8449

Supreme Court of Illinois

Illinois Central R.R.Co.

VS.

71641

R. S. Chamberlain

Marion County & Sleas and proceedings had in the Circuit Court in and in the Creent Court in auch for the County of Marion and State of Illinois in a carlain Cause heretofor pending in said Comb between Lobert & Chamber -lin Plaintiff and The Ellinois Central Rail Koad Company. Defendent. De it Fremembered that on the 19th day of January ad 1860 Dames W Trimmer Esq a Justice of the Frace within sor the County of Masion and State of Illinois filed in the office of the text of the Circuit Court of said County the following papers Towit An account in words efigures following Fourt Robert & Ramberlin The Dlivois Central Rail Road Company 20 RS Chambelinder 21 A Trby 1839

For Milling ond man by summing I

whom buyuning her

\$100.700"

Summons in words of gures following Down "State of Allinois Est The People of the State of Allinois To any Constable of laid County Grading ? For are hereby Commanded to Summon The Bluois Central Lail Load Company to appear of me at my affice in Dandoval on the day of August AND 18 at one Oclock I A la ausere The Complaint of Robert S Chamber 7 Rulum of sun too dim to copy -lin for failure to pay him a Certain almout, not In Jaded Exceeding Our hundred Nallars. And here of make due orturn as the Law derects. Spiven under om hand "ed seal this 30 days of July and 1859 1. Bl. Trumenf 9. 5.8 Transcript in words ofegues following down State of Illinois & Hazion Craul & In Justice Court

Robert & Chamberlin & Fremant \$100 The Illinois Central For Killing man Rail Road Company & Summons essent John 3 att 1889 returnable on the Justice Court & Padaig of August Ensuing \$350 Oak i Oclock F. M.

Quinnous orlumed, served by leading & the agent of Raid Company also byleaving a Copy on The 3 of August 1839 The parties having appeared by their allowings a motion to dis - mess was made by Council for Frendants on account of usufficient service and relien of Lerner, a motion for Constable to account return was made by Council for Plainliff . Objected to by Defendants Council Ed permitted by the Court thew after he aring the wedere fredgment was rudered against said company for fifty Tollars and fifty and well with of such I Whenmer I.C. State of Allewois 3 & Bol Fremmer a fastice Certify that the foregoing transarish Ed papers Levewith transmitted Contains full platement of the proceedings had before me in said Gust Given under my hand this 1st day of September 1859 Demmer St. Copy of Appeal Bond " Wow all men By These Bresents Chat The Allinois Central Rail Road Company State of Allewois, are held and firmly bound unto Robert & Chambelin in the pend him of One

[8449-2]

under band thirty Dollars Lawful money of the will Stales for the payment of which, will and bruly to be made, we kind ourselves for heirs, Executors and administrators, fourthy, severally and firmly by these presents. Witness our hands and deals, This 15 to day of August about abligation is such That Whereas the said Hobert of Chamberlin did on the 6th day of august ad 1859 Defore fill. Trumoner a Justice of the France for the said Country of Marion recover a Judgment against the above Goundan Almois Central Lail Road Company for the sum of fifty seven Dollars and fifty cents and Costs from which Judgment to said Kail Road Company has taken an appeal to the arcent Court of the County of Marion aforesaid and Hate of Illinais. Now, if the said Hail Touch Company shall prosecute their appear with effect and shall pay whateou Judgment may be rendered by the Combinepon dismissal or treat of Raid appeal, then the above obligation to be void, Otherwise to remain in full fores and effects approved by me, at my office this

Thereupon Summons issued in the words following County of Marion) 55 { The Prople of the State of County of Marion) 55 { bllmois & the Sheriff of Raid County Greating, He Command you to summon Robert & Chamberlin if to be found in your County, to appear before the arcent Court of Marion County, on the first day of the neight time thereof to he holden atthe Court Honse, in Salew, on the third Monday in the mouth of Warch next, to auswer The Illinois Withal North Road Company in their appeal from the Socket of & W Trimmers Esq a fustice of the Trace in for said County and hereof make dere ordered to our land Court as the Law derects Witness Of W Sagaw Class afour Raid Comb, and The Official Seal Chereof at Salew, This 19th. day of Lannay and 1860 On the Reverse of onlich is the following Endersement by the Sheriff Fourth Troved by reading to Rd Cham by the aning Sheltz Shiff By A. W. Jannings Oply And afterwards at the March term of the Marion County Crewit Court downty

