness, H. W. Eagan, Clerk of our said court, and the official seal thereof, at Salem, this 19th day of January, A. D., 1860.

H. W. EAGAN, Clerk.

On the reverse of which is the following endorsement by the sheriff, to wit: "Served by reading to R. S. Chamberlin."

JOE SHULTZ, Sheriff.
by J. W. JENNINGS, Deputy.

And afterwards at the March Term of the Marion County Circuit Court, to wit:

[Page 6.]

135 Robert S. Chamberlin, vs. Illinois Central Railroad Company. } Appeal.

This cause being now called for trial, came the parties, by their attornies, and on their consent, this case is submitted to the court for trial without a jury; and the court having heard the evidence, arguments of counsel, and being fully and sufficiently advised of and concerning the premises, finds its verdict for the plaintiff for $71 00 and costs.

It is therefore ordered and adjudged that the plaintiff do have and recover of and from the defendant, the said sum of $71 00, together with his costs in this behalf expended, and may have execution therefor, &c.

Came the defendants, by Haynie, their attorney, and pray an appeal, which is granted on filing bond in $200 00 in thirty days, security to be approved by the clerk. Bill of exceptions to be presented at this term of this court.

Whereupon, said defendants, by its attorneys, on the 30th day of March, A. D., 1860, filed in the office of the clerk of said circuit court, its appeal bond, which is in the words and figures following, to wit:

[Page 7.] Know all men by these presents, That we, the Illinois Central Railroad Company, and Isham N. Haynie, are held and firmly bound unto Robert S. Chamberlin, in the penal sum of two hundred dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heir and administrators, jointly, severally and firmly, and by these presents.

Witness our hands and seals, this 31st day of March, A. D., 1860. The condition of the above obligation is such, whereas, the said Robert S. Chamberlin did, on the twenty-sixth day of March, A. D., 1860, before the circuit court for the county of Marion, State of Illinois, recover a judgment against the above bounden Illinois Central Railroad Company, for the sum of seventy dollars and costs of suit, from which judgment the said Illinois Central Railroad Company have taken an appeal to the supreme court of the State of Illinois. Now, if the said Illinois Central Railroad Company shall prosecute their appeal with effect, and shall pay said judgment, costs, interest and damages in case said judgment shall be affirmed, then the above obligation to be void, otherwise to remain in full force and effect.

In presence of

Approved by me at my office, this 31st day of March, 1860.

H. W. EAGAN, Clerk. by J. O. CHANCE, Deputy. } ILLINOIS CENTRAL RAILROAD COMPANY, per I. N. HAYNIE, Attorney in fact.

I. N. HAYNIE, (SEAL.)

[Page 8.] Also, on the date last aforesaid, defendant filed its bill of exceptions, which is in words and figures following, to wit:

Be it remembered that at the March term, 1860, of the Marion Circuit Court, a certain cause hereinafter described, wherein Robert S. Chamberlin was plaintiff, and the Illinois Central Railroad was defendant; came on to be tried, and was then and there tried before His Honor, H. K. S. O'Melveney, without a jury, the same having been submitted to him by consent. On the trial of said cause the following proceedings were had, to wit:

Robert S. Chamberlin, vs. Illinois Central Railroad Company. } Appeal.

Christopher Fouke was standing on the platform at the eating house—saw the train start south, and shortly after saw the mare break loose, about fifty or sixty yards from the track, on the west side, and saw the horse run down the side of the track—train seemed to run at speed of fifteen or twenty miles an hour—saw the horse jump on the track, and then afterwards saw that two legs were broken. Horse worth $80 or $90.

[Page 9.] *Cross-examined.*—The horse broke loose some distance from the track of the Central Railroad track, and ran towards the track. The train was then under way. The train ran at a rate of fifteen or twenty miles an hour. I was situated behind the train, or the train was between me and the horse when it struck. It happened at the cattle-guard, about one-fourth mile from where I stood. The horse jumped on the track at about that place. The fence of the railroad obtruded the horse from running any further down the track.

Re-examined.—This was February or March, 1856.

