Hornback, Aquilla P vs. Herron, Francis 1857 Ralls 375/11

586/9

Ryland
trespass - cutting timber, making into railroad ties
Δ says only cut a few
jury for Herron - $44.33 - filed for treble (triple) damages
reversed
receives only $144.33

Transcript

Francis Herron Plaintiff
vs.
Aquilla P. Hornback Defd. } Trespass

Plaintiffs Attorney
Thomas L. Anderson

Defendants Attorneys.
Lamb & Lakelan

Page 1

State of Missouri
County of Ralls } ss

Be it remembered that heretofore to wit. on the 2nd day of February A.D. 1855 the Plff. Francis Herin filed in the Office of the Clerk of the Circuit Court of said County of Ralls his Petition against Aquilla P. Hornback Defendant which Petition is in the words and figures following To Wit;

Francis Herron Plff
vs.
Aquilla P Hornback Deft.

} In the Circuit Court of Ralls County Mo. In Vacation.

Petition

Francis Herron Plff. states that he now is and has been since the year 1837 the owner of the following land to wit, The East half of the North East quarter of section 19 Township fifty six Range 5 west, and the East half of the South East quarter of the same section Township & Range, lying & being in the County of Ralls in the State of Missouri, and on or about the 12th day of February 1845 and on divers other days between that day and the commencement of this suit, the said defendant wrongfully & without leave entered upon said lands & then and there with hands in his employment or under his controle & by himself cut down

& split into rails & boards a large number of oak trees & other timber trees of the value of one hundred dollars and took and carried the same away, & also split into rails trees that had been cut down by others and took and carried away said rails of the value of about fifty dollars. Plaintiff states that the said defendant had no interest in the timber trees cut by him nor in the rails or boards made by him and taken away from said land nor had he any interest in said land and that the cutting down of said trees & the splitting & carrying away of said rails & boards were wanton willful & unmitigated trespasses, wherefor plff says he has sustained damage to the amount of 150 dollars and asks that he may have judgment for treble the amount of said damage as provided by an act of the General Assembly of the State of Missouri, entitled "an act to prevent certain trespasses, approved Febuary 10th 1845. and grant to plff, such relief as he is entitled to,

Francis Herron, by his
Attorney
Thos L. Anderson

City of Pittsburg ss—
Francis Herron makes oath and says that he believes the forgoing petition & the matters & things as therein stated are true.

3 Sworn to & subscribed before me this 20th day of ~~September~~ December 1852 } Francis Herron

J. Wiggans, Ald }

On which said Petition a Summons was issued, in words & figures following to wit:

State of Missouri }
County of Ralls } ss. The State of Missouri

To the Sheriff of Ralls County greeting: We command you to summon Appellee P Hornback

Summons that he be and appear in our Circuit Court at the Court house in the Town of New London within and for said County on the fourth Monday in March next. then and there before the Judge of our said Court to answer a petition exhibited in our said Court against him by Francis Herron in a civil action by petition which Petition is hereto attached. & this you shall in no wise omit; & have you then and there this writ certifying thereon to our said Court how you have executed the same. Witness my hand as Clerk and the seal of said Court. Done at Office at New London in said County of Ralls this 3d day of January 1853.

L. S.

Samuel R. Caldwell Clerk

On which said Summons the following return is found, To wit:

Sheriffs Return,

Executed the within Petitions & Summons by delivering a certified copy of the same to the wife of the within named Aquilla P Hornback a free white female over the age of 15 years at his residence in Ralls County Mo, this 1st day of February A D 1853.

