No. 8663

Supreme Court of Illinois

Ohio & Mississippi R.R.Co.

vs.

John Timlin

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Whereas at the June Term of the Richland Circuit Court, begun and held at the Court House in Olney in the County of Richland and State of Illinois, on Monday the 12th day of June A.D. 1865, and at the 5th day of said Term, being the 16th day of June A.D. 1865, the following proceedings were had and determined, and made matter of Record, to wit:

On the 2nd day of June 1865, the plaintiff filed in said Court the following,

Declaration

In the Richland Circuit Court of the June Term 1865.
State of Illinois
Richland County } ss. The Ohio and Mississippi Rail Way Company, defendants herein, being an incorporated Company in the State of Illinois was summoned to answer, John Tinslin, the plaintiff in this suit of a plea of Trespass on the Case, whereupon the said Plaintiff by John M. Wilson his attorney complains for that whereas the said defendants, heretofore to wit: on the 11th day of June A.D. 1862, in the County of Richland and state of Illinois, were the owners and proprietors of the Ohio and Mississippi Rail Road, which said Rail Road, to wit: the part thereof situate and being in the said County of Richland was then and there open for use for a long space of time, to wit, from the the 11th day of June 1862.

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and had been open for use, and so continued hitherto at the County aforesaid whereby and by force of the Statute in such case made and provided the said defendants became liable to pay for all injuries by them done to horses, sheep, cattle and hogs by the use of said Rail Road upon condition that the said defendants failed neglected and refused within six months after the said Rail Road was open for use, to wit: from and after the 11th day of June 1862. to erect and maintain fences on the sides of said Rail Road to wit, on the sides of that part thereof so open for use in the County aforesaid suitable and sufficient to prevent horses, cattle, sheep and hogs from getting upon the said Rail Road within five miles of a settlement with openings gates or bars at the crossings of said Rail Road, and cattle guards at all such crossings existing at the date of the passage of said Act, or which might thereafter be established suitable and sufficient to prevent horses, cattle, sheep and hogs from getting upon said Rail Road track, except when the proprietors of adjacent lands had already erected fences, or had agreed to do so with said defendants, and except at the crossings of public roads or highways, and within the limits of cities, towns and villages, and except, also where it was not necessary to fence said

Rail Road, yet the said defendants well knowing the premises, but contriving and wrongfully intending to injure and aggrieve the plaintiff in this behalf to wit: on the 11th day of June 1862, and from that date hitherto have wholy neglected and refused to erect and maintain such fences and other guards wherefore and by reason whereof heretofore to wit: on the 22nd day of May 1865, at and in the County aforesaid, and on divers other days and times between that day that day and the day of the commencement of this suit, 1 large hog of the value of fifteen dollars, 1 other hog of the value of eight dollars one heifer of the value of twenty dollars, and one large breeding sow of the value of twenty dollars, then and there the property of said plaintiff of great value to wit: of the total value of Sixty three Dollars; and then and there lawfully feeding and depasturing in and upon the lands adjacent to Rail Road of the said defendants went over and escaped from the aforesaid adjacent lands to and upon the said Rail Road to wit: at a point on the said Rail Road within five miles of a settlement where the owners of the adjacent lands had not erected fences sufficient to prevent horses, Cattle, Sheep and hogs from getting to and upon said Rail Road, nor had they or any

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of them agreed to fence the same with the said defendants, and at a point on said rail road where it was necessary to fence the same to prevent horses cattle sheep and hogs from getting upon said rail road from the adjacent lands and where there was no croping of a public road or highway and without the limits of any City, Village or Town, and the aforesaid hogs, sow and heifer, the property of the said plaintiff so being then and there upon the said Rail Road for want of sufficient fence the said plaintiff avers that the said defendants then and there ran against and upon the said hogs, sow and heifer with great force, and did then and there by a locomotive and train of cars of the said defendants passing along over said Rail Road did bruise wound, cripple and kill the aforesaid hogs sow and heifer to wit: at the County of Richland aforesaid whereupon the said plaintiff says he has been injured, and has sustained damages by means of the premises to a large amount, to wit: to the amount of $63 dollars, and whereas the said defendants whose line of rail road in part lies within the said County of Richland and State of Illinois was by force of the Statute in such case made and provided within Six months after the passage of said act, to wit: Six months after the 11th day of June

