

Jefferson County Circuit Court
Case Files - Civil
September 1887

Box 39 Folder 10

Perry, John D.

vs.

St. Louis, Iron Mountain & Southern
Railway Co.

Negligence

\$800 damages for setting fire to
plaintiff's fence in 516, 17 T 39 124 E

John D. Perry Plaintiff

Against
St. Louis Iron Mountain
and Southern Railway
Company

Defendant

In the Circuit Court of Jefferson
County Missouri.

To September Term 1887.

The Plaintiff states that the defendant is now and was at the date of the injury hereinafter complained of, a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, and is now and was at the time hereinafter mentioned the owner of, and engaged in operating a certain Railroad known as the St. Louis Iron Mountain and Southern Railway, extending southward from the City of St. Louis through Jefferson County Missouri, to the States of Arkansas and Texas, and is the owner of divers locomotives and cars used, propelled, and operated on said railroad; that plaintiff ^{was on the 9th day of April 1887 and now} is the owner and has control and possession of, a certain tract of land situated in sections 16 & 17 in Township N^o thirty-nine (39) North of range N^o four (4) East, in Jefferson County Missouri; that defendant's said railroad passes through along and adjoining said tract of land; that on the 9th day of April 1887 said tract of land was enclosed by a lawful fence composed of posts and plank, and plaintiff avers that prior to and during the month of April 1887, defendant negligently

permitted large quantities of dry grass and other inflammable material to accumulate upon its right of way alongside and adjoining Plaintiffs said fence, and also negligently failed to procure and provide upon its engines, proper appliances and machinery to prevent the escape of fire from said engines; that on the 9th day of April 1887 the employees and agents of defendant operating and moving one of its engines and train of cars on said road, in passing along and adjoining the fence of plaintiff aforesaid negligently and carelessly permitted sparks of fire to escape from its said engine and be communicated to plaintiffs fence and to the inflammable material near said fence as aforesaid, thereby setting said fence on fire and causing about one mile and a quarter thereof of the reasonable value of Five Hundred Dollars to be consumed and destroyed.

Plaintiff says that by reason of the negligence of defendant in permitting said inflammable material to accumulate on its right of way, and of its negligence in failing to provide ~~for~~ ^{for against} proper appliances and machinery to prevent the escape of fire from its engines, and by reason of the negligence of defendant's employees in managing and operating its engines as above stated, plaintiffs fence has been destroyed and he has been prevented from making and securing his crops on his said lands, and prevented from rearing said lands and deriving any benefit therefrom, by

reason of all of which he has sustained damages in the sum of Eight Hundred Dollars for which sum he prays Judgment against defendant.

J. F. Green
Attorney for Plaintiff

John A. Derry. 24th

St Louis Iron Works
& Southern Ry Co. Dept

Section for Damages

Petition

Filed Aug. 24th/887

Wm B. Sawyer
Clerk

THE STATE OF MISSOURI, } ss.
County of Jefferson.

The State of Missouri,

To the Sheriff of Jefferson County---Greeting:

We command you, that you summon.....

*The St. Louis Iron Mountain & Southern
Railway Company* defendant

if found in your County, to be and appear before the Honorable Judge of our Circuit Court, on
the first day of the next term thereof, to be begun and holden at the town of Hillsboro, within
and for the County of Jefferson, on the *second* Monday of *September*
next, then and there to answer unto.....

John A. Perry Plaintiff

upon *its* original petition, a copy whereof is hereunto annexed and accompanies
this writ, and have you then there this writ

D. D. Neasey
Witness, C. THO. HORINE, Clerk of our said Circuit
Court, with the seal thereof hereunto affixed, at
office in Hillsboro, this *25th* day of

August A. D., 18*87*
D. D. Neasey, Clerk Circuit Court.

I served the within writ on the within named defend-
 ant the Morris Iron Mountain Southern Ry Company, ^{on the 26th day of August, 1887} leaving
 a copy of this writ and the annexed petition at a business
 office of the defendant, at Defoe Jefferson County Missouri
 with J. H. Hayden the person in charge of said business of-
 fice, the president and other chief officers of said defendant
 being absent & not found in my County.

