Catherwood, Robert H. & Patterson, Henry L. v. Deaver, Fanny adux of the estate of Larkin Deaver 1857 St. Louis 386/10

Old Box 590/25

Re: for cash paid for cleaning privy & abating nuisance 1/2 on each property
A = wants to set aside continuance

Dismissed
Filed 1856
Oct. Term 1857
Debt

State of Missouri } Plea, held before the
Saint Louis County } Law Commissioners Court of St Louis County,

Be it remembered, that on the Second day of April, in the year of our Lord, one thousand eight hundred and fifty five, there was filed in the office of said Law Commissioners Court, a Certain Appeal Coam Liberty Waite Esquire a Justice of the Peace, within and for the Township and County of Saint Louis between Fanny Deaver Administratrix of the estate of Larkin Deaver Plaintiff against Robert H. Catherwood and Henry L Patterson defendants,

(1)

The following is a true transcript of the papers of said appeal as filed in said Court Towit

Cause of Action } "Henry L. Patterson owner
} Robert H. Catherwood Lessee and occupant
To Fanny Deaver, admr of the Estate of Larkin Deaver deceased, Dr
1854, Sept 21, For 12 cash paid for cleaning Privy and abating nuisance thereon by order of Street inspector, which Privy and the vault thereunder are partly on the lot in possession of Administratrix and partly on the Lot of said Patterson, occupied by said Catherwood, which lots front on Olive Street between 11th & 12th Streets, Said Privy is on the Alley in the rear of said Lots, and was used prior to the above date and at the time of the

2 creation of said nuisance, and still is used in Common by the occupants of both Lots. Amount paid $60.00 ½ is $30.00 "

Summons { "The State of Missouri;
To any Constable of St Louis Township, in Saint Louis County, Greeting
We Command you to Summon Robert H. Catherwood and Henry L. Patterson, to appear before the undersigned, one of the Justices of the peace of St Louis Township, in St Louis County, on the 10th day of March, 1855, at 9 of the Clock in the Forenoon, at his office, in the same Township, to answer the Complaint of Fanny Deaver, Admx of the estate of Larkin Deaver deceased for $30.00, and subpoena defendants as witnesses for plaintiff.
Given under my hand, this 21st day of February 1855.
Liberty Waite Justice, "

Return { "Executed this writ by reading it to the within named defendants, Done in St Louis Township Feb 22nd 1855, and summoning the defts as witness.
S. B. Brua, Constable, By J. D. Mount, D.C.

Street inspectors Notice { "Saint Louis Sept 17th 1854
Mr Loughlan, agt for Mrs Deaver, Sir You are hereby notified and required to remove nuisance from her property which is upon Olive Street Bt 11th & 12th Sts. S.W. Side

3 Consisting of a privy which is full and foul and must be removed forthwith from the service of this notice, and in case you should fail to comply with this order, it is made my duty to report you to the proper officers

Respectfully Yours,

James Regan,

Street inspector, for third Ward. "

No to dismiss } "Fanny Deaver administratrix &c } Before Justice Waite

Henry L. Patterson and

Robert H. Catherwood

Defendants move the Court to dismiss suit for want of jurisdiction as by plaintiffs bill it appears that question to title of real estate is to be tried.

Henry L. Patterson and

Robert H. Catherwood, "

Justices Docket Entries } "Fanny Deaver administratrix of the Estate of Larkin Deaver dec'd } Assumpsit on account for $30.00 Summons issued to

Robert H. Catherwood &

Henry L. Patterson

Court George B. Brua, on the 21st day of February 1855, returnable on the 10th day of March 1855, returned executed on defendants the parties appeared and being ready for trial, the case was submitted to the Justice a motion then being made by the defendant for a Nonsuit on the ground that there was no evidence that there was a request made by the plaintiff or any one else

4 to remove the nuisance. (Motion Overruled) Motion being made previous to the aforesaid to dismiss on the Ground for want of Jurisdiction as by plaintiffs bill it appears that question of title to real estate is to be tried. (Motion Overruled). Henry L. Patterson then asked a severance, not granted, Whereupon the Justice after hearing the evidence Considered and adjudged that the defendants is Justly indebted to the plaintiff in the Sum of $30.00, It is therefore ordered and adjudged by the Justice that the plaintiff have Judgment against the defendants for the Sum of $30.00 for her debt and also for the costs in this behalf expended, and that she have execution thereon according to law. Now on this day March 17th 1855. Comes Asa S. Jones, and prayed an appeal to the Law Commissioners Court and enters into recognizance in the sum of One hundred dollars, with R. H. Catherwood and W. L. Catherwood, as sureties appeal allowed."

