

No. 8704

# Supreme Court of Illinois

Samuel Arnold, Admr.

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vs.

Ohio & Mississippi R.R.Co.

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State of Illinois  
Marion County

Plead and proceedings had  
in the Circuit Court in  
and for the County of Marion  
and State of Illinois in a  
certain cause heretofore  
pending wherein Samuel  
Arnold administrator of the  
Estate of William Mills  
deceased was Plaintiff  
The Ohio and Mississippi  
Rail Way Company Defendant

Be it Remembered that on the fifth day of  
September A. D. 1865 the above named  
Plaintiff filed in the office of the Clerk  
of the Circuit Court of said Marion County  
his precept for summons against the above  
named Defendant in words and figures following to-wit  
State of Illinois ss. Circuit Court Marion County  
County of Marion March Term A. D. 1865

Samuel Arnold Admin  
Estate of William Mills dec'd

v

The Ohio and Mississippi Rail Way Company Damages \$5000

The Clerk will

issue summons as above to the Sheriff of Marion  
County to execute  
Circuit Clerk  
Marion Co.

A very & Good  
Atty's pro Plaintiff

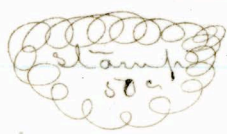
Whereupon summons issued in words & figures following to wit-

State of Illinois ss. The People of the County of Marion State of Illinois to the Sheriff of said County greeting

We do command you to summon The Ohio & Mississippi Rail Way Company if to be found in your County to appear before the Circuit Court of Marion County on the first day of the next term thereof to be holden at the Court House in Salem on the third Monday in the month of March next to answer Samuel Arnolds Admin Estate of William Swills decd In a plea of trespass on the case to his damages \$5000 as he says & hereof make due return to our said Court as the Law directs"



Witness of arob. J. Whance Clerk of our said Court at Salem this 5<sup>th</sup> day of September



A. D. 1864

J. C. Whance Clerk

Endorsed by the Sheriff as follows"

"I have served the within summons by delivering a true copy of the same to James R. Wain agent of Ohio & Mississippi Railway Company - President not found Sept 7<sup>th</sup> 1864"

S. R. Barrigan Sheriff

And afterwards to wit on the 4<sup>th</sup> day of March A. D. 1865 said Plaintiff filed his declaration in words & figures following to wit"

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A D 1865 said Plaintiff filed his declaration herein in words and figures following to wit

"District Court of Marion County  
March Term A. D. 1865

State of Illinois  
County of Marion

Samuel Arnolds administrator of all <sup>and</sup> singular the goods <sup>and</sup> chattels <sup>and</sup> credits which were of William Sniles deceased at the time of his death who died intestate the Plaintiff in this suit - by Avery and Wood his attorneys complains of the Ohio <sup>and</sup> Mississippi Railroad Company a corporation existing under <sup>and</sup> by virtue of the laws of the State of Illinois, who has been summoned to answer said Plaintiff in an action of trespass on the case - To wit that whereas at the time of the committing of the grievances herein - after mentioned to wit - on the first day of October in the year of our Lord One thousand Eight hundred <sup>and</sup> Sixty two to wit - at the county of Marion aforesaid the defendant was a common carrier of goods <sup>and</sup> chattels <sup>and</sup> Passengers for hire to wit - from Salem to Hannibal in said State to wit - at the County aforesaid - and the said defendant was then and then the owner and proprietor of a certain Rail Road which said Rail Road was and still is used <sup>and</sup> operated in the County of Marion <sup>and</sup> State of Illinois