R. B. Caldwell Sheriff.
Ralls County Mo.

And afterwards to wit: on the 20th day of March A D 1853 at the regular Term of the Ralls Circuit Court begun & continued at the Court house in the Town of New London within and for said County of Ralls, before the Hon. Carty Wells Judge of said Court, the following order is found, To wit,

Francis Herron Plaintiff,
vs.
Aquilla P. Hornback Defendant } Civil action

Order

Now at this day comes the said Plaintiff by Anderson his attorney, and the said Defendant by Lamb his attorney, and said defendant files his motion for security for costs and to dismiss this cause

5 whereupon on motion of said Plaintiff he has leave to file an affidavit herein and bond for costs 30 days before the next term of this Court and cause continued, —

Which said Motions are in the words & fidures following To wit,

Francis Herrin } In the Ralls Circuit Court
vs, } March Term AD 1853 —
A. P. Hornback } Tresspass —

Motion for Security of Cost. Deft. moves the Court to order Plff to give security for costs in the above entitled cause for the reasons that he is now and was at the time of the institution of this suit a non resident of the State of Missouri —

S. W. Lamb. for Deft.

Motion to Dismiss Deft. also moves the court to dismiss the above entitled cause for the reasons that Plff. did not at the time of nor since the commencement of this suit file any affidavit to the truth of the facts of his declaration,

Lamb. for Deft.

And afterwards to wit: on the 30th day of March AD 1853. the following order is found to wit.

6

Francis Herron Plaintiff
vs.
Agnilla P. Hornback Defendant
} Civil Action of Trespass

motion to Dismiss over ruled, bond for costs filed & approved

Now at this day comes the said Plaintiff on his motion it is ordered by the Court that the order made at this term be vacated. The motion filed heretofore to dismiss this cause is seen and concidered by the Court & overruled, whereupon the said defendant files the bond of T. L. Anderson for costs in this cause which is approved by the Court & cause continued,

Which Bond is in the words & figures following to wit, —

Bond for costs

Thomas L. Anderson hereby obligates & binds himself to pay to Agnilla P. Hornback and all the officers of the Circuit Court of the County of Ralls in the State of Missouri all costs that have accrued or may hereafter accrue in a certain cause now pending in said Court wherein Francis Herrin is plaintiff and said Hornback defendant — suit for Trespass. Witness my hand and seal this 28th day of March 1853 —

Thos. L. Anderson Seal

And afterwards to wit on the 24th day of August ~~March~~ A D 1853, The following Order is found to wit,

7 Francis Herrin Plaintiff
vs
Aquilla P Hornback Deft. } Trespass

Now at this day comes the Parties aforesaid by their respective attorneys, On motion of said Defendant he has leave to file his answer herein forty days before next Term of the Court, & cause set for Trial at that term & continued.

And afterwards to wit on the 16th day of February AD 1856 the following order is found of Court

Francis Herrin Plaintiff. } Trespass
vs
Aquilla P. Hornback Deft. }

Now at this day comes the said Defendant by his attorney & files his answer herein,

of knowledge sufficient to form a belief as to whether plaintiff was at the time stated in his petition, the owner of the tracts of land therein described. Defendant admits that some time within five years next preceeding the commencement of this suit he did cut and carry away from the land described in plaintiffs petition seven red oak trees used for shingles of the value of one dollar each, one black oak used for rails, of the value of one dollar one

Answer

7 Francis Herrin Plaintiff
vs } Trespass
Aquilla P. Hornback Deft. }

Now at this day comes the Parties aforesaid by their respective attorneys, On motion of said Defendant he has leave to file his answer herein forty days before next Term of the Court, & cause set for Trial at that term & continued.

