Goethe, John v St Louis & Iron Mountain Railroad Co 1865 534/5

641/15 —

Straat R
Kellogg R A

Goethe R
v
St Ion A

Oct 65
Feb 63

D stated that D injured 2 cars
breaking cars less.

$70

Wagner no exception no motion for nonsuit
Affirmed

1.

State of Missouri } ss.
County of St. Louis } Be it remembered that on the 15th day of June 1864 there was filed in the office of the Clerk of the Law Commissioners Court within and for the County aforesaid a Petition which is in words and figures following to Wit:

Petition.

John Goethe Plaintiff vs. St. Louis & Iron Mountain Rail Road Company Deft.	In the Law Commissioners Court of St. Louis County. August term, 1864. St Louis County ss.

The Plaintiff states that on or about the 22nd day of March, 1864, the defendant injured two cows, the property of this Plaintiff, by running a Locomotive car or carriage against said cows, thereby breaking two of the legs of one and one of the legs of the other, and rendering said cows of no value whatever to this Plaintiff; that said injury was done on the road of said defendant a short distance south of a station known as, and called Tuckers Station, it being north of the City of carondelet, in the County of St. Louis and State of Missouri; that said injury was not done at or near the crossing of any public highway nor was said rail road track enclosed by a lawful fence at or near the place where said injury was done.

The plaintiff says, that in consequence of the acts of said defendant in injuring said

cows, he has been damaged in the sum of seventy dollars, for which and costs, he asks Judgement against said defendant.

Jno. N. Straat
Attorney for Plff.

Affidavit

John N. Straat agt for the plaintiff in the above entitled cause, makes oath and says he believes the matters and things stated therein are true.

Subscribed and sworn to before me this 15th day of June, A.D. 1864.
W. C. Huffman
Clk.

Jno. N. Straat.

Thereupon the following summons was issued to wit:

Summons

The State of Missouri
To the Marshal of St. Louis County
Greeting:

We command you to Summon St. Louis and Iron Mountain Rail Road Company, to appear before the Saw Commissioners Court, of St. Louis County, on the first day of the next term thereof, to be held in the City of St. Louis, within and for the County of St. Louis, on the first monday of August next, then and there to answer the complaint of John Goethe, as set forth in the annexed petition: and have you then and there this writ

Seal.

Witness, W. C. Huffman Clerk of our said Court, with the seal thereof hereto affixed, at office, in the City of St. Louis, this

Fifteenth day of June in the year of our Lord eighteen hundred and sixty four.

W. C. Hoffman
Clk.

~~Acknowledge myself bound for all costs~~

To the foregoing summons the marshal made the following return:

Marshals Return.

Executed this writ in St. Louis County this 15th July 1864 by delivering a copy of the writ and petition, as furnished by the Clerk to Stephen D. Barlow, President of the Iron Mountain Railroad Company.

James Coff
marshall.

And afterwards to wit:

On 1st day of August, 1864. there was a demurrer to Plaintiffs petition filed in words and figures following to wit:

John Goethe Plaintiff
vs.
The St. Louis and Iron Mountain Rail Road Company Defendants

St. Louis Law Com.a Court August Term 1864.

St. Louis County

Demurrer.

And now come the Defendants and demur to the Plaintiffs petition, because they say that the statements and allegations therein contained are not sufficient in law to constitute a cause of action in this

II Because no place is stated in said petition where the injury happened.

III Because the place where the injury happened

is not stated with sufficient certainty in said petition

IIII. Because it is not alleged in said petition that the Plaintiff's cows were injured at any place, were the Defendants were required by law to construct or maintain a fence.

Tansig & Kellogg Attys for Defendants.

John Goethe
vs.
St. Louis & Iron Mountain Rail-road Company.

Submition

The parties by attorneys come and submit to the Court the demurrer herein. And the Court not being fully advised thereof takes time to consider.

John Goethe
vs
St. Louis & Iron Mountain Rail-road Company

The Court being fully advised of the demurrer herein, doth overrule the same.

On October 10th 1864 the following answer was filed by the defendants in the above cause in words and figures as follows to wit:

Answer.

John Goethe Plaintiff
vs
The St. Louis & Iron Mountain Rail Road Company Defendant

October Term 1864 Law Commissioners Court St. Louis County

Appearance. Answer

Defendant states, in answer to the Petition of the Plaintiff in the above entitled cause that whether "on or about the
" 22nd day of March, 1864, the defendant in-
" jured two cows the property of this Plaintiff
" by running a locomotive Car or Carriage
" against said cows, thereby breaking two of
" the legs of one and one of the legs of the other
" and rendering said cows of no value whatever
" to the Plaintiff" Where said injury (if any) occurred: whether at the crossing of a Public Highway or not, and whether the road at the place of injury was, or was not enclosed by a lawful fence, or whether the defendants were by law required to construct and maintain a fence at the place of injury, Defendants have no knowledge, or information, sufficient to form a belief, and therefore ask proof thereof

James Taussig Atty. for Deft.

City & County of St. Louis } Personally appeared
August 31st 1864. } Stephen D. Barlow President & Agent of Defendant And made oath that the foregoing answer and matters therein as stated he believes to be true before me

Theodore F. Chiles Notary Public
St. Louis Co Mo.

Seal.

S. D. Barlow

Agreed case

And afterwards on the 8th day of December 1864, an agreement was filed by the Attorneys in said cause in words and figures as follows to wit:

6

John Goethe, plaintiff,
vs.
St. Louis & Iron Mountain Rail Road Co. deft.

In the Law Commissioners Court of St. Louis County.
December term, 1864.

Agreed Case

It is agreed by and between the parties to the above entitled cause that the facts set forth in the plaintiffs petition are true, but if the pltff. recover he shall recover only ($60) sixty dollars.

And it is also agreed that at the place where said injury occured there was not on either side of said Rail Road any enclosed or cultivated field; that on the west side of said Rail Road there was at said point a perpendicular ledge or bank more than twenty feet high and on the east side of said road, at the place of said injury, was a large sandy waste, subject to overflow by the Mississippi river at times of high water, and at low stages of water open to cattle, and where cattle often frequented. Pltffs petition and the defts answer, (subject to all exceptions for insufficiency, except that it is understood the Pltff alleges the deft to be a duly incorporated Rail Road Co. under the laws of the State, for the transportation of freight and passengers in the State, which allegation the deft. admits to be true,) are made parts of this agreed case.

Dec. 8th 1864.

Jno. N. Staat,
Atty. for pltff.

Taussig & Kellogg
Attys. for Deft.

John Goethe
vs.
St. Louis and Iron Mountain Railroad Company

Argument continued.

John Goethe
vs.
St. Louis and Iron Mountain Rail Road Company.

Judgment

The parties by attorneys come and having argued this cause submit the same to the Court; and the Court having duly considered and being fully advised of the premises doth find that the defendant is indebted to Plaintiff in the sum of Sixty dollars. It is therefore adjudged by the Court that plaintiff recover of defendant the debt aforesaid and his costs herein expended and have execution therefor.

John Goethe
vs.
St. Louis and Iron Mountain Rail Road Company.

Affidavit for Appeal.

Affidavit for Appeal

And afterwards to wit, on the 25 day of January 1865, the following affidavit for appeal was filed.

George B. Kellegg agent of the defendant in the above entitled cause makes oath and says that the appeal in the above suit is not taken for vexation or delay but because the defendant is injured by the judgement of the

Court below.

Sworn to and subscribed before me this 25 day of January A.D. 1865.

W. C. Haffman.
Clk.

Geo. B. Kellogg.

And afterwards to wit on the 25th day of January 1865, the following Bond for Appeal was filed.

Bond

Know all Men by these Presents: That we George B. Kellogg agent of the St. Louis and Iron Mountain Rail Road Company as principal, and George B. Kellogg & Isidor Bush as sureties are held and firmly bound unto John Goethe, in the sum of one hundred & fifty 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 25th day of January A.D. 1865.

The condition of the above obligation is such, that whereas The St. Louis and Iron Mountain Rail Road Company has appealed from the judgement rendered against it and in favor of John Goethe in the Law Commissioners Court of St. Louis County, for the sum of sixty Dollars together with costs.

Now if the said appellant will pay all costs and damages that may be awarded against it occasioned by such appeal, and shall prosecute its appeal, and shall perform such judgement 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 judgement, or any part thereof, be affirmed, it 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 it by the Supreme Court, then this obligation to be void, otherwise to remain in full force and effect.

Geo. B. Kellogg (Seal)
Isidor Bush, (Seal)

Law Commissioners Court of St. Louis County,
December Term, 1864. January 25th 1865.

This day appeared George B. Kellogg agent of the principal, and George B. Kellogg and Isidor Bush, the securities in the foregoing bond, and acknowledged to have executed the same for the purposes therein expressed.

Seal.

In Witness of which, I hereunto set my hand, and affix the seal of said Court, at Office, in St. Louis, the day and year last aforesaid

W. C. Huffman
Clerk.

John Goethe
vs.
St. Louis & Iron Mountain Rail Road Company.

Saturday
February 4, 1864,

Affidavit for appeal and appeal bond filed, and appeal to Supreme Court granted.

State of Missouri }
County of St. Louis } ss.

I, W. C. Huffman, Clerk of the Law Commissioners Court within and for said County, Certify the foregoing to be a full and complete Transcript of the records and proceedings in said cause as the same now remain on file in my office. to of Record.

(Seal) In Witness of which, I hereunto set my hand and affix the seal of said Court, at office in the City of St. Louis, this 3d day of February A.D. 1865.

W. C. Huffman
Clerk Law Commissioners Court

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(15) Oct T. 1865
No 105

John Goethe
" Respdt

St. Louis & Iron
Mountain Rail
Road Company
Appellant

Appeal to Sup. Court

Filed Feby 7. 1865
A W Mead
Cx

T. Kellogg for appellant
" Respdnt

$5.00 $10 paid by Attys

Asst of Errors filed

John Göethe, Respt. } In the Supreme Court.
vs.
St. Louis & Iron Mountain } March term, 1865.
Rail Road Company, Aplt. }

And now comes the Respondent, by his attorney, & moves the court to dismiss the above entitled cause, & for the following reasons:

1st. Because there is nothing saved in said cause for this court to pass on — no instructions having been offered by either party, & no exceptions taken to any act or decision of the court below.

2d. Because the appeal was improperly allowed, no motion for a new trial having been made by the appellant, in the Law Comrs. Court.

Jno. N. Straat,
atty for Respt.

No. 198.

Goethe
v
Iron M. R. R. Co.

Mo. to dismiss & reasons.

Withdrawn

S Graat
for Respt.

Filed 17th March 1865
A. W. Mead
Clerk

John Goethe, Respt.	In the Supreme Court.
vs.	
St. Louis & Iron Mountain Rail Road Co. Appellant.	March term, 1865.

And now comes the Respondent by his attorney, & moves the court to affirm the Judgment rendered by the Law Commissioner in the above entitled cause, & for the following reasons, viz:

1st. Because no exceptions to the rulings of the court below were saved during the proceedings had in said cause.

2d. Because the appellant made no motion in the lower court in arrest of Judgment.

3d. Because the appellant made no motion in the lower court for a new trial.

4th. Because there is no bill of exceptions filed in this cause.

5th. Because the appellant is debarred from taking exceptions in this court not expressly decided in the court below.

6th. Because the record in this cause does not properly present any thing on which this court can review the action of the lower court.

Jno. N. Strait,
atty for Respt.

No. 198.

March term, 1865.

John Göethe, Respt.
vs.
St. Louis & I. M. R. R. Co.
applt.

Motion to affirm
Judgt & reasons.

Straat,
for Respt.

Filed 17th March 1865

A. W. Mead
Clerk

John Goethe
vs
St Louis & Iron M R R Co

In Sup Ct Mo
Oct S. 1865

Opinion of the Court.

On the trial of this cause no exceptions were taken, no motion made for new trial, or in arrest of judgment.

The respondent now files his motion for an affirmance of judgment; it is sustained and the judgment is affirmed.

Judge Holmes concurs;
Judge Lovelace absent

David Hagner

57

~~57~~ 0

Goethe

vs

St Louis & Iron M

R R Co

Opinion of the

Court

by Wagner

Affirmed

Filed Nov 20. 1865

J. A. Willis

Clerk

John Goethe Respt
vs.
St Louis & I. M. R.R. Co.
Appelt.

In Supreme Court.

March term 1865.

The Respondent, in support of his motion to affirm ~~to affirm~~ the Judgt of the court below, cites the case of
George P. Davis (Dorris) v. James B. Colt, 31 Mo. 530 & the authorities therein cited.
Whittelsey v Sullivan, 33 Mo. 405, although an instruction was given, a mo. for new trial made & bill of exs. filed
Boyse v Bart, 34 Mo. 74.

In 15 Mo. 315, Fire v Rogers. cited by Appellant, the court will observe that exceptions were taken to the ruling of the court, instructions given, & a motion for a new trial filed & overruled.

In 26 Mo. Wagner v Jacoby, 530, exceptions were taken to the ruling of the court, cited by Appelt.

The same is true in 28 Mo. Prince v Cole, 486, cited by appelt.

The same is true also in case of Gray v Hesleep, 33 Mo. 238, cited by appelt.

In the case before the court, no exceptions at all were taken, & nothing was saved.

Strodt
for Respt

Goethe v. St. L. & I. M. R.R. Co.

authorities cited by Respt. in support of his motion to affirm

Gorthe against

o

The St Louis & Iron Mountain

Rail Road Company

Upon the motion to ~~demurrer~~ affirm filed in the above entitled cause Defendant refers the Court to

Gray vs Heslep	33 Mo		238
Magner vs Jacob	26 Mo		530
Prince vs Cole	28 Mo		486
Fine vs Rogers	15 Mo		315

The facts having been agreed upon in the Court below, the legal liability based upon those facts, was the question submitted to the Court, and from that decision, Defendant could as well appeal (without motion for new trial) as from Judgment on demurrer

Gorther 15 St Louis & Iron Mountain
Rail Road Company

Mem
Against Motion

John Gorthe, Respondent
vs
The St Louis & Iron Mountain Rail Road Company Appellant

IN SUPREME COURT,
March TERM, 1865

AND now come the said Appellant and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Respondent
2. That said Court rejected proper and legal testimony offered by Appellant
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Appellant
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Respondent when it should have been rendered for the Appellant
10. ~~That said Court overruled the motion for a new trial, made by~~

Samp't Kellogg
Attorney for Appellant

And now comes the respondent and for joinder in error says that there is no error in the record and proceedings of said Court in said cause, as assigned by said appellant.

Jno. N. Straat,
atty for Respondent

Goethe 13 Iron Mountain R R Co

Assignment of error