18449-37

Robert & Chamberlin

The Flinois Central

Pail Road Company) This Cause bring now Called for brial Came the parties by their allornies, and on their Consent this Cause is aubmitted to the Court for hial without a Juny and the Comt having heard the induce, angu -muls of Course and bring fully and sufficiently advised of and Concerning the premiers finds its be diet for the Slamliff for \$71 and costs. Dr's Cherefore ordered Ed adjudged that the Slamliff do have and reconer of and from the Defend -ands the said Luw of 871 together with his casts in This brhalf expended and may have execution Came the Defendants by Haynie Cheir alloney and pray an appeal which is granted on filing Bond in \$200 in 30 days, Recently to be approved by the derto. Bill of Exceptions to be presented at this term of this Court" Thereapon said Defendant by its allorners on the god day of March Ad 1860 filed in The office of the derk of said arcuit Com its appeal Dond which is the words and figures following Dowits

Anow all Mew By these I resents, That we Ow Delinois Central Rail Road Company and Ishaw Maynie are held and firmly bound unto Hobert & Chemberlain in the penal sum of two hund and Vollars Lawful money of the until States, for the payment of which, well and truly to be made, we bind ourselves, our heirs and administrators fourthy, severally and firmly by these presents. of March above The Condition of the above oblegation is such, Whereas the said Said Nobert & Chambrilain ded on the levely sixth day of March W D1860 before the Circuit Court for the County of Marion State of Illinois occome a Judy ment against the above bounder Illinois Cutoat Kail Road Company for the sum of severy dollars and Costs of seit from which Judgment the said Illinois Central Kail Road Company have taken an appeal to the orderenes Court of the State of Minois. Now if the Raid Illinois foutral Kail Road Company shall prosecute their appeal with effect and shall pay paid costs Costs betweet and Dumages in Caso said Judgoment shall be affirmed the the above obligation to be boid's otherwise to runain in full force and offeet. de presure of Allinois Central Rail Road Company Approved by mo for DA Hayniv atty in fact thy office this sell 3 10 13 50 of again Class Ar Eagander " DA Hayniv Eleas By Lachance Super A Hayow Eleas

Class on the date last aforesaid Mifued and filed its Bell of Exceptions which is words ifigures following Bowith "Bo it Remembered that at On Warch term Ad 1860 of the Waron Cremb Comb a culein Cause heremafter described Wherein Kobert of Chambelino was Plaintiff & the Illinois Central Rail Road win Defts. Cand on to be tried was the Et there tried by and before his How OF DO Mulvery without a Jung the same having been submitted to him by consent, On the Trial of Raid Cause the following proceedings were had Joint "Robbeal Soul Royd Appeal. Christopher Fourte. Was slanding on the platform at the rating house - said the train start South and shortly after Saw the man break loos about fifty or eight yards from the hast on the Hist side and law the horse our down the side of the hacks hain seemed to run at at Speed of 15 or twenty miles an how! law the horse funt on the track Ed Thus afterwards saw that two legs were broken Horse worth \$80 or \$90 Wallars.

Cross Examined The horse broke love some cistance that of the Central Rail Road Crack and saw lowards the Cracks - The Crain was The under may - The brain van at a vato of 15 or houng miles anhow I was situated think the train or the trein was beliveen me and the horse when it struck-It happened at the calle grands about one forsite mile from when I stood the horse purped on the track at about that place. The few of the Kail Road abtructed the horse from running any further down the hack, This was Frbmay or March 1856 Gross - The first he can was the horse Pail Road track Towards the hack -The horse run down by the side of the hast Everal Audied yards and jumped on the track about when The Cattle guards at almost, I thew saw no mow will & saw the horse look like it was putched up by the can - it broke two legs - The horse was a point with \$75 or \$80 Nallais - I Reach the car whistle about the time it should the horse, it was about 14 mile from when I was slanding

