Steamboat Reindeer vs. Ridgley, Stephen 1857 St. Louis Co. 8th Cir. 225/8

Box 598/6

Affirmed

R owned slave Celiste - mulatto - transported to Alton, IL; daughter of a free woman, expected freedom

1854 act isn't retroactive - still had 12 mo not 6

Judgment by default shouldn't be set aside b/c was S's negligence - had writ & bond

State of Missouri }
County of St. Louis } Be it remembered that heretofore to wit on the Tenth day of September AD 1854 there was filed in the Office of the Clerk of the St. Louis Court of Common Pleas within and for the County aforesaid a certain petition which is in the words and figures following to wit;

(1)

Petition

Stephen Ridgley plaintiff }
vs } St. Louis County }
Steamboat Reindeer } In the Common
Defendant } Pleas Court
October Term 1854

Plaintiff states that heretofore to wit; on the 14th day of September 1854 he was the owner of a certain slave for life called Celeste a mulatto woman of about twenty four years of age and that said defendant, a steamboat used in navigating the waters of this State of which Capt. Bruner was master did on the day and year last aforesaid transport and carry from St. Louis in the County aforesaid to Alton in the State of Illinois said slave woman Celeste without the consent or permission of said plaintiff to whom said slave did and does of right belong whereby the said defendant has forfeited, and became liable to pay to said plaintiff the value of said slave.

Plaintiff avers that said slave Celeste was worth and was of the value of One thousand dollars which sum said defendant has

(2)

never paid to plaintiff, or any part thereof though often requested and demanded, wherefore plaintiff asks judgment for the sum of One thousand dollars being the value of said share with interest & costs, according to the Statute in such case made & provided

Knox & Kellogg
Attys

State of Missouri }
County of St. Louis } The said plaintiff makes oath and says he believes the above petition and the matters therein as stated are true

S. Ridgley

Sworn to & Subscribed this 9th day of Sept 1854 C H Hicks clk

Thereupon Plaintiff filed the following Bond

Affs Bond.

Know all men by these presents that we Stephen Ridgley as principal and Richard Ridgley as security are indebted to the State of Missouri in the sum of Two Thousand dollars for the payment whereof, we bind ourselves our heirs executors and administrators jointly and severally firmly by these presents sealed with our seals and dated at St. Louis this Ninth day of September eighteen Hundred and fifty four The Condition of this obligation is such that whereas Stephen Ridgley is about to institute a suit in the St. Louis Court of Common Pleas by attachment against the Steamboat Reindeer defendant for the sum of One thousand dollars and — cents. Now if the said plaintiff shall prosecute his suit with effect or pay all damages that may accrue to the boat or vessel, or the owners or officers thereof by reason of said attachment or

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any process or proceeding in said suit then this obligation to be void otherwise to remain in full force

S Ridgley (Seal)
Approved, attest; S Ridgley (Seal)
C H Hicks, Clk.

Thereupon issued the following warrant to wit;

Warrant

The State of Missouri
To the Sheriff of St Louis County, Greeting;
Whereas Stephen Ridgley has this day filed in the Office of the Clerk of the St Louis Court of Common Pleas for the County aforesaid his complaint in writing stating that he has a demand against the Steamboat Reindeer for the sum of One thousand dollars and — cents which accrued against said boat on account of Capt. Prince Walker thereof as in said complaint hereto annexed is set forth in all its particulars and which said sum of One thousand dollars — cents is the sum sworn to in said complaint. These are therefore to authorize and direct you forthwith to seize the said Steam Boat Reindeer with her tackle apparel and furniture or so much thereof as may be sufficient to pay the said sum of One thousand dollars and — cents with all costs and detain her until discharged by due course of law. And how you shall execute this ~~warrant~~ make return to our said Court on the first day of the next term thereof to be begun and held at the City of St Louis within and for the County ~~of St Louis~~ aforesaid on the second Monday of October next, and have you then and there this writ

(Seal) Witness Charles H Hicks Clerk of our said Court with the seal thereof hereto affixed at Office in the City of St Louis this 10th

(4)

day of Sept. in the year of our Lord eighteen hundred and fifty Six. C H Hicks clerk.

Thereupon the Sheriff made the following return

Shff's Return

Executed this writ in the County of St. Louis on the tenth day of September A D Eighteen hundred and fifty Six by seazing and taking into my custody the Steamboat Reindeer with her tackle apparel and furniture, which boat was released by me on the same day, bond being given according to the Statute in such case made and provided which bond is hereto attached

James Castello
Sheriff
By S Wochan Dpty.

Which bond is in the words and figures following to wit;

Release Bond.

Know all Men by these presents that we Joseph Brown of the Steamboat Reindeer as principal and R C McAllister as security are held and firmly bound unto Stephen Ridgley in the sum of Two Thousand dollars for the payment of which we bind ourselves our heirs executors and administrators firmly by these presents, Sealed with our seals and dated this tenth day of September Eighteen Hundred and fifty Six.

The Condition of the above obligation is such that whereas the said Stephen Ridgley plaintiff has sued out of the Office of the Clerk of the St. Louis Court of Common Pleas a warrant against the Steamboat Reindeer returnable to the next October term of said Court being on a demand for the sum of One thousand dollars and — cents

(5) Now, if the said ——— shall satisfy the amount which shall be adjudged to be owing and due to the said plaintiff in the determination of said suit together with all costs accruing then this obligation to be void otherwise to remain in full force Joseph Brown. (Seal)
Approved R. C. McAllister. (Seal)
September 10th 1856
C. A. Hicks Clk.

And afterwards the following further proceedings were had in this cause to wit; October Term 1856

Monday October 29th 1856

Default Confs.d and Order of Eng.r

"Now at this day comes the plaintiff by his attorney but the defendant although being duly summoned and solemnly called comes not but makes default, wherefore it is ordered that the complaint herein be taken against said defendant as confessed, and that an enquiry be had herein at the present term of this Court

And afterwards the following further proceedings were had in this cause to wit;

Monday December 1st 1856

Mo to set aside default Overruled"

"The defendants motion to set aside the default herein being heard and by the Court fully understood it is ordered that said motion be overruled"

And afterwards the following further proceedings were had in this cause to wit;

Should be 1856.