Which said Answer is in the words & figures following to wit;

Francis Herrin Pltff — } In the Ralls Circuit
vs } Court AD 1855
Aquilla P. Hornback Deft } In Vacation.

r And now at this day comes the the said defend=ant by his atty. & for answer to pltff. petition says. He does not know nor has he any means or knowledge sufficient to form a belief as to whether plaintiff was at the time stated in his petition. the owner of the tracts of land therein described. Defendant admits that some

Answer time within five years next preceeding the commencement of this suit he did cut and carry away from the land described in plain=tiffs petition seven red oak trees used for shingles of the value of one dollar each, one black oak used for rails, of the value of one dollar one

8

cent, Deft. states that this last tree was dead & standing in a public road in general use which had been opened according to Law. Deft. states for futher answer that neither he nor any one ~~else~~ in his employ or under his direction or authority did cut down or carry away any timber or trees from the land described in plffs petition, at any time within five years next before the commencement of this suit except so far as stated above, Defendant for futher answer states, that he is not guilty of any of the trespasses charged in plffs petition except as admitted above. Defendant relies, rep. on the statute of Limitations of five years as a defence to plaintiffs, cause of action except so far as those trees are concerned, the cutting of which he has admitted, Defendant charges that the cutting down and carrying away of the timber and trees from the land described as set out in plffs petition was done more than five years prior to the beginning of this suit & that plffs cause of action is therefore barred by limitation which deft. relies upon as a defence to this suit except so far as those trees are concerned the cutting of which are admitted above.

Lamb, & Lakeman Attys

Aquilla P. Hornbach deft

9 Agnilla P Hornbuck deft. makes oath and says the matters and things as stated in the above answer are true. —

Sworn to and subscribed before me this 23rd day of February 1856,

A. P. Hornback

Sam'l H. Caldwell Clerk

And afterwards to wit: on the 26th day of March AD 1856. at the regular Term of the Falls Circuit Court begun & continued at the Court house in the Town of New London within and for the said County of Falls before the Hon. John J. Redd Judge of said Court the following order is found to wit,

Francis Herrin Plaintiff
vs.
Agnilla P. Hornback Deft. } Trespass. —

Cause continued

Now at this day comes the parties aforesaid by their attorneys, and by agreement this cause is continued,

And afterwards to wit, On the 26th day of August, 1856 it being the August Term of the Falls Circuit Court the following order is found to wit. —

10

Francis Herrin Plaintiff
vs
Agnilla P Hornback Defts. } Trespass

Now at this day comes the parties aforesaid by their respective attorneys, and a Jury being ordered come as follows To wit; John P. Fisher Isaac Rice, Michael J. Jones Thomas J. Mills. Tempee H. Davis Coleman Jamison, Bayles G. Rector Samuel O. J. Tompkins Anderson Organ C. Gentee Francis Leake and John Brice, twelve good and lawful men of the County of Ralls, who being duly elected tried and sworn well and truly to try the issue joined between the parties herein, upon their oaths find said issue in favor of said plaintiff and assess the damages to the sum of forty three dollars & thirty three cents. Whereupon the said plaintiff files his motion to treble the damages herein assessed by the jury which motion is seen and considered by the Court and sustained And it is ordered by the Court that said damages be trebled. It is therefore considered by the Court that the said plaintiff Francis Herrin do have and recover of and against the said defendant Agnilla P. Hornback the sum of one hundred and twenty nine dollars and ninety nine cents assessed as aforesaid by the Court together with his costs and charges in this cause

Jury ordered. Trial. verdict

Motion to treble damages

Which said motion to treble the damages assessed by the Jury, is in the words and figures following to wit.

Francis Herrow.

vs.

Aquilla Hornback } Trespass — Ralls Circuit Court August Term 1856.

The Plaintiff comes & moves the Court to treble the damages rendered by the Jury in the above cause

Anderson for Plff

11 incured, & that he have execution therefor.

And afterwards. Towit: on the 29th day of August 1856. it being during the regular term of the Ralls circuit Court the following order is found. Towit,

Francis Herron Plaintiff
vs
Aquilla P. Hornback Defendant } Civil Action for Trespass

Now at this day comes the parties aforesaid by their respective attorneys and the said Defendant files his bill of exceptions herein and prays the Court to allow and sign the same. which is done accordingly. and ordered to be made a part of the record herein.

