Steamboat Columbus vs Sturgess, Samuel L 1856 St. Louis Co. 373/6
" , John A

585/28

Leo.
R&R

Sturgess & Bro have demand against steamboat for $78.75
account of Fulton, Wm, Cpt.
for damages done to 25 sacks of sweetpotato

State of Missouri } ss. Plea held before
County of St Louis } the Law Commissioners Court of St Louis County.

Be it remembered, that on the 12th day of March A. D. 1855, there was filed in said Law Commissioners Court of St Louis County, a certain appeal, from Louis DuBreuil, Esquire, a Justice of the Peace, in and for the Township and County of Saint Louis between Samuel L. Sturges and John A. Sturges plaintiffs and Steam Boat Columbus defendant,

1 The following is a true transcript of the papers of said appeal as filed in said Court to wit,

Complaint. "The State of Missouri } ss
County of St Louis } Before Louis DuBreuil a Justice of the Peace, for Saint Louis County,

Sturges & Brother to wit

Samuel L. Sturges and John A. Sturges doing business under the name and style of Sturges & Bro, by Samuel L. Sturges complain that they have a demand, against the Steam Boat Columbus, a boat used in navigating the waters of this State, amounting to Seventy eight dollars and Seventy five cents: which demand accrued against said Steam Boat on account of William Fulton Captain thereof for Malperformance of a Contract of affreightment and damages done to goods, shipped on Board of said boat within the last six months next preceeding the commencement of this suit, and is

2 in all its particulars, as follows to wit:
Twenty five bags or sacks of Sweet potatoes shipped on or about the 22nd day of December 1854, on board Steam Boat Columbus per bills of lading herein filed, and the said Samuel L. Sturges of the firm of Sturges & Bro further states that said firm has now no other demand against the said Steam Boat Columbus which is a lien thereon.

Samuel L. Sturges

Being sworn on his oath says that the facts set forth in the above Complaint are true.

Sam. L. Sturges

Sworn to & subscribed before me this 11th day of January 1855

Louis Du Preuil Justice

Warrant { "The State of Missouri
To any Constable of Saint Louis Township in Saint Louis County. Greeting:
Whereas Samuel L. Sturges & Brothers have this day made to the undersigned, a Justice of the Peace, within and for said County, their Complaint according to the provisions of an act entitled "An Act Concerning Boats and Vessels" Approved March 26th 1845, setting forth that they have a demand against the said Steamboat Columbus amounting to Seventy eight dollars and Seventy five Cents, which demand accrued against said Steam Boat on account of Wm Fulton the captain thereof for Malperformance

of Contract of affreightment and in said Complaint, hereunto annexed, is set forth in all its particulars. These are therefore to
3 direct and authorise you forthwith to seize the said Steam Boat Columbus and detain her in your Custody, with her tackle, apparel and furniture, or so much thereof as shall be sufficient to satisfy said debt and costs, until discharged by due course of law. You are further directed to make return of this Warrant forthwith.
Given under my hand this 11th day of January 1855.
Louis DuBreuil, Justice.

Return "Executed this writ by reading the same on board of the within named Steam Boat Columbus, and also by notifying the Captain of said boat of the contents of this writ and also by seizing and taking into my Custody said boat her tackle, apparel and furniture or so much thereof as to satisfy the within debt and costs. done in St Louis Township on the 11th day of January 1855.
Charles Lafrance Constable."

Bond "Know all men by these presents, That we Sturgis of the firm of Sturgis & Brother as principal, and A. I. Luce as Security, acknowledge ourselves to be indebted unto the State of Missouri in the sum of One hundred and sixty dollars, for the payment whereof we bind ourselves, our heirs executors and administrators firmly by these presents,

4 Sealed with our seals and dated this 11th day of January in the year eighteen hundred and fifty five.
The Condition of this obligation is such That whereas Samuel Sturgess and Brothers by Samuel L. Sturgess as plaintiffs are about to bring a suit by warrant, before Louis DuBreuil a Justice of the Peace, within and for the Township of St Louis, against the Steam Boat Columbus defendant, returnable forthwith wherein the sum sworn to is Seventy eight 75/100 dollars. Now, if the said plaintiffs shall prosecute the said suit with effect, and shall pay all damages which may accrue to the said Steam Boat Columbus or the owners or officers thereof by reason of the said warrant, or any process or proceeding in said suit then this bond shall be void; otherwise it shall be in full force
Samuel L. Sturgess for Sturgess & Bro (LS)
A. J. Luce (LS)
Attest and approved
Louis DuBreuil. Justice"