Saturday December 13th 1857#

Jury trial & Judgt. for $1000.00/100

Now again comes the plaintiff by his attorney and thereupon come a jury to wit; Wm. Hilgeman John Taylor Michael Collins, George Miller Daniel Hiller H J Hilsdorf Samuel Treadway John A Hart Chas. Bender Henry Schaffer Caleb Harris and Wm. Fine, twelve good

(6)

and lawful men who being duly elected tried and sworn well and truly to assess the damages herein after hearing all the evidence in the cause, upon their oaths aforesaid, say that they assess the plaintiffs damages herein at the sum of One thousand dollars, therefore it is considered by the Court that said plaintiff recover of Joseph Brown the principal and Roger C Mc Allister the security in the release Bond herein the damages aforesaid in form aforesaid as assessed, and also his costs herein expended and have execution therefor

And afterwards the following further proceedings were had in this cause to wit;

Monday January 12th 1857

Mo to set aside Judgt & for a New trial and Mo in arrest of Judgt Ovd

"The defendant's motion to set aside the judgment herein and for a new trial, and its motion in arrest of judgment being heard and fully understood by the Court it is ordered that said motions be and they are hereby severally overruled"

And afterwards on the 23d day of February AD 1857 the following Bill of Exceptions was filed to wit;

Bill of Exceptions.

Be it remembered that on the 20th day of November 1856, the defendant filed a motion & affidavit to set aside the judgment by default & which motion is in these words;

Mo to set aside judgment by Default & affidavit of Geo P. Strong.

George P Strong being duly sworn says he was spoken to on the street by the agent of the said defendant in reference to an attachment against said Boat. But said agent did not know in what Court said attachment was pending, and this affiant examined the return Docket of this Court & the Circuit Court

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of said County and made a private docket of all the causes found therein in which this affiant and his partner were employed as Counsel But this affiant by mistake overlooked the above entitled cause and after such examination supposed said cause must be pending in the United States District Court at Jefferson City Mo This affiant saw no publication in reference to said suit & believes none was made This affiant and his partner A D Strong Esq learned only a few days since that said cause was pending in this Court & that a judgment by default had been taken with a writ of enquiry which is still unexecuted.

This affiant learns from the papers & complaint or petition filed in said cause that this suit is brought to recover the value of a certain negro slave alleged to have been forfeited by reason of a violation of the statute in reference to the carrying & transportation of slaves out of this state, plaintiff claiming in his petition that a slave belonging to him was transported on said boat on or about the 1st day of September 1855 out of this State.

This affiant further states that since he learned of said judgt. by default he has made inquiry in reference to said alleged transportation of said slave and he is informed and believes that if said slave was transported on said Boat out of this State it was without the knowledge or consent of either the Master Commander or Owner of said Boat and that such fact could be made to appear upon a trial of this cause.

This affiant further states that more than

six months elapsed after the time when said supposed cause of action accrued before the commencement of this suit & that the same is barred by the Statute regulating proceedings against boats and vessels under which statute this suit is brought. Affiant further states that the said Steamboat Reindeer was the property of Henry Hotchkiss who resides in New Haven ~~in New Haven~~ State of Connecticut at the time of the alleged transportation of said Share out of this State and that since that time he has sold said Boat to the persons now in possession of her one of whom Joseph Brown has executed the bond required by law in order to release said boat when she was attached up this suit, and that neither said Brown or his Surety on said Bond are especially interested to defend this suit as this affiant believes for the reason that whatever claim might be established against said Boat originating prior to the date of the said sale of said Boat the vendors of said Boat the said Hotchkiss would have to indemnify them against or refund to them any sum of money they might be required to pay on account of such claim. This affiant further states that he & his partner were the regular attorneys & counsel of said Hotchkiss in all matters connected with the said Steamboat during his ownership thereof & that he believes his authority extends to the winding up of all matters connected with the interests of said Hotchkiss in relation to said Boat, and that said Boat owned as aforesaid was in the employ of

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the Chicago Alton & St. Louis Rail Road Company of which Company this affiant and his partner were at the time aforesaid & still are the attorneys and counsel.

Wherefore this affiant in behalf of said Rail Road Company and of said Holchkiss moves the Court to set aside the judgment by default in this cause and to permit the said Holchkiss and the said Railroad Company or one of them to enter their appearance herein and to defend this action

Geo. P. Strong

Subscribed and sworn to before me this 20th day of November AD 1851.

C H Hicks cl

Ridgley vs Steamer Reunder

The above named defendant moves the Court to set aside the default in this cause and permit the owner & employer of said Boat to file an answer & defend this action

Strong pro Mo.

Which Motion the Court overruled & refused to set aside said judgment & permit the defendant to file an answer in this cause. To which decision of the Court overruling said motion & refusing to set aside said judgment & permit the defendant to file an answer in said cause defendant did then and there except.

And afterwards to wit on the day of 1851. said cause was called for the assessment of damages upon the writ of enquiry before the lime awarded. Defendant thereupon moved the court to continue said cause to the next term for the assessment of damages on the ground that by the law of the land the writ of enquiry could

not be legally executed at the term at which the judgment by default was taken

The Court refused to continue said cause and decided that said writ of enquiry should be then executed To which decision defendant then and there excepted

Testimony of of H B Moreland

A Jury was then empannelled and the plaintiff introduced H. B. Moreland who testified that he knew Celeste that she was a bright Mulatto that he had known her for many years. She was very valuable and would bring in Market ten or twelve hundred dollars, that if she were taken to New Orleans she might have brought a great deal more perhaps 1500 or 2000 Dollars as she was a handsome looking girl that he saw her at Chicago after she ran away, when he went there to try to find another negro.

On cross Examination he stated that she was a capable girl good house servant, but did not live with her Master lived with her mother a free colored woman living in St. Louis & was employed as a Chambermaid on Boats

That if she had been led to expect her freedom he did not think it would make her less valuable, would suppose it would have the effect to make her more valuable.