Bill of Exceptions filed

Which said Bill of Exceptions is in the words and figures following to wit,

Bill of Exceptions

Francis Herron
vs.
Aquilla P. Hornback }

Be it remembered that on the trial of the above entitled cause. after

12 the close of the testimony and the argument of Counsel. the Court instructed the Jury as follows.

To the giving of which instructions the defendant by his counsel at the time excepted. That afterwards the Jury came into court and rendered their verdict in words as follows. "We the Verdict Jury find for the Plaintiff forty three dollars and thirty three cents. L. J. O. Tompkins foreman" That afterwards the plaintiff by his counsel filed the following motion.

Francis Herron
vs. } Trespass. Rolls Circuit
Aquilla Hornback } Court August Term 1856

Motion to treble damages The plaintiff comes and moves the Court to treble the damages rendered by the Jury in the above cause.

Anderson for Plff.

which said motion having been seen and concidered is by the Court sustained. To the action of the Court in sustaining said motion trebbling the amount of the verdict of the Jury. the defendant by his Counsel at the time excepts, and tenders this his bill of exceptions which being seen is allowed by the Court & is signed, sealed and made a part of the record herein. Defendant also prays an Appeal prayed

appeal to the supreme court which is granted,

John T. Redd (Seal)

And afterwards to wit the following order is found. To wit.

Francis Herron Plaintiff
vs.
Agnilew P. Hornback Deft. } Trespass

Order of Court to make out transcript to Supreme Court. appeal allowed

Now at this day comes the said defendant by his attorney and files his petition for an appeal from the judgment of the Court in this cause rendered, to the supreme Court of this State, which Petition is seen and considered by the Court and granted. It is therefore ordered by the Court. that a true and correct transcript of the record and proceedings of the Court in this cause with all things relating thereto, be made out by the Clerk of this Court under the seal of this Court, and transmitted to the Supreme Court of this State.

State of Missouri
County of Ralls } ss I Samuel K. Caldwell Clerk of the Circuit Court in and for said County of Ralls do certify that the annexed and forgoing pages contain a true and Corret transcript of the record of said Court in the case of Francis Herron against

14 Aquilla P. Hornback as full and complete as the same is now remaining of Record and on file in the office of said Court. Witness my hand as Clerk and the seal of said Court. Done at Office at New London in said County of Ralls this 3rd day of October A D 1856

Sam'l R Caldwell Clerk

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Transcript 3114 Words	$3.14
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(9) 20

March. T. 1857.

Transcript

Francis Herron
respt.

Vs

Agnilea P. Hornback
appet

Appeal Rails C.C.

~~Filed 7 October 1856~~
~~Wm. S. Glanville~~
~~Clk.~~

Filed 28 February 1857.
Wm. S. Glanville
Clk

20

Francis Herron
vs.
Aquilla P Hornback

In the Sup.
Court March
Term 1857

Appellant assigns the following
error in the Court below.
The Circuit Court erred in
rendering judgment for treble the
amount of damages found by the
Jury.

Lauck & LaRenaud
Attys for Appellant

Hewson
vs.
Hornbacker

Assignment of
Errors.

Filed 18 March 1857
Wm. S. Glenn Clk

Francis Herron
vs.
Aquilla P Hornback

Sup Court
March Term 1857

Appellant, defendant below, by his attorneys, relies upon the following points and authorities for a reversal of the judgment of the court below in trebbling the amount of damages found by the Jury.

The petition in this case is based upon the statute of 1845 entitled "an act to prevent certain trespases", ~~and the petition~~ also contains a common law count. It was therefore error in the Lincoln Circuit court in trebbling the amount of damages found by the jury, as the finding of the jury was General without specifying the value of the thing injured &c. See Ewing Et al vs. Leaton Et al. Respondents 17 Mo. R 465 and 18 Mo. Reb 514.

