Stratton, Myron L. vs. Harriman, William 1856 Cooper Co. 1st. Cir. 209/6

Old 72/11A

Recovery - Affirmed

Slave John of Harriman willfully set fire to a barn & stable owned by Thos. Lickelider at night where bay $300 stallion of Stratton was
owner of slave is not liable - offence committed a/g stable, not contents of stable

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the first Judicial Circuit in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Cooper County in the Judicial Circuit aforesaid wherein Myron L Stratton was plaintiff and William Harriman was defendant

in an action of Trespass on the Case manifest error hath intervened, to the great damage of the said plaintiff as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the first Monday in July next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the twenty second day of April in the year of our Lord one thousand eight hundred and fifty six

Wm E Dunscomb

SEAL OF THE SUPREME COURT OF MISSOURI

SEAL OF THE CIRCUIT COURT OF COOPER COUNTY

State of Missouri } Ss
County of Cooper } I Benj Tompkins clerk of the circuit court for said county do hereby certify that the execution of the within writ will appear by the Schedule (A) hereto annexed

Given under my hand and seal of said court at office this May 2nd 1856

Benj Tompkins clerk

CIRCUIT COURT COOPER COUNTY MISSOURI

(4.)

State of Missouri }ss
County of Cooper } Be it remembered that on the 11th day of February 1856 Myron L Shatton filed in the office of the Clerk of the circuit court for the County & State aforesaid his certain petition in writing which said petition reads in words & figures following to wit:

Petition

In the Cooper Circuit court
March term 1856

Myron L Shatton = Plaintiff
against } civil action
William Harriman defendant.

Plaintiff states that John a slave on or about the first day of April A D 1855 did wilfully set fire to and burn in the night time a barn & stable of Thomas Lickliter in the county of Cooper and that William Harriman the defendant was the master and owner of said slave at the time he committed said offence. Plaintiff further states that he had in the barn and stable of said Lickliter at the time the same was so burnt by the said slave a bay stallion of great value to wit of the value of three hundred dollars, and that said horse was entirely consumed by said fire and was wholy lost to plaintiff. Plaintiff further states that by reason of the premises and of the commission of said offence by the said slave as aforesaid he has sustained damages to the amount of three hundred dollars for which he prays judgment. Draffen Atty for Plaintiff

Thomas Lickliter agent for plaintiff makes oath & says that he believes the above petition and the matters therein as stated are true Thomas Lickliter

Subscribed & sworn to this 11th day of February A D 1856 before me Henry R Brant JP

Justice fee 25c paid by Plaintiff H R Brant JP.

upon which said petition the clerk of said court endorsed the following writ of summons, which with a separate copy of said petition & writ was delivered to the Sheriff of Cooper County, which said writ reads as follows.

Writ

The State of Missouri to the Sheriff of Cooper County. Greeting: You are hereby commanded to summon William Harriman that he be and appear here in our Cooper Circuit court before the Judge thereof, on the first day of the next term thereof which will commence and be held at the court House in the city of Boonville in said county on the first monday in March next, then & there to answer unto the above & foregoing petition in our said court filed against him by Myron L Stratton a copy whereof as also of this writ herewith accompanies this writ and hereof you fail not and have you there and there this writ.

Witness Benj Tompkins clerk of our said court with the seal thereof hereto affixed at office this February 11th 1856

L.S.

Benj Tompkins clerk
By Geo Ainslie D.C.

upon which the Sheriff of said county, endorsed the following return to wit:

Sheriffs Return

I certify that I served the within Petition and writ on William Harriman by leaving a separate copy of the same at his usual place of ~~abode~~ abode in Cooper County Missouri with a white person a member of his family above the age of fifteen years on the 12th day of February 1856

Pr Emmons Ferry
Sheriff
By George H Bullock
Deputy Sheriff.

And afterwards at the march term of the circuit court of Cooper County Missouri for the year 1856 and while

said court was in session on the 7th day of March 1856 the following entry was made of record in said cause to wit

Record

Myron L Stratton
vs
Wm Harriman

Defendant by his attorney files his demurrer to said plaintiffs petition,
which said demurrer reads in words and figures following to wit:

Demurrer

Cooper Circuit court
March term 1856

William Harriman - Deft
ads
Myron L Stratton - Pltff

The defendant demurs to plaintiffs petition because it does not state facts sufficient to constitute any cause of action
2d Because no cause of action is set forth in said petition. Adams & Stephens for Deft.

And afterwards to wit on the 10th day of March 1856 at the the term last aforesaid of said court, and while said court was in session the following entry was made of record in said cause. to wit

Record

Myron L Stratton Pltff
vs
Wm Harriman deft

The plantiff by his attorney files his motion to strike defendants demurrer from the Record.
which said motion reads in words & figures following to wit:

Motion

In the Cooper Circuit Court
March term 1856.

Myron L Stratton
against
William Harriman.

the plaintiff comes and moves the court to strike the demurrer filed by defendant to plaintiffs petition in this cause from the record for the following reasons. First The demurrer is too general as it does not show wherein the petition of plaintiff is defective.
Second. The demurrer does not distinctly specify the grounds of objection to the petition, unless it does so, it may be disregarded.

Wraffen atty for plff.

And afterwards to wit at the term last aforesaid of said court on the 19th day of March 1856 the following entry was made of Record in said cause to wit.

Judgment

Myron L Shallow plff
vs
William Harriman deft

Now at this day come the said parties by their attorneys and the demurrer heretofore filed by said defendant coming on to be heard and all and singular the premises being seen heard and fully understood by the court It appears to the court here that said plaintiffs petition is not sufficient in law to have and maintain his said action against said defendant, in manner and form as said plaintiff has above alleged. Therefore it is considered by the court that said plaintiff take nothing by his said petition and that he said defendant go hence &c. It is further considered by the court that said defendant recover of said plaintiff his costs & charges in this behalf laid out and expended and that he have execution therefor.

clks Certificate

State of Missouri } ss
County of Cooper } I Benj Tompkins clerk of the circuit court for said county do hereby certify that the foregoing 4 pages contain a full true and complete copy of the Record & proceedings in the

case of Myron L Stratton against William Harriman, as the same remain in my office

Given under my hand and the Seal of said court hereto affixed at office this May 2nd 1856

Benj Tompkins clerk.

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Fees.

Fees for making this record

1250 words & figures, at 10 c per 100	1.25
two certificates & seals	1.00
paid clerk by plff.	2.25

7

13.

Myron L Shatton, pl
vs
William Harriman

from Cooper Circuit
Court.

filed June 21 1887
Wm C Duncomb
Clerk

Stratton vs Harriman

This was an action by plaintiff against the defendant, in order to recover damages for the destruction of the plaintiff's property by the slave of the defendant – The petition states, "that John a slave on or about the first day of April A.D. 1855 did wilfully set fire to and burn in the night time a barn and stable of Thomas Lickliter in the County of Cooper, and that William Harriman, the defendant was the master and owner of said slave at the time he committed said offence – Plaintiff further states, that he had in the barn and stable of said Lickliter at the time, the same was so burnt, by the said slave, a bay stallion of great value, to wit of the value of three hundred dollars, and that said horse was entirely consumed by said fire and was wholly lost to plaintiff – Plaintiff further states that by reason of the premises and of the commission of said offence by the said slave as aforesaid, he has sustained damages to the amount of three hundred dollars, for which he prays judgment –

To the petition the defendant demurred, because it does not state facts sufficient to constitute any cause of

action: and because no cause of action is set forth in said petition - The Court sustained the Demurrer and gave judgment therein for the defendant: the plaintiff thereupon sued out his Writ of Error, and brings the case to this Court -

The question here involves the construction of our statute, making the owner liable for certain offences committed by his slave, by which the property of an other is damaged - The 35 section of the IX Art. of the Act, Crimes and Punishments Digest 1845 provides, that, "Every person who shall be injured by the commission of any offence against his person, as specified in the II article, or against his property, as specified in the III article of this Act, committed by a slave, shall have an action against the Master or owner of such slave, for the time, to recover any damages by him sustained, by the commission of such offence, not exceeding in amount the value of the slave".

The 7 section of the III article is as follows - Every person who shall wilfully set fire to or burn in the night time any house, building, barn, stable boat or vessel of an other, or any house of public worship, college academy, or school house, or building used as

such, or any public building, belonging to the United States or this State, or to any County, City town or village, not the subject of arson in the first or second degree, shall on conviction be adjudged guilty of arson in the third degree". This section embraces the offence charged to have been committed by the defendants' slave - "Wilfully setting fire to and burning in the night time the barn and stable of Thomas Lickleder" - The offence is arson in the third degree - The property against which the offence was committed is the barn and stable of Lickleder: and not the contents of the barn and stable.

The 11 section of this III article, declares that "Every person who shall, in the day or night time wilfully set fire to or burn any goods, wares merchandize or other chattels of another, not the subject of arson in the third degree, or any stack of grain of any kind, belonging to another, or any grain, grass, or herbage, growing or standing in the field, or any nursery or orchard of fruit trees, or any fence belonging to another, or any toll bridge or other public bridge, shall, on conviction be adjudged guilty of arson in the fourth degree" - The punishment of arson, in the third degree

is imprisonment in the penitentiary not less than five nor more than seven years: In the fourth degree, in the penitentiary not more than four years or by imprisonment in the County jail not less than six months.—

The remedy is given for the damage done to the property offended against. Here the plaintiff shews that the property offended against is the stable and barn of Lecklider. The offence set forth as committed by the slave is against the 7th section of the III article and not the 11th section. The defendants slave committed arson in the third degree and not the fourth. We do not think the plaintiff's statement of his cause of action is embraced by the provisions of the third article of the Act and consequently the defendant is not made liable under the Statute.