When he said she would probably bring 1500 or 2000 dollars in New Orleans he supposed it would not be as a slave but as a Mistress

Testimony of B M Lynch

B M Lynch for plaintiff testified that he knew the slave Celeste, & considered her worth in this Market a thousand dollars he would have given that for her.

Cross Ex. Would consider a negro who had

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been brot up with the idea of being emancipated less valuable in this Market though it might not hurt her for the Southern Market. If disappointed in obtaining her freedom she would be more apt to run away or be dissatisfied in St Louis where the chances for running away are so numerous would consider that such an idea would make her worth much less than if she had never been led to expect her freedom.

Testimony of Stephen Ridgley

Stephen Ridgley the plaintiff being sworn for defendant testifies that the negro gal Celeste mentioned in the petition was originally the property of Mrs Renaud who owned her mother and Brothers and sisters that Mrs Renaud had intended to emancipate the whole family including the girl Celeste but had died previous to carrying out her intentions that Mr Renaud told him he was unable to liberate more of the family than the Mother and wished to sell the Children, that at the request of Celeste & her Mother plaintiff bought Celeste for the price of $ 800 00 which was considered less than she would have brought if she had been sent to the Southern Market. That Celeste was a very bright yellow girl very smart & capable spoke French & English & was a very competent servant and he considered her worth One thousand dollars, that at the time he bought Celeste she and her Mother promised to make refund to him the money he paid for her, but he had never made any bargain contract or agreement to liberate her upon being repaid the amount of the money paid for her, that there was no definite understanding between them that

Celeste was to be free when that purchase money was refunded; that all his servants knew that if they did well by him he would do well by them that there was no other understanding between them so far as he was concerned, that after he bought Celeste she continued to live with her mother, and they two were engaged as Chambermaids on different Boats, that they made their own bargains with the boats and Celeste was to bring him her wages, but had never earned very much for him, that he knew of and assented to her running on a boat engaged in the trade from St. Louis to New Orleans as a Chambermaid, that on one occasion when the Boat was lying at Cairo in Illinois Celeste came up to St. Louis on the Rail Road from Cairo to St. Louis and after the Boat came up it paid her wages to him that he had also consented to her running on the Missouri River boats and that when he went east in the Summer of 1855 he went to see Celeste and found her still with her mother who had moved from her previous residence to another house in the City and he told her then that she could go on the Missouri River Boats but that he never gave her permission to go on the Alton Packets of which the Reindeer was One, that during his absence Celeste was engaged on the Steamboat Polar Star in the Missouri River trade and that boat paid him some forty dollars for her wages after his return from the East, That during his absence and shortly before his return Celeste ran away and he has

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never seen her since That she never had lived in his family or worked for his benefit except as above stated, that he had never apented to the said negro Celeste going upon any boats except those running in the New Orleans & Mississippi River trade that the New Orleans Boats generally touched at Cairo which was in the State of Illinois and was a free state that he understood that said girl was now in Chicago in Illinois Thereupon the jury found the damages sustained by the plaintiff to be One thousand dollars And afterwards on the 17th day of December 1854 defendant filed the following motion in arrest of judgment,

Motion in arrest of judgment.

The defendant moves the Court to arrest the judgment in this case,
1st Because the petition shows that the suit was not commenced within six Months after the time of the alleged carrying away of the slave of plaintiff
2d Because the Court had no jurisdiction of this cause nor of the defendant in this proceeding
3d Because the whole proceeding was illegal & void

A. D. & G. P. Strong
atty for Deft

Which motion the Court overruled & refused to arrest said judgment to which decision of the Court defendant did then and there except And afterwards on the 17th day of December 1854 defendant filed the following motion to set aside judgment & judgt. &c.

The defendant moves the Court to set aside the judgment in this case & for a New trial

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Mo for New trial

1st. Because the Court erred in refusing to defendant leave to file an answer and to defend this cause.

2d. Because this Court has no jurisdiction of this cause.

3d. Because the damages assessed are excessive & illegal

4th. Because of newly discovered evidence showing the plaintiff has no cause of action against the defendant and ought not to recover, and that defendant has a good and meritorious defense to this action

A. D. & G. P. Strong
Attys for Deft

And the affidavit of Geo P Strong filed Dec 17th 1857.

Affidavit of Geo P Strong

George P Strong one of defendants attorneys in the above entitled cause states that from conversation had with various persons connected as Officers & otherwise with the defendant, after he learned that a judgment by default was rendered in this case, he learned that neither the Master Commander or owner of said Steam Boat Reindeer had permitted the slave of defendant to be carried upon said Boat and that they had no knowledge sufficient to form a belief of her having been carried away on said Boat as alleged in plaintiffs petition or of the truth of any of the allegations of said petition. Since the decision of the motion to set aside the default in this cause this affiant has been informed and believes that the said slave was permitted by the plaintiff to run as a chambermaid on steamboats running to and touching at various points in the State of Illinois. and that at the time said slave

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is alleged to have been transported on said Boat Reuben she had authority from plaintiff to go upon any steamboat she might select, as a free person or to hire herself out upon steamboats as a Chambermaid and that at said time she was allowed by the plaintiff to live with a free colored person and to direct and control her own movements & to employ her time where and in such manner as she might choose.

After this affiant learned that this cause was pending in this Court & that a default had been taken he made extensive enquiries as to the facts and circumstances connected with the transportation of said slave out of the State of Missouri but was informed that the Master & Commander of said Boat knew nothing of said slaves being on board of said Boat at any time and that the owner of said Boat who resided in the State of Connecticut as affiant was informed & believes was wholly ignorant of any of the matters alleged in plaintiffs petition.

This affiant made diligent enquiries elsewhere before the assessment of damages in said cause but without learning the facts above detailed previous to that time. Affiant has however learned since that time the matters and things above set forth respecting the mode in which said slave was employed & the license given to her to go where she might choose and he now believes the defendant has a good and legal defense to this action which it can establish if an opportunity be given to file an

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answer & defend this suit

Geo P. Strong

Subscribed and Sworn to before me this 17th day of December AD 1856.

