

8470

No. _____

Supreme Court of Illinois

Illinois Central R.R.Co.

vs.

J. F. Chenowith

71641  7

Jackson County Circuit Court State of Illinois

Copy of Invoice.

James F Chenoweth

vs
Grapes & Arms
Damage \$ 2000.

vs
Illinois Central Rail Road Company

The Clerk of the Jackson Circuit Court will please Issue Summons against Defts in the above entitled Cause laying Plaintiffs Damages at \$ 2000. ⁰⁰ Returnable 1st day of ensuing May term

Cogan & Allen
for Plff.

Made April 25th 1861.

James P Watson Clk.

Copy of Summons

State of Illinois

Jackson County

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

We command you, that you summon The Illinois Central Rail Road Company. If to be found in your County, to be and appear before the Circuit Court of said County, on the first day of the next Term thereof, to be holden at the Court House in the Town of Murphysboro, on the 1st Tuesday in the Month of May next; to answer James F Chenoweth.

In a Plea of Grapes & Arms, Damage Two thousand Dollars (\$ 2000. 00) as he says. And hereof make due Return to our said Court as the Law directs.

Witness, James P Watson, Clerk of our said Court, And the Judicial Seal thereof, at Murphysboro, this 25th day of April A.D. 1861.

James P Watson, Clerk

Endorsement on back of Summons,

I Return the within Executed by Reading to William
Mason this the 26th April 1861. and leaving a true Copy
of the within with William J. Mason.

Yrs Coy Shff
by J. W. Sanders. Deputy

At the May term of the Jackson County Circuit Court
Illinois, there appears that there were no proceedings in
said Cause.

Copy of Declaration.

State of Illinois } Oct. Of the October Term 1861
Jackson County } of the Jackson Circuit Court

James F. Chenoweth the Plaintiff in this Suit Com-
plains of the Illinois Central Rail Road the defendant
in this Suit of a plea of *Quasi de et armis* For that
Whereas before and at the time of the committing of the
grievances as by the said defendants ^{hereinafter mentioned} ~~these~~
they the said defendants were owners and proprietors
of a certain Rail Road to wit the Illinois Central
Rail Road for the Carriage and Conveyance of Passengers
from Decatur Illinois to Cairo Illinois and from
Chicago Illinois to Cairo Illinois for hire and reward
to the said defendants in their behalf and the said
defendants being such owners and proprietors of the
said Illinois Central Rail Road as aforesaid, thereupon
hitherfore to wit on the 1st day of January 1860
at the County of Washington and State of Illinois
to wit at the County & State aforesaid at the instance
and request of the said defendants was a passenger
in the Cars of the said defendants to be safely
securely & certainly conveyed from Decatur Illinois

to Carbondale in said State for which conveyance
the said Plaintiff paid to the said defendants the
regular & usual fare on and along the line of said
road for a certain fare & reward to the said defend-
ants in that which said fare was then and there
paid by said Plaintiff behalf to said defendants
and the said defendants then and there received the said
Plaintiff as a passenger in their said Cars running
upon said road as aforesaid; and thereupon it then and
there became and was the duty of the said defendants
to safely and securely carry & convey the said Plain-
tiff from Decatur Illinois to Carbondale Illinois
upon their said Rail Road as aforesaid and in their
said Cars as aforesaid. But the said defendants not
regarding their duty in that behalf did not safely
and securely carry and convey the said Plaintiff
in their Cars and upon the line of their said Rail
Road from Decatur Illinois to Carbondale Illinois
but on the contrary forcibly unlawfully maliciously
& wilfully ejected thrust from and put off
between Station of their said Cars so running upon
said Road the said Plaintiff beating bruising
and doing the said Plaintiff great damage by
their said action in the premises and assaulting
wounding the said Plaintiff by their action as afo-
said; and also by means of the premises the said
Plaintiff became and was sick sore lame and
disordered and so continued for a long space of time
to wit hitherto during all which said time the
said Plaintiff suffered and underwent great pain
and was hindered and prevented from transacting
and attending to his necessary affairs by him during
all that time to be performed and transacted and lost
and was deprived of divers great gains and profits
and advantages which he might and otherwise