And a certain Locomotive Rail Road Engine  
 and certain Rail Road cars for the carriage  
 and conveyance of goods and passengers to wit  
 from Salem aforesaid to Lawrenceville  
 aforesaid - And the said defendant being  
 such owner and Proprietor of the said Rail  
 Roads and the said Locomotive Rail Road  
 Engine and the said Rail Road cars -  
 the said William Mills deceased in his  
 lifetime to wit - on the day and year to wit -  
 at the county aforesaid at the special instance  
 and request of the said Defendant - was upon  
 one of the said defendant's Rail Road cars  
 as a passenger to be safely and securely  
 carried and conveyed by the said defendant  
 upon a certain journey to wit - from Salem  
 aforesaid to Lawrenceville aforesaid  
 through the Counties of Marion Richland  
 Clay and Lawrence in said State of Illinois  
 And the said Defendant then and there to  
 wit - at the county of Marion aforesaid re-  
 ceived the said William Mills as such  
 passenger and thereupon it then and there became  
 and was the duty of the said defendant to  
 use due and proper care that the said  
 William Mills as aforesaid should be  
 safe and secure while thus a Passenger

upon the said Rail Road bar - and when  
 upon the said Rail Road of the said defendant  
 "and proceeding upon his said journey to wit" from  
 & aforesaid to Lawrenceville aforesaid =

Yet the said Defendant although well knowing  
 the premises did not use due and proper care  
 that the said William Mills should be safely  
 car <sup>and</sup> upon and along the said Rail Road  
 "and securely carried upon the said Rail Road  
 of the said defendant upon the said journey  
 from & aforesaid to & aforesaid = but wholly  
 neglected so to do "and suffered "and permitted  
 the said Rail Road car upon which the said  
 William Mills was then a passenger as  
 aforesaid "and the other aforesaid Rail Road  
 car connected therewith to be so decayed rotten  
 "and insufficient that the same then and there  
 to wit" at the town of Bridgeport in the county  
 of Lawrence "and State aforesaid to wit" at the  
 county of Marion aforesaid whilst proceeding  
 "and being drawn along and upon the said  
 Rail Road of the said defendant by the aforesaid  
 = said Locomotive Rail Road Engine in  
 rapid motion broke, crushed "and fell to  
 pieces, and the same was then and there  
 thrown from "and off the track of the said Rail  
 = Road "and by means whereof the said William  
 Mills as aforesaid then and there without  
 any negligence or want of care upon the

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part of him the said William Mills as aforesaid was killed to wit" On the day and year and at the County aforesaid And the said Plaintiff avers that at the time when the said William Mills as aforesaid was killed as aforesaid he the said William Mills as aforesaid was using all due care and ordinary prudence that while so in the exercise of such care and prudence he the said William Mills was killed as aforesaid And said Plaintiff avers that the said William Mills at the time of his death as aforesaid left him surviving John J. Mills his father and Lydia Mills his mother and Nancy Jane Mills his sister and Evan Patterson Mills - Moses - Swattson Mills - John H. away Mills and David Marion Mills his brothers to whom the damages recoured can be distributed as by statute in such case made and provided and that afterwards to wit on the first day of August A. D. Eighteen hundred and sixty four at Fayette County in said State the said Plaintiff was duly appointed by the County Court of said County administrator of all and singular the goods and chattels, rights and credits which were of the said William Mills deceased at the time of his death and the said Plaintiff being hereinto bound

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the letters of administration which give sufficient evidence to the Court here of the grant of administration to the Plaintiff aforesaid

2<sup>nd</sup> Count

And whereas also at the time of the committing of the injuries and grievances hereinafter mentioned to wit on the first day of October A. D. Eighteen hundred and Sixty two to wit at the County of Marion aforesaid the defendant was a body corporate and was the owner and Proprietor of a certain Rail Road extending through and from Salem in said State to Lawrenceville in said State, which said Rail Road was also and still is used and operated in the County of Marion and State of Illinois and the said defendant was then and there the owner and proprietor of a certain train of Rail Road cars running along and upon said Rail Road for the carriage and conveyance of goods and chattels and passengers for hire to wit from Salem aforesaid to Lawrenceville aforesaid to wit at the County aforesaid and that to wit on the day and year to wit at the County aforesaid the said William Miller deceased in his life time at the special instance and request of the said Defendant went upon one of the Rail Road cars of the defendant aforesaid train of Rail Road cars as a passenger to be safely and securely carried and conveyed