And when said motion was called defendant by its Counsel stated that it desired the hearing of said motion to be postponed until the affidavit of John A Brunner who was the Master & Commander of the Steamboat Reindeer at the time the said negro slave Celeste is alleged by plaintiff to have been transported out of the State could be obtained. That said Brunner had been absent from St. Louis for some Months previous to the Making of this application and defendant by its counsel had been seeking information in reference to the defense of this suit ever since and had learned since the assessment of damages herein that the testimony of said Brunner was material and would support the second affidavit of defendants counsel to set aside the judgment &c And asked for time to procure said Brunners affidavit, Whereupon the Court remarked that if it should be opinion that the Matters set up in defendants second affidavit should affect the decision of the Court it would permit; the affidavit of Capt. Brunner to be filed Nunc pro tunc.

Thereupon the said Motion was submitted to the Court and by the Court overruled to which decision of the Court overruling said motion and refusing to set aside said assessment of damages & said judgment defendant then & there excepted.

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And afterwards on the 23d day of February 1857 defendant produced the affidavit of said John A Prunes which is in the words and figures following to wit;

Affidavit of Jno A Prunes

John A Prunes being duly sworn says he was Master & Commander of the said Steamboat Reindeer during the Month of September AD 1855 and for some Months prior and subsequent to that date

That he has been recently informed that plaintiff claims in his petition in the above entitled cause damages for the loss of a Negro Woman named Celeste alleged to have been transported from the State of Missouri on said Boat about the ~~[illegible]~~ day of September 1855

This affiant states that no such negro was transported on said Boat at that time or at any other time as this affiant believes with the Knowledge and consent of this affiant or of any person having authority to permit a negro slave to be carried upon said boat. This affiant further states that he has no Knowledge or information that said negro woman was ever transported upon said Boat at any time, or in any manner whatever This affiant further states, that from the strict orders that he had given that no negro should be allowed to go upon said Boat without the Knowledge and consent of this affiant and the great care and diligence which this affiant invariably used to prevent any negro or colored person going upon said boat except upon the clearest proof of their being free or having the consent of their Masters this affiant verily believes that said negro slave of plaintiff was not transported upon

the said boat Reindeer at all, but that if she escaped it was upon some other boat than the Reindeer which was commanded by this affiant or by some other Means.

Affiant further states that he left the command of the Reindeer the spring of 1856 and in the fall of 1856 this affiant went south and has been absent from the State of Wisconsin ever since until the last few days. This affiant knew nothing of the commencement or pendency of the suit aforesaid until since his return which was on the 13th Instant and had no opportunity to communicate with the defendants counsel prior to that time

Sworn to & Subscribed before me this 19th day of February 1857

Jno. A. Brunner

Edwd. E. Allen
Justice of the Peace.

Which affidavit by leave of Court was thereupon filed Nunc pro Tunc.

The defendant prays that this his Bill of Exceptions may be signed and made a part of the Record in this cause which is accordingly done

Samuel Treat Judge.

And afterwards the following further proceedings were had in this cause to wit,

Tuesday February 24th 1857

Affidavit filed and Appeal allowed.

The defendant comes by its attorney and files an affidavit for an appeal herein and on its motion by its said attorney an appeal is allowed it to the Supreme Court from the judgment herein: whereupon the defendant files a recognizance herein and Joseph Brong & Roger C. McAllister as principals and James Meegan and James Beebe as securities in said recognizance

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acknowledge themselves indebted to Stephen Ridgley the plaintiff herein in the sum of twenty One hundred dollars conditioned as is stated in said recognizance.; and said principal and securities are approved by the Court. Which affidavit & Bond are in the words and figures following to wit;

Affidavit for Appeal.

George P. Strong attorney & agent of the above named appellants on his Oath states that the appeal in the said cause is not made for vexation or delay but because this affiant believes that the appellants are aggrieved by the judgment of said Court.

Sworn to before me this 23d February 1857

Geo. P. Strong

C. H. Hicks Clk

Appeal Bond.

Know all Men by These Presents that we Joseph Brown & R. C. McAlister as principals and James Wegan & James Burke as sureties are held and firmly bound into Stephen Ridgley in the sum of Twenty One Hundred dollars for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly and severally firmly by these Presents. Sealed with our Seals and dated at St. Louis this twenty third day of February A.D. 1857

The Condition of the above obligation is such that whereas said Brown & McAlister have appealed from the judgment rendered against them and in favor of said Ridgley in the St. Louis Court of Common Pleas for the sum

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of One Thousand dollars, together with costs. Now if the said appellants will pay all costs and damages that may be awarded against them occasioned by such appeal; and shall prosecute their appeal; and shall perform such judgment as shall be given by the Supreme Court and such as the Supreme Court may direct the St. Louis Court of Common Pleas to give and shall if the judgment or any part thereof be affirmed, comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against them by the Supreme Court, then this obligation shall be void, otherwise it shall remain in full force & effect.

Acknowledged & Approved
Attest
C. H. Hicks.
Clerk

Joseph Brown (Seal)
Roger McAllister (Seal)
James Wagon (Seal)
Jas. Burke (Seal)

State of Missouri }
County of St. Louis } ss I Charles H. Hicks Clerk of the St. Louis Court of Common Pleas within and for the County aforesaid certify the above and foregoing to be a full true and complete transcript of the record and proceedings in the above entitled cause as fully as the same remains in my Office.

In Testimony Whereof I hereto set my hand and affix the seal of said Court at Office in the City of St. Louis this Tenth day of February

A D Eighteen Hundred and fifty Seven
C. H. Hicks. clerk.

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(6)

Oct. Term 1858

Stephen Ridgley
resp.

vs Transcript

Steamboat Reindeer
apt.

Appeal from St. Louis
Court of Common Pleas

Filed 6th October 1857
Wm L Glanville Ck.