1862, the said Rail Road being then and there open for use required to erect and maintain fences on the sides of said Rail Road so open for use, suitable and sufficient to prevent horses cattle, sheep and hogs from getting on to said Rail Road with openings or gates or bars at farm crossings of said Rail Road, and cattle guards at all crossings then existing or thereafter established sufficient to prevent such stock from getting on said Rail Road from the lands adjoining the same, except as provided in said act, that the defendants are not required to erect such fences at the crossings of public roads, and highways, and within cities towns and villages, nor where fences are unnecessary to prevent such stock from getting on the said Rail Road from the lands adjoining the same, nor where the said rail road runs through uninclosed lands lying at a greater distance than five miles from a settlement nor where the proprietors had erected fences, or had agreed with said defendants to do so, and by force of the statute aforesaid so long as such fence and cattle guards should not be made and kept in good repair after the time for making the same, to wit; Six months after the passage of said act, had elapsed the said defendants became liable to pay for all damages done by their agents or engines of said defendants to any cattle horses sheep or hogs

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on said Rail Road Nevertheless the said defendants not regarding their duty in that behalf hath hitherto wholy neglected and failed to erect and maintain such fences. Wherefore the said plaintiff in fact says that on the 22nd day of May 1865, and at divers times since then, and before the commencement of this suit, at a point on said defendants Rail Road in said County of Richland and State of Illinois without the limits of any City town or village, and at no croping of any public road or highway, and where it was necessary to fence and keep the same in good repair to prevent cattle horses sheep and hogs from getting on said defendants Rail Road from the lands adjoining the same, and within less than five miles of a settlement, and where the proprietors of the adjoining lands had made no agreement with said defendants to fence the sides of said defendants Rail Road, and where the proprietors of the lands had not erected and kept in good repair fences suitable and sufficient to prevent such stock from getting upon said defendants Rail Road 1 large hog of the value of $15.00 one smaller hog of the value of $8.00 one large sow with young worth $20.00, and one heifer of the value of Twenty Dollars the property of the said plaintiff of great value, to wit, of the total value of $63.00 was upon the lands

adjoining said Rail Road departing, and on the day and year last aforesaid escaped from said adjoining lands to and upon said Rail Road, for the want of the erection and maintainance of a suitable fence on the sides of said Rail Road to prevent Cattle horses Sheep and hogs from getting on said defendants Rail Road at that point, and whilst the above described hogs, Sow and heifer were then and there upon said defendants Rail Road, the said defendants engine with great force and violence passing over said Rail Road ran upon and against the said hogs sow and heifer while the said engine was in charge of the servants of the said defendants and then and there wounded and killed the above described hogs sow and heifer, the property of the plaintiff aforesaid, wherefore and by reason of the premises the said defendants became liable to pay for the damages so done as aforesaid to the said plaintiff, to wit: damages to the amount of $63.00. Sixty three dollars, and therefore he brings his suit.

John M Welson Atty for pltff.

Upon which was issued the following.

Summons.

State of Illinois
Rockland County } SS

The People of the State of Illinois, to the Sheriff of Said County, Greeting;

We Command You that you summon the Ohio & Mississippi Rail Way Company, if they shall be found in your county, personally 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 Olney, on the 2nd Monday in the Month of June A.D. 1865, to answer John Tinlin in a plea of Trespass on the Case to the damage of said plaintiff in the sum of Sixty three Dollars, as he says. And have you then and there this writ, and make return thereon in what manner you execute the same. (Revenue 50 cts Stamp)

Witness C W Cullen Clerk of our Circuit Court at Olney this 2nd day of June in the year of our Lord One thousand Eight Hundred and Sixty five, Test: C. W. Cullen, Clerk Circuit Court

Seal

By R S Thurman Dpty.

Upon which the Sheriff of said County made the following

Return.

Served the within Summons by leaving a Copy thereof with Pearson, Depot Station Agent, at Olney, the President not being found in the County, June 2nd A.D. 1865

Wm Coventry Sheriff R.C.

On the 16th day of June 1865. the defendant filed in said cause the following,

Plea

State of Illinois } Richland Circuit Court
Richland County } ss June Term 1865.

John Timlin
vs } Trespass on the Case.
O & M R R Co

And the said defendants come and defend the wrong & injury when &c. and say that they are not guilty in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the Country &c

H P Burton, atty for Defts.