by the said Defendant upon a certain journey  
 to wit from Salem aforesaid to Lawrenceville  
 aforesaid through the Counties of Marion  
 Richland & Way & Lawrence in said State  
 And the said defendant then and there to  
 wit at the County of Marion aforesaid received  
 the said William Mills as such passenger  
 And thereupon it then and there became And was the  
 duty of the said Defendant to use due <sup>And</sup> proper  
 care that the said William Mills as aforesaid  
 should be safe <sup>And</sup> secure while thus a Passen-  
 -ger upon the said Rail Road <sup>And</sup> the  
 said train of Rail Road cars <sup>And</sup> the  
 said Rail Road of the said Defendant  
 And proceeding upon his said journey <sup>And</sup> it  
 then <sup>And</sup> there became and was the duty of  
 the said defendant to keep the track of the  
 said Rail Road and the switches con-  
 -nected therewith in good repair and to keep  
 the said switches securely locked <sup>And</sup> fastened  
 so that no accident or injury might occur  
 to the said William Mills as aforesaid  
 by reason of neglect on the part of the  
 said defendant to keep the aforesaid  
 Rail Road switches so locked <sup>And</sup> fastened  
 as aforesaid. Yet the said Defendant <sup>although</sup>  
 knowing the premises did not use due <sup>And</sup>  
 proper care care in locking and securely

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fastening the said switches attached to the track of the said Rail Road of the said Defendant as aforesaid but wholly neglected so to do - and said defendant carelessly and negligently left a switch at a part of the track of their said Rail Road at - to wit - the town of Bridgeport in the county of Lawrence in said State to wit - at - various points aforesaid loose & unsecured and unattended & unwatched by any person and by reason whereof afterwards to wit - on the day and year & at the County - aforesaid & whilst the said Rail Road car wherein the said William Mills as aforesaid was thus a Passenger as aforesaid was connected with & forming a part of the aforesaid train of Rail Road cars of the said Defendant & proceeding with rapid motion upon & along the said Rail Road of the said Defendant the said last mentioned Rail Road car wherein the said William Mills aforesaid was thus a Passenger was thrown from & off the track of the said Rail Road & overturned and broken in pieces & by means whereof the said William Mills as aforesaid without upon the part of him the said William Mills any negligence or want of care, as and then & there killed to wit - on the day and year

to wit= at the County aforesaid= And the said Plaintiff avers that at the time when the said William Mills as aforesaid was by the neglect of the said defendant killed as aforesaid he the said William Mills as aforesaid was using all due care and ordinary prudence and that while so in the exercise of such care and prudence he the said William Mills was so killed as aforesaid to wit= on the day and year to wit= at the County aforesaid And the said Plaintiff further avers that the said William Mills left him surviving at the time of his death the following persons as his next of kin to wit= John J. Mills his father= Lydia Mills his mother= Nancy Jane Mills his sister and Evan Patterson Mills Moses Patterson Mills= John W. Arvey Mills and David Marion Mills his brothers to whom the damages recovered can be distributed as by statute in such case made and provided and that afterwards to wit= on the first day of August A. D. Eighteen hundred and sixty four at Fayette County in said State the said Plaintiff was duly appointed by the County Court of said County administrator of all and singular the goods and chattels and rights and credits which were of the said William Mills deceased at the time of his death

by the letters of administration now produced and shown to the Court is more fully made to appear"