Bill Lading } "Shipped, in good order and well conditioned by R.L. Wilson on board the Steam Boat called the Columbus, whereof Fulton is Master now lying in the Port of Natchez and bound for St Louis To say, No Mark (25) Twenty five sacks sweet potatoes privilege of reshipping in case of low water. Marked and numbered

as in the margin, and are to be delivered without delay in the like good order and condition, at the Port of Saint Louis (The dangers of the River and fire only excepted) unto Stinger & Bro or to their assigns, he or they paying freight for the said

(5)

Sixty Cents per bag Charges 2 00

In witness whereof the master or Clerk of the said Boat hath affirmed to 3 Bills of Lading all of this tenor and date one of which being accomplished the others to stand void

Fulton Cobb

Natchez the day of December 1854."

Justices Docket Entries

"Stinger and Brothers which firm is composed of Samuel L. Stinger and John A. Stinger vs Steam Boat Columbus

Damages $78.75

Upon affidavit made by Samuel L. Stinger, warrant issued, directed to Constable Charles Lafrance, returned by him same day "Executed by attaching the Steam Boat Columbus, and by notifying Fulton the Captain thereof, and by reading said writ on board of said boat. On that day both parties appear, plaintiffs, by Samuel L. Stinger and "Steam Boat Columbus", by Fulton Captain thereof. The parties being ready for trial, submit the matter in issue to the decision of the Justice, who after hearing the evidence adjudges, that plaintiff recover of the defendant, the sum of Seventy five 25/100 dollars for their damages and also the costs of these proceedings. The defendant thereupon gives verbal notice to the plaintiffs that they will take an appeal

6 On the 20th day of January 1855, defendant by Edward G. Ware one of the Owners of the Steam Boat Columbus Comes and prays an Appeal, makes affidavit and gives bond, whereupon the Appeal is granted by the Justice to the Saint Louis Law Commissioners Court."

Affidavit { "Sturges & Brother Plaintiffs { Before Justice
Steam Boat Columbus Defendant { DuBreuil

This day personally appeared before Louis DuBreuil, a Justice of the Peace in and for the County of St Louis, in the State of Missouri. Edward G Ware, who being duly sworn, upon his oath says that the Application for an Appeal, in the above entitled Case is not made for vexation or delay, but because he believes the Appellant is injured by the Judgment of the Justice.

Edwd G. Ware

Sworn to and Subscribed before me, this 20" day of January 1855.

Louis DuBreuil Justice."

Recognizance { "We, the undersigned Edward G. Ware and E. B. Kimball, acknowledge ourselves indebted to Samuel L. Sturges and John A. Sturges doing business under name and style of Sturges & Bro. in the sum of One hundred and Sixty dollars, to be void upon this Condition, Whereas Edward G. Ware in behalf of Owners of Steam Boat Columbus

has appealed from the Judgment of Louis DuBreuil, a Justice of the Peace, in a certain action between Samuel L. Sturges & Jno A. Sturges, plaintiffs, and Steam Boat Columbus, defendant; Now if, on such appeal, the Judgment of the Justice be affirmed, or if, on the trial anew in the Law Commissioners Court, Judgment be given against the appellant and he shall satisfy such Judgment, or if the appeal shall be dismissed, and they shall pay the Judgment of the Justice, together with the costs of appeal, the recognizance shall be void.

7

Edwd G. Ware Seal

E. P. Kimball pr W. Raffaety Seal

Attest and approved this 20th day of January 1855,

Louis DuBreuil Justice."

Certificate

"State of Missouri County of St Louis ss

I Louis DuBreuil, a Justice of the peace, within and for said County, do hereby certify that the foregoing is a true correct and full transcript of all proceedings had before me in the above entitled cause, as the same appears from my docket and the papers annexed comprise all that is filed issued and executed therein.

