Reardon, Mary v. St. Louis County 36 M. 555 515/8

631/15
March, 1861

Plaintiff is a widow - charge
the county has a responsibility to maintain
and repair highways - husband killed
trying to repair bridge 5000

App
Gareschi

Resp
Gardner

Holmes - judgment affirmed

State of Missouri } ss Be it remembered that on the
County of Saint Louis } 26th of May 1860 there was filed
in the office of the Clerk of the
Saint Louis Circuit Court ~~within~~ a petition which is
in the words and figures following, to wit:

Petition

Mary Reardon - plaintiff
vs
Saint Louis County - Defendant

} In St Louis Circuit Court
Plaintiff by Alex J. P. Garesche, her attorney
states that she is the widow of Daniel Reardon
now deceased and that said Daniel Reardon died
on or about the 22nd day of March A.D. 1860
Plaintiff further states that defendant is a corporation
having the charge of building making and keeping in
proper repair & condition, the roads turnpikes and
Public Highways of said Saint Louis County and
particularly a certain Road or turnpike known as
the Bellefountain Road. — Plaintiff further states
that on said Bellefountain Road, there is about
six miles from the City of Saint Louis, a bridge across
a stream known as Sugrass River or cold Water
Creek, and that through the neglect & default of
said defendant to provide proper guards, said Daniel
Reardon when travelling said Road and about to cross said
bridge at night stepped over the parapet of said bridge
and was then and there killed by the fall -
Plaintiff alleges - that she has been damaged in at least
the sum of Five thousand Dollars & therefore asks
judgment for said sum

Alex J P Garesché
Atty for Plff.

(2) Mary Reardon plaintiff makes oath and says that the above petition and matters as therein stated she believes to be true

Mary Smer Reardon
Mark

Subscribed and Sworn
to before me this 26th May
1860

S Rice Clk

On the filing of which petition the following Summons was issued

Summons The State of Missouri } SS =
County of Saint Louis } To the Sheriff of St Louis County -
= Greeting; =

We command you to Summon - Saint Louis County to appear before the Judge of our Circuit Court on the first day of the next term thereof - to be held in the City of St Louis within and for the County of Saint Louis on the Last Monday of September next, then and there to answer the complaint of Mary A Reardon = as set forth in the annexed petition and have you then and there this writ

SSSS -

Witness Stephen Rice Clerk of our said Court with the seal thereof hereto affixed at office in the City of Saint Louis this 26th day of May in the year of our Lord Eighteen hundred and Sixty

Stephen Rice Clk

There is endorsed on Said writ the following Return

Sheriffs Return Executed this writ in the County of Saint Louis on the 30th day of May 1860 by delivering a copy of this

writ and petition as furnished by the Clerk to John H Lightner - President of the Board of County Commissioners of the County of Saint Louis

Thomas E Courtenay Sheriff
By James A Guion Deputy

And on the 26th day of September 1860 the following demurrer was filed -

Demurrer. The defendant demurs to plaintiffs petition for the following grounds of objection.

First - Because said petition does not state facts sufficient to constitute a cause of action in this.

1st Said petition does not state or show that the killing of said Daniel Reardon did not happen by his own negligence or want of care, or that he exercised necessary care and attention in passing said Bridge

Second - It is not alleged or shown in said petition, that it was the duty of defendant to provide proper grounds to said bridge.

3rd At common law, no action can be maintained against Defendant for failing to repair a bridge or to provide guards for the same, and the petition does not state or show under what statute if any this suit is brought

Samuel H Gardner
Atty for Deft.

And at the September Term 1860 and on the 10th of Dec 1860 the following order was made herein

The Demurrer to the amended petition being fully heard and considered by the Court is sustained.

By leave of Court ten days is given plaintiff to amend

4

Amended Petition

And on the 11th of January 1861 the following amended petition was filed =

Plaintiff by Alex S P Graves her attorney for an amended petition states that she is the widow of Daniel Reardon now deceased and that said Daniel Reardon died on or about the 22nd day of March 1860 — Plaintiff further states that defendant is a corporation, having the charge of building making and keeping in proper repair & condition the roads, turnpikes and and public highways of said Saint Louis County and particularly a certain road or turnpike known as the Bellefountain Road, Plaintiff further states that defendants by sundry statutes is expressly authorized to levy taxes upon the inhabitants of said County of St Louis for the purpose of keeping in repair the bridges roads turnpikes and highways, and in exercise of this power and at the time of the death of said Daniel Reardon was and for a long time, before had been collecting such taxes so authorized for the keep and of said bridges, roads, turnpikes & highways and among others of the said Bellefountaine Road, Plaintiff further states that on said Bellefountaine Road, there is about six miles from the City of St Louis, a bridge across a stream known as Jengrass river or cold water creek and that through the neglect and default of said defendant to provide proper guards to said bridge necessary for the and protection of persons passing or travelling on and along said road the said Daniel Reardon when travelling on said Bellefountaine Road and about to cross said bridge at night without any negligence or fault of his stepped off of said bridge and was then and there killed by the fall