3<sup>d</sup> Count And whereas also the said Defendant - at the time of the committing of the grievance hereinafter mentioned to wit - on the first day of October A. D. Eighteen hundred and sixty five to wit - at the County of Marion aforesaid was a common carrier of goods chattels and passengers for hire to wit - from Salem in said State to Lawrenceville in said State to wit - at the County aforesaid and the said defendant was then and there the owner and Proprietor of a certain Rail Road, which said Rail Road was and still is used and operated in the County of Marion and State of Illinois and a certain Locomotive Rail Road Engine and certain Rail Road cars for the carriage and conveyance of goods and chattels and passengers for hire to wit - from Salem aforesaid to Lawrenceville aforesaid - and the said Defendant being such owner and Proprietor of such Rail Roads and said Locomotive Rail Road Engine and said Rail Road cars thereupon heretofore to wit - on the day and year to wit - at the County aforesaid the said William Mills deceased in his life time at the special instance and request of

the said defendant went upon one of the  
 aforesaid Rail Road cars upon the said  
 Rail Road of the said Defendant as a Pas-  
 = senger to be conveyed upon a certain journey  
 to wit" from Salem aforesaid to Lawrenceville  
 in said State - And the said Defendant then  
 there received the said William Mills  
 as aforesaid as such passenger, and thereupon  
 it then there became was the duty  
 of the said defendant to use due proper  
 care that the said William Mills as  
 aforesaid should be safe secure while  
 thus a passenger upon the said Rail Road  
 car upon the said Rail Road of the  
 said defendant - and proceeding upon his said  
 journey - And whereas at the time of the  
 committing of the grievances hereinafter  
 mentioned to wit" on the day year to wit"  
 at the County of Marion aforesaid, the said  
 Rail Road car of the said defendant wherein  
 the said William Mills as aforesaid was  
 thus a Passenger then there as aforesaid  
 the other aforesaid Rail Road cars of  
 the said defendant were connected together  
 and were in rapid motion, being drawn along  
 upon of the said Rail Road of the said  
 Defendant by the aforesaid Locomotive Rail  
 Road Engine of the said defendant under

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the guidance direction and control of the said Defendant by the then servants of the said defendant. Yet the said defendant <sup>although</sup> well knowing the premises then and there behaved and conducted in so negligent careless and unskillful a manner in and about the loading management and control of the said Rail Road cars so drawn along and upon the said Rail Road of the said Defendant by the aforesaid locomotive Rail Road Engine and in and about the driving guidance and government of the said locomotive Rail Road Engine that by and through the carelessness unskillfulness and gross negligence of the said defendant in that behalf and for want of due care and proper attention thereof the said Rail Road car wherein the said William Miller as aforesaid was then and there a Passenger as aforesaid, was then and there thrown from and off the top of the said Rail Road to, upon and against the earth with great force and violence and the same was then and there created and broken in pieces by means whereof the said William Miller as aforesaid, without any negligence or want of care upon the part of him the said William Miller, was then

And there killed to wit on the day <sup>the</sup> year to  
 wit at the County of <sup>the</sup> = And the said  
 Plaintiff avers that at the time when he  
 the said William Mills as aforesaid  
 was so killed by the negligence of the said  
 Defendant as aforesaid he the said  
 William Mills was using all due care  
 and that while so in the exercise of such careful prudence  
 and ordinary prudence - he the said  
 William Mills was killed as aforesaid  
 to wit on the day <sup>the</sup> year and at the County  
 aforesaid = And said Plaintiff avers that  
 the said William Mills left at the time  
 of his death him surviving John G. Mills  
 his father = Lydia Mills his Mother = Nancy  
 Jane Mills his sister and Evan Patterson  
 Mills = Moses Patterson Mills = John  
 Nancy Mills and David Marion Mills  
 his brothers to whom the damages recovered can  
 be distributed as by statute in such case  
 provided = And that afterwards to wit on the  
 first day of August A. D. Eighteen hundred  
 and sixty four at Fayette County in said  
 state the Plaintiff was by the County Court  
 of said County appointed administrator of  
 all and singular the goods and chattels  
 rights and credits which were of the said William Mills  
 deceased at the time of his death as by the letters of adminis-  
 tration which the said Plaintiff here brings and produces to this  
 Court is made fully to appear =

To the damage of said  
 Plaintiff Five Thousand Dollars = <sup>whereof he brings</sup>  
 Suit Etc  
 Drey and Wood  
 Atty pro Plaintiff

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To the damage of said plaintiff five thousand Dollars, wherefore he brings suit re  
Avery and Wood attys for Plaintiff

And afterwards To wit" On the 4<sup>th</sup> day of March A. D. 1865 said Plaintiff filed his Oath and Letters of Administration in words and figures following to wit"

State of Illinois ss.