would have derived and acquired, and thereby also the
said Plaintiff was forced and obliged to and did
then and there pay lay out, and expend divers large
Sums of Money amounting in the whole to the
Sum of \$ 5000.00 in and about the endeavoring
to be cured of the said Fractures, Bruises, & Injuries
so received as aforesaid; And also thereby the said
Plaintiff was hindered and prevented from continuing
his said Journey and was kept and detained at the
County of Washington and State aforesaid to wit
at the County of Jackson and State of Illinois
for a long Space of time to wit the Space of ten
Days, and during that time then incurred great
expenses in the whole amounting to a large Sum
of Money to wit the Sum of \$ 5000.00 in and
about his necessary Support and Maintenance
to wit at the County and State aforesaid, Whereby
the Action hath accrued to the said Plaintiff
to have and maintain of and from the said
Defendants the said Sum of \$ 5000.00 and there-
in due,

Wm J Allen & Bro
Attys for Plaintiff

Filed Sept 21st 1861
James P Watson, Clk

And afterwards to wit at the October Term of the
Jackson County Circuit Court the following Pro-
ceedings were had.

Tuesday October 8th 1861.

~~And on that day came the~~

James F. Chenneth
vs
Illinois Central Rail
Road Company.

vs
vs
vs
Newspaper & Warms
Monday October 8th 1861.

And now on this day came the Plaintiff by his Attorney W. J. Allen, and the defendants being three times solemnly called came not but made default. It is therefore Ordered by the Court that the Plaintiff have judgment by default against the defendants, and that a jury be called to appraise the damage, whereupon twelve good and lawful men were called being Monroe Martin, William Keller, Sampson Wise, Wm. H. Cox, Dudley Williams, Henry Purdy, Achilles Harris, James Mc Bride, John P. Smith, Francis McCross, David Collins, John Sumner who after being duly sworn to appraise the damage, and hearing of the evidence retired to consider of their verdict and afterwards returned into open Court the following verdict "We the jury find for the Plaintiff and appraise the damage at Twelve hundred and fifty dollars."

It is therefore Ordered and adjudged by the Court that the Plaintiff James F. Chenneth have judgment for and against the said defendants the Illinois Central Rail Road Company for the sum of Twelve hundred and fifty dollars damage together with the costs of this suit herein to be taxed and may have execution therefor.

State of Illinois vs
Jackson County } I James P. Watson Clerk of the
Circuit Court within and for said
County and State. Do Certify that the above and

foregoing is a True and correct Copy of all the Original Papers and the Orders of the Court, entered in the above Cause as appears from the Papers on File in my Office and as also appears from the Records in my Office.

In Testimony Whereof I have hereunto set my hand and Affixed the Seal of my Office at Murphysboro in said Jackson County Illinois this the 27th day of October A.D. 1861

James P. Watson, Clerk

Errors assigned.

- 1st. - The Court erred in rendering judgment by default when the Sheriff's return on the ^{below} summons showed no service on defendants;
- 2nd. The Court erred in rendering judgment against defendants, ^{below} ~~when~~ ^{when} they were not in court.
- 3rd. The Court erred in rendering judgments ag^t

defendants below:

- 1st - Because the Sheriff's "return" was defective & void.
 - 2nd. Because Plaintiff's Declaration was defective, & on its face showed no right of action against Defendants below.
- Haynie & Green,
for Plaintiff in Error.

The Clerk of the Supreme Court First Term Term in
 will make the writ of error in this case a supersedeas
 deors on plaintiff in error amounting to bond
 in the penalty of twelve hundred dollars with
 John R. Payne security, said bond according
 to law - Done at Chambers this 1st day of November
 A. D. 1861
 Sidney P. Wells

Copy of Record

John F. Thorne

18

Wm's Embroidered
 Road Company

James P. Colman

Samuel L. Latham

Filed Nov. 14 1861

W. L. Latham Clerk

Paid by Grant \$500

Wm. Latham

Supreme Ct. 1st Grand Div. S. C.
Nov. 5. 1861

The Illinois Central R. Co.

vs
James F. Chenoweth

Error to Jackson Co.

This was a suit in the Jackson
Circuit Court, an action of trespass vi et armis -
in which James F. Chenoweth was the Plaintiff
and the Illinois Central Railroad Company ^{Defendant}
Judgment was rendered ^{at Jackson County at the October term 1861} in the Circuit Court
in favor of James F. Chenoweth, and the
Defendants in the Court below, bring the case
here to correct errors.

The Clerk of the Sup. Ct. will
issue Writ of Error in the above styled suit.