Gross.—The first he saw was the horse running from the west side of the Central Railroad track towards the track. The horses ran down by the side of the track several hundred yards, and jumped on the track about where the cattle guards are situated. I then saw no more until I saw the horses—looked like it was pitched up by the car—it broke two legs. The horse waa a young horse, worth $75 or $80. I heard the car whistle about the time it struck the horse—it was about one quarter of a mile from where I was standing.

[Page 10.] Welcom Martin.—I saw the horse running towards the track from west side of track. It turned and run down the track in the direction the train was running. There was no fence on the east side, or anything to prevent it's running off on the prairie on the west side. When the horse first ran in upon the track the train was fifty or sixty yards behind the mare. My position was behind the train when the horse was struck, but on the west of the road. The train was between me and the horse, when struck. The horse ran upon the track about one hundred yards. I think there was no effort on the part of the cars to prevent an accident—the cars were running at the rate of twenty miles per hour—don't know who owned the horse—think he was worth $70 or $80.

M. Volk—Saw the horse run on the west side of the road towards the track—then turn and jump on the track, and was struck, The cars struck the horse about where the cattle-guard is located. There is a fence runs out from the road at the cattle-guard at right angles—about at that point the horse jumped on the track—there is no fence nor other obstruction west of the road where the horse ran, to prevent the horse from running out on to the prairie.

George Conover.—The train was running at its usual speed, say fifteen or twenty miles per hour—heard them whistle several times while the horse was running, and before it jumped on the track—think if they had put down brakes, could have prevented accident. The horse jumped on the track and was struck.

Cross examined.—I am considerably experienced in railroading. A person cannot tell with any accuracy, what the rate of speed of a train is when they are situated behind it, and are a quarter of a mile from it. I was situated at the crossing, standing on the platform and the cars were a quarter of a mile from me when they struck.

Leatherbury.—Was standing on the platform at the crossing, near the door of the eating house, where cars started. Saw the horse break loose from where he was hitched—several rods (about twenty rods) from the track on the west side—he started to run towards the track, and down it ran in that manner with the cars until he got to about where the cattle guards are, and then the horse jumped on the track, and the cars struck him. The rate of speed at which the cars were running about fifteen or twenty miles. The horse was a pony, worth from $70 to $90. The cars were between me and the horse when they struck the horse. There was no fence or other obstruction on the west side of the track to prevent the horse from running out into the prairie. Saw the horse turn in the direction of the road, and the next I saw was the mare fly up before the locomotive.

Here the evidence closed for plaintiff, and this was all the testimony introduced by either party. Whereupon the court, to whom said cause was, by consent, submitted—rendered a verdict in favor of the plaintiff for the sum of seventy dollars ($70) and costs; and the defendant thereupon moved for a new trial in said cause, for the following reasons:

First. The court heard improper testimony.

The testimony is insufficient to support the verdict.

The weight of testimony is in favor of defendant, but the court overruled the motion for a new trial, to which defendant then and there excepted and rendered judgment for the plaintiff on said finding, to which defendant then and there excepted, and now prays his bill exceptions, signed and sealed, and it was done.

H. K. S. O'MELVENY, Judge, &c. {SEAL}

STATE OF ILLINOIS,
Marion County. } SS.

I, H. W. Eagan, Clerk of the circuit court of said county, do hereby certify the foregoing to be a true and complete transcript of the record, and all the proceedings had in our said court in the above named cause, as the same remains on file in my office.

Given under my hand, and seal of office, this June 20th, 1860.

SEAL.

H. W. EAGAN, Clerk,
per J. O. CHANCE, Deputy.

47

Appl from Macon

Ills Cent RR Co

Appltt

vs

Robt S Chamberlain

applee

Filed Nov. 15. 1860 —

N. Johnston Clk

Errors Assigned.

1st. The court erred in admitting improper evidence against defendant below.

2d. The court erred in excluding proper evidence offered by defendant below.

3d. The court erred in refusing a new trial.

4th. The court erred in rendering judgment for plaintiff below.

5th. The court erred in rendering judgment against defendant below.

6th. ~~The court gave improper instructions for plaintiff below.~~

7th. ~~The court refused proper instructions for defendant below.~~

HAYNIE, for Plaintiff in error.

Pleas in the Marion Circuit Court.

STATE OF ILLINOIS,
Marion County. } Pleas and proceedings had in the Circuit Court in and for the county of Marion and State of Illinois, in a certain cause heretofore pending in said court between Robert S. Chamberlin, Plaintiff, and the Illinois Central Railroad Company, Defendant.