Fayette County

I do solemnly swear

that I will well and

truly administer all and singular the goods and chattels, rights, credits and effects of William Mills deceased and pay all just claims and charges against said Estate so far as his goods, chattels and effects shall extend and the law charge me and that I will do and perform all other acts required of me by law, to the best of my knowledge and abilities"

Sworn to and subscribed before me  
this 1<sup>st</sup> day of August A. D. 1864  
to W. Jerris County Clerk

State of Illinois ss.

Fayette County

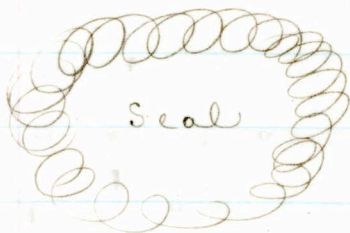
The People of the

State of Illinois to

all to whom these Presents shall come greeting"  
Know Ye that whereas William Mills late of the County of Fayette and State of Illinois died intestate as it is said on or about the 4<sup>th</sup> day of September A. D. 1862 having at the time of his decease personal property



in this State which may be lost or destroyed or diminished in value if speedy care be not taken of the same - to the end therefore the said property may be collected <sup>and</sup> preserved for those who shall appear to have a legal right or interest therein we do hereby appoint Samuel Arnolds of the County of Fayette <sup>and</sup> State of Illinois administrator of all <sup>and</sup> singular the goods <sup>and</sup> chattels, rights <sup>and</sup> credits which were of the said William Smith at the time of his decease with full power and authority to secure <sup>and</sup> collect the said property <sup>and</sup> debts wherever the same may be found in this State - <sup>and</sup> in general to do <sup>and</sup> perform all other acts which now are or hereafter may be required of him by law"



Witness to W. Smith Clerk  
of the County Court in <sup>and</sup> for  
the County of Fayette at his  
office in Vandalia this 1<sup>st</sup> day  
of August - A. D. 1864

to W. Smith Clerk

And afterwards to wit" on the 22<sup>nd</sup> day of March  
A. D. 1865 <sup>and</sup> filed same March 31<sup>st</sup> 1865  
Plaintiff <sup>Defendant</sup> files Pleas, in words  
<sup>and</sup> figured following to wit"

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State of Illinois } Marion Circuit Court  
Marion County } March Term 1865

The Ohio & Mississippi  
Railway Company  
vs  
Samuel Arnold Adm<sup>r</sup>  
of Est of William Mills dec<sup>d</sup> } Trespass on the case

And the said  
defendant comes and says that this  
Court ought not to have or take further  
cognizance of the action aforesaid because  
it says that the said supposed causes of  
action & each and every of them (if any such  
have accrued to the said Plaintiff) accrued  
to the said Plaintiff out of the jurisdiction  
of this Court = that is to say at & in the  
County of Lawrence in the State of  
Illinois & not at or in the County of  
Marion aforesaid or elsewhere within the  
jurisdiction of this Court = and de-  
fendant that there is a Circuit Court regularly  
held in & for said County of Lawrence  
having complete cognizance of the action  
aforesaid. And that de-  
fendant had at the time of  
the commencement of this suit & still has  
agents in said County of Lawrence whom  
service can be had in due form <sup>of law</sup> & this

the said defendant is ready to verify -  
 wherefore the said Defendant prays  
 judgment whether this Court can or will  
 take further cognizance of the action  
 aforesaid"