Affidavit { "Fanny Deaver administratrix of estate of Larkin Deaver, deceased, Plaintiff,

Robert H. Catherwood & Henry L. Patterson Defendants.

This day, personally appeared before Liberty Waite, a Justice of the Peace, in and for the County of Stronis, in the State of Missouri, Asa S. Jones, Atty for plaintiffs 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 appellants are injured by the judgment of the Justice,

Ata. Jones for plaintiffs. "

sworn to & subscribed before me this 17th day of March 1855.
Liberty Waite Justice "

Recognizance } "We the undersigned, R. H. Catherwood & Henry L. Patterson and William L. Catherwood, acknowledge ourselves indebted to Fanny Weaver administratrix estate of Larkin Weaver, decd, in the sum of One hundred dollars, to be void upon this Condition; Whereas: Said R. H. Catherwood and Henry L. Patterson, have appealed from the judgment of Liberty Waite, a Justice of the Peace, in a certain action between Fanny Weaver administratrix &c plaintiff and R. H. Catherwood and Henry L. Patterson, defendants. Now if, on such appeal, the judgment of the Justice, be affirmed, or if, on the trial anew, in the Law Commissioners Court of Shannon County, judgment be given against the appellants, and they shall satisfy such judgment, or if such appeal shall be dismissed, and they shall pay the judgment of the Justice, together with the costs of appeal, the recognizance shall be void,

R. H. Catherwood Seal
H. L. Patterson Seal
W. L. Catherwood Seal

Attest, this 17th day of March 1855.
Liberty Waite Justice, "

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Certificate } "State of Missouri } ss.
County of St Louis } I, Liberty Waite
a Justice of the peace, within and for
the County aforesaid, do hereby certify that
the foregoing is a true transcript of the docket
entries in the above entitled case, and the
papers hereto attached are all the papers
now on file in my office in any way appertaining to the same,
Given and Certified this the 31st day of
March 1855 Liberty Waite
Justice of the peace, "

And afterwards, towit at the respective terms and days herein after named the following further proceedings were had in this Cause in the Law Commissioners Court of Saint Louis County,

April Term 1855.

Tuesday April 17th 1855

Cont { "By Consent Continued to the 25th day of April 1855,"

Wednesday April 25th 1855.

Cont { "By Consent Continued to the 2nd day of May next, "

Wednesday May 2nd 1855.

Cause heard advised { "Now at this day Come the parties by their attorneys, and waive a Jury and submit

the trial of this cause to the Court, whereupon the Court after hearing the evidence, and not being sufficiently advised of and concerning the premises, takes time to advise, "

7

Friday May 4th 1855,

Judgt

"Now at this day the Court being fully advised of and concerning the premises, doth find that Robert R. Catherwood is indebted to said plaintiff, in the sum of Thirty dollars, Therefore it is considered by the Court that said plaintiff recover of said defendant, Catherwood, and William L. Catherwood, his security in the recognizance of appeal, the said sum of Thirty dollars, and that execution issue therefor.

The Court further finds for the said defendant Henry L. Patterson, Therefore it is considered by the Court that said defendant Patterson recover of plaintiff his costs and charges, in this behalf expended, and that execution issue therefor.

Motion for New trial filed

The defendants by their attorney move the Court to set aside the Judgment herein and to grant a New trial, and file their reasons therefor, "

Saturday May 5th 1855

Motion Heard Advise

"The Court having duly heard the defendants motion to set aside the Judgment and to grant a new trial herein and not being sufficiently advised thereof takes time to advise, "

June Term 1855.

Monday June 4th 1855.

Motion Sustd } "Now at this day the Court being fully advised of and concerning the motion of the defendant Robert H. Catherwood, to set aside the judgment herein and to grant a new trial doth consider that said motion be and the same is sustained, and it is further ordered by the Court that the judgment as to the said Henry D. Patterson be and the same is set aside, and that the Cause abide the determination of the suit."

Monday June 18th 1855.

Attach Awarded } "Now at this day come the parties by their attorneys, and on motion of plaintiff attachments are awarded against witnesses on behalf of said plaintiff returnable June 19th 1855."

Tuesday June 19th 1855.

Attach Awarded } "Now at this day come the parties by their attorneys, and on motion of plaintiff attachments are awarded against witnesses on behalf of plaintiff returnable June 20th 1855."

Wednesday June 20th 1855

Trial { "Now at this day come the parties by their attorneys, and not requiring a jury submit the trial of the Cause to the Court, whereupon the trial thereof is finished."

Wednesday June 27th 1855.

Judgt { "Now at this day the Court having duly Considered the proofs herein, and being fully advised of and Concerning the premises, doth find for the said defendant Henry L. Patterson. Therefore it is ordered by the Court that said defendant Patterson recover of said plaintiff his Costs and charges in this behalf expended and that execution issue therefor. And the Court doth find that the said defendant Robert H. Catherwood is indebted to the plaintiff in the sum of Thirty dollars. Therefore it is further ordered by the Court that said plaintiff recover of said defendant and William L. Catherwood his security in the recognizance of appeal, the debt aforesaid, with costs aforesaid, by the Court found, also her Costs and charges in this behalf expended, and that execution issue therefor."

Friday June 29th 1855

Motion for New trial filed { "Now at this day Come the parties by their attorney, and move the Court to set aside the Judgment herein, and to grant a new trial and file their reasons therefor. "Said Motion is in the words and figures following towit;"

Motion { Defendants move the Court to set aside Judgment in this case & for New trial, because The Court sitting as a Jury found 1st Against the law, 2nd Against the evidence. 3rd Against the weight of evidence, 4th The Court refused good and legal instructions

offered on the part of the defendant
pr Jones & Sherman attys, "

Saturday June 30th 1855.

Motion Gubn } "Now at this day Comes the plaintiff by her attorney, and submits to the Court, the defendants motion to set aside the Judgment and to grant anew trial herein, "

August Term 1855.

Monday August 6th 1855.

Motion Ov'd } "The Court having duly Considered the defendants motion to set aside the Judgment herein, and to grant anew trial, doth Consider that said motion be and the same is overruled, "

Saturday September 1st 1855.

Bill of Exfiled } "Bill of exceptions filed by the defendant Catherwood, attorney, "

Said bill of exceptions is in the words and figures following towit: "

Bill of Except, } Be it Known that at the trial of the above entitled cause, at the June Term 1855. of this Court. The plaintiff to support her action introduced James Regan, who testified, That in the fall of 1854, he was Street Inspector in the City of St Louis, That in September of that year he had his attention drawn by a Mr Cooper to a privy on the back part of the premises then occupied by Mr Cooper on Olive Street between 11th & 12th Streets, I found the privy very offensive

Regan }

11 It was a double vault and extended over to defendant Catherwoods premises which was the next lot. The vault was filled within four feet of the top. Question: Did you give notice to Mr Deaver or her agent to remove the Contents of the vault, & this question was objected to by defendants attorney as being immaterial and not binding on defendants, obj overruled, and witness says I gave notice to Mr Deavers agent, Mr Cooper lived in Mr Deavers house at that time, I never was on the premises of Catherwood.

Lochlin } Thomas Lochlin testifies, I was Mr Deavers agent last Summer (looks at paper presented by Plffs Counsel and says. That is the Notice of the Street inspector to remove Contents of the vault, (See pages 2 and 3) I first saw it in September 1854, Plaintiffs Counsel offered notice in evidence, which was objected to by defendants, objection was overruled by the Court and notice is read, Witness proceeds. I employed a man to have it cleaned out, It is a double vault one half is on Pattersons lot and one half is on Deavers. Catherwood occupied Pattersons lot, & Mr Cooper Deavers lot. I paid the man Sixty dollars who cleaned it out, Patterson told me to go to Catherwood about it when I presented the bill for cleaning out the vault to him, I went to Catherwood who told me he would not pay it and to go to Mr Patterson, His heirs would expire soon, Mr Deaver is dead. Cooper is tenant of the Deaver House. The ground along

12 there is supposed to be springy, last year was very dry no rain at all scarcely, I consulted Mr Deaver before I had the

Cooper { vault cleaned out. Mr Cooper Testified I lived in the Deaver House. The privy was very offensive It is built on the line between the lot, I occupied and the one Catherwood occupied, There is a high fence between the lots. Plaintiffs then showed that Sixty Dollars was a reasonable charge for cleaning the vault. also that there was a pipe running from the hydrant on the Deaver lot to the Sewer, also that the vault was filled to within a foot and one half or two feet of the flooring. The Ordinances of the City of St Louis in relation to the removal of nuisances was then read by Plff's Counsel, The plaintiff here rested his case. In defence the following evidence was introduced, The privy on Catherwoods premises was not in a bad condition in September 1854, It was no more offensive than privies usually are, Catherwoods family experienced no inconvenience from it, The vault would fill occasionally and then fall away. It was as full a few ~~days~~ weeks after it was cleaned out as it was when cleaned out, It is as full now or nearly so as it was when cleaned out. It rises and falls. Water from Mr Deavers hydrant runs into it. It was not cleaned for four years. The Ground is Springy people about there had to build sewers to their privies