Given under my hand this 31st day of January 1855. Louis DuBreuil, Justice of the Peace."

And afterwards at the respective terms and on the days hereinafter named the following further proceedings were had in this cause in

The Law Commissioners Court of Saint Louis County,

April Term 1855.

"Friday April 20th 1855.

Cont } "By order of the Court Continued to the next term."

June Term 1855.

"Tuesday June 5th 1855.

Cont "By Consent Continued to the 11th day of June 1855, at 3 O Clock, P.M.

Tuesday June 26th 1855.

Cont "Now at this day Come the plaintiffs by their attorney, and on motion this Cause is Continued to the next term."

Tuesday September 4th 1855.

Cont "Continued to next term by Consent."

October Term 1855

Wednesday October 3rd 1855.

Affirmance } "Affirmance

Now at this day Come the plaintiffs by their attorney, but the defendant although solemnly called Comes not. Whereupon on motion of plaintiffs it is ordered by the Court that the Judgment herein as rendered by the Justice be affirmed and that said plaintiffs recover of said defendant and Edward G Ware and E.B. Kimball the principal and security in the recognizance of appeal the sum of Seventy eight dollars and Seventy five Cents being

the amount of the Judgment of the Justice. Also their Costs and Charges in this behalf expended and that execution issue therefor. "

Tuesday October 9th 1855.

9 Affirmance Set aside "By Consent of the parties by their attorneys herein, it is ordered by the Court that the Judgment of Affirmance herein be set aside, Costs to abide the determination of the Suit "

December Term 1855.

Thursday December 19th 1855.

Attach Awarded "The parties by their attorneys appear and examination of Plaintiffs attachments are awarded, against witnesses for the 18th of December instant at 3 O'Clock P.M. "

Tuesday December 18th 1855.

Trial "Now at this day Come the parties by their attorneys and do requiring a Jury submit the Cause to the Court. Whereupon the trial of the Cause progressed and is finished. "

Wednesday December 19th 1855

Judgt "Appeal Now at this day the Court having duly Considered the proofs herein, and being fully advised of and Concerning the premises doth find that the said defendant is indebted to the said plaintiffs in the sum of Sixty one dollars and fifty six Cents, Therefore it is Considered by the Court that said plaintiffs recover of said defendant and Edward S Ware and E.B. Kimball

the principal and security in the recognizance of appeal, the debt aforesaid in form aforesaid, by the Court found, also their Costs and Charges in this behalf expended and that execution issue therefor.

Tuesday January 8th 1856.

Motion filed & Ord. "Now at this day comes the defendant by her attorney, and moves the Court to grant a new trial herein & files her reasons therefor. Whereupon the Court being thereof fully advised doth overrule the same."

Said defendant's motion is in the words and figures following to wit:

Motion "And now comes the defendant & moves the for a new trial on the following Grounds 1st the Court erred in its declaration of the law. 2nd the verdict of the Court sitting as a Jury was against the law under the evidence 3rd Upon the evidence the verdict should have been for the defendant. 5th The Court erred in admitting testimony

Kenny and Harding for deft."

Saturday January 19: 1856

Bond filed "Now at this day comes Chester Harding Jr Esq. one of the attorneys of Ezekiel B. Kimball, and on behalf of said defendant presents to the Court his bond in accordance with the Statute in that case made and provided to said plaintiffs in the sum of

One hundred and fifty dollars, with Edward Y Ware as Security, which said bond was duly acknowledged before and approved
11 by the Court. Whereupon on motion of the defendant by her Attorney an appeal is granted from the Judgment herein to the Supreme Court.

And the plaintiffs by their Attorney, Consent that the defendants bill of exceptions may be filed at any time before the closing of the February Term of the Court.