From the verdict is does not appear whether the finding of the jury was upon the Statutary or Common Law Count. The Lincoln Court assumed to know this fact & therefore Committed the error complained of. ——

Lamb & Lakenan
Attys for Appellants

Francis Herron

vs.

Aquilla P Horn=
=lock.

Points and authorities relied upon by Appellant

Filed 18 March 1857
Wm S. Glanville
Clk

Francis Herron
vs.
Aquilla P Hornback

In Sup. Court
March Term
AD 1857.

Plaintiff filed his petition in the Ralls Circuit Court against defendant in which he charged that defendant (who is appellant here) "On or about the 12th of Feb. 1845 and on divers other days wrongfully and without leave entered upon the lands of plaintiff and by himself to with hands in his employ cut down & split into rails & boards a large number of oak trees and other timber trees of the value of one hundred dollars. And that he also split into rails trees that had been cut down by others and took and carried away said rails of the value of about fifty dollars. Plaintiff also charged in his petition that the land upon which said timber was growing and lying was the property of the plff. and that appellant had no interest in the timber trees so cut down and carried away nor had he any interest in the land upon which the same was growing.
Plaintiff asked judgment for trebble damages which he avered to be one hundred and fifty dollars.

To this petition defendant filed his answer in which he admitted a part of the trespass and denied the balance of the trespass as charged in the petition. Defendant also relied upon the Statute of limitations as a bar to the action, so far as a portion of the alleged trespass was concerned.

Upon this state of the case the parties went to trial before a jury who after the close of the testimony rendered the following verdict "We the jury find for the plaintiff forty three dollars and thirty three cents." Afterwards the plaintiff filed his motion to trebble the amount found by the jury which motion was sustained by the Court and judgment rendered against defendant for the sum of one hundred and twenty nine dollars and ninety nine cents. To the opinion of the Court in trebbling the amount of damages found by the jury the defendant at the time excepted and has brought his case to this Court by appeal. The only point relied upon for a reversal of the judgment below is the action of the Circuit Court trebbling the amount of damages found by the jury.

Lamb & Lakeman
Attys for Appellant.

Hevron
vs.
Hornback

Brief of Attys
for Appellant

Filed 18 March 1857
Wm S. Glannville
Clk

Herron v Hornback -

The question in this case involves the propriety of the judgment of the Circuit Court for treble the damages found for the plaintiff by the verdict of the jury -

The action was for trespass committed by entering on the lands of the plaintiff cutting down trees, splitting them into rails and boards, taking and carrying away the rails and boards: also for splitting trees, which had been cut down by other persons, into rails and carrying away the rails -

The defendant answered admitting that he had cut down some seven or eight trees and carried them away; but denied cutting any more -

There was a trial by jury; none of the evidence is preserved and none of the instructions saved - The jury returned the following verdict, "We the jury find for the plaintiff forty three dollars and thirty three cents" - The plaintiffs counsel thereupon filed his motion for treble the damages found by the jury; the Court sustained this motion; gave judgment for treble damages and to this action of the Court the defendant,

excepted. files his bill of exceptions and brings the case here by appeal—

This case comes fully within the decisions of this Court heretofore made in the case of Ewing et alg vs Leaton et als. in 17 vol. Mo. Rep. 465 and the case of Le baume vs Woolfolk 18 Mo. Rep 514— and to the opinions in these cases we refer as deciding this— The verdict ought to have been for the value of the property injured and then judgment for treble that value— In a petition like the present, a general verdict, without specifying the value of the injured property, will not warrant the Court below in giving judgment for treble the damages found—

The judgment in this case must be reversed; and the judgment entered here for the amount of the verdict only, viz $43.33 cts— The appellant to recover his costs in this Court— Judge Scott concurring; judge Leonard absent—

John F. Ryland

Herron vs Hornback –

The only question in this case involves the propriety

20

Herron vs Hornback

opinion

Ryland

Filed 15 May 1857
Wm S Glanville
Ck

X X

Copy of within for lower Court —