5 Plaintiff alleges that by reason thereof she has been damaged in the sum of Five thousand Dollars and for which she asks judgment

Alex S. P. Gareché
Atty for Pltff.

Alex S. P. Gareché agent and attorney of plaintiff makes oath and says that the above petition and matters as therein stated he believes to be true

Alex S. P. Gareché

Sworn to and Subscribed
before me January 11th 1861
S Rice Clk D.

And on the 14th of January 1861 the following demurrer to the amended petition was filed

Demurrer to amended Petition

The defendant demurs to Pltffs amended petition for the following grounds of objection

First - Because said amended petition does not state facts sufficient to constitute a cause of action - in that.

1st Said petition does not state or show that the killing of said Daniel Reardon did not happen by his own negligence or want of care or that he exercised necessary and proper care and attention in passing said Bridge —

2nd It is not alleged or shown in said petition that it was the duty of defendant to provide proper guards to said bridge —

3rd At Common law no action can be maintained against Defendant for failing to repair a bridge or to provide guards for the same - and the petition does not state or show under what statute if any this suit this suit - nor does it set forth or

or show and statute law of this State under which defendant would be liable in this action

Samuel K Gardner
Atty for Deft.

And at the same term and the 28th day of January 1861 the following entry was made herein
The Demurrer to the amended petition herein being heard and fully considered by the Court is sustained

Bill of Exceptions

And on the 30th day of January 1861 there was filed the following Bill of Exceptions
At trial of this cause the following proceedings were had –

Plaintiff having by leave filed an amended petition – defendant demurred thereto and the Court having sustained the demurrer plaintiff then and there excepted and tendered this his bill of Exceptions and prayed that the same might be signed and sealed by the Court + which by the Court is so ordered

S. M. Breckinridge (seal)

State of Missouri } ss.
County of Saint Louis } I Stephen Rice Clk of the Saint Louis Circuit Court within and for the County and State aforesaid certify the above and foregoing to be a true and complete transcript of the record and proceedings in the above entitled cause 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 the City of St Louis this 29th 1st of March A D 1861

Stephen Rice Clk

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1864 April 5. Submitted on Brief
1865. Nov 7 Submitted by respondent, taken as sub-
mitted by Appellant
" Nov 13. Assumed. Dp 361

Oct T. 1865
No 44 (15)

Mary Reardon
Plff in Error.
vs
Saint Louis County
Deft in Error.

Transcript for Supreme Court

Filed March 2d 1861.
Wm S. Glanville Clk.

Mr J. P. Garesché
for Appellant

Gardners for
Appellee

Fee $2.80 pd by A.J.
P. Garesché

$1000 pd by Appellant / A. J. P. Garesché atty /
asgt.

(8)

Mary Reardon, Plff in Error
vs
The County of St. Louis
Deft. In Error

In Supreme Court
March 3. 1861.

The said Plaintiff in Error says there is manifest Error in the record & proceedings of the St. Louis Circuit Court — and for said Error she assigns the following 1st said Court — sustained the Demurrer to Plaintiffs amended petition — and gave judgment against Plff — thereon —

Garesche, Garesche & Farrish
for Plff — In Error

And the Defendant says there is no such error as assigned above
26 Oct 65 H A Clover
Atty for Co

306

Mary Reardon

v.

St. Louis County

assignment of Errors

Filed. March 25 1861

Wm. S. Glanville Clk.

The State of Missouri, ss.

The State of Missouri, to the Honorable the

in said State—Greeting:

WHEREAS, In the record and proceedings in a certain cause lately pending in the St. Louis Circuit Court

wherein Mary Reardon is Plaintiff, the county of St. Louis is Defendant

in a case of Damages manifest error hath intervened, to the great damage of said Plaintiff as by her complaint we are informed.