Be it remembered that on the 19th day of January, A. D., 1860, James W. Primmer, Esq, a Justice of the Peace, within and for the county of Marion and State of Illinois, filed in the office of the Clerk of the Circuit Court of said county, the following papers, to wit: An account in words and figures following, to wit

Robert S. Chamberlin,
vs.
Illinois Central Railroad Company. }

The above Company, To R. S Chamberlin, Dr.

21st February, 1859.—For killing one mare, by running upon and injuring her.....$100 00

[Page 2.] Summons in words and figures following, to wit:

STATE OF ILLINOIS,
County of Marion. } SS.

The people of the State of Illinois, to any Constable of said County, Greeting:

You are hereby commanded to summon the Illinois Central Railroad Company to appear before me at my office in Sandoval, on the 6th day of August, A. D., 18—, at 1 o'clock, P. M., to answer the complaint of Robert S. Chamberlin, for failure to pay him a certain demand not exceeding one hundred dollars; And hereof make due return as the law directs.

Given under my hand and seal this 30th day of July, A. D., 1859.

J. W. PRIMMER, J. P., {SEAL}

Transcript in words and figures following, to wit;

STATE OF ILLINOIS,
Marion County. } In Justice's Court, before J. W. Primmer, J. P.

Robert S. Chamberlin,
vs.
Illinois Central Railroad Company. } Demand, $100 00, for killing mare. Summons issued July 30th, 1859, returnable on the 6th day of August ensuing, at 1 o'clock P. M.

Costs in Justice's Court, $3 50.

[Page 3.] Summons returned; served by reading to agent of said company: also by leaving a copy on the 3d of August, 1859: the parties having appeared by their attorneys, a motion to dismiss was made by counsel for defendants, on account of insufficient service, and return of service: a motion for constable to amend return was made by counsel for plaintiff, objected to by defendant's counsel and permitted by the court. Then, after hearing the evidence, judgment was rendered aginst said Company for fifty dollars and fifty cents, and costs of suit.

J. W. PRIMMER, J. P.

STATE OF ILLINOIS,
Marion County. }

I, J. W. Primmer, a Justice of the Peace for said county, do certify that the foregoing transcript and papers herewith transmitted, contained full statement of the proceedings had before me in said court.

Given under my hand, this 1st day of of September, 1859.

J. W. PRIMMER, J. P.

(COPY OF APPEAL BOND.)

Know all men by these presents, that we, the Illinois Central Railroad Company and I. N. Haynie, of the county of Marion, in the State of Illinois, are held and firmly bound unto Robert S. Chamberlin, in the penal [Page 4.] sum of one hundred and thirty dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals, this 15th day of August, A. D., 1859.

The condition of the above obligation is such, that whereas, the said Robert S. Chamberlin, did, on the 6th day of August, 1859, before J. W. Primmer, a Justice of the Peace of said county of Marion, recover a judgment against the above bounden Illinois Central Railroad Company, for the sum of fifty-seven dollars and fifty cents, and costs, from which judgment the said Railroad Company has taken an appeal to the Circuit Court of the county of Marion aforesaid, and State of Illinois.

Now, if the said Railroad Company shall prosecute the appeal with effect, and shall pay whatever judgment may be rendered by the court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Approved by me at my office, this 15th day of August; 1859.

J. W. PRIMMER, Justice of the Peace.

ILLINOIS CENTRAL RAILOAD COMPANY,
by E. R. DEEDA, {SEAL}

I. N. HAYNIE, (SEAL.)

[S4449-11]

[Page 5.] Thereupon summons issued in the words following, to wit:

STATE OF ILLINOIS, } SS.
County of Marion.

The people of the State of Illinois, to the Sheriff of said County, Greeting:

We command you to summon Robert S. Chamberlin, if to be found in your county, to appear before the Circuit Court of Marion county, on the first day of the next term thereof, to be holden at the Court House in Salem, on the third Monday in the month of March next, to answer the Illinois Central Railroad Company, in their appeal from the docket of J. W. Primmer, Esq, a Justice of the Peace in and for said county, and hereof make due return to our said court, as the law directs.

{SEAL} Witness, H. W. Eagan, Clerk of our said court, and the official seal thereof, at Salem, this 19th day of January, A. D., 1860.

H. W. EAGAN, Clerk.

On the reverse of which is the following endorsement by the sheriff, to wit: "Served by reading to R. S. Chamberlin."

JOE SHULTZ, Sheriff.
by J. W. JENNINGS, Deputy.

And afterwards at the March Term of the Marion County Circuit Court, to wit:

[Page 6.]

135 Robert S. Chamberlin, vs. Illinois Central Railroad Company. } Appeal.

This cause being now called for trial, came the parties, by their attornies, and on their consent, this case is submitted to the court for trial without a jury; and the court having heard the evidence, arguments of counsel, and being fully and sufficiently advised of and concerning the premises, finds its verdict for the plaintiff for $71 00 and costs.

It is therefore ordered and adjudged that the plaintiff do have and recover of and from the defendant, the said sum of $71 00, together with his costs in this behalf expended, and may have execution therefor, &c.

Came the defendants, by Haynie, their attorney, and pray an appeal, which is granted on filing bond in $200 00 in thirty days, security to be approved by the clerk. Bill of exceptions to be presented at this term of this court.

Whereupon, said defendants, by its attorneys, on the 30th day of March, A. D., 1860, filed in the office of the clerk of said circuit court, its appeal bond, which is in the words and figures following, to wit:

[Page 7.] Know all men by these presents, That we, the Illinois Central Railroad Company, and Isham N. Haynie, are held and firmly bound unto Robert S. Chamberlin, in the penal sum of two hundred dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heir and administrators, jointly, severally and firmly, and by these presents.

Witness our hands and seals, this 31st day of March, A. D., 1860. The condition of the above obligation is such, whereas, the said Robert S. Chamberlin did, on the twenty-sixth day of March, A. D., 1860, before the circuit court for the county of Marion, State of Illinois, recover a judgment against the above bounden Illinois Central Railroad Company, for the sum of seventy dollars and costs of suit, from which judgment the said Illinois Central Railroad Company have taken an appeal to the supreme court of the State of Illinois. Now, if the said Illinois Central Railroad Company shall prosecute their appeal with effect, and shall pay said judgment, costs, interest and damages in case said judgment shall be affirmed, then the above obligation to be void, otherwise to remain in full force and effect.

In presence of

Approved by me at my office, this 31st day of March, 1860.
H. W. EAGAN, Clerk.
by J. O. CHANCE, Deputy. } ILLINOIS CENTRAL RAILROAD COMPANY, per I. N. HAYNIE, Attorney in fact.

I. N. HAYNIE, (SEAL.)

[Page 8.] Also, on the date last aforesaid, defendant filed its bill of exceptions, which is in words and figures following, to wit:

Be it remembered that at the March term, 1860, of the Marion Circuit Court, a certain cause hereinafter described, wherein Robert S. Chamberlin was plaintiff, and the Illinois Central Railroad was defendant; came on to be tried, and was then and there tried before His Honor, H. K. S. O'Melveney, without a jury, the same having been submitted to him by consent. On the trial of said cause the following proceedings were had, to wit:

Robert S. Chamberlin, vs. Illinois Central Railroad Company. } Appeal.

Christopher Fouke was standing on the platform at the eating house—saw the train start south, and shortly after saw the mare break loose, about fifty or sixty yards from the track, on the west side, and saw the horse run down the side of the track—train seemed to run at speed of fifteen or twenty miles an hour—saw the horse jump on the track, and then afterwards saw that two legs were broken. Horse worth $80 or $90.

[Page 9.] *Cross-examined.*—The horse broke loose some distance from the track of the Central Railroad track, and ran towards the track. The train was then under way. The train ran at a rate of fifteen or twenty miles an hour. I was situated behind the train, or the train was between me and the horse when it struck. It happened at the cattle-guard, about one-fourth mile from where I stood. The horse jumped on the track at about that place. The fence of the railroad obtruded the horse from running any further down the track.

Re-examined.—This was February or March, 1856.

Gross.—The first he saw was the horse running from the west side of the Central Railroad track towards the track. The horses ran down by the side of the track several hundred yards, and jumped on the track about where the cattle guards are situated. I then saw no more until I saw the horses—looked like it was pitched up by the car—it broke two legs. The horse waa a young horse, worth $75 or $80. I heard the car whistle about the time it struck the horse—it was about one quarter of a mile from where I was standing.

