Denver and Rio Grande Railway Vs. Harris

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Appeal No. : 122 U.S. 597

Appellant : Denver and Rio Grande Railway

Respondent : Harris

Judgement :

Denver & Rio Grande Railway v. Harris - 122 U.S. 597 (1887)
U.S. Supreme Court Denver & Rio Grande Railway v. Harris, 122 U.S. 597 (1887)

Denver & Rio Grande Railway v. Harris

Argued May 5, 1887

Decided May 27, 1887

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ERROR TO THE SUPREME COURT

OF THE TERRITORY OF NEW MEXICO

SYLLABUS

If a claimant of real estate, out of possession, resorts to force and violence amounting to a breach of the peace to obtain possession from another claimant who is in peaceable possession, and personal injury arises thereupon to the latter, the party using such force and violence is liable in damages for the injury without regard to the legal title, or to the right of possession.

Iron Mountain & Helena Railroad v. Johnson, 119 U. S. 608 , affirmed and applied.

A corporation is liable for *civiliter* torts committed by its servants and agents done by its authority, whether express or implied.

In trespass on the case to recover for injuries caused by gunshot wounds inflicted by defendant's servants, evidence of the loss of power to have offspring, resulting directly and proximately from the nature of the wound, may be received and considered by the jury, although the declaration does not specify such loss as one of the results of the wound.

In an action of trespass on the case against a corporation to recover damages for injuries inflicted by its servants in a forcible and violent seizure of a railroad, punitive damages within the sum claimed in the declaration may be awarded by the jury if it appears to their satisfaction that the defendant's officers and servants, in the illegal assault

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complained of, employed the force with bad intent and in pursuance of an unlawful purpose, wantonly disturbing the peace of the community and endangering life.

The Atchison, Topeka and Santa Fe Railway Company was in peaceable possession of a railroad from Alamosa to Pueblo, and while so in possession, the Denver and Rio Grande Railway Company, by an armed force of several hundred men, acting as its agents and employer, and under its vice-President and assistant general manager, attacked with deadly weapons the agents and employer of the Atchison, Topeka and Santa Fe Railway Company having charge of the railroad,

and forcibly drove them from the same and took forcible possession thereof. There was a demonstration of armed men all along the line of the railroad seized, and while this was being done and the seizure was being made, the plaintiff, an employee of the Atchison, Topeka and Santa Fe Railway Company, while on the track of the road in the line of his employment, was fired upon by men as he was passing and seriously wounded and injured. Immediately upon the seizure of the railroad as aforesaid, the Denver and Rio Grande Company accepted it and entered into possession and commenced and for a time continued to use and operate it as its own. The plaintiff brought this suit to recover damages for his injuries. *Held* that the Denver and Rio Grande Company was liable in tort for the acts of its agents, and that the plaintiff could recover damages for the injuries received, and punitive damages under the circumstances.

This action was brought by James Harris, the defendant in error, against the Denver and Rio Grande Railway Company, a corporation of the State of Colorado, to recover damages for injuries which, he alleges, were sustained by him in his person by reason of an illegal and wrongful assault made by that company, acting by its servants and agents. The plea was not guilty. There was a verdict and judgment in favor of the plaintiff for nine thousand dollars. The judgment was affirmed in the supreme court of the territory, and has been brought here for review.

The defendant introduced no evidence, although its officers were the chief actors on the occasion when the plaintiff was injured. The case made by the latter and other witnesses testifying in his behalf is stated by the supreme court of the territory in the following extract from its opinion:

"The record discloses the fact that there was evidence on the trial in the lower court to the effect that, about the tenth or twelfth of June, 1879, the Atchison, Topeka and Santa Fe

Railway Company was in peaceable possession, by its agents and employees, of a certain railroad in the State of Colorado running from Alamosa to the City of Pueblo in that state; that at or about that date, and while the Atchison, Topeka and Santa Fe Railway Company were so in possession of said railroad, the plaintiff in error, the Denver and Rio Grande Railway Company, by an armed force of several hundred men, acting as its agents and employees, and under its vice-president and assistant general manager, attacked with deadly weapons the agents and employees of said Atchison, Topeka and Santa Fe Railway Company having charge of said railroad, and forcibly drove them from the same and took forcible possession thereof; that there was a demonstration of armed men all along the line of the railroad seized, and while this was being done and the seizure was being made, the defendant in error, who was an employee of the Atchison, Topeka and Santa Fe Railway Company on said line of railroad, and while on the track of the road and on a hand car thereon in the line of his employment, was fired upon by men as he was passing, and seriously wounded and injured; that immediately upon the seizure of the railroad as aforesaid, the plaintiff in error accepted it and at once entered into possession thereof and commenced and for a time continued to use and operate the same as its own. "

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MR. JUSTICE HARLAN, after stating the facts of the case in the foregoing language, delivered the opinion of the Court.

One of the propositions advanced by counsel for the company is this: that it appears from the plaintiff's case and by his evidence that he voluntarily armed himself, and, taking the law into his own hands, joined an illegal assembly, for the purpose, if necessary, of committing murder; that in the course of the riot and rout, he received a wound at the hands of those whom he had sought by violence to destroy; that under such circumstances the law will not permit him to recover for an alleged assault, but conclusively presumes his assent thereto, nor will the law permit him to recover through the medium and by the aid of an illegal transaction to which he was a party, and which constitutes the foundation of his case.

The same proposition was stated in another form in argument: that the plaintiff engaged voluntarily, and not for his necessary self-defense, in a physical combat with others, and cannot, upon principle, maintain a civil action to recover damages for injuries received in such combat at the hands of his adversary unless the latter beat him excessively or unreasonably; this, upon the ground that

"where two parties participate in the commission of a criminal act, and one party suffers damages thereby, he is not entitled to indemnity or contribution from the other party."

These propositions have no application in the present case. The evidence, taken together, furnishes no basis for the suggestion that the plaintiff voluntarily joined an illegal assembly for the purpose, if necessary, of committing murder, or any other criminal offense; nor does it justify the assertion that he voluntarily engaged in a physical combat with others. All that he did on the occasion of his being injured was by way of preparation to protect himself, and the property of which he and his co employees were in peaceable possession, against organized violence. It appears in proof,

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as stated by the court below, that the Atchison, Topeka and Santa Fe Railroad Company was in the actual, peaceable possession of the road, when the other company, by an armed body of men, organized and under the command of its chief officers, proceeded, in a violent manner, to drive the agents and servants of the former company from the posts to which they had been respectively assigned. It was a demonstration of force and violence that disturbed the peace of the entire country along the line of the railway and involved the safety and lives of many human beings. It is a plain case, on the proof, of a corporation taking the law into its own hands and, by force and the commission of a breach of the peace, determining the question of the right to the possession of a public highway established primarily for the convenience of the people. The courts of the territory were open for the redress of any wrongs that had been or were being committed against the defendant by the other company. If an appeal to the law for the

determination of the dispute as to right of possession would have involved some delay, that was no reason for the employment of force -- least of all for the use of violent means under circumstances imperiling the peace of the community and the lives of citizens. To such delays all, whether individuals or corporations, must submit, whatever may be the temporary inconvenience resulting therefrom. We need scarcely suggest that this duty, in a peculiar sense, rests upon corporations, which keep in their employment large bodies of men whose support depends upon their ready obedience of the orders of their superior officers and who, being organized for the accomplishment of illegal purposes, may endanger the public peace, as well as the personal safety and the property of others besides those immediately concerned in their movements.

These principles, under somewhat different circumstances, were recognized and enforced by this Court at the present term. One Johnson was in the actual, peaceable possession of eighteen miles of a railroad built by him for a railroad company, and was running his own locomotives over it. He claimed the right to hold possession until he was paid for his

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work. But the company, disputing his right to possession, ejected him by force and violence. He brought his action of forcible entry and detainer. This Court said that the party

"so using force and acquiring possession may have the superior title, or may have the better right, to the present possession, but the policy of the law in this class of cases is to prevent the disturbances of the public peace, to forbid any person righting himself in a case of that kind by his own hand and violence, and to require that the party who has in this manner obtained possession shall restore it to the party from whom it has been so obtained, and then, when the parties are *in statu quo,* or in the same position as they were before the use of violence, the party out of possession must resort to legal means to obtain his possession, as he should have done in the first instance."

Iron Mountain & Helena Railroad v. Johnson, 119 U. S. 608 , 119 U. S. 611 . While this language was used in a case arising under a local statute, relating to actions of forcible entry and detainer, it is not without force in cases like this, where the peaceable possession of property is disturbed by such means as constitute a breach of the peace. If, in the employment of force and violence, personal injury arises therefrom to the person or persons thus in peaceable possession, the party using such unnecessary force and violence is liable in damages without reference to the question of legal title or right of possession.

Reference was made in argument to those portions of the charge that refer to the liability of corporations for torts committed by their employees and servants.

In *Philadelphia, Wilmington & Baltimore Railroad v. Quigley,* 21 How. 207, this Court held that a railroad corporation was responsible for the publication by them of a libel in which the capacity and skill of a mechanic and builder of depots, bridges, stationhouses, and other structures for railroad companies, were falsely and maliciously disparaged and undervalued. The publication in that case consisted in the preservation, in the permanent form of a book for distribution among the persons belonging to the corporation, of a report made by a committee of the company's board of directors in relation

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to the administration and dealings of the plaintiff as a superintendent of the road. The Court, upon a full review of the authorities, held it to be the result of the cases

"that for acts done by the agents of a corporation, either *in contractu* or *in delicto,* in the course of its business and of their employment, the corporation is responsible as an individual is responsible under similar circumstances."