Tuesday February 19th 1856

Bill Ex filed { "By Consent bill of exceptions filed by the defendants attorney." Said bill of exceptions is in the words and figures following to wit:

Bill of Ex { "Be it remembered that this cause was tried before the Court, sitting as a jury, that on the trial the partnership of the plaintiffs was admitted. The plaintiffs then read a bill of lading, which was admitted to be a Contract of the defendant, in words and figures following to wit: (See pages 4 and 5.)
It was also admitted that the twenty five sacks of potatoes named in said bill of lading were shipped in good order and were then sound, and that they were in bad order and wholly decayed and worthless when delivered at Saint Louis. The value of the potatoes were admitted to be as charged

in plaintiffs complaint and it was agreed that if plaintiffs recovered the amount of freight due the defendant should be deducted from the amount of the recovery. Plaintiffs proved that each sack contained from 1¾ to 2 bushels of potatoes.
Plaintiffs rested here.
The defendant then read the following depositions.

Deposition of Robinson

Perry E. Robinson of lawful age being produced sworn and examined on the part of the defendant saith I was discharging Clerk on the St Pt Columbus in January 1855. I was at the levee in St Louis. About 9th January 1855. There were sweet potatoes on board the boat. I believe about 25. sacks. They were put on the levee in proper order for delivery. I had nothing more to do with them than to see that the proper number were there and to see that they were put into shape for delivery. It was my duty to deliver the potatoes to the person representing himself to be the consignee called and enquired if they were there & I handed the potatoes out to him. He went away and I saw no more of him.
Cross Examined by attorney for plaintiffs
When these potatoes were put off the St Pt Columbus ~~out~~ on the levee they were in a damaged condition. They were apparently rotten.
Perry E. Robinson

Deposition Dougher

Peter Dougher of lawful age being produced sworn and examined on the part of the

defendant Saith, I was mate of St Bt Columbus, in December 1854 & January 1855, The boat was at Natchez in December 1854
13 While there we took on some sacks of sweet potatoes they were comeing here, dont know how many sacks. These potatoes were stowed during the whole trip from Natchez to St Louis, in the forward part of the hold. It depends on the weather where is the proper place for stowing perishable freight. In cold weather the proper place is in the hold, that part of the hold where these potatoes were stowed is a dry and warm place it wont freeze there, While these potatoes were on board it was very changable weather, One day cold and one day warm, In such weather as we had on that trip I think the potatoes were properly stowed The potatoes were put here at St Louis on the levee, We were detained at Cairo on this trip Eleven or twelve days on account of low water and ice, The boat came on as fast as she could under the circumstances, Cross Examined by attorney for plaintiffs When we took these potatoes on board they were in good order, when they were put off at the Levee in Saint Louis they were rotten, they were not in the same condition as when received.

Peter Pougher

Deposition of Powell

E. R. Powell of lawful age being duly sworn on the part of the defendant Saith I was Clerk of the St Bt Columbus, during December 1854 & January 1855, I know of the

Receipt at Natchez of some sweet potatoes twenty five sacks. I believe they were Consigned to Stingis & Bro. in St Louis, These potatoes arrived in Saint Louis, I saw them on the levee. I left Stingis & Bro a written notice that these potatoes were on the levee for delivery. I Called at their office several times. They did not receive the potatoes, I did not then know why not, because I had never been Stingis & Bro about them. The potatoes were on the levee some two or three days, I dont know what became of them, I left notice of freight being on levee before 12 O'clock M of the day. Cross Examined by atty for Plaintiffs I believe the potatoes were in good order when received at Natchez on the Columbus, when they were put on the levee they were rotten. The were nineteen days making the trip from Natchez to St Louis. We were detained by low water & ice at Cairo Eleven days. The bill of lading for these potatoes was signed at Natchez on the 23rd or 24th day of December 1854 I think

E A Powell Jr.

Defendant here rested.

Plaintiffs then called a witness who testified that the proper place for storing potatoes on about in winter is in the hold. In weather alternately hot & cold, proper place is in the hold or engine room. Have had them come to me in the Engine room in medium weather and on deck in warm weather

This was all the testimony —

The Court on its own motion then gave the following declaration of the law, viz:

Instruction } A Steam Boat having the right ~~reserved~~ reserved to reship Cargo, ought to exercise that right whenever it becomes necessary by reason of any Causes which Conduced to granting the right, by the Shipper.