The Ohio & Mississippi  
 Railway Company  
 By H. P. Burston its atty in fact  
 State of Illinois  
 Marion County ss. H. P. Burston at  
 - lawyer for the above  
 named defendant being duly sworn  
 deposes and says that the above pleads  
 the facts therein stated are true in  
 substance & fact  
 subscribed & sworn to H. P. Burston  
 before me this 22<sup>d</sup> day  
 of March 1865  
 do to above clerk  
 By J. C. Chancery

And afterwards to wit on the  
 30<sup>th</sup> day of March A. D. 1865 Plaintiff  
 filed demurrer to Plea in words & figures  
 following to wit"  
 State of Illinois ss District Court of Marion  
 County of Marion County March Term -  
 A. D. 1865"

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Samuel Arnold Administrator  
of the Estate of William Mills deceased

v

The Ohio & Mississippi Rail Way Company

I respone on  
the lease

And the said Plaintiff answers says that he is  
not bound to answer the said plea of the said  
defendant because he says that the same is  
the matters and things therein alleged are  
not sufficient in law to prevent the Court  
from having cognizance of the action  
aforesaid wherefore said Plaintiff prays  
that this Court may take cognizance of the  
action aforesaid and that the said defendant  
may answer over

Prayer in Demurrer  
vs P. Burston

Avey & Woods  
attys for Plffs

Atty for Deft"

Whereupon the following  
order appears of record

Samuel Arnold Admin  
Estate of William Mills dec'd

v

The Ohio & Mississippi  
Rail Way Company

I respone on  
the lease  
No 98

And now at this day  
To wit" Friday March 31<sup>st</sup> A. D. 1865 Jones

to Plaintiff by Avery <sup>and</sup> his attorneys  
 and the Defendant having been duly served  
 with process herein more than ten days before  
 the sitting of this present term of this Court  
 also comes by Ho P. Buxton, <sup>Esq</sup> its attorney and said  
 Defendant by its said attorney having been  
 = before to wit" On the 22<sup>nd</sup> day of March 1865  
 filed Plea herein. Plaintiff by his attorneys  
 now deannues thereto and the Court heard argu-  
 = ment on said Deannues and takes this  
 case under advisement &c"

And afterwards to wit" at the August term  
 A. D. 1865 the following order appears of record  
 to wit"

"Thursday August 24<sup>th</sup> cause called  
 and by consent continued until the next  
 term of this Court"

And afterwards to wit" at the  
 March Term A. D. 1866 the following order  
 appears of records to wit"

"Wednesday March 28<sup>th</sup> 1866 this cause  
 is called and the Court having at the previous  
 term heard arguments of counsel on Plain-  
 = tiffs deannues to Plea and having taken

same under advisement - doth now give  
 and Plaintiff elects to stand by their deannues whereupon the Court giving  
 judgment for the Defendant <sup>judgment for the defendant</sup> for costs" It is  
 therefore ordered and adjudged by the Court that said defendant  
 do have and recover of and from said Plaintiff their cost  
 in this behalf expended and that execution may issue  
 therefor &c"

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State of Illinois }  
Marion County }  
                          } ss

I do hereby certify  
to be of the true and  
correct copy of the  
pleas and proceedings had  
in the above entitled cause as the same  
appears of record in my office

Given under my hand and  
seal of office at Salem  
in said Marion County  
State aforesaid this 3<sup>rd</sup> day  
of October A. D. 1866.

A. C. Moore Clerk

In Supreme Court  
 To the Nov. Term 1866

State of Illinois  
 Grand Division

Samuel Arnold Administrator  
 of William Mills Esq

vs

The Ohio and Mississippi Rail  
 Way Company

Assignment of  
 Errors

And now comes the said Samuel  
 Arnold Plaintiff in Error and says that in the  
 record and proceedings aforesaid there is no manifest  
 error in this to wit

- I. The court erred in overruling  
 demurrer to plea in abatement
- II The court erred in rendering  
 judgment in favor of Defend-  
 ant vs Plaintiff for costs.
- III the court erred in quashing writ  
 and abating suit
- IV The court erred in awarding  
 execution therefor vs Plaintiff