J. M. Green

for Plaintiff in Error

~~17~~ 7

Dr. C. R. & Co

James H. Chenoweth

Errors to Jackson Co

Receipts

July 14 - 1861 -

N. Johnston M

State of Illinois. }
Alexander County }

Ill. Cen. R. R. Company
vs. Spirit of Error from
J. P. Brown
Chenoweth

W. H. Green being duly sworn,
deposes & says he is Attorney for the Plain-
tiff in Error, in the above styled Cause; and
that he proposes to tender and will
tender a Bond on the part of the
Plaintiff in Error, with Jehan N. Haynie
as security on such Bond. He further
says that said Haynie is worth as
much as \$15000. - in goods, chattels,
lands & Tenements, in his own right, and
unincumbered.

W. H. Green

Sworn to & Subscribed before me this 30th day of
October A.D. 1861.

Jesse, Wm L. Harman, Clerk of the
Circuit Court of Alexander County, Illinois

I know all men by these presents that in the
Illinois Central Railroad Company
and J. A. Haynie are held and firmly bound
unto James Chenoweth in the sum of three
hundred dollars lawful money for
the payment of which well and truly to be
made in hand our selves or Successors heirs
& assigns jointly severally & finally by these
presents writing our names and Seals on
this the 9th day of November A.D. 1861.

The condition of the above obligation is Such
that whereas the Said James Chenoweth died at
the October Term of the Jackson Circuit Court 1861
Recover a judgment against the above bound
Illinois Central Rail Road Company for the
sum of three hundred and fifty dollars And
whereas the Said Illinois Central Rail Road Company
have prayed a writ of Error & the same has
been ordered to issue the made a Supersederas
upon bond being filed to Avise if the Said Illinois
Central Rail Road Company shall well and
truly & without delay prosecute their said writ of
Error with Effect and in case said judgment of
of the Circuit Court is affirmed shall pay
the same & all costs & Damages sustained
by said Chenoweth by reason of the money
being out of said writ then this bond
to be void otherwise to remain in full
force & effect

Given under the hand & Seal, of
the above named obligors on this
9th Nov^r 1861

"Illinois Central Railroad Company"
by J. A. Haynie atty in fact
J. A. Haynie Seal

41

See C.R.R. Co

$\sqrt{\frac{3}{2}}$ Print of Error.

J. Chenoweth

Bond

Filed Nov 13-1861-

A. Solunita Clerk

Carbondale July 26th 1862.
Major Johnston:

Dear Sir:

In the case
of Chenoweth vs. I. C. R. R. Co.,
Error to Jackson Co.,
Superior ordered by
Judge Bruce, last Nov^r,
Execution has been issued
from the Jackson Circuit
Ct. — Please write to
me at Metropolis, let
me know, if you can, how
this has happened. I
am certain I feel a
good

Yrs in haste
W. H. Green.

26 July 4

Dear Mother
I have just received your letter of the 21st

and was glad to hear from you. I am well and hope these few lines will find you the same.

I have not much news to write at present. The weather here is very hot and dry.

I am sure you will be interested to hear that I have just received your letter of the 21st.

I am sure you will be interested to hear that I have just received your letter of the 21st.

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 Jackson 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 Jackson county, before the Judge thereof between

James J. Lepruweth plaintiff and The

Illinois Central Rail road Company

defendants it is said manifest error hath intervened to the injury of the aforesaid Illinois Central Rail road Company as we are informed by their 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 1st Tuesday after The 2^d Monday 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. John D. Catton Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this fourteenth day of October in the year of our Lord one thousand eight hundred and Sixty One.

Wm. Johnston

Clerk of the Supreme Court.

State of Illinois
First Grand Division
SUPREME COURT

To the Clerk of the Circuit Court for the County of [unclear] in the County of [unclear] State of Illinois: Greeting:

SUPREME COURT.
First Grand Division.

*Illinois Central
Rail road Company*
Plaintiff in Error,

VS.

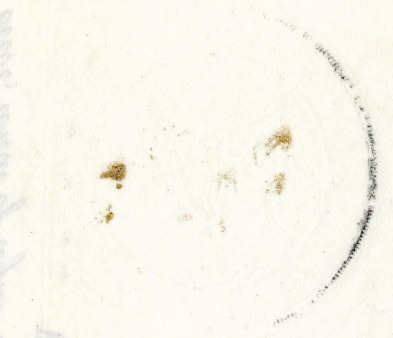
James F. Chewwith
Defendant in Error.