15

The burden of proving that the defendants Could not reship, is upon the defendants, to which the plaintiffs at the time excepted The Court found for the plaintiffs and judgment was rendered accordingly, The defendants in due time filed his motion and reasons for a new trial as follows

(See page 10.)

which motion the Court overruled to which ruling the deft took due exception & prays that this his bill of exception may be signed and sealed which is accordingly done

John W. Colvin Law Com Seal "

The defendants appeal bond filed herein is in the words and figures following to wit:"

Bond } Know all men by these presents that we Ezekiel B. Kimball as principal and Edward G. Ware as surety are held and firmly bound unto Singer & Bro in the sum of One hundred and fifty dollars, for the payment of which, well and truly, to be made, we bind ourselves our heirs, executors & Administrators jointly and severally firmly by these presents, sealed with our seals and

16 dated at St Louis this 19th day of January A.D. 1856, The Condition of the above obligation is such, that whereas the Steam Boat Columbus and her securities have appealed from the Judgment rendered against them and in favor of said Singer & Brother in the Law Commissioners Court of St Louis County for the sum of Sixty one dollars and fifty Six Cents together with Costs. Now if the said Appellant 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 Law Commissioners Court of St Louis County to give, and if the Judgment as any part thereof be affirmed, that they will comply with and perform the same so far as it may be affirmed, and will pay all damages and Costs which may be awarded against them by the Supreme Court then this obligation to be void, otherwise to remain in full force and effect.

E. P. Kimball by Thos Harding atty Seal
Edw G Ware Seal

Law Commissioners Court of St Louis County
December Term 1855, January 19, 1856

This day appeared Chester Harding one of the attorneys of Ezekiel P. Kimball and Edward G Ware, the principal and security in the bond going before and the said Chester

Harding acknowledged the execution of the same for the act and the said Ezekiel B Kimball and the said Edward H. Ware acknowledged the same for the purposes therein expressed.

17

Witness whereof I hereto set my hand and affix the seal of said Court, at office, in St Louis, the day and year last aforesaid.

John W. Colvin
Law Commissioner, &c

State of Missouri } ss.
County of St Louis }

John W. Colvin,
The Law Commissioner of Saint Louis County, Certify that the above and foregoing is a full true and complete transcript of the Record and proceedings in the Case of Samuel R. Stinger and John A Stinger Plaintiffs and the Steamboat Columbus defendant, actually as the same remains in my office.

Testimony whereof I hereto set my hand and affix the seal of said Law Commissioner Court at office in St Louis this 27th day of February 1856

J. W. Colvin
The Law Commissioner of
Saint Louis County
Missouri

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(28)

March. T. 1856

Samuel L. Sturgess &
John A. Sturgess respt.

vs Transcripts

St Pt Columbus appet.

Appeal from Law
Commissioners Court

Comfort & Manter
Krum & Harding

Filed 4th March 1856.
Wm S. Glanville
Clk.

Fee $4.75 pd by C Harding Jr

147

be from bill exceptions for opps. attys 1.00

Sturges, respt
vs:
A. M. Columbus
appellant

Supreme Court
March Term 1856 -

The appellant, by her attorneys, comes & says that there is manifest error in the record, proceedings & judgment of the Court below, in this to wit;

1st The Court ~~sitting as a jury~~ erred in declaring the law

2d The Court, sitting as a jury, found against the evidence.

3d The Court, sitting as a jury, found against the law under the evidence

4th The Court, sitting as a jury, found for the wrong party -

5th The Court erred in refusing a new trial to the defendant below -

Kinn & Harding
Attys for appellant

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Mar 7. 1886

Sup Court

Sturges respt

vs

W. Bt. Columbus

appllt

Assignment of errors

Knox & Harding

for applt —

Filed 26 March 1856,

W. S. Glanville

ck

Saml L. Sturgis &c respondent } Supreme Court
St Bt Columbus appellant }

The respondents say there is no error in the record
Comfort & Mantle
for respondents

147

Supreme Court

Saml L. Sturgis &c

:

Lt Bt Columbus

Joinder

Filed 3d April 1856
W. S. Glanville
Ck

Sturges, et al, respondents
vs.
The steamboat Columbus
appellant.

In the Supreme Court
May T. 1856

Brief of the appellant.