By reason whereof the said plaintiff prays  
 that said judgment may be reversed

Reuben Woods

Atty for Plaintiff

James Arnold Admr

vs

The Ohio M R W Co

\_\_\_\_\_

Record

\$6.50

Filed Oct. 23-1866

St. Johnston City

paid by B. Wood \$5.00

6.50



# A B S T R A C T.

SAMUEL ARNOLD Adm'r of  
WILLIAM MILLS dec'd.,  
vs.  
THE OHIO & MISSISSIPPI  
RAIL WAY COMPANY.

} PLAINTIFF IN ERROR.  
} **Error to Marion.**  
} DEFENDANT IN ERROR

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

DECLARATION that Deft. was Corporation owning and running Railroad trains through Marion and Lawrence Counties ; that deceased at Marion County became a passenger, and at Lawrence County was killed by negligence of Defendants, etc.	Page. 3,4,5, 6, 7, 8, 9,10, 11, 12, 13, & 14, 15, & 16
COPY of Letters of Administration	15, & 16
PLEA In Abatement by Defts. that the supposed causes of action, and each and every one of them (if any such have accrued to said Plaintiff) accrued to said Plaintiff within the jurisdiction of this Court; that there was a Circuit Court in Lawrence County having cognizance of said causes of action, and that Defendant had agent in Lawrence County, on whom service could be had. Filed March 22, 1865. Rerefiled March 31st 1865.	17 & 18
Plaintiff's demurrer to Defendant's plea and joinder. Filed March 30, '65.	19
Order of Court, March Term, 1865. Case taken under advisement.	20
Order of Court, March Term, 1866. Judgment for Defendant on demurrer, and Plaintiff standing by demurrer. Judgment for Defendant against Plff., for Costs and Execution awarded	20
<b>Assignment of Errors.</b>	
That Court erred in allowing amended plea in abatement to be filed; in overruling demurrer to plea in abatement; in quashing the writ and abating the suit; in rendering judgment in favor of Defendant vs. Plaintiff for costs and awarding Execution therefore vs. Plaintiff.	22

**BRIEF.**

Session Laws 1853. Page 65.  
Illinois Central Rail-Road Company vs. Swearingen, 33d Ill. Page 289.

**BENSON WOOD,**  
*Attorney for Plff. in Error.*

Eggingham Gazette Print.

Arnold - Adm of

vs

C. & M. Railway Co

Abstract & Brief of  
Pliff in error.

Filed, Oct 23 - 1866.

St. Johnstown NY

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.  
First Grand Division. }

The People of the State of Illinois,

To the Sheriff of Marion County.

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Marion county, before the Judge thereof between Samuel Arnold Adams of the estate of William Mills Adams

plaintiff and The Ohio and Mississippi Railway Company

defendant; it is said that manifest error hath intervened to the injury of said Plaintiff

as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at MOUNT VERNON, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Ohio and Mississippi Rail Way Company

that They be and appear before the Justices of our said Supreme Court; at the next term of said Court, to be holden at MOUNT VERNON, in said State, on the first Tuesday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if They shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Ohio & Mississippi Railway Company notice together with this writ.

WITNESS, the Hon. P. H. Walker Chief

Justice of the Supreme Court and the seal thereof, at

MOUNT VERNON, this twenty third day of

October in the year of our

Lord one thousand eight hundred and ninety six

Noah Johnston

Clerk of the Supreme Court.

I hereby return the within writ having served same by reading to the within named defendants Agent. James R. Waiter he being Station Agent of the Ohio & Mississippi Rail Way Company at Salem Marion County also by leaving with the said J R Waiter Station Agent a True Copy of this writ as I am therein Committed this 24<sup>th</sup> day of October A D 1866 The president of said Ohio & Mississippi Rail Way Co <sup>not being found in Marion County</sup> J. W. Griley Sheriff Marion County Illinois

1.00  
1.00  
1.00  
1.20

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SUPREME COURT.