NOW, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of St. Louis, in the County of St. Louis, in said State, on the First Monday in March next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

WITNESS, WILLIAM S. GLANVILLE, Clerk, of our said Supreme Court, at office in the City ~~of Saint Louis, the~~ Eighth day of February in the year of our Lord one thousand eight hundred and ~~fifty-~~ eighty one

W S Glanville

CLERK.

(2)

State of Missouri } ss = In ~~Stephen~~ obedience to
County of St Louis } the within writ of error I
hereby send you a true and
complete transcript of the record and
proceedings in the cause of Mary Reardon vs
Saint Louis County certified under our seal
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 the City of St
Louis this 1st day of March A D
1861

Stephen Rice Clk

Mary Reardon plaintiff in error } In the Supreme Court of the State of Missouri at St Louis -
St Louis County defendant in error
service of notice of writ of error heretofore sued out in this cause to St Louis Circuit Court and now pending in Supreme Court is accepted =
St Louis 26 Feby 1862

Saml H Gardner
Atty for Deft
in Error

297 Mch 3 62

253

Reardon
&
Adams County

Filed Oct 3. 1862
A W Mead
Clk

Mary Reardon, Appellant
vs
County of St. Louis, Respondent

In the Supreme Court
of the State of Missouri
At St Louis.

Appellants Statement

Appellant as the widow of Daniel Reardon instituted this suit in the Circuit Court against the County of St. Louis to recover $5000.00. damages for his death.

The Petition states that his death was caused through the neglect and default of Defendant in not providing proper guards to a bridge on a road under the Charge of Defendant, so that Daniel Reardon crossing it at night stepped over the parapet and was killed by the fall

Defendant Demurred to the petition on the ground that there was no cause of action against it, and the demurrer having been sustained the cause is brought here by Appeal.

Alex T. P. Garesché

Atty of appellant

49 Mar J 64

Reardon
v
St Louis County

Appellant's Statement.

Filed March 31. 1864
A. W. Mead
Clk

To Hon John D. S. Dryden Ass't Sup't Ct of Mo
with compliments of A. J. P. G.
St Louis 3 May 64

IN THE SUPREME COURT OF THE STATE OF MISSOURI,

AT ST. LOUIS.

MARY REARDON, Appellant
vs.
ST. LOUIS COUNTY, Respondent.

APPELLANT'S BRIEF.

1. The petition is sufficient.

2. The Plaintiff was entitled to recover.

Sec. 3 & 4—Act concerning damages. Rev. Code '55, p. 648.

3. By the laws applicable to St. Louis County, it is compelled to keep in repair the roads, bridges and highways of certain routes, inter alia the Bellefontaine road, and to carry out the purpose, is clothed with power to borrow money, levy taxes and to collect toll.

See Act concerning roads and highways.

Volume of "Laws applicable to St. Louis County," Sec. 2, p. 379. Sec. 5, p. 380. Sec. 12, p. 381. Sec. 2, p. 386—concerning tolls. Sec. 2, p. 391—authorized to borrow money. Sec. 1, p. 393—"to open" and "to keep in repair all public roads in St. Louis County." Sec. 11, p. 396—to open and keep in repair "may tax." Sec. 14, p. 396—may apply tolls to the keeping in repair roads and *bridges*, and opening new roads.

Sec. 15, p. 396—County Court may employ such Surveyors, Engineers and Agents necessary to open and keep in repair the roads of said County, and for the erection of bridges and other work on said roads.

Sec. 19, p. 396—may take other County funds for those purposes.

Sec. 21—Must collect such rate of toll as shall be reasonable and just, to apply the same to keeping said roads in repair.

4. A defective bridge, or the want of a suitable barrier to a bridge or road, is a defect for which a Company can be held responsible.

Randall *vs.* Prop'rs Cheshire Turnpike Co.—6 N. H., p. 147. Townsend *vs.* Presid't & Directors of Susquehannah Turnpike Co.—6 John., p. 90. Wheeler *vs.* Troy—20 N. H., p. 78. Coggswell *vs.* Livingston—4 Cush'g, p. 308. Norriss *vs.* Litchfield—35 N. H., p. 271. Willey *vs.* Portsmouth—35 N. H., p. 314. Tolland *vs.* Willington—26 Conn., p. 583, and the cases therein cited. Hayden *vs.* Attleboro—7 Gray, (Mass.) p. 338. Palmer & als. *vs.* Andover—2 Cush'g, p. 600.

A public bridge is a public highway.

McPheeters *vs.* Meramec Bridge Co.—28 Mo., p. 465.