On the 16th day of June 1865. was made and entered of record the following,

Judgment,

John Timlin
vs } Trespass on the Case
The Ohio & Mississippi Rail Way Company,

Now at this day come the parties to this cause by their attorneys. Issue being joined; let a jury come. Whereupon came a jury, to wit: William McWilliams, Philip McWilliams, Samuel

Sherman, Abraham Pettleton, John Kuster, Silas Leathers, John P Harmon, James Hankins Robert Smith, John Ferris, Isaac Barnes and N Whitney twelve good and lawful men duly selected tried and sworn a true verdict to render, on the issue joined who after hearing the evidence and argument of Counsel, retired to consider of their verdict, and afterwards returned into open Court the following verdict, to wit: We the jury find for the plaintiff and assess his damages at forty five dollars. Therefore it is ordered and adjudged by the Court that the plaintiff recover of and from the said defendants the sum of Forty five Dollars assessed as aforesaid, together with his costs and charges by him about his suit in this behalf expended, and that he have execution therefor.
And now come the defendants by their attorney and move the Court for a new trial, and, also in arrest of judgment which said motions are overruled by the Court. Whereupon defendants pray an appeal to the Supreme Court of this State, which is allowed, and ordered that they file appeal bond in thirty days from this date in the sum of Two Hundred Dollars with Andrew Darling as security.

Whereupon the Defendants

filed the following, June 16th 1865.

Bill of Exceptions

Be it remembered that at the June Term 1865 of the Richland Circuit Court on the trial of the case of John Tinlin vs the Ohio and Mississippi Rail Way Company, the plaintiff to support the issues on his part offered the following testimony.

Michael Tinlin says my father had three hogs and a heifer killed on the Ohio and Mississippi Rail Road in Richland County Ills. One hog was killed by the Rail road train, last August. One hog last December, and one large Sow with pig was killed last May; the heifer was killed last April. The hog killed last August was worth $12.00. the one killed last December was worth $12.00, and the one killed last May was worth $20.00; the heifer was worth $20.00 They were not killed at a Road crossing, or within the limits of a Town City or Village, and were killed within five miles of a Settlement, and where the road was not fenced.

X Ex. The Sow would weigh 200lbs gross. The hog killed last August would weigh 150lbs gross, and the hog killed last December would weigh 100lbs gross. The heifer was as large as an ordinary two year old. I do not know

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any thing about what pork was worth or stock, I only guess at their value.

James E Cheek says,

I know the heifer pltffs. She was a common ordinary heifer I did not see her killed. I have seen her bones on the side of the rail road where the folks said she was killed.

Hiram Sharp called by defendants said, a sow like the one described would be worth $12.00, The heifer was worth $8.00, and the other two hogs from $15.00 to $20.00

Isaac Barnes called by defts. says, I offered $8.00 per hundred for stock hogs last August and September and could not get them. They were worth about the same last December.

This was all the testimony in the case. The jury returned a verdict for pltff for $ Whereupon the defendants moved the Court for a new trial and in arrest of judgment, which motions were overruled by the Court. to which ruling of the Court in overruling said motions the defendants by their counsel at the time excepted. Whereupon the Court entered judgment against the defendants on the verdict, and for costs. And the defendants present this their Bill of Exceptions, and ask that the same be signed and sealed by the Court and made a

part of the record in this cause which is done

Aaron Shaw (Seal)

Judge 25th Judl. Cir. Ills.

And on the 22nd day of June 1865 the defendants filed the following:

Appeal Bond

Know all men by these presents; That we the Ohio and Mississippi Rail Way Company, principal, and Andrew Darling Security are held and firmly bound unto John Tinlin in the Penal Sum of Two Hundred Dollars, Current money of the United States for the payment of which, well and truly to be made, we bind ourselves, our Heirs and Administrators, jointly severally and firmly by these presents,

Witness our hands and seals this 19th day of June 1865;

The Condition of the above obligation is such, That whereas the said John Tinlin did on the 16th day of June A.D. 1865 in the Circuit Court of the County of Richland Ills recover a judgment against the above bound Company for the sum of forty five Dollars, from which judgment the said Company hath taken an Appeal to the

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Supreme Court of the State of Illinois.
Now if the said Company shall prosecute his said 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

The Ohio Mississippi Rail Way Company
by A P Boyden (Seal)
their atty in fact

Taken and entered into before me in my office this 22nd day of June 1865
A. D. Arline (Seal)
C W Cullen Clerk

Also. on Even date with the aforesaid Declaration was filed the following Account,

John Finlin vs O & M R W Co.

To	1 hog July 1864		15.00
"	1	about Christmas	5.00
"	"	big Sow with pig 22d May	20.00
"	"	Heifer 5th April.	20.00
			$63.00

State of Illinois
Richland County } ss

I, C W Cullen, Clerk of the Circuit Court in and for the County of Richland aforesaid, do hereby certify that the foregoing is a true and complete Copy of the Record in said Cause, as appears from

the Original record and files now in my said Office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my Office in Olney this 8th day of August A.D. 1865.