FIRST GRAND DIVISION.

Samuel Strobel - Plaintiff  
vs  
William Wells - Defendant

PLAINTIFF IN ERROR.

The Ohio & Mississippi Railway Company

DEFENDANT IN ERROR.

Scire Facias.

Filed Nov 6 1866  
J. W. Griley



State of Illinois,  
SUPREME COURT,  
First Grand Division.

} SS

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Marion Greeting:

**Because,** In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Marion county, before the Judge thereof between Samuel Arnold Administrator of the estate of William Mills deceased plaintiff and The Ohio and Mississippi Railway Company defendants it is said manifest error hath intervened to the injury of the aforesaid Plaintiff

as we are informed by his complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at **Mount Vernon**, in the County of Jefferson, on the first Tuesday in the month of November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. P. H. Walker Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twenty third day of October in the year of our Lord one thousand eight hundred and Sixty Six.

W. H. Johnston  
Clerk of the Supreme Court.

SUPREME COURT.

First Grand Division.

Samuel Arnold - Adm.  
of Mrs. Mills - dec'd.

Plaintiff in Error,

The Ohio <sup>vs</sup> Mississippi  
Railway Company  
Defendants in Error.

WRIT OF ERROR.

Issued & FILED - Cert.

23<sup>o</sup> 1866 -

A. Johnston Clk



*[Faint handwritten notes and signatures, including a large '1' and '2' in the right margin.]*

*[Faint vertical text on the left margin, including 'State of Illinois' and 'SUPREME COURT'.]*

# A B S T R A C T.

SAMUEL ARNOLD Adm'r of WILLIAM MILLS dec'd., vs. THE OHIO & MISSISSIPPI RAIL WAY COMPANY.	}	PLAINTIFF IN ERROR.  <b>Error to Marion.</b>  DEFENDANT IN ERROR
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<b>Placita &amp; Precipe,</b>	<b>Page 1</b>
<b>Summons directed to Sheriff of Marion County, returnable to</b>	"
<b>March Term, A. D. 1865, Marion Circuit court.</b>	2
<b>Return of Sheriff of Marion County served on Agent of</b>	3
<b>said Company,</b>	

DECLARATION that Deft. was Corporation owning and running Railroad trains through Marion and Lawrence Counties; that deceased at Marion Coun- ty became a passenger, and at Lawrence County was killed by negligence of Defendants, etc.	Page. 3,4,5, 6, 7, 8, 9,10, 11, 12, 13, & 14,
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COPY of Letters of Administration	15, & 16
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PLEA In Abatement by Defts. that the supposed causes of action, and each and every one of them (if any such have accrued to said Plaintiff) accrued to said Plaintiff within the jurisdiction of this Court; that there was a Circuit Court in Lawrence County having cognizance of said causes of action, and that Defendant had agent in Lawrence County, on whom service could be had. Filed March 22, 1865. Refined March 31st 1865.	17 & 18 19 20
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Plaintiff's demurrer to Defendant's plea and joinder. Filed March 30, '65.	19
Order of Court, March Term, 1865. Case taken under advisement.	20

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

That Court erred in allowing amended plea in abatement to be filed; in overruling demurrer to plea in abatement; in quashing the writ and abating the suit; in rendering judgment in favor of Defendant vs. Plaintiff for costs and awarding Execution therefore vs. Plaintiff.	22
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### BRIEF.

Session Laws 1853. Page 65.  
 Illinois Central Rail-Road Company vs. Swearingen, 33d Ill. Page 289.

**BENSON WOOD,**

*Attorney for Plff. in Error.*

**Efingham Gazette Print.**





Arnold - Admt of  
Mills - Pttf in sum

by

W. M. Railway  
Pttf in sum

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Dismissed by Agreement -  
at Costs of Pttf in sum

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Loan to Marine

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Cont bill on Page 179  
Subok "B"

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totally issued hereon

8704