5. These and the following cases, that what is a defect is a question of fact to be found by the Jury.

Merrill *vs.* Inh. of Hampden—26 Maine, p. 234. Casseday *vs.* Stockbridge—21 Vermont, p. 397. Commonwealth *vs.* Central Bridge Station—12 Cush'g, p. 245.

6. Is the County of St. Louis, as a municipal or public corporation, exempt from the present action?

Formerly, undoubtedly it would have been through the blind devotion of the Courts to the case of Russell *vs.* Inh'ts of Devon—6 Durm. & East., p. 671. But of late years the Law of Corporations has been greatly modified under the decisions of our Courts. Corporations no longer shield themselves from actions of tort or trespass, or from their contracts unless under seal.

City of St. Louis *vs.* Hospital Ass'n—15 Mo., p. 592.

A careful examination of the authorities which shield public corporations from actions will be shown to rest, all of them, on a single decision, and that the case, already quoted, of Russell *vs.* Inh'ts of Devon—Lord Kenyon decided that case adversely to the plaintiff, lest the principle would give rise to an infinity of actions; certainly a very flimsy reason, but principally because the county is not incorporated; and if incorporated, as the judgment would be against the corporation and not the corporators, the judgment would be fruitless, as there would be no corporate fund out of which to satisfy it.

Ashhurst, the other Justice, affirmed the plaintiff's inability to sue, for the reason of the infinity of actions to which the principle would give rise, and that the judgment, when rendered, must be satisfied out of the property of only one or two individuals who either could never be re-imbursed, or to re-imburse themselves must sue all of the inhabitants of the county.

As regards the infinity of actions, experience has shown the futility of the argument. All of the New England States expressly by Statute, and others of the States by the decision of their Courts, give a remedy, and yet experience has not shown that suits are so multiplied that the litigation is enormous, or that the public interests are sacrificed. On the contrary, the result is that the public welfare is promoted in the greater security afforded to the life and property of the individual, a most important object sought for in the government of every civilized nation. Again at Common Law the penalty of negligence was very severe; but our Statutes attach but a trifling penalty to offences like these, cognizable only at Common Law. Sec. 2, p. 1020, Rev. Stat. of '55. It amounts then to an immunity.

Why, then, should the doctrine of the Men of Devon be sustained in this State? Here our counties can be sued (Sec. 6, p. 503, Rev. Stat. '55), and may levy taxes to defray their expenses (Sec. 1, p. 1349, Revised Statutes '55).

The doctrine that counties as part of the State Sovereignty can commit no laches, is exploded in this State.

St. Charles County *vs.* Powell—22 Mo., p. 527.

And very properly, as the State itself has waived this exclusiveness—Sec. 9, p. 1049, Rev. Stat. '55.

And its Constitution provides that it shall be sued—Sec. 25, Art. 3, p. 69, Rev. Stat. '55.

Our Courts have sustained the decision of the Men of Devon, but have expressly saved the point involved in the present action. In Gurno *vs.* City of St. Louis, 12 Mo., p. 424, Judge Napton avers that corporations (public) would be responsible "for wanton and malicious, or negligent and unskilful exercise of their powers.'

In Taylor *vs.* City of St. Louis, 14 Mo., p. 24, Judge Napton shields the City, "where the power 'has not " been abused,' but skilfulfy and discreetly exercised."

In Lambar *vs.* City of St. Louis, 15 Mo., p. 613, Ryland, Justice, uses this language: "We do not pretend " to say, but that for neglect and unskilfulness, and mismanagement in constructing public improvements, that " there might be cases presented in which the City's liability would be manifest."

Then that we should recover, we cite:

Bartlett *vs.* Crozier—17 Johnson, p. 439.

City of Tallahassee *vs.* Fortuna—3 Florida, p. 25.

Bacon *vs.* City of Boston—3 Cushing, p. 174—which seems to be decided on Common Law principles, and without reference to any Statute.

McCombs *vs.* Akron—15 Ohio, p. 479—re-affirming Rhodes *vs.* Cleveland—10 Ohio, p. 159. In this last case Russell *vs.* Men of Devon is very correctly criticised.

Ross *vs.* Madison—1 Ind., (Carter) p. 281.

Wayne Co. Turnpike Co. *vs.* Berry—5 Ind., p. 286.

Wheeler *vs.* Troy—20 N. H., p. 77. That the remedy exists at Common Law and independently of the Statute. The force of this decision however is impaired by that of Bell *vs.* Town of Winchester—32 N. H., p. 435—and in which the principle is questioned, though the case of Wheeler *vs.* Troy is neither quoted by Counsel, nor mentioned by the Court.

Hutson *vs.* City of New York—5 Sandford, p. 296—and in which the authorities are reviewed.

Seagraves *vs.* City of Alton—13 Ills., p. 366.

Browning *vs.* City of Springfield—17 Ills., p. 143—a very elaborate review of the cases pertinent to the question.

In Comm'rs *vs.* Martin—4 Mich., p. 557—the principle of Russell *vs.* Men of Devon is affirmed, because the Comm'rs can assess only $250 for repairs. But where, as in the instance of St. Louis County, they have the power to tax for the *necessary* funds, the decision could not apply.

Conrad *vs.* Village of Ithaca—16 New York, p. 161—and cases cited in note A, containing a thorough review of the question.

Storrs *vs.* City of Utica—17 New York, p. 104.

Mayor of Baltimore *vs.* Marriott—9 Maryland, p. 173—quoted also in Mayor of Baltimore *vs.* Eschback—18 Maryland, p. 283.

Hammer *vs.* City of Covington—3 Met. Ky., p. 499.

Erie City *vs.* Schwingle—22 Penn., p. 384.

Finally, it would be well to secure uniformity between the decisions of State and Federal Courts, where the uniformity does not conflict with the Laws of the State. The principle contended for by Appellant has received the sanction of the Supreme Court of the United States, and hence, unless it be adopted by the Courts of Missouri, the only consequence will be that citizens of other States and foreigners, sharing none of the burthens of the Government, will enjoy a protection not guaranteed to our own people. Citizens of this State must sue in our Courts, and would be non-suited, while all other persons could sue in the Federal Courts successfully—a very unjust distinction which certainly should not exist.

Chicago City *vs.* Robbins—2 Blackf. U. S. Sup. Ct. Reports—only indirectly affirms the principle for which we contend. But the case of Nebraska City *vs.* Campbell, *Ibid.* p. 590, is a case in point. Judge Nelson in

the decision uses this language: "The Charter vested in the City Council the title to all of the streets within "the corporate limits, and it is made their duty to construct and improve the same at the public expense; "for this purpose, and others, the Council are authorized to levy a tax on all the taxable property within "the city. This provision in respect to streets *necessarily embraces all bridges within the limits of the city "and constituting a part of the street.*"

* * * P. 502—"The Law is well settled in respect to *public* municipal corporations, upon which the duty "is imposed to construct and repair, or to keep in repair streets or bridges, and upon which is also conferred "the means of accomplishing such duty, that they are liable for any special damage arising out of neglect in "keeping the same in proper condition."

This doctrine goes far beyond the principle for which we contend.

7. Another principle we maintain, and that is that there would be no question of the Law if the Defendants were a Turnpike Co. Why then should the County, thus allowed to enjoy all the powers and privileges of a Turnpike Corporation, not be held to the same accountability, and this power to build turnpike roads and collect toll be treated as in this respect one of emolument, and for which the County is to be held responsible just as any ordinary individual?

9 Mich., p 165—Detroit *vs.* Correy.

ALEX. J. P. GARESCHÉ,
Counsel for Appellant.

Reardon

v.

St Louis County

Pff & Apptts Brief

by A. J. P. Garesche

(11)

Mary Reardon appellant — } In the Supreme
vs } Court of the State
St Louis County respondent — } of Missouri at St Louis

Admitted that in this cause the demurrer to amended petition was sustained and ~~thereupon~~ the Court gave final judgment ~~[illegible]~~ against the plaintiff that the defendant recover its costs and go hence without day and thereupon ~~defend~~ plaintiff appealed, all of which facts though not included in transcript of record, are to be taken as if they appeared of record in said cause and no diminution of the record ~~may~~ need be suggested, for its amendment —

Wm C. P. Gaeschke
Atty of ~~respondent~~ Appellant —

S. H. Gardner
Pro Respondent

Recd in
vs
St Louis County

Agreement as
to Record -

Filed June 9 1864
A. W. Mead
Cl

Mary Reardon appellant } On the Supreme Court of the State of Mo at St Louis
vs
St Louis County respondent

To Hon Henry A Clover Attorney of respondent —

Take notice that inasmuch as the Hon David Wagner & Walter S Lovelace & Nath Holmes Esq usurp the offices of Judges of the Supreme Court of the State of Missouri appellant will not submit her cause to their decision & of this you are fully advised

St Louis 31 Oct 65

Hen R P Gauscher
Atty of appellant

Mary Reardon
Appellant
v
St. Louis County
Appellee

Notice by Appellant
that she will not
submit her case
to the decision of
the Supreme Court

Filed Nov 7. 1865
J. A. Willis
Clerk

Mary Reardon
vs
St Louis County

In Sup Ct Mo
Oct T 1865.

Opinion of the Court.

This is a writ of error to the Circuit Court of St Louis County, which Court sustained a demurrer to the plaintiffs amended petition and gave judgment for the defendant.

The plaintiff alleges in her petition, that she is the widow of Daniel Reardon deceased, that the defendant is a corporation having the charge of building, making and keeping in proper repair and condition the roads, turnpikes and public highways of St Louis County and particularly of a road known as the Bellefontaine road, that the defendant by various statutes is expressly authorized to levy taxes

upon the inhabitants of said County of St Louis for the purpose of keeping in repair the bridge &c and that at the time of the death of said Daniel Reardon was and for a long time before has been collecting such taxes; that on said Bellefontaine road there is a bridge across a stream known as Gingras river and that through the neglect and default of said defendant to provide proper guards to said bridge necessary for the due protection of persons passing or travelling on and along said road, the said Daniel Reardon when travelling on said Bellefontaine road and about to cross said bridge, at night, without any fault or negligence of his stepped off of said bridge and was then and there killed by the fall, The plaintiff alleges that by reason thereof she has been damaged in the

sum of five thousand dollars for which the asked judgment

A County is a territorial sub-division, a quasi-corporation, and is invested with corporate powers for certain purposes. The Statute laws of the State establishes County Courts, and prescribes their powers and duties, giving to them among other things the control and management of the County property, the power to levy taxes to defray the expenses of their respective Counties, and also certain specific powers in respect to opening and repairing roads and highways

The powers of the County Court, and what precise relation it bears to the County we are to ascertain from the numerous acts which have been passed from time to time by the legislature conferring jurisdiction upon

it. It is no where declared that the County Court is the general agent or representative of the County: it is a part of the State government, with specific powers, duties and functions, generally local to the County it is true, but derived from the State and not from the County, and subject to be altered or changed at the will ~~[illegible]~~ of the legislature without regard to the will of the County.

It acts independently of the County in obedience to State laws. Duties imposed upon the County Court by the legislature, it performs as acts of obedience to the legislature directly as a State functionary, and not as an agent of the County. It is true it can bind the County in some contracts, subject it to some legal obligations, and appropriate its money to certain

objects; but these powers it excercises by virtue of authority derived from the State government, and in obedience to State laws.

The State legislature has given to the County Court of St Louis County, certain powers and duties in respect to roads and highways in that County, and even if we admit, that the acts of the legislature do fully impose upon the County Court the duty to construct, and repair and keep in good order roads and bridges, and that the same acts confer upon it the means of accomplishing that duty, by the levying of taxes upon the property of the people of the County, does it then follow as a legal sequence that the County is responsible for special damages arising out of neglect in keeping a road or bridge in proper condition? The duty is not

imposed, not upon the County, but upon the County Court, nor has the County any power over districts and overseers.

By the law of England, the duty of keeping roads in repair devolved on the Parishes. And this obligation was absolute and irrespective of any resources or means for that purpose, it was founded on prescription and immemorial usage. But this never formed a part of the common law of Missouri. The law will not impose a duty where the means of performing it does not exist.

The Counties, as such, have no control over the repair of roads. They choose the County Court and there their power ceases. The Statute gives to the County Court in express terms, the care and superintendence of the highways and bridges of the County, and confers upon it all the powers requ

-sible to the execution of the trust, and it derives all its authority not through the County, but directly from the statute. The County has no authority to give any direction or instruction to the County Court as to the proper performance of its duty.

Upon a whole view therefore, to the plain provisions of the statute we are led irresistably to the conclusion that no such broad and onerous obligation rests upon the County.

But there is another consideration, the fact that no precedent exists for an action of this character is very strong evidence that it cannot be maintained. Accidents and injuries on roads, are of frequent occurrence and it is singular if this remedy exists that it should have remained undiscovered during the whole period

of our State organization

~~The cases referred to by counsel from other, have no bearing upon the question for the reason that the statutes of these states expressly provide that towns~~

We have examined some of the cases referred to by the counsel for the plaintiff in Error from the New England States and find that they have no bearing on this question; for the reason that the statutes in these states expressly provide that the towns shall be liable to actions at the suit of individuals for their personal damages.

In Riddle vs The Proprietors of the locks and canals on Merrimac river (7 Mass 169) Ch. J. Parsons takes the distinction between quasi corporations and corporations created for the benefit of the corporators themselves; holding that the former are only

liable to information or indictment for a neglect of duty, while the latter are liable to a civil action also, and cites the cases of Russell vs the Men of Devon (2 Term Reb 667) and the Mayor of Lynn vs Turner (Cowp 86) as authority for the distinction

And in Mower vs Leicester (9 Mass 247) the Court held that Corporations created for their own benefit stood on the same ground in respect to liability as individuals, but that quasi corporations created by the legislature for purposes of public policy are not responsible for the neglect of duties enjoined on them, unless the action is given by the statute,

We see no error in the judgment of the Court below.

Judgment affirmed, Judge Holmes concurs, Judge Lovelace absent

David Hagner

28 C

Mary Reardon
vs
St Louis County

Opinion of the
Court by Wagner

Affirmed.
Filed Nov 13. 1865
J. A. Willis
Clerk

(28)

Mary Reardon appellant } In the Supreme Court
vs } of the State of Missouri
St Louis County Respondent } at St Louis.

Reply to Respondent's Argument -

The County Court has a judicial and an administrative jurisdiction, but this matter of laying out Roads is of the latter. State vs Cooper 17 Mo - p 510 and the distinction is drawn even in the case cited by respondent of Miller vs Iron Co - 29 Mo p 122 - the point then made by respondent of the discretion of the County Court is of no force -

Equally futile the distinction attempted to be made between the County and the County Court - The latter is the County in all of these administrative matters.

Equally mistaken is the Counsel in the assertion that the St Louis County Court can raise only a limited amount for repairs of Roads - The authorities cited by appellant in his Brief show that it is authorised by taxes and by tolls to raise the necessary funds -

~~Whether a barrier~~ While the Roads in St Louis County are certainly superior to those of other portions of the State, yet whether ~~a~~ ~~be~~ the omission of a barrier at the locality where Reardon lost his life, be a defect is a question of fact to be determined by the Jury and cannot be decided on demurrer - See cases cited in 4th or 5th sub^ns of appellant's Brief -

Upon the question of our right to sue the County, the case cited by respondent of Wilson vs Mayor of Brooklyn 1 Denio p 595 is reviewed in the case of (the note A) of Conrad vs Ithaca 16 N.Y. p 161 = Martin vs Brooklyn 1 Hill N.Y. R cited also by respondent supports the principle for which we contend - Judge Cowen p 550 uses this language "I speak not of Banks or" "other Corporations; nor of Sunpike Companies who are certainly "liable for their Agent's omission to keep their Road in repair." "consider the liability also of municipal corporations for like" "omissions, where the duty of repair or the like is absolute and due" "from them as a corporation Mayor of Linn vs Spike 6° - Cowen p 86"

The ~~[illegible]~~ decisions of the Supreme Court recognise the right of plaintiff to sue in this action, and more nearly conform to the decisions of our own Court. They differ from the principle of Nebraska City vs Campbell 2 Black W S Sup Ct - in this that they hold the City responsible only for the unskilfulness or ~~omission~~ negligence of the municipal corporation or its Agents in the exercise of corporate Powers, while the case referred to in Black holds the corporation liable for every injury resulting from any exercise of corporate power, or omission to exercise its corporate Privileges and powers - And hence it is that the doctrine of the W S Sup Ct ~~R~~ goes so far beyond the principle contended for by plaintiff -

As to the sufficiency of the petition Erie City vs Schwingle 22 Penn p 284

Mr. T. P. Gausche
Atty of Appellant

29 Mar 564

Reardon
vs
St Louis County —

Reply to respondent's
argument —

Mary Reardon
Pltff in Error
vs
The County of St Louis
Deft in Error

In Supreme Court
March Term 1864

Defts Brief & Points

The demurrer in this cause was properly sustained by the Court below.

The Pltffs counsel has failed through the whole case to draw the proper distinction between the deft "the County of St Louis" and the County Court of St Louis County and between State roads and County roads. The Bellefontaine road mentioned in the petition is a State and not a County road. See "an Act about roads in St Louis County" Sess Acts 1849 page 591 Sec's 2 & 3. Also Laws applicable to St Louis County page 379 § 2-3.

The County Courts as the agents and officers of the State have the charge of the State roads within the respective counties.

It is made the duty of the said Courts to apply the funds set apart for that purpose to the repair of the roads within their jurisdiction and it is left to the discretion of the Courts in what

manner those funds shall be applied.
The county as a corporation has no control over the State roads. The County Court in directing the expenditure of the road fund is exercising its Statutory jurisdiction over roads as a branch of the State judiciary. In exercising that jurisdiction whether it does what it ought not to do, or fails to do what it ought to do the county can in no event be made liable, any more than it can be for the acts or omission of the Circuit Court. The Legislature has seen fit to give in charge of the County Courts all matters relating to guardians minors, lunatics, idiots, insane persons apprentices, roads &c. and counties are not liable in damages for the action of the Court in exercising its discretion in any of those matters. this doctrine was fully established in the case of Miller vs Iron County 29 Mo: Rep 122
The opinion of the Court in that case will apply with equal force to the case at bar. Where a duty judicial in its nature is imposed on a public officer or a municipal corporation a private action will not lie for delinquency or misconduct.
See Wilson vs the Mayor of New York
1st Denios Rep: 595 – 600

In regard to the pleadings and liabilities of officers See

Bartlett vs Crozier
17 Johnsons Rep: 438

A municipal corporation is not liable for the malfeasance or non-feasance of one of its officers in respect to a duty specifically imposed by statute on the Officer otherwise if the duty is one imposed absolutely by statute on the Corporation as such

See Martin vs the Mayor &c of Brooklyn
1st Hills Rep 545 – 551.

The Counsel for Plff in the case at bar has failed to observe that no duty whatever is imposed upon the county – the corporation but the duty is imposed upon. and the discretion is confided to the County Court as it might have been to the Circuit Court or the Common Pleas.

None of the many cases cited by the Plffs counsel are parallel to the one at bar. his references are to cases arising on contract. to cases where express obligations are imposed absolutely upon the corporations themselves. or to private corporations exercising their corporate functions for the benefit of its members.

The Pltffs counsel asks why should the county be allowed to enjoy all the powers and privileges of a Turnpike corporation and not be held to the same accountability?" I reply the County has none of the powers or privileges of a turnpike Co. this case has been prosecuted from the beginning upon the assumption that the county was like a turnpike Co and owned the Bellefontaine road and managed it for its pecuniary benefit. The pltffs counsel has failed to note the distinction between a private corporation exercising their corporate functions for the benefit of its members and public corporations instituted for the purposes of government.

See 2d Hills S.C. Rep 571.
" also American Leading cases 469.
" " 9 Mass Rep: 237.

It is difficult to perceive what application of the principles held by this Court in the cases cited by pltffs counsel from the 12th, 14th, 15th and 22d Mo: Rep: can be made to sustain the right of action in this case.

The case of Russell et al vs the men of Devon 2 Durn & East 308 continues to be good authority to this day. and although the

principles established in that case have in some instances been criticised they have never yet been overruled by any respectable authority.

The County court of this county is authorized to raise a limited amount of money to keep in repair the public roads in the county, and to expend it in such manner as the court may deem best. Is there any power except the Legislature that can compel the Court to expend the whole or any portion of the money raised upon any particular locality no matter how pressing might be the emergency? certainly not. It is a matter entirely within the conscience of the Court, as much as is the decision of any question before the Circuit Court.

But this is not even a question of keeping the road in repair. It is a well known fact that the roads and bridges in this county are much superior to those of any other county in the State, enormous sums having been expended in constructing them. It is admitted the road was in good repair, and of the width required by law, but the complaint is that the county failed to provide a sufficient guard to prevent Jeffs husband

from walking over the parapet of the bridge.

Defts counsel submits that neither the county nor the county court were required by law to provide such guards. if that were so guards would have to be provided wherever persons could by any possibility hurt themselves by walking or driving off the road. Is the County to insure that every person who passes along a road will not get off of it? or is it simply to provide a road when people can pass safely if they choose.

When the road is made of the width required by law and kept in good repair the county court has done its duty and it is absurd to say that the county is liable in an action of this kind when a man walks off from a bridge or bank and is injured. If a person travelled the road in the day time there could be no excuse for his getting off the track. if he undertook to travel it in the night he was bound to take such precautions as were necessary to insure his safety. If the night was so dark he could not see at all he should have taken a lantern. if he was blind or drunk he had no business upon the road in that condition, and the counsel for defts in

error submits that the demurrer was properly sustained by the Court below.

Saml B. Gardner
for Deft in Error

Mary Reardon
Pltff in Error
vs
The County of
St Louis
Deft in Error

Defts Points & Brief

S H Gardner
for Deft in Error

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