Free \$1.00

W. M. Fry Sheriff
 Jefferson County MO.

6338

No 9328

To. September Term 1887

John d. Perry Plaintiff

-vs- } Action for
 damages

Morris Iron
 Mountain & Southern
 Railway Company
 Def.

Original

Served Aug 26th 1887
 on J. H. Hayden

State of Missouri
County of Jefferson

In the Circuit Court
Sep. Term 1887

John D. Perry
Plaintiff

Spring Iron Mountains and
Southern Railway Co
Defendant

Answer

Now comes the defendant
by attorney and for answer
to plaintiffs petition denies
each and every allegation
therein.

Geo H. Bunker
Att'y for Def.

Ms 93
John S. Gray

Hamlet

St Louis 2nd 1887
W. W. W.

Shelton

File 13/87

W. W. W.
Hamlet

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

Jefferson

} ss.

No. *26*

THE STATE OF MISSOURI, To

*John A. Bradford**William Blanton, Margie McSpaden (et al) and James Bowman**You are Hereby Comanded,* That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the town

of *Atchamora*within and for said County, on *Tuesday*

the

1st

day of

*January*A. D. 188*7*, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein

John A. Perry

Plaintiff,

and

Ed. J. Wells & Co

Defendant,

on the part of said

personally

, and this you shall in no

wise omit. And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

WITNESS my hand and the seal of our said Court. Done at

office in

Atchamora

in said County, this

22d

day of

*January*A. D. 188*8*

By

Deputy Clerk.

Wm. Heagy

Clerk.

SUBPENA.

No. 26

CIRCUIT COURT

Of Jefferson Co., Mo.,

Term, 1888

John H. Perry

vs.

St. L. J. Mrs. R. C. R. C.

PLAINTIFFS'

DEFENDANTS'

WITNESSES.

Day of Trial

Jan 10th / 88

Jos. Bradford Jan 7 1888

Wm. Leighton Jan 7 1888

Angie McSpaden Jan (Ed) 7 1888

Jas. Gowen Jan 7 1888

Filed January 9 / 1888
D. B. Vaughan

RETURN.

Per, \$2.00

I hereby certify that I served the within Writ in the County of Jefferson and State of Missouri, on the 7 day of January, 1888, by reading the same in the presence & hearing of the within named parties;

Jos. Bradford William Leighton
Angie McSpaden Jas. Gowen

J. H. Perry Sheriff Jefferson Co.
by A. Richardson Deputy

SUBPOENA.--CIRCUIT COURT.

STATF. OF MISSOURI, COUNTY OF

SS-

No. 49

THE STATE OF MISSOURI,

Q. W. Andrew McSpedden

You are Hereby Commanded, That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the town of Wellsburg, within and for said County, on Wednesday

of skills and

within and for said County, on Wednesday

the

103

day of

James

A. D. 18~~88~~, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein

John D. Perry

Plaintiff,

and

St Louis Iron Works & Mfg Co

Defendant.....

on the part of said

Self

and this you shall in no

wise omit. And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

WITNESS my hand and the seal of our said Court. Done at

office in *Stillsboro*

in said County, this

7

day of

A. D. 1888

A. D. 1888

June
 A. D. 1888
 N. H. News

CLERK,

By

DEPUTY CLERK.

SUBPENA.

No. 49

CIRCUIT COURT

Of Jefferson Co., Mo.,

Term, 1888

John H. Perry

vs.

The L. M. H. Ry Co

PLAINTIFFS'

WITNESSES.

DEFENDANTS'

Day of Trial June 10

Andrew McSpaden

FEE, \$ 50 &

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson
 and State of Missouri, on the 10th day of February, 1888, by
 reading the same in the presence and hearing
 of the within named Andrew McSpaden.

J. W. McSpaden
 Jefferson Co. Mo.

Filed January 10 / 1888
 J. B. Vealby Clerk

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

Jesse W. } ss.