N Dole P. Strong

$8.00 hc by N Dole P Strong
Ecd
C W Hicks Ck

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Opg't Mt. 58 / joined / respt. stat / rev. Cuff
Affirmed 18 Dec. 1858 - B. p. 579 /

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Ridgley
against
Steamer Reindeer

In the Supreme Court of Missouri.
March Term 1858.

The said defendant, appellant herein, comes and says there is error in the record of this cause, in this.

1st The court erred in refusing to set aside the default, & permit the defendant to enter its appearance & file an answer in said cause.

2d The court erred in executing the writ of inquiry at the same term at which the default was entered.

3d The court erred in refusing to set aside the assessment of damages, & the judgment thereon, & to permit the defendant to plead to the merits, & have a regular trial herein.

4th The court erred in excluding evidence offered by the defendant upon the execution of the writ of inquiry.

Wherefore defendant prays that said judgment may be reversed, & the cause remanded, for a new trial &c.

N. D. & G. P. Strong
Attys for Appellant.

Respondent comes and says that there is no error & the record

Vinton Kelly [illegible]

Filed 4 Nov. 1858.
W. S. Glanville, Ck.

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Ridgley
vs
Steamer Reindeer

Assignment of Errors.

Filed 15 March '58
W S Glanville
Clk

N. D. & G. P. Strong
Attys of Appt.

No 89

Stephen Ridgley Reeft
v
Steamboat Reindeer
Appellant.

In Sthn Supreme Court
Octr Term 1858

This action was instituted to recover of the Appellant the value of a slave taken from the State of Missouri to the State of Illinois. The right of action is created by act of the Legislature of the State of Missouri found on the 1477 page of the Revised Statutes of the year 1855 Sec 32. The warrant was issued September 10th 1856, on that day the Boat was seized, and gone land and was released.

On the 29th day of October 1856 a default was entered in the case. On December 1st 1856 a motion was made to set aside the default which was overruled and damages were assessed December 13th 1856. An appeal was taken on the 24th day of February 1858 and a transcript of the record was filed in this Court on the 6th day of October 1857.

When the case was called for the assessment of damages Appellant made an application for a certain venue which was overruled. He also filed his motions for the assessment of damages and in arrest of judgment which were overruled and the case is brought by appeal to this Court.

Vinnie & Kelly
Cttys for Respondent

No 89
In the Supreme Court
Octr Term 1858

Stephen Ridgley
Respondent
"
Henry Bert Reinders
Appellant
Statement of case
Vince & Kelly
Atty for Rest

Filed 5 Nov. 1858.
W. H. Glanville
Clk

No 89

Stephen Ridgley
Respt

In the Supreme Court

Steamboat Reindeer
Appellant

Oct Term 1858

The Respondent contends that the Court committed no error in refusing to set aside the judgment by default rendered in this case. The default was not entered for several weeks after the commencement of the Term of the Court to which the case was returnable. Nor was a motion to set the default aside made until the case was set for the assessment of damages. A want of all diligence on the part of the appellant is manifest from this continued neglect

The affidavits on which the Appellant relied to induce the Court to set aside the default were wholly insufficient for this purpose. They do not account for the want of attention to this case nor do they state substantial merits. They rather express the hope that if the defendant has been to answer something may turn up that will relieve the defendant from liability

If negligence be apparent in not

filing an answer to the petition in this case then it is apparent that such diligence was not used in preparing for the assessment of damages or would entitle the defendant to a continuance of the cause. The only question to be determined by the jury was the value of the negro when every end it is not pretended that the defendant derived any additional evidence upon this question

There is nothing in the point that the assessment of damages could not be had at the return term. The warrant was issued the Bost seized and land given on the 10th day of September 1856 more than twenty days before the return day of the warrant. All such cases are by law tried at the return term as in all cases in St Louis County where there has been personal services twenty days before the return day of the process issued

It was not necessary to institute suit within six months from the time the appellant took away the negro. From the very nature of the case of the suit must be instituted within six months of the time when the wrong was done, oftentimes the guilty would escape unhelpful of justice. The fact ~~not~~ to be proved not arising out of contract but of

a wrong done, and oftentimes secretly done as to time may be of difficult proof

The Statute which provides for the recovery according to the provisions of an act entitled "an act concerning lost and repeals" only refers to the last named act as designating the proper method to be adopted in enforcing plaintiffs claim and subjecting the lost to the penalty prescribed by Statute. It does not refer to the act or regulating the time within which suit must be brought to enforce the penalty. See Rev Statute of 1855 page 1477 Sec. 32.

The liability imposed on the defendant is in the nature of a penalty for a wrong done. The Statute limiting actions brought to recover a penalty is found in page 1048 Rev Statute of 1855 Sec 4, this Statute limits the right of action to three years

The Statute of limitations is must be taken advantage by answer and not by demurrer or motion in arrest of judgment 19 Mo 63 Smith et al v Dean

The language employed in limiting the time within which actions must be brought under the act concerning lost and repeals shows that it was not intended to apply to actions brought to recover a penalty. Rev Statute page

No 89
In the Supreme Court
October Term 1858

Stephen Ridgley
Respondent
as
Stewart Remedier
Permits & authorities
relied on in by Respondent
Vance & Kellogg
Attys for Respondent

Filed 5 Nov. 1858.
W. F. Glanville
Clk

313 Sec. 42

Vance & Kellogg
Attys for Respondent

Stephen Ridgley
vs
Steamboat Reindeer.

Supreme Court of Missouri

This was an action by the plaintiff vs the Steamboat Reindeer, for the penalty prescribed in the 31st Section of Art. 1. of the Act. Concerning Slaves" found in 2 Rev. Stat. 1855. p. 1018.

The petition was filed September 10. 1856 and alleges that defendant carried away the slave of plaintiff named Celeste on the 14th Sep. 1855. and took her out of the State. that her value was $1000.00 for which he asks judgment.

Rec. p. 1. & 2.

On the twenty ninth day of October 1856. a default and writ of inquiry were taken,

Rec p. 5.

Before this writ was executed, the owner of the Reindeer came in and moved to set aside the default, and for leave to defend the action, and filed an affidavit in support of this motion. The Court however overruled the motion,

Rec. p. 5. for the motion and affidavit

see pp. 6. 7. 8. 9.