[Page 10.] Welcom Martin.—I saw the horse running towards the track from west side of track. It turned and run down the track in the direction the train was running. There was no fence on the east side, or anything to prevent it's running off on the prairie on the west side. When the horse first ran in upon the track the train was fifty or sixty yards behind the mare. My position was behind the train when the horse was struck, but on the west of the road. The train was between me and the horse, when struck. The horse ran upon the track about one hundred yards. I think there was no effort on the part of the cars to prevent an accident—the cars were running at the rate of twenty miles per hour—don't know who owned the horse—think he was worth $70 or $80.

M. Volk—Saw the horse run on the west side of the road towards the track—then turn and jump on the track, and was struck, The cars struck the horse about where the cattle-guard is located. There is a fence runs out from the road at the cattle-guard at right angles—about at that point the horse jumped on the track—there is no fence nor other obstruction west of the road where the horse ran, to prevent the horse from running out on to the prairie.

George Conover.—The train was running at its usual speed, say fifteen or twenty miles per hour—heard them whistle several times while the horse was runuing, and before it jumped on the track—think if they had put down brakes, could have prevented accident. The horse jumped on the track and was struck.

Cross-examined.—I am considerably experienced in railroading. A person cannot tell with any accuracy, what the rate of speed of a train is when they are situated behind it, and are a quarter of a mile from it. I was situated at the crossing, standing on the platform and the c rs were a quarter of a mile from me when they struck.

Leatherbury.—Was standing on the platform at the crossing, near the door of the eating house, where cars started. Saw the horse break loose from where he was hitched—several rods (about twenty rods) from the track on the west side—he started to run towards the track, and down it ran in that manner with the cars until he got to about where the cattle-guards are, and then the horse jumped on the track, and the cars struck him. The rate of speed at which the cars were running about fifteen or twenty miles. The horse was a pony, worth from $70 to $90. The cars were between me and the horse when they struck the horse. There was no fence or other obstruction on the west side of the track to prevent the horse from running out into the prairie. Saw the horse turn in the direction of the road, and the next I saw was the mare fly up before the locomotive.

Here the evidence closed for plaintiff, and this was all the testimony introduced by either party. Whereupon the court, to whom said cause was, by consent, submitted—rendered a verdict in favor of the plaintiff for the sum of seventy dollars ($70) and costs; and the defendant thereupon moved for a new trial in said cause, for the following reasons:

First. The court heard improper testimony.

The testimony is insufficient to support the verdict.

The weight of testimony is in favor of defendant, but the court overruled the motion for a new trial, to which defendant then and there excepted and rendered judgment for the plaintiff on said finding, to which defendant then and there excepted, and now prays his bill exceptions, signed and sealed, and it was done.

H. K. S. O'MELVENY, Judge, &c. {SEAL}

STATE OF ILLINOIS,
Marion County. } SS.

I, H. W. Eagan, Clerk of the circuit court of said county, do hereby certify the foregoing to be a true and complete transcript of the record, and all the proceedings had in our said court in the above named cause, as the same remains on file in my office.

Given under my hand, and seal of office, this June 20th, 1860.

SEAL.

H. W. EAGAN, Clerk,
per J. O. CHANCE, Deputy.

47

Appl from Monroe

Ills C R R Co
appltt
vs
Robt S Chamberlain
appee

Argued Novr. 15.

Filed Nov. 15. 1860
A. Johnston Clk

Errors Assigned.

1st. The court erred in admitting improper evidence against defendant below.

2d. The court erred in excluding proper evidence offered by defendant below.

3d. The court erred in refusing a new trial.

4th. The court erred in rendering judgment for plaintiff below.

5th. The court erred in rendering judgment against defendant below.

6th. ~~The court gave improper instructions for plaintiff below~~.

7th. ~~The court refused proper instructions for defendant below~~.

HAYNIE, for Plaintiff in error.

47

Ill. C. Railroad

vs

R. S. Chamberlin

Appl. from Macoupin

8449

Conv. Confessed - Judgt

Reversed Remanded

Cost bill on Page 1116