No. 62

THE STATE OF MISSOURI, To

Jesse W. } ss. No. 62

You are Hereby Commanded. That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the Town of *Shellsboro*, within and for said County, on *20th inst* the _____ day of _____ A. D. 18____, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein _____ Plaintiff,

and _____ Defendant,

on the part of said _____, and this you shall in no

wise omit. And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

WITNESS my hand and the seal of our said Court. Done at

office in *Shellsboro* in said County, this

19th day of *January* A. D. 188*8*

CLERK.

By

Deputy Clerk.

SUBPENA.

No. 62

CIRCUIT COURT

Of Jefferson Co., Mo.,

January Term, 1888

Perry

VS.

Rg. Co.

PLAINTIFFS' }

WITNESSES.

~~DEFENDANTS'~~ }

Day of Trial

R. E. Mockbee

Filed January 12 / 1888
D. B. V. C. J.

Fee, \$50.00

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson and State of Missouri, on the 12th day of January, 1888, by delivering it to the same in the hands of the hearing of the witnesses R. E. Mockbee

J. M. McCarty Sheriff

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

{ ss.

No. B1

THE STATE OF MISSOURI, To

Reynolds(Beatin' former) &Beago -

You are Hereby Commanded, That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the Townof Willbore

, within and for said County, on

10th

day of

JanuaryA. D. 1888, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein

John D. Perry is

Plaintiff,

and

Robert D. Perry & HurlingCo -

Defendant,

on the part of said

Defendant

, and this you shall in no

wise omit. And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

WITNESS my hand and the seal of our said Court. Done at

office in

Willbore

in said County, this

3rd

day of

JanuaryA. D. 1888

By

DEPUTY CLERK.

W. B. Hooper

CLERK.

SUBPENA.

No. 31

CIRCUIT COURT

Of Jefferson Co., Mo.,

January Term, 1888

John H. Perry

vs.
St. L. & I. M. & S. Ry. Co.

PLAINTIFFS' } WITNESSES.

DEFENDANTS' }

Day of Trial

Reynolds, Jan. 7, 1888

Scaggs,

Filed Jan. 12/1888
R. B. Veasey
clerk

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson
and State of Missouri, on the 7 day of January, 1888, by
calling the same in the presence & hearing of the said
named John H. Reynolds
at the courthouse of said county of Jefferson
in said county of Jefferson
By W. Medley Sheriff of Jefferson Co.
By A. Richardson Deft

FEE, \$75c

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

} ss.

No. 52

THE STATE OF MISSOURI, To

James D. Rogers
John A. Thompson

You are Hereby Commanded. That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the City
 of St. Louis within and for said County, on Monday

the 11 day ofA. D. 1888, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein

Plaintiff

and

Defendant

on the part of said

, and this you shall in no

wise omit. And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

WITNESS my hand and the seal of our said Court. Done at

office in

St. Louis

in said County, this

10 day ofA. D. 1888

By

Deputy Clerk.

Clerk.

SUBPENA.

No. 52

CIRCUIT COURT

Of Jefferson Co., Mo.,

January Term, 1888

John W. Perry

vs.

Reg. Co.

~~PLAINTIFFS~~

DEFENDANTS

WITNESSES.

Day of Trial 11th January

R Washbourne

Jasper Scaggs

Jake Hammons

Filed Jan 13/1888
D. B. Veasey
Clerk

Fee, \$ 1.50

RETURN.

I hereby certify that I served the within Writ in the County of

Jefferson

and State of Missouri, on the 11th and 13th day of January, 1888, byreading the same in the presence and hearing of the
within named, R. Washbourne, Jasper Scaggs and
Jake Hammons.Dec. M. M. M. Sheriff of Jeff. Co. Mo.
By Wm. H. Graham,
Deputy.

State of Missouri }
County of Jefferson }

In the circuit Court
July Term 1888

John Perry
Plaintiff

vs
St Louis Iron Mountain
and Southern Railway Company
Defendant.

Application for a Continuance

Now comes the defendant by attorