

**Stockton Vs. Bishop**

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**SooperKanoon Citation :** [sooperkanoon.com/79942](http://sooperkanoon.com/79942)

**Court :** US Supreme Court

**Decided On :** 1846

**Appeal No. :** 45 U.S. 155

**Appellant :** Stockton

**Respondent :** Bishop

**Judgement :**

Stockton v. Bishop - 45 U.S. 155 (1846)

U.S. Supreme Court Stockton v. Bishop, 45 U.S. 4 How. 155 155 (1846)

**Stockton v. Bishop**

**45 U.S. (4 How.) 155**

*ERROR TO THE CIRCUIT COURT OF THE*

*UNITED STATES FOR WEST PENNSYLVANIA*

## **SYLLABUS**

Where a count in a declaration is defective on account of dates' being left blank, but the party has pleaded and gone to trial, the presumption is that the proof supplied the defect.

In an action on the case for injury sustained by the oversetting of a stagecoach, although the declaration does not set out the payment of any passage money nor any promise or undertaking on the part of the defendants to carry the plaintiff safely, yet if it states that the plaintiff became a passenger for certain rewards to the defendants, and thereupon it was their duty to use due and proper care that the plaintiff should be safely conveyed, and if the breach was well assigned, and the cause went on to plea, issue, trial, and verdict, the defect in the declaration is cured by the 32d section of the Judiciary Act of 1789.

The "right of the cause and matter in law" being with the plaintiff in the court below, the judgment of that court must be affirmed.

There was no bill of exceptions signed by the judge, and the record presented the following appearance.

Among the rolls, records, and judicial proceedings of the Circuit Court of the United States in and for the Western District of Pennsylvania in the Third Circuit may be found the following words and figures, to-wit:

" *Copy of Docket Entries* "

"McCandless, and Harriet Bishop, a citizen"

"McClure & Biddle of the State of Ohio"

vs. 18

"Darragh, Loomis, Lucius W. Stockton and Dan-"

"Mahon & Washington iel Moore citizens of Penn."

" *Summons case, exit September 17, 1842*"

"1842, November 4, returned. Served by leaving a copy at the dwelling house of, D. Moore November 1, 1842, and personally on L. W. Stockton, November 2, 1842. "

"1843, Jan. 12. Narr. filed."

"1843, February 6. On motion of Mr. Darragh, rule for security for costs."

"1843, February 7. Rule for security for costs returned, 'Served on Mr. McClure, February 7, 1843.'"

"1843, April 5. Consent of attorney for defendants that a commission issue forthwith to take testimony on part of plaintiff, and declension to file cross-interrogatories. (See paper filed)"

"1843, April 5. Interrogatories on part of plaintiff filed, and commission issued to Albert G. Westgate, Esq., of McConnellsville, Morgan County, Ohio, commissioner named by plaintiff."

"1843, April 10. Stipulation of John Sarber as security for costs filed."

"1843, April 18. Commission, with depositions taken before Albert G. Westgate, Esq., returned and filed."

"1843, May 10. Plea of defendants filed."

"1843, May 10. Agreement of attorneys filed."

"1843, May 17. Continued."

"1843, October 5. Subpoena on part of defendants to Dr. Kennedy."

"1843, October 28. Subpoena on part of defendants to Dr. Campbell."

"1843, October 30 and 31. Subpoenas on part of plaintiff to Dr. A. H. Campbell James Corbin, James Smith, James Snyder, and Daniel Brown."

"1843, November 20. Above subpoenas returned."

"1843, November 22, 23, 24, and 25. Tried by jury, and, 25, verdict for plaintiff for six thousand five hundred dollars (\$6,500), with costs of suit."

"1843, November 24. Defendants' points filed."

"1843, November 25. Motion in arrest of judgment, and for a new trial."

"1843, November 27. Plaintiff's bill of costs filed."

"1843, November 30. Reasons in arrest of judgment and for a new trial filed."

"1843, December 1. Argument for a new trial commenced."

"1843, December 7. Argument of motion for new trial continued and concluded by Messrs. Mahon and Loomis for defendants and Mr. Biddle *contra* for plaintiff."

"Same day. Affidavit of Jacob Murphy filed."

"Same say. After argument, defendants' points overruled and judgment on the verdict; stay of execution for thirty days."

"Same day. Plaintiff's counsel desired the sanction of the court to the following amendment to the verdict, objected to by defendants' counsel. Objections filed by order of the court; after argument, objections overruled, and verdict amended as follows, *viz.:* "

"And now, to-wit, December 7, 1843, inasmuch as the plaintiff,

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on the trial of the cause, offered proof of but a single disaster, and its injurious consequences, as set forth in the second count of the declaration, the verdict is amended accordingly, and judgment entered for the plaintiff on the said second count, and for the defendants on the first count."

"1843, December 15. Defendants enter into a bond, which is approved by Judge Irwin, in the sum of thirteen thousand dollars, and sue out their writ of error."

"1843, December 15. Citation issued."

"1843, December 15. Writ of error allowed and issued."

"1843, December 16. Citation returned; served by copy on R. Biddle, Esq., attorney of defendants."

" *Copy of Declaration* "

" *In the Circuit Court of the United States for the* "

" *Western District of Pennsylvania* "

"Lucius W. Stockton, a citizen of Pennsylvania, and Daniel Moore also a citizen of Pennsylvania, were summoned to answer Harriet Bishop, a citizen of Ohio, in an action on the case. Whereupon the said Harriet Bishop, by McCandless & McClure, her attorneys, complains for that whereas the said defendants, before and after the time of committing the grievance hereinafter mentioned, were owners and proprietors of a certain line of stagecoaches for the carriage and conveyance of passengers from Baltimore, in the State of Maryland, to Wheeling, in the State of Virginia, for hire and reward, to the said defendants in that behalf, and the said defendants being such owners and proprietors of the said line of coaches so as aforesaid, thereupon heretofore, to-wit, at the special instance and request of the said defendants, became and was a passenger in the said line of coaches, to be safely and securely carried and conveyed thereby on a certain journey, to-wit, from Baltimore aforesaid to Wheeling aforesaid, for a certain fare and reward to the said defendants in that behalf, and the said defendants then and there received the said plaintiff as such passenger as aforesaid, and thereupon it then and there became and was the duty of the said defendants to use due and proper care that the said plaintiff should be carefully and securely carried and conveyed by and upon the said line of coaches on the said journey, yet the said defendants, not regarding their duty in that behalf, did not use due and proper care that the said plaintiff should be safely and securely carried and conveyed by and upon the said stagecoach, on the said journey from Baltimore aforesaid to Wheeling aforesaid, to the damage of the plaintiff twenty thousand dollars."

"And whereas also heretofore, to-wit, on the day and year aforesaid, at Baltimore aforesaid, the said plaintiff, at the said special instance and request of the said defendants, became and was a passenger

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by a certain other coach, to be safely and securely carried and conveyed thereby on a certain journey, to-wit, from Baltimore aforesaid to Wheeling aforesaid, for certain rewards to the said defendants in that behalf, and thereupon it then and there became and was the duty of the said defendants to use due and proper care that the said plaintiff should be safely and securely carried and conveyed by the said line of coaches on the said journey from Baltimore aforesaid to Wheeling aforesaid, yet the said defendants, not regarding their duty in this behalf, did not use due and proper care that the said plaintiff should be safely and securely carried and conveyed, by the last mentioned coach, on the said journey from Baltimore aforesaid to Wheeling aforesaid, but wholly neglected to do so, and by reason whereof one of the legs, one of the arms, two of the ribs, [and] the collar bone of the said plaintiff then and there became and were fractured and broken, and the said plaintiff was then and there otherwise greatly bruised, wounded, and injured, and also by means of the premises the said plaintiff became and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to-wit, hitherto, during all which time the said plaintiff suffered and underwent and endured great pain, and was hindered and prevented from transacting and attending her necessary and lawful affairs and business by her during all that time to be performed and transacted, and lost and was deprived of divers great gains and advantages and profits which she might and otherwise would have derived and acquired from the same, and thereby also the said plaintiff was forced and obliged to pay, lay out, and expend divers other large sums of money, amounting in the whole to the sum of one thousand dollars in and about the endeavoring to be cured of the last mentioned bruises, fractures, and injuries received as last aforesaid, to the damage of the said plaintiff twenty thousand dollars, and therefore she brings suit."

"Mc ANDLESS & Mc CLURE"

" *Plaintiff's attorneys* "

"(Then followed a summons, and a commission to take testimony, under which several witnesses were examined, and the record proceeded.)"

" *Copy of Plea* "

"BISHOP v. STOCKTON ET AL. Circuit Court of the United States for the Western District of Pennsylvania."

"The defendants, by Cornelius Darragh, their attorney, come and defend the wrong, when &c.;, and for plea say, that they are not guilty of the matters and things alleged against them in the plaintiff's declaration, and of this they put themselves upon the country."

"May 10, 1843."

"C. DARRAGH, *for defendants* "

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" *Copy of Defendants' Points* "

"HARRIET BISHOP v. STOCKTON & MOORE"

"The counsel of the defendants respectfully request the court to instruct the jury as follows:"

"1st. That the proprietors of a stagecoach do not warrant the safety of their passengers in the character of common carriers, and that they are not responsible for mere accidents to the persons of passengers, but only for the want of due care. (Given)"

"2d. That they do not warrant the safety of passengers; their undertaking, as to them, goes no further than this, that as far as human wisdom and vigilance can go, they will provide for the safe conveyance of their passengers. (Given)"

"3d. That if the jury believe that the accident in this case was caused by the intoxication of James Corbin, the driver, but that he was not only not in the habit of drinking intoxicating liquors, but was intoxicated on this occasion for the first time in his life; that, in this event the defendants will have exercised due care in the selection and employment of James Corbin as a driver, and will not be liable in this action. (Refused)"

"4th. That if the jury believe that the accident was caused by the intoxication of James Corbin, yet if they also believe that a long course of previous habitual good conduct through a series of years, from his boyhood to the time of this accident in question, had satisfied the defendants, the tavern keepers with whom James Corbin boarded, and his associates, that he was a temperate and an abstemious man, that then the defendants, as far as ordinary wisdom and vigilance could go, did provide for the safety to their passengers in the selection and employment of James Corbin as a driver, and that they are not liable in this action. (Refused)"

"5th. If the jury believe that, at the time of the accident, the coach was on the upper and safer portion of the road, and that the accident occurred in the effort of Corbin to take up his horses after descending the hill, that the defendants are not liable in this action. (Refused)"

"6th. That although the jury may believe that Corbin was, at the time of the accident, partially intoxicated, still if he was not so much intoxicated as to be incapable of the management and control of this team, and the accident did not arise from that cause, but from the state of the weather, obscurity of the night, and the condition of the roads, that the defendants are not liable in this action, especially if the jury believe that the said Corbin had heretofore sustained an unexceptionable character for skill, care, and sobriety. (Refused)"

"7th. If the jury believe that the driver was a person of competent skill, of good habits, and in every respect qualified and suitably prepared for the business in which he was engaged, plaintiff

cannot recover unless they were clearly satisfied that on this occasion, the disaster was attributable to the fault of the driver, and not to the darkness of the night or other accidental cause, and that said accident would not have occurred but for the fault of the driver. (Given)"

" *Defendants' Exceptions* "

"HARRIET BISHOP v. STOCKTON & MOORE. In the circuit court of the United States."

"The counsel for defendants respectfully except to the refusal of the court to instruct the jury as prayed for on all the points presented by them, except the first, second, and seventh."

"MAHON & WASHINGTON"

"METCALF & LOOMIS"

"25th November, 1843 *Attorneys for defendants* "

" *Copy of Reasons for a New Trial, and in Arrest of Judgment* "

"HARRIET BISHOP v. STOCKTON & MOORE."

"The counsel for defendants move the court for a new trial, for the following reasons, *viz.:* "

"1. The verdict is against the weight of evidence."

"2. It is rendered for vindictive damages."

"3. It is not the result of the deliberate opinions of the jurors, or of comparison of their several opinions, but the amount was fixed and determined by the average of different sums named by the jurors."

"They move in arrest of judgment, because -- "

"1. No sufficient cause of action is set forth in plaintiff's first count of narr., and the verdict is general on both counts."

"2. No sufficient cause of action is set forth in either count, there being no allegation that the amount charged for fare, or passage money, had in fact been paid by plaintiff."

"3. General errors."

"MAHON & WASHINGTON"

" *Attorneys for defendants* "

"November 27, 1843"

" *Copy of Affidavit of Jacob Murphy* "

"Personally appeared before me, a justice of the peace in and for the County of Fayette, Jacob Murphy, who, being sworn, doth depose and say that he was a juror in the Circuit Court of the United [States] for the Western District of Pennsylvania for November term, 1843, and that he was one of the panel who tried the case of *Harriet Bishop v. L. W. Stockton and Daniel Moore* for damages accruing from the upsetting of a stagecoach, and that the method adopted by the jury by which they settled on the amount

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of the verdict was this: it was agreed that each juror should mark the sum he found, and that the total amount, divided by twelve, should, without alteration, be the amount of the verdict; in accordance with their agreement, each juryman put down the amount he thought proper; they then added the whole together and divided the amount by twelve, and the product was six thousand five hundred dollars, which was reported as the verdict of the jury."

"JACOB MURPHY"

"Sworn and subscribed before me 5 December, 1843."

"CLEMENT WOOD, *J.P.* "

" *The verdict as ordered to [be] entered by the court* "

"And now, to-wit, December 7, 1843, inasmuch as the plaintiff, on the trial of the cause, offered proof of but a single disaster and its injurious consequences, as set forth in the second count of the declaration, the verdict is amended accordingly and judgment entered for the plaintiff on the said second count and for the defendants on the first count."

" *Copy of Defendants' Objections* "

" I n the circuit court of the United States, Western District of Pennsylvania"

"HARRIET BISHOP v. L. W. STOCKTON ET AL."

"The counsel for the plaintiff having moved the court to make the following entry of record in the cause, to-wit:"

" And now, to-wit, November, 1843, inasmuch as the plaintiff, on the trial of the cause, offered proof of but a single disaster, and its injurious consequences, as set forth in the second count of the declaration, the verdict is amended accordingly, and judgment entered for the plaintiff, on said second count, and for the defendant on the first count."

"The defendants, by their counsel, now, to-wit, November 7, 1843, appear in court and object to the allowance of said motion by the court, and to any permission by the court that such entry as is above indicated should be made in the cause, and in support of their objection assign the following causes, to-wit: that the issue, if any, joined by the pleadings between the parties, was upon the whole declaration; that the jury were sworn to try the issue, if any, joined upon the whole declaration; that the jury returned their verdict in writing in the following words:"

"HARRIET BISHOP v. STOCKTON, MOORE & CO."

" We, the jurors sworn and empanelled in this cause, do find for the plaintiff six thousand five hundred dollars, with costs of suit, this 25 November, A.D. 1843."

"Which said verdict was received by the court, and thereupon an

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entry was made of record in the cause, in the following words, to-wit:"

" Jury find for the plaintiff six thousand five hundred dollars, with costs of suit."

"That the verdict so found by the jury was found by them upon the entire issue or issues, if any, between the parties, and upon the whole declaration, embracing both the first and second counts thereof; that said verdict is general; that the testimony given in the cause was as applicable to the first as to the second count of the declaration; that the defendants have as good a right to claim that the verdict of the jury should be amended, by entering it upon the first count of the declaration for the plaintiff, and judgment thereon for the plaintiff, and judgment on the second count for the defendants, as the plaintiff has to claim that the proposed entry should be made. That the jury having given a general verdict for entire damages on both counts of the declaration, which verdict was received by the court, and entered of record without objection from the plaintiff, and the jury having separated, the court have not the legal right, and if they possess the legal right, ought not, in the exercise of a sound discretion, to modify the verdict of the jury in the manner proposed by the plaintiff's counsel, which objections, and reasons in support thereof, are respectfully submitted by the defendants, to be filed and entered of record in the cause."

"METCALF & LOOMIS"

"MAHON & WASHINGTON"

" *Attorneys for defendants* "

" *United States, Western District of Pennsylvania, ss.:* "

"I, Edward J. Roberts, Clerk of the Circuit Court of the United States in and for the Western District of Pennsylvania, do hereby certify, that the foregoing is a full, true, and complete exemplification of the record in the case of Harriet Bishop, a citizen of the State of Ohio, against Lucius W. Stockton and Daniel Moore citizens of Pennsylvania."

"In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at Pittsburgh, this twentieth day of December, A.D. 1843, and in the sixty-eighth year of the independence of the said United States."

"E. J. ROBERTS, *Clerk* "

A writ of error, sued out on behalf of Stockton & Moore brought up the record in the form in which it is stated above.

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MR. JUSTICE CATRON delivered the opinion of the Court.

This cause comes here by a writ of error to the Circuit Court of the District of Western Pennsylvania. There is no bill of exceptions in the record, although instructions said to have been given by the court to the jury are certified up as part of the proceedings. These, of course, we cannot notice. Other supposed errors are therefore relied on as sufficient to reverse the judgment.

1. That the judgment below was rendered for the plaintiff on the second count of the declaration, and it is insisted that this count is so defective that no judgment could be rendered on it, and therefore on error the judgment must be reversed. If the assumption be true, the consequence must follow.

The second count refers to the first for the dates of the circumstances, and the injury complained of, and as no time is given in the first count, neither has this any.

The plaintiff in error having pleaded not guilty and gone to trial, the presumption is that the proof supplied the defective statement. Such, we suppose, is the uniform

rule, where material dates are left blank.

2. It is insisted that the declaration does not set out the payment of any passage money; nor any promise or undertaking on the part of the defendants below to carry the plaintiff safely. The allegation is that the plaintiff, at the special instance and request of the defendants, became and was a passenger in a certain coach, to be carried safely &c.;, for certain rewards to the defendants; and thereupon it was their duty to use due and proper care, that the plaintiff should be safely conveyed. The breach is well assigned, as it shows the neglect and consequent injury sustained. No demurrer was interposed, for want of form; and this brings the 32d section of the Judiciary Act of 1789 to bear on the proceeding. Not guilty was pleaded; a trial had on the issue, on which the jury returned a verdict in these words:

" *Harriet Bishop v. Stockton, Moore & Co.* We, the jurors sworn and empanelled in this cause, do find for the plaintiff six thousand five hundred dollars, with costs of suit, this 25 November, A.D. 1843."

The verdict was received by the court, and stands recorded as found, and afterwards, on motion, it was amended so as to apply to the second count only.

Who the jurors were, or how many found the verdict, does not appear; nor does it appear that they were sworn to try the issue, further than the jury say in their verdict. Still we are bound to presume in favor of proceedings in a court having jurisdiction of the parties and subject matter, that justice was administered in the ordinary form, when so much appears as is found in this imperfect record.

The declaration, plea, and finding must be taken together, and

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from these, we are bound, by the 32d section, above cited, to ascertain whether, according to the right of "the cause and matter in law," the plaintiff is entitled to her damages; and in so doing, defects of form must be disregarded. Why Congress so provided, in 1789, is obvious. No modes of proceeding were prescribed by the act,

in civil causes, at common law, and the modes observed in the English courts left to apply as general rules. These were formal and technical; and forasmuch as by the 35th section all parties to causes in courts of the United States might plead and manage their own causes personally, if they saw proper, technicalities could not be required. That the practice under this privilege has not corresponded to the theory tolerating it may be conceded; yet we cannot for this reason disregard the clause covering jeofails, intended for its protection; and if proceedings, as recorded, in the courts in any part of the Union were as loose in 1789 as this record indicates them yet to be, in one circuit court at least, where the two acts of 1789 continue to govern, it must be admitted that Congress acted wisely in declaring that no litigant party should lose his right in law for want of form, and in going one step further, as Congress unquestionably has done, by declaring, that, to save the party's rights, the substance should be infringed on to some extent, when contrasted with modes of proceeding in the English courts, and with their ideas of what is substance.

According to "the right of the cause and matter of law" appearing to us on the pleadings and verdict, we think the plaintiff is entitled to her damages, and that judgment below ought to have been rendered for her.

But the judgment there given is also assailed, and justly, as being less formal than what precedes it. It is either no judgment, or binding. If it amounts to nothing, then, by the 22d section of the Judiciary Act, no writ of error lay (as one can only be prosecuted on a final judgment), and the case must be dismissed for want of jurisdiction, and the plaintiffs in error be sent to the court below, to quash the execution. We think, however, there was a judgment on the verdict, that warranted an execution for the damages found; and consequently the prosecution of a writ of error. And this being so, for the reason above stated, such judgment must be

*Affirmed.*