In *State v. Morris & Essex Railroad,* 23 N.J.Law 369, it was well said that

"If a corporation has itself no hands with which to strike, it may employ the hands of others, and it is now perfectly well settled, contrary to the ancient authorities, that a corporation is liable *civiliter* for all torts committed by its servants or agents

by authority of the corporation, express or implied. . . . The result of the modern cases is that a corporation is liable *civiliter* for torts committed by its servants or agents precisely as a natural person, and that it is liable as a natural person for the acts of its agents done by its authority, express or implied, though there be neither a written appointment under seal, nor a vote of the corporation constituting the agency or authorizing the act."

See also Salt Lake City v. Hollister, 118 U. S. 256 , 118 U. S. 260 ; *New Jersey Steamboat Company v. Brockett,* 121 U. S. 637 ; *National Bank v. Graham,* 100 U. S. 699 , 100 U. S. 702 . The instructions given to the jury were in harmony with these salutary principles. Whatever may be said of some expressions in the charge when detached from their context, the whole charge was as favorable to the defendant as it was entitled to demand under the evidence.

One of the consequences of the wound received by the plaintiff at the hands of the defendant's servants was the loss of the power to have offspring -- a loss resulting directly and proximately from the nature of the wound. Evidence of this fact was therefore admissible, although the declaration does not in terms specify such loss as one of the results of the wound. The court very properly instructed the jury that such impotency, if caused by the defendant's wrong, might be considered in estimating any compensatory damages to which the plaintiff might be found, under all the evidence, to be entitled. *Wade v. Leroy,* 20 How. 34, 61 U. S. 44 .

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The court also instructed the jury that they were not limited to compensatory damages, but could give punitive or exemplary damages if it was found that the defendant acted with bad intent and in pursuance of an unlawful purpose to forcibly take possession of the railway occupied by the other company, and in so doing shot the plaintiff, causing him incurable and permanent injury, always bearing in mind that the total damages could not exceed the sum claimed in the declaration. This instruction, the company contends, was erroneous. Its counsel argue that while a master may be accountable to an injured party to the extent of

compensatory damages for the wrongful acts of his servant provided the servant is acting within the general scope of his employment in committing the injury, even though the master may not have authorized or may have even forbidden the doing of the particular act complained of, yet he cannot be mulcted in exemplary damages unless he directed the servant to commit the special wrong in question in such manner as to personally identify himself with the servant in the perpetration of the injurious act.

The right of the jury in some cases to award exemplary or punitive damages is no longer an open question in this Court. In *Day v. Woodworth,* 13 How. 371, which was an action of trespass for tearing down and destroying a mill dam, this Court said that in all actions of trespass, and all actions on the case for torts,

"A jury may inflict what are called exemplary, punitive, or vindictive damages upon a defendant, having in view the enormity of his offense rather than the measure of compensation to the plaintiff,"

and that such exemplary damages were allowable "in actions of trespass where the injury has been wanton or malicious, or gross and outrageous." The general rule was recognized and enforced in *Philadelphia, Wilmington & Baltimore Railroad Co. v. Quigley,* which, as we have seen, was an action to recover damages against a corporation for libel, in the latter case the Court observing that the malice spoken of in the rule announced in *Day v. Woodworth* was not merely the doing of an unlawful or injurious act, but the act complained of must have been conceived "in the spirit of mischief, or of criminal indifference to civil obligations."

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See also Milwaukee & St. Paul Railway v. Arms, 91 U. S. 489 , 91 U. S. 492 ; *Missouri Pacific Railway v. Humes,* 115 U. S. 512 , 115 U. S. 521 , and *Barry v. Edmunds,* 116 U. S. 550 , 116 U. S. 562 -563.

The court in the present case said nothing to the jury that was inconsistent with the principle as settled in these cases. The jury were expressly restricted to compensatory damages unless they found from the evidence that the defendant

acted with bad intent and in pursuance of an unlawful purpose to employ force to dispossess the other company. The doctrine of punitive damages should certainly apply in a case like this, where a corporation, by its controlling officers, wantonly disturbed the peace of the community and by the use of violent means endangered the lives of citizens in order to maintain rights for the vindication of which, if they existed, an appeal should have been made to the judicial tribunals of the country. That the defendant, within the meaning of the rule holding corporations responsible for the misconduct of their servants in the course of its business and of their employment, directed that to be done which was done is not to be doubted from the evidence, the whole of which is given in the bill of exceptions. Its governing officers were in the actual command and directing the movements of what one of the witnesses described as the "Denver and Rio Grande forces," which were avowedly organized for the purpose of driving the other company and its employees, by force, from the possession of the road in question.

Other questions were discussed by counsel, but they do not in our judgment deserve consideration. Substantial justice has been done without violating any principle of law in the admission of evidence or in the granting or refusing of instructions.

The judgment is affirmed.