C. W. Cullen Clerk
By A. S. Thurman Deputy Clk

Assignment of Errors

The Court Erred in overruling appellants motion for a new trial.
The Court Erred in overruling appellants motion in arrest of Judgment.

W. D. Burton
Atty for appellants.

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Record

~~John Tinslin~~

~~vs~~

~~O. & M. R.W. Co.~~

Clerk's fee for Rec. 6 18 6

" " " Postage 8 5,75

O & M R W Co
Appellants
defendants below
vs.
John Tinslin
Appellee

Appeal from Richland

filed Nov. 7-1865.

N. Johnston Cl

The Ohio & Mississippi Railway Co.
To Zophar Case
Publisher "Constitution & Union" Dr.

1865
Nov For printing Abstracts O & M.R.R. Co
vs John Timlin
750 Words @ 30 ¢ pr 100 $2,25

Recd payment Nov 18th 1865
Zophar Case

[8163-9]

O & M Railway Co
vs
John Fenlin

Printers fees $2.20

Supreme Court of Illinois; First Grand Division.

NOVEMBER TERM, 1865.

THE OHIO & MISSISSIPPI RAILWAY COMPANY, Appellants, (Defendants below) *VS.* JOHN TIMLIN, Appellee.	Appeal from Richland County.

ABSTRACT OF THE RECORD.

On the 2d day of June, 1865, the appellee filed in the Richland Circuit Court his declaration against appellants in an action of trespass on the case for killing stock of appellee on the railroad of appellants, and alleging negligence of appellants in not fencing their railroad, as required by law.—*Record, pp.* 1, 2, 3, 4, 5, 6, 7.

Appellants filed plea of general issue.—*Record, p.* 9.

The case was tried at the June Term, 1865, of the Richland Circuit Court, when the appellee introduced the following evidence:

Michael Timlin says: My father had three hogs and a heifer killed on the Ohio & Mississippi Railroad, in Richland county, Illinois. One hog was killed by the railroad train last August, one hog last December, and one large sow with pig was killed last May. The heifer was killed last April. The hog killed last August was worth $12; the one killed last December was worth $12; the one killed last May was worth $20. The heifer was worth $20. They were not killed at a road crossing, or within the limits of a town, city, or village, and were killed within five miles of a settlement, and where the road was not fenced.

Cross Examined.—The sow would weigh 200 pounds gross. The hog killed last August would weigh 150 pounds gross. The hog killed last December would weigh 100 pounds gross. The heifer was as large as an ordinary two year old. I do not know what pork or stock was worth. I only guess at their value.—*Record, p.* 11.

James C. Cheek says: I knew the heifer of plaintiff's. She was a common, ordinary heifer. I did not see her killed. I have seen her bones on the side of the railroad where the folks said she was killed.—*Record, p.* 12.

Hiram Sharp, called by defendants, said: A sow like the one described would be worth $12. The heifer was worth $8 00, and the other two hogs from $15 to $20.—*Record, p.* 12.

Isaac Barnes, called by defendants, says: I offered $8 per hundred for stock hogs last August and September, and could not get them. They were worth about the same in December.—*Record, p.* 12.

This was all the testimony in the case. The jury returned a verdict for appellee for $45, whereupon the appellants moved the court for a new trial and in arrest of judgment, which motions were overruled by the court, to which ruling of the court, in overruling said motions, the appellants, by their counsel, at the time, excepted.—*Record, p.* 12.

The court entered judgment on the verdict in favor of appellee for $45 and costs.—*Record, p.* 10.

Appeal bond.—*Record, p.* 13.

ASSIGNMENT OF ERRORS.

The court erred in overruling appellants' motion for a new trial.

The court erred in overruling appellants' motion in arrest of judgment.

H. P. BUXTON,
Attorney for Appellants.

Brief.

A new Trial should have been granted because;
1st There is no proof that the road had been in operation for six months.
2d There is no proof that appellee owned the property.
3d There is no proof that a fence was necessary.
4th There is no proof that appellants owned or were operating the railroad—

H. P. Buxton
Atty for appellants.

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Abstract

O & M R R Co

vs

John Finlin

Filed. Nov 7. 1865.

A. Johnston Cl

Supreme Court of Illinois; First Grand Division.

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H. P. BUXTON,
Attorney for Appellants.

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H. P. Buxton
Atty for Appellants

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Abstract

O & M R W Co

vs

John Funlin

Filed Nov. 7. 1865.

A. Johnston Clk

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O & M. R. R. Company
vs
John Sinclair

Received for Nonjoinder

Costbill on Page 630 –
Execution for Costs to
Shff. Rutland Dec 14 – 65 –

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