He is not liable at Common law. At Common law, though the master be liable for the servant's negligence to the injury of another, when doing a lawful act, in his service, he is not liable if the act be wilfully unlawful, unless shown to be done by the Master's authority. In the case of Ellis vs Turner et al.

8 Term Rep. 531. Lord Kenyon said "the defendants are responsible for the acts of their servant in those things that respect his duty under them, though they are not answerable for misconduct in those things that do not respect his duty to them; as if he were to commit an assault upon a third person in the course of his voyage."

"In McManus v. Crickett 1 East. 106 it was considered to be a question of great concern, and of much doubt and uncertainty, whether the master was answerable in damages for an injury wilfully committed by his servant while in the performance of his Master's business; without the direction or assent of the Master. The Court of King's Bench went into an examination of all the authorities and after much discussion and great consideration, with a view to put the question at rest, it was decided that the Master was not liable in trespass for the wilful act of his servant, in driving his Master's carriage against another, without his Master's direction or consent. The Court considered that when the servant quitted sight of the object for which he was employed, and without having in view his Master's orders, pursued the object which his own malice suggested, he no longer acted in pursuance of the authority given him, and it was

deemed, so far, a wilful abandonment of his master's business." This case, says Chancellor Kent, has received the sanction of the Supreme Courts of Massachusetts and New York, on the ground, that there was no authority from the Master, express or implied, and the servant in that act, was not in the employment of his Master. 2 Kent's Com. 260 — Richmond Turnpike Co. vs Vanderbet. 1 Hill's Rep 480 — Wright vs Wilcox 19 Wend. 343 — Jennings vs Rawanaugh 5 Mo. Rep. 26 — Ewing vs Thompson 13 Mo. Rep 132 — Douglass vs Stephens 18 Mo Rep 362 —

It is not important to pursue this point further, as the plaintiff does not contend, that the defendant is liable by the principles of the Common law — He relies alone upon the statute concerning Crimes and Punishments and cites the sections of that act above quoted, and contends that it is only necessary that the petition should show that a slave committed the wrong complained of, that the defendant at the time was master or owner of the slave, and that plaintiff hath sustained damage to his property by the commission of the wrong —

The burning of goods wares merchandize or other chattels constitutes arson in the fourth degree, as specified in the 11 section above quoted – This is a substantive offence in itself and must be so charged, and it can not grow out of arson in burning a barn or stable, which is arson in a higher degree, and punishable in a different way – As before remarked the offence charged as committed by the slave John is arson in the third degree, and is against the barn and stable of Sickli der; not against the horse of a third person happening to be therein at the time – This statute is a highly penal one, and must be construed strictly –

In the opinion of this Court, the offence against the property must be correctly and properly charged, in order to be seen whether it is an offence under the third article of the act, mentioned in the 35th section or not; Here the offence is not the arson in burning goods chattels &c but in burning the barn and stable –

The judgment below must be affirmed –

Judge Leonard Concurring – Judge Scott not present when the case was submitted –

John F. Ryland

Stratton

v.

Harriman

Opinion

Ryland

filed March 14 1857
Wm E Duncan
Clerk

In the Supreme Court
July Term 1856.

Myron L. Stratton - appellant
against
William Harriman Respondent

Error to Cooper Circuit Court -

The appellant sued respondent alledging as his cause of action that respondents slave John had wilfully set fire to and burned in the night time a barn & stable belonging to one Licklider - and that appellant had in the barn at the time a stallion of the value of three hundred Dollars which was consumed by the fire and wholly lost.

The petition needs in these records.

"Plaintiff states that John a slave on or about the first day of April 1855, did wilfully set fire to and burn in the night time a barn & stable of Thomas Licklider in the County of Cooper and that William Harriman the defendant was the master and owner of said slave at the time ~~the said barn was so burn~~

he committed said offence. Plaintiff further states that he had in the barn & stable of said Lickliter at the time the same was so burnt by the said slave a bay stallion of great value to wit of the value of three hundred Dollars and that said horse was entirely consumed by said fire and was wholly lost to plaintiff. Plaintiff further states that by reason of the premises and of the commission of said offence by the said slave as aforesaid he has sustained damages to the amount of three hundred Dollars for which he prays judgment."

To this petition the respondent demurred alleging as causes of demurrer. 1st That it does not ~~contain~~ facts sufficient to constitute any cause of action.
2d Because no cause of action is set forth in said petition."

The circuit court sustained the demurrer and gave judgment against the plaintiff.

Adams & Stephens for respondent -

Points & authorities -

1st. A master or owner is not liable at common law for an injury wilfully committed by his slave without his direction or assent - and especially when the slave is not at the time in the performance of his masters business - See Jennings vs. Kanawaugh 5th Mo Rep. 26. Emery vs Thomson 13 Mo Rep. 132. Douglas vs Stephens 18 Mo Rep 362

Snie vs Trice 2d Bay's Rep 345. Wingis vs Smith 3d McCord's Rep 400. 2d Kent com. 259-260 - 17 Mass. Rep 508-510.

2d The statute which gives a party a remedy against the master or owner of a slave for an ~~injury~~ offence against his property committed by such slave does not cover a case of this kind - See Revised Laws of Mo 1845 Title Crimes & punishments - article 9 Section 35. & article 3. pages 414 - & 355.

The property offended against in this case was the barn and stable of Lickliter and not the horse of the plaintiff - The arson committed

in burning Lickliders barn & stable and not its contents - see section 7 article 3 Crimes & Punishments Revised Laws 1845 page 355 - In such a case Licklider him=self would have no remedy for an injury to the contents of the barn & stable much less would a stranger whose property happened to form a part of the contents. The remedy is given for the damage done to the property offended against and the property offended against in this instance was the barn & stable - and not its contents -

This is a penal statute and ought to be construed strictly, but the most liberal construction would not render the defendant liable in this case.

When goods wares merchandize or other chattles are burnt it constitutes arson in the fourth degree. See section 11 of article 3 above referred to. But this is a substantive offence in itself and must be so charged and it cannot grow out of arson in burning a barn or stable.

which is arson in the third
degree, an offence of a higher
grade, & punished in a different
way.

2 Bays Rep 345
3 McCord's Rep 400
Snie vs Trice Bays Rep -
Wagin vs Smith McCord's

Harriman
ad
Stratton -

Respondents
Brief by Adams
& Stephens.

filed July 2 1856
Wm E Dunscomb
Clerk

Error to the Cooper Circuit Ct.

Myron L Strattan Appellant
vs
William Harriman Respondent

The plaintiff Myron L Strattan brought his suit in the Cooper Circuit Court against the Defendant William Harriman for damages sustained to his property by the act of defendants slave,

The defendant demurred to the petition of plaintiff, and his demurrer was sustained by the Court, The question here then involves the sufficiency of the petition,

J. W. Drofner for the Appellant makes the following points,

1st The petition is sufficient and is not liable, to the objection taken by the defendant

2nd It is only necessary that the petition should show that a Slave Committed the Wrong Complained of, that the defendant at the time was the Master or owner of the slave, and that plaintiff hath sustained damage to his property by the Commission of the wrong, R C 1845 Tit. Crimes & punishments Article 3 Sects 7 and 11 - and Section 35 of Article 9 -

Stratton Appellant
vs
Hanniman Respondent

The Clerk will please
file this brief.
J. W. Draffen
for Appellant

filed June 25 1856
Wm E Dunscomb
Clerk

In the Supreme Court

Myron L Stratton = Appellant
vs
William Harriman = Respondent

Now at this day comes the said Myron L Stratton by his attorney and says that in the said Record and proceedings and in giving the Judgment there is manifest error in this to wit.

1st That by the said Record and proceedings it appears that the Circuit Court gave Judgment for the Respondent, whereas by the Law of the Land Judgment ought to have been given for the said Myron L Stratton Appellant and therefore in this there is manifest error.

Wherefore for the errors aforesaid and for others appearing in the said record and proceedings the said Appellant prays that the said Judgment may be reversed and annulled, and that he be restored to all things which he has lost by reason thereof - and that the Court here proceed as well to the examination of said record and proceedings as of the matters above assigned for error, and that said Respondent rejoin to the said errors &c

Draffen atty for
Appellant

Myron L Stratton
vs
William Hanniman

Assignment of errors

filed July 9 1856
Wm E Dunscomb
Clerk

In the Supreme Court
July Term 1856.

Myron L. Stratton – appellant
vs
William Harriman Respondent
Error to Cooper Circuit
Court –

The Respondent Harriman
comes and says that there
is no error in the said
Record and proceedings
nor in the giving of the
said judgment –
and he joins in Error.
and asks that the said
judgment may be in
all things affirmed –

Smith & Adams
Atty for Respondent –

7

Harriman
ad &
Stratton

Joinder in
Error.

filed July 9 1856

Wm E Dunscomb
Clerk