Point I

The Court below erred in it's declaration of the law as to the effect of the reservation of the "privilege of reshipping, in case of low water."

This privilege was not a contract, on the part of the master, that he would exercise it. The fact that the exercise of the privilege does not relieve the carrier from his liability as such (Angell Com Car. § 227) negatives the idea of any obligation to use it. And, suppose the privilege had been simply that of "re-shipping", without the qualification "in case of low water, then, according to the law of the Court below, the first carrier would not be allowed to carry his cargo a mile, because he has bound himself to reship, in any event. —

Point II

Even if it had been the duty of the master to reship he would not be guilty of negligence in not reshipping unlep it appeared that he had the means of doing it. In this case, there is no proof on the subject; but, it does appear that the boat was delayed, at Cairo, by ice & low water, — causes which might authorize the inference that navigation was suspended as to all boats, including the Columbus, & therefore, that reshipment was impossible —

The Court below erred, then, in declaring the law of the case as to the burden of proof.

Point III

Upon the whole case, the defendant was entitled to judgment.—

The voyage was not broken up.— On the contrary, no disaster happened to defendant & she, in fact, completed her trip & delivered the cargo in question to the respondents,— thus earning her freight.— (Abbot on Shipping p 428, side paging)

Nor was the voyage constructively broken up by any certainty of unreasonable delay.— The master could not tell how soon the ice would disappear & the river rise.— He might as well have expected the navigation to be opened after a delay of a few hours as to anticipate a delay of eleven days.—

This case, then, is not to be governed by rules which apply, when a voyage is broken up by the destruction of the boat — or, by the certainty of an unreasonable delay, before the vessel can proceed & when the master, becoming the agent of all the parties interested under such circumstances, may be bound to trans-ship his cargo, even at the sacrifice of the interests of his owners. It is a case where the master had the right to retain his cargo & earn his freight.—

~~Having~~ This right being established, does the proof show anything to entitle the respondents to a recovery? It appears by the record,

1st that the property was of a perishable nature.

2d — that it was well & properly stowed & cared for on the boat.—

3d — that there was no unnecessary delay of the boat.—

4th that the "bad order" of the cargo, on delivery was caused by it's natural decay

It does not appear, either

1st that the carrier was guilty of any laches or bad conduct.

2d that the decay was caused or increased by the delay, or by any act or omission of the carrier.

or, 3d that re-shipment was possible.

Under these circumstances, the appellant contends that, under the law respecting loss by the inherent defects or qualities of bona peritura, the loss must fall upon the respondents & that appellant has shown a legal excuse for the delivery of the cargo in bad order.

Rmm A Harding
for applt.

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Sup C. Mar 7/56

Sturges, resp^t

vs.

N. Bt. Columbus, applt

Brief of applt

Krum & Harding

for applt.

Filed 17 April 1856

W S Glanville

Ck

No 147. Sturgess against Steam Boat Columbus.

The power of reshipping in case of low water contained in this bill of lading, is a privilege ~~[illegible]~~ reserved to the boat, and not a duty imposed upon it. By the contract of affreightment, the carrier is bound to transport the goods to their destination in his own vessel, unless prevented from doing so, by some event, "~~[illegible]~~" not occasioned by himself and which he could not control "vis major" - and all the authorities concur that by the maritime law, in that event, the voyage being broken up, the ship owner is at liberty to tranship and earn his full freight by the fulfilment of his contract in another bottom. (Shipton vs Thornton 9 Adol. & Ellis 314)

If however the event produce only a temporary suspension of the voyage, neither party being then at liberty ~~[illegible]~~ to put an end to the contract, it is the duty of the carrier to resume ~~its [illegible]~~ as soon as the obstacle is removed, and to proceed with the goods in his own boat to the place of delivery - but this clause relieves him from that necessity, in the particular case provided for, and gives him the privilege of sending the cargo forward in another boat, without effecting any other change ~~[illegible]~~ in the rights or duties of the parties.

The judgment must therefore be reversed & the cause remanded.

A Leonard

No 147

Sturgess

apt

St. Bt. Columbus

Opinion

Leonard

Judge

Reversed & Remanded

Filed 7 June 1856

Wm. S. Glanville

Clk

x x