13 their is none to this priviy. Defendants here
verbed. The Counsel for defendants asked
the Court to declare the law to be in this
case as set forth the following instructions
Granted 1 The Court declares the law to be that
when work, labor and services are rendered
and performed voluntarily no action for
such labor work and services will be sustain=
ed however meritorious and benificial they may
be.
Granted 2. If the Court sitting as a Jury find there
was no nuisance on the premises of defendants
they will find for the defendants."
Granted 3. That the notice given by the Street inspec=
tor to plaintiffs to remove nuisance, does not
bind the defendant."
Refused, 4. That it must be shown that the plaintiff
in this case is entitled to be administratrix of
the estate Larkin Beaver. dec.d before she can
recover,
Refused, 5. That the law will not hold any process
compulsory on the plaintiff so as to bind the
defendants to a Contribution of services done
by plaintiff under that process which plain=
tiff as her agents bought and procured to be
served upon plaintiff.
Granted 6 The plaintiff must show affirmatively that
there was a nuisance on the premises of defen=
dants before plaintiffs can have Judgment,
Granted 7 That it must be shown that Patterson
was owner or occupier before the plaintiff
can have Judgment against him,
Refused 8. That notice given by the Street inspector
under Section 18 under an ordinance of the City

of St Louis in relation to nuisances No 2387, is not Compulsory process such as will entitle the plaintiff to Contribution of the defendant in this case, "

All of which instructions the Court Granted with the exception of instructions Numbered 4, 5, and 8, which instructions the Court refused to grant, to which refusal, the defendants Counsel then and there excepted.

The Court Sitting as a Jury found against defendant Catherwood and for defendant Patterson, and Judgment was Given accordingly, Whereupon defendants Counsel filed his motion and reasons for a new trial, as follows. (See pages 9 & 10) which motion the Court overruled to which ruling defendant Catherwood excepted and prays the Court to sign this his bill of exceptions

John W. Colvin Law Comr. (Seal) "

Thursday September 20th 1855

Bond filed { "Now at this day Comes the defendant, and presents to the Court here his bond in accordance with the Statute in that case made and provided to said plaintiff in the sum of Two hundred dollars, with E. R. Mason and W. L. Catherwood as Securities, which said bond is Approved by the Court. Whereupon on motion of defendant by his Attorney An Appeal is Granted from the Judgment herein to the Supreme Court, "

Said bond is in the words and figures following, to wit:

15 Bond

"Know all men by these presents, that we Robert H. Catherwood as principal and E. R. Marow and Wm. J. Catherwood as sureties are held and firmly bound unto Fanny Deaver &c in the sum of Two 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 Saint Louis, this 7th day of Sept. A. D. 1855.

The Condition of the above obligation is such, that whereas Robert H. Catherwood has appealed from the judgment rendered against him and in favor of Fanny Deaver &c in the Law Commissioners Court of St Louis County, for the sum of Thirty dollars together with Costs, Now if the said Appellant will pay all Costs and damages that may be awarded against him occasioned by said appeal, and shall prosecute his appeal, and shall performe 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 or any part thereof be affirmed, that he will comply with and performe the same so far as it may be affirmed, and will pay all damages and costs which may be awarded against him by the Supreme Court then

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this obligation to be void otherwise to remain in full force and effect,

R. H. Catherwood Seal
E. R. Mason Seal
Wm. L. Catherwood Seal

Approved Sept 7th 1855
Geo. Calvin Law Comr. "

State of Missouri } ss.
Saint Louis County } I John W. Colvin
The Law Commissioner of St Louis County,
Certify that the foregoing is a full and true transcript of the record and proceedings in the Case of Fanny Weaver, administratrix of the estate of Larkin Weaver deceased against Robert H. Catherwood and Henry L. Patterson as fully as the same remains of record in my office,

In testimony whereof I hereto set my hand and affix the Seal of said Court, at office in St Louis, this 29 th day of January A. D. 1856,

John W. Colvin
Law Commissioner of
St Louis County
Missouri

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66

25

Oct. Term 1857.

Fanny Deaver
admx of the estate of
Larkin Deaver decd
respts.

Transcript

Robert H. Catherwood
Henry L. Patterson apts.

Saml Reber, plff
Jones & Sherman Defts

Filed 10 March 1856
Wm. S. Glanville
Clk.

Fee $4.50

66

Dismissed 13 Nov. 57

Supreme Court. Oct Term 1857

Fanny Deaver admrx } Appellee
Robert L Cutherwood } Appellant

Now comes Appellant by his attorney moves the Court to set aside continuance in above entitled case, & dismiss the appeal

James F Sherman atty for Appellant

Deaver } Appellee
v
Catherwood } Appellant.

No Set aside Continue
& dismiss appeal

Filed 13 Novr. 1857
Wm S Glanville Ck.