(8449-57

Wilson Martin. Dear the horse running lowards the track from the West side of hack - It turned and can 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 offon the prairie on the West side. When the horse first oan in upon the track the hain was so or to fards 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 raw whom the track about 100 yards - I think Chew was no affort on the part of the cars to fire rout an accedent the Cars were running at the rate of 20 miles per how. Don't Know who owned the horse thenk he was worth 70 or so Dollars. Wolk. faw the horse run on the West side of the road broads the track then been and pump on the brack and was struck a Tho cars struck the horse about when the cattle quand is located. There is a fence our from the Road at the cattle guardo at Right angles - about at that point the horse jumped on the track there is no June nor other abstruction west of the Koad where the Rosse ran a primer the horse

from running out on to the prairie froze Conover. The Crain was himning at its usual speed - Lay 15 or 20 miles pur hom heard Them whith several times while the horse was running and before it jumped on the track - Think if They had kut down breaks Could have prevuled the accident The horse pumped on the Crack and was struck Crass Exam I carried and Considerably Experienced in Kail Hoading a puson Cannot lill with any accuracy what the Kato of speed of a Crain are by side from it I was situated at the Crossing standing on the platform and the Cars were /4 milo from me when they Southerday. Was slanding on the platform at the assing near the door of the Eating House when cars started - Saw the horse break love from when he was hetched Several Rods about to from the wark on the Heat side he started to men towards the tracks and down it oan in that manne with the cars until he got to about when the Cattle guards are and the the horse pumped

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on the track and the cars struck him. The rate of speed or which the cars were. Juning was about 15 or 20 miles. The horse was a pony winth from \$70 to \$ 90 the cars wew heliocen me and the Lorse when they stress the horse There was no Jenes or other obstrue lion on the West side of the hack to present the horse from running out in to the fraining Saw the horse turn into the ducation of the brack to the next & saw was the mare fly up before the Locomolive. Den the roidence closed for Pff. and this was all the testimorny introduced by withou party - Whereupon the Court to whom said Cause was by Consent submitted a rendered a verdich in favor of the Slandiff for the sum of Leventy Dollars / 70 % and Coats and the Deft Chereupon moved for a hew tient in earl Cause for the following Reasons First. The Court heard improper Certimony The testimony is cusufficient to support the The weight of believous is in Javor of Defendant But the Court overweed the motion for new lucal to which Deft thew red thew Excepted soudered Judgmus for the Plaintiff on said finding to which Deft then their excepted snow prays his Bill of Exceptions signed theated til is done - AXS Omelvery Judge village

State of Arlinors 355 DA & Sagarling of the Circuit Court of said County do hereby Certify the foregoing to to a true to Complete transcript of the Trends El all the proceedings had en laid Court in the above named Cause The lame remains on file in my offe ien under my hard En [8449-7]

Jila Avv. 15.1860. A. Sahnston Cly Pand by Acynic 5,00

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.

Illinois Central Railroad Company.

To R. S Chamberlin, Dr.

The above Company, 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.,

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,

Demand, \$100 00, for killing mare.

Summons issued July 30th, 1859, returnable on the 6th day Illlnois Central Railroad Company.) of August ensuing, at 1 o'clock P. M.

Costs in Justice's Court, \$3 50.

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

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,

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

STATE OF ILLINOIS, County of Marion. SS.

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.

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,

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.

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 Ma.ch, 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 was 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. afte from Morion

Ils Could RRCo Robe & Chamberlain Then Nov. 15. 18leso-

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 impreper instructions for plaintiff below.
- 7th. The court refused proper instructions for defendant below.

HAYNIE, for Plaintiff in error.

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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,

Illinois Central Railroad Company.

To R. S Chamberlin, Dr.

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

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,

Demand, \$100 00, for killing mare.

Summons issued July 30th, 1859, returnable on the 6th day Illlnois Central Railroad Company.) of August ensuing, at 1 o'clock P. M.

Costs in Justice's Court, \$3 50.

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

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,

I. N. HAYNIE,

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

STATE OF ILLINOIS, County of Marion. SS.

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.

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 was 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. Where-upon 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.

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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.

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