WRIT OF ERROR.

Issued. Made and
Superseded
and FILED. Nov. 14
1861-
A. Johnston Clerk

*This writ of error is made a Supersedeas, and is
to be obeyed accordingly.*

A. Johnston Clerk



*Witness the open papers of the
Clerk of the Supreme Court and the seal
of the State of Illinois, this 14th day of
November 1861.*

James F. Chewwith

IN THE SUPREME COURT OF ILLINOIS,
FIRST GRAND DIVISION.....NOVEMBER TERM, 1861.

A B S T R A C T .

The Illinois Central Railroad Co., }
VS. } Writ of Error
James F. Chenowith.

This was an action of Trespass VI ET ARMIS, brought by Defendant in Error, against Plaintiffs in Error, in the Jackson Circuit Court, to the May term, 1861.

Summons was issued returnable to the first Tuesday in May, 1861, against Plaintiffs in Error, the Illinois Central Railroad Company.

On the back of said summons, was the following endorsement, to wit :

“ I return the within, executed by reading to William S. Mason, this 26th April, 1861, and leaving a true copy of the within with William S. Mason.”

“ WM. COX, Sheriff.
by J. W. Sanders Depty.”

At the May Term, 1861, there were no proceedings in the case.

At the October Term, 1861, Plaintiff below filed his Declaration in Trespass VI ET ARMIS ; and there being no appearance by Defendants below, judgment by default, was rendered for \$1250.

E R R O R S A S S I G N E D .

1. The Court erred in rendering judgment when the Sheriff's return showed no service on Defendants below.
- 2d. The Court erred in rendering judgment against Defendants below, when they were not in Court.
3. The Court erred in rendering judgment where there was no service, the “ Sheriff's “return,” being insufficient and void.

I. N. HAYNIE,
WM. H. GREEN,
For Plaintiff in Error.

P O I N T S R E L I E D O N A N D C I T E D B Y P L A I N T I F F S I N E R R O R .

The service is insufficient, because the writ is against the Illinois Central Railroad Company, and the service required by the statute, in such cases, must be on the President of the Company, if he reside in the County in which suit is brought, or by leaving a copy with the clerk, cashier, secretary, engineer, conductor or agent, of such company ; and the return does not show on whom service was had in this case.

There is nothing in the return to show that Wm. S. Mason had any connexion with Defendants below.

—VIDE Scates' Statutes, p. 243.
Bancroft vs. Speer, 24 Ill. Reports, p. 227.
I. & M. Telegraph Co. vs. Kennedy, 24 Ill. Reports, p. 319.

IN THE SUPREME COURT OF ILLINOIS,

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

ABSTRACT.

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VS. } Writ of Error
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—o—
ERRORS ASSIGNED.

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- 2d. The Court erred in rendering judgment against Defendants below, when they were not in Court.
3. The Court erred in rendering judgment where there was no service, the “ Sheriff's “ return,” being insufficient and void.

I. N. HAYNIE,
WM. H. GREEN,
For Plaintiff in Error.

—o—
POINTS RELIED ON AND CITED BY PLAINTIFFS IN ERROR.

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I. & M. Telegraph Co. vs. Kennedy, 24 Ill. Reports, p. 319.

7 ~~41~~
J. C. R. R. Co

by
Chenoweth

Abstract

Filed Nov. 14 - 1861
N. Johnston City

FIRST GRAND DIVISION

IN THE SUPREME COURT OF ILLINOIS.

NOVEMBER TERM, 1861

That is holding in the matter of the W. & A. R.R. Co. and the same with reference to the
conductor of road, of such company; and the same does not appear to be in the
the County is a private right, or by having a copy and the copy, which, necessarily, requires
the same is a private right, and the same must be in the hands of the County, if it is to be
The same is a private right, and the same is a private right, and the same is a private right.

JOHN H. HAYNE

J. N. HAYNE
J. M. H. CREEK

ERRORS ASSIGNED.

The Court was in reference to the same, and the same is a private right, and the same is a private right, and the same is a private right.

No 7

Ill. C. R. R. Co

my

J. J. Chrowith

error to Jackson

~~8470~~

Dismissed in 1862 -

8470

lost bill on P. 523 -