The cause was ~~set~~ called for the execution of the writ of inquiry on the 13th Dec 1856.

during the same term at which the default was taken. Defendant moved to post pone

the execution of the writ, & continue the cause until next term. p. 9. of Rec.

This motion was overruled. A jury was impannelled, & the writ of inquiry was executed. The jury assessed the damages at ~~$~~ $1000.00 & final judgment was rendered for the amount, p. 6. of Rec.

p. 6.

Defendant moved to set aside this judgment, & for leave to file an answer, & for a trial of the cause, and also in arrest of judgment & filed two — affidavits in support of the motion, for new trial. p. 13. of rec. for affidavits

see p. 14. & seq. The Court overruled the motion, and the defendant having filed a bill of exceptions brought the case to this Court by appeal.

~~Upon the assessment of damages, the Court was asked to instruct for Pt. ff. defendant as follows.~~

The first affidavit in support of the motion to set aside the default, made by the Counsel & states in substance that he was informed on the Street by an agent of the Steamboat Reindeer, that a Suit had been brought against her, & requested to attend to it. That the agent did not know in what Court it had been brought.

That upon this information, the Counsel examined the dockets of the St Louis Circuit Court, & also ~~that~~ the Court of Common Pleas, and did not find the Cause; that he then concluded that the Suit had been brought in admiralty, in the United States District Court at Jefferson City, Missouri, the next term of which would not be held until June following.

That it was the intention of the defendant to defend the Cause, and that the failure of Counsel to find it, on the dockets of either of the State Courts, was the only reason why an answer was not filed.

The affidavits of the Attorney of defendant, & of John A. Brunner, filed in support of the motion for new trial, ~~go~~ tend to establish that ~~defendant could probably prove~~ the negro woman was never taken off by the Boat-claim, at any rate

that she was not taken away with the knowledge or consent of either the Master, Commander or owner, or of any person authorized to give any consent; & that the owner was a non resident, living in a remote State.

And further that the Negro woman had been allowed to hire her own time; lived separate from her Master, had never lived with him, or in his family, but lived with her Mother who was free; & was allowed to employ her time as she chose; that with the knowledge & consent of her Master she had hired herself on Steam boats running up the Missouri & to New Orleans, as a Chambermaid, & had on one of these trips, been detained by ice at Cairo in the State of Illinois, for some time & had then travelled on the Rail road through the interior of that State from Cairo to St Louis.

That she was permitted by her Master to come and go as she pleased, and during the Summer, in which she escaped, ~~she~~ her Master had gone to the East to spend the Summer, leaving her with this free Negro her Mother, under the Care of no white person, with permission to run on the river as a Chambermaid.

The testimony of Plaintiff himself shows all these facts, and also shows enough to raise the presumption that he never expected to claim or exercise any other ownership in this negro, than to en-

deavor to get back $800.00 which he had advanced for her. upon the promise of herself & Mother to work and refund the money to him. in order to prevent her former Master from selling her to a trader to go to New Orleans. He states that although she was a very capable house servant. he had never employed her at all in his family. and had never exercised over her, the rights of a Master. but had permitted her to make her own bargains. & virtually to act as she chose.

See Ridgleys testimony. P. 11 of Rec.

Defendant - the Appellant - makes the following points.

The Court should have set aside the default & permitted the defense to be made. And should have set aside the final judgment & permitted an answer & a regular trial.

Although the granting of a new trial, or setting aside the default - is a matter of discretion in the Court below; that discretion must be exercised in a reasonable manner.

The Statute under which plaintiff proceeds is a penal Statute & the Court should have been liberal, in giving the defendant - or its owner, the opportunity to show that he had not incurred its penalty. If the facts stated in these affidavits could be established, & part of them are established by the evidence of the plaintiff, who was examined as a witness, upon the assessment of damages, no judgment ought to have been received.

If the Slave secreted herself on the boat, & went away upon it without the knowledge of the officers or owners, the penalty ought not to been

forced. In Price vs Thornton, 10 Mo. R. 136. on page 140. Justice Napton, delivering the opinion of the Court, says. "These Statutes being penal in their character, must be strictly construed, and an unintentional violation of their provisions, we suppose, was not designed to be punished".

10 Mo. R. 136.

Much more if she never went away at all, upon the Reindeer. And there was not a particle of proof, that she was carried away on that Boat. The legal effect of a default, in a case where there was no personal service, nothing but constructive notice, is all the plaintiff has to establish the guilt of deft.

From the affidavits & the evidence of Plaintiff it appears that the Slave was permitted to go on the river to the State of Illinois, where upon every trip she was probably on the soil of a free State with abundant opportunities for escaping.

Did not this conduct of Plaintiff amount to a general consent or permission on his part, for this woman to go where, & upon what Boat she chose. If it did, then he is not entitled to the penalty

2 Rev. Stat. 1855. p. 1018.

And more than that, he permitted or suffered her "to go at large upon the hiring of her own time, & to act or deal as a free person, in violation of Sec.

Sec. 7. of the same law, and was thereby guilty of an offence, and a wrongful act, which contributed directly, & greatly, if it was not the principal cause of the loss of his Slave.

2 Rev. Stat. 1835, p. 1472. Sec. 7.

The same provision, is found in the Rev. Stat. 1845, p. 1014, s. 7.

The Plaintiff ought not to be protected from the consequences, to which his own wrongful conduct has contributed.

The lien against the Boat was discharged by the failure of the Plaintiff to bring his action, within six months after the cause of action accrued. And the Court had no jurisdiction of the subject matter of this suit after that time.

1 Rev. Stat. 1835 Sec. 42. p. 313.

This remedy by suit vs the Boat is a special one existing only by virtue of the Act concerning Boats & Vessels, and can only be enforced according to the strict provisions of that Act. It is embraced in the 4th Class of Cases in which a lien is given vs Boats & Vessels. by that Act. Ib. p. 304. Sec. 1.

The provision of Sec. 42. is not in the nature of

a Statute of limitation, giving a defense, which may be waived. It limits the jurisdiction of the Court. If the action is not commenced within six months, the lien is gone, it does not exist; & no consent of the defendant, or omission to plead that section can give the Court any power to enforce a lien which does not exist.

Before the plaintiff can maintain his action at all, he must show affirmatively that it was brought within six months, after it accrued. In this case the petition of Pltff. shows that nearly a year elapsed before he began this suit.

But it was contended in the Court below that, as the action accrued before the passage of the act of 1855, limiting the lien to 6 months: the plaintiffs right is not affected by it, or that at least he has six months after the passage of the last act, during which he may bring his action.

This might be so, if this were a common law proceeding, or an ordinary Statute of limitations But it is not. It is rather in the nature of a criminal Statute. The plaintiff is seeking to enforce a penalty, not a common law right, nor a right acquired by contract.

The Legislature could undoubtedly

repeal that act at any moment of time, & all rights of action for that penalty, would be gone. There can be no vested right to a fine, or penalty, before it has been imposed.

The Legislature might have enacted that there should be no penalty or lien against any Boat, for such a cause. And all liens would instantly cease. The penalty could not be enforced for previous offenses, any more than in the case of any other crime. Even after an indictment found, while the prosecution is pending, if the Legislature repeals the act, under which the prisoner is indicted, he must be discharged.

So in this case; The Legislature may prescribe the time within which the penalty may be recovered, and they may alter that time at pleasure, or annul the act which gives the penalty, altogether.

The common law remedy, is not affected, or prejudiced by this act, or by the recovery of the penalty. Though the plaintiff can only have a lien on a Boat, for six months after the offence has been committed, he may sue in trespass, & recover his damages. That is a right which may be said to be vested, & cannot be taken away, or cut off, by an act, passed after it accrued. But the action against a Boat, can only be maintained under the Statute concerning

"Boats & Vessels", & in strict accordance with its provisions.

The appellee ~~court~~ plaintiff below contends that the six-months clause does not apply, because this action is given by another Statute, & the act concerning "Boats & Vessels," is only referred to, "as designating the proper method to be adopted in enforcing plaintiff's claim, & subjecting the Boat to the penalty prescribed by Statute."

The Court will observe that the Act concerning Slaves, gives to every owner of a slave unlawfully carried away, three remedies. 1st his action for a penalty, vs the Master or owner of the Boat.

2d An action is and a lien upon the Boat, for the penalty.

3d It is common law remedy, for the tort.

The first would undoubtedly be limited by the general Stat. of lim. in relation to actions for a penalty, which is 3 years.

The second, is expressly given by, and referred to the act, concerning "Boats & Vessels"

If not brought in strict accordance with the provisions of that act, & in time the time limited how can it be brought at all.

No other law gives the action, ~~at all~~. How then can it exist, when by the terms of that act, ~~it~~ the lien is expressly discharged.

The party wronged has his election, & may sue the owners or Master for this penalty, at any time before three years have elapsed, or he may sue the boat by name, & enforce a lien, provided he does so, within six Months after the wrong is committed.

In both the foregoing cases he recovers, not the damages, he has sustained, but a specific penalty, arbitrarily fixed by the Legislature, & which might have been with equal justice, & perhaps greater propriety given to the State, & which may at any moment be changed in its amount, or in the person who shall recover it, or be absolutely taken away, and no injustice is done to any one. for there still remains to the party injured, the Common Law Remedy, in which he can recover all the damage he has actually sustained,

Hence the appellee has no right to complain if, in this case his long delay has occasioned the loss of the penalty, or, in other words this Court should decide that he had not pursued the course indicated under the Statute to secure it. He can still sue in trespass, & recover all he has lost.

The execution of the writ of inquiry was premature. The Statute expresly provides that in every case except in a suit upon an instrument of writing, the "inquiry of damages shall be made at the term next after the term ~~next~~ in which such interlocutory judgment shall be rendered." a provision evidently favoring the setting of the default aside.
Rev. Stat. 1855. p. 1280. S. 10.

The court below refused to let this execution of the writ of inq. of damages be continued to the next term.

There were no such laches on the part of defendant, which ought to be visited with the serious consequences of a default, in such a case as this, one of which is in law an admission of the cause of action, that is, the the commission of the Crime, for which the penalty is imposed, leaving nothing for plaintiff to do, or defendant to resist, but the establishment of the quantum of that penalty, fixed by the value of the negro.

It is peculiarly a case, where the plaintiff ought to be held to strict proof. He does not seek reparation, for damages sustained, but he demands a Statutory penalty, the recovery of which does not prevent his recovering the damages actually sustained by the ordinary action of trespass.

Surely, a Court, administering the law upon enlarged principles of justice, ought to have exercised its discretionary power to set aside a default in such a case, with liberality, so as to give a party, charged with an offense, the penalty for which was a thousand dollars, a fair trial, and an opportunity to be heard in his own defense. But such was not the course of the Court below in this cause. Although the affidavits were sufficient, as far as negative testimony could go, to make it exceedingly probable that the defendant was not guilty, and although no proof was adduced by plaintiff, who should have been held to the burden of making out his case affirmatively, to show that defendant was guilty, yet the Court steadily refused every application to let the case be tried upon its merits.

The course pursued by the Common Pleas Court seems the more uncalled for & unreasonable, in view of the fact that the motion to set aside the default, was made, long before the writ of inquiry was executed, some six or eight weeks. So that no time would have been lost, or right of plaintiff abridged in the least, by granting the motion.

This Court will observe that this is not a case, where the defendant could under

ordinary circumstances, establish his innocence, affirmatively. If the negro of plaintiff, ran away secretly, unless a Boat, should happen to be able to show that she went on some other Boat, or by some other ~~[illegible]~~ route, it would be almost an impossibility to show affirmatively, that she did not go upon any particular Boat, that happened to be running from this port at, or near the time of her escape.

The defendant's affidavits go to show that the probabilities are very strong in favor of her innocence,

1st The rules of the Boat, & the constant care and practice of her Master, Capt Bruner, to permit no negro to go on the Boat without knowing that she or he had permission or a right to go, coupled with his statement of his belief, from his own knowledge, & from his inquiries, that this negro did not go, on that Boat, give good ground to suppose that she was not carried away on the Reindeer.

2d The culpable practice of her Master, in permitting her to hire herself on Boats, as chamber maid, where she was often in a free state, and had daily opportunities for escaping, render it exceedingly probable that she did embrace one of these numerous opportunities, thus furnished by her Master, to

make her escape, without ever being on the defendant. the St. Bt. Reindeer.

What is this want of diligence of which Plff's Counsel speaks. & which is to be visited with such severe penalties. to the defendant.

It is simply that deft's Counsel. in looking over a docket. containing perhaps. a 1000 cases, by mistake overlooked a single case. & concluded, that the cause was in another Court. not meeting for several months. & therefore failed to put in an answer.

It would be strange indeed. if an oversight. so easily made. & so difficult to avoid. should debar a party charged with a crime or misdemeanor. or an act to be visited with a heavy penalty from his right to make his defense. & much more when his application for that privilege was made long before. a final judgment had been recovered.

It was a very natural conclusion. that the case was in the Admiralty Court. for about that time. parties were running to extremes. in their attempts to bring every case. in any way connected with Boats. or Navigation. into the Admiralty Court.

It availed nothing to defendant. that plaintiff did not take his default. for several weeks after he could have taken it. Defendant did not know

the Case was in that Court; & consequently could not be expected to file an answer.

The Motion to set aside the default should have been the more readily sustained, from the fact that there was no personal service in this case. It was a proceeding in rem, & the only party interested to defend the action, was a 1000 miles & more from the place where it was brought, & knew nothing about it. The parties in possession of the Boat, ~~after~~ when she was seized, were purchasers of her, after the time of the alleged commission of the offense. And it would not be difficult to show that, if they had a responsible vendor, it might be greatly for their interest to let the boat be condemned & sold.

For these reasons defendant's counsel asks this Court to reverse the judgment of the Court below, to set aside the default, & permit the defendant to file an answer, & defend this Cause.

Geo. P. Strong
Atty for Deft.

Supreme Court
Oct. Term 1888.

Stephen Ridgley
vs
Steam Boat Reindeer

Argument for Defendant

Filed 2 Decbr. 1888.
W. H. Glanville Cl.

Geo. P. Strong
Atty for Deft.

Ridgeley v. S.B. Reindeer

This suit was brought on the 10th Sept. 1856 – on a cause of action alleged to have accrued on the 14th Sept. 1855.

The 42 section of the act concerning boats & vessels, in force when this suit was brought, required all suits upon liens, given by the act, except those enumerated in the first clause (of which this was not one) to be commenced (in St Louis county) within six months. Before this law took effect, twelve months were allowed for suits of this character. The question is, whether the ~~act of~~ 42. s. of the act of 1856. applied to this case.

It is very clear that if this was an ordinary civil action, & not one for a penalty, it was not barred; – because it is not necessary in order to give reasonable effect to the statute of 1856 to give it any retrospective operation. As the statute did not prescribe any time, within which suits, upon past causes of action, & not then barred by any existing statute, should be barred, the reasonable intendment must govern that these acts were designed to be entirely prospective, & was not intended to cut off causes of action which were not then barred by previous statutes. Any other construction would lead to results clearly not contemplated by the legislature, & which, if foreseen, would of course have been provided for.

On the last day of April, the day before the Revised Code of 1856 took effect, Ridgeley had a cause of action which was not barred by any statute then in force. On the contrary, he had until the 14th of Sept. 1856 within which to bring his suit — if the Revision of '56 & the 42nd section be applied to his case, his remedy was not merely affected, but it was entirely cut off for the 6 mos. had entirely expired. This was evidently not the intention of the law. Where the Legislature intend to legislate upon past causes of action, as they may do in the opinion of some, they would of course give a reasonable ~~with~~ time after the passage of the act, within which to bring suits upon them.

These observations are made upon the assumption that ~~that~~ there was nothing peculiar in this action, distinguishing it from ordinary suits on contracts. It is urged, that admitting the law to be as above stated, it ought not to be applied to this case, because it is a suit for a penalty, — that the legislature has a right to repeal a law giving a penalty at any time, without just cause of complaint to any one; — that there is no vested right in a penalty, as there is in a contract; — & therefore a strict & literal construc-

tion may with propriety be given to this 42nd section in the case now under consideration. It is no doubt true, that there is no vested interest in a penalty & that the legislature may repeal the law which gives it, at any time without affecting the rights & interests of any one, but in this case, they have not in fact repealed the penalty - nor have they in any respect changed the law as it stood before on this subject. The 42. section applies in general terms to all the cases enumerated in the second, third & fourth clauses of the first section of the act - and it would be difficult to maintain one construction of the section in reference to one class of cases to which it refers & another construction for another class. The section in terms makes no distinction & evidently designs none. That they had the right to make such a distinction cannot alter the construction of the section - neither can the admitted existence of other remedies concurrent with this, as that is equally true of all the liens specified in the law.

The cases of Field & Cuthcart v. Mason (8 Mo. R. 687) & Webb v. Coonce (11 M. R. 10) are sufficient to show that the refusal of the Court below to set aside the default was not such an unwarrantable or improper exercise of his discretion as to justify the interference of this Court. There was certainly negligence of the party, if not, of his attorney -

for the writ advised him, in what Court the suit was brought; & he gave a bond for the boat in which the same thing is recited.

It is objected that the enquiry of damages was executed at the ~~same~~ return term of the writ. The 25th section of the act establishing a Land Court in Illinois county, ~~authorizes~~ makes all suits in this county triable at the ~~&~~ return Term ~~&~~ (p. 1595) where the service is fifteen days before the first day of such Term.

Judt. affirmed

W. B. Napton

The other Judges concur.

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Ridgeley v. S. B. Reinder

Opinion of the Court

Napton

Filed 18 Dec. 1858.
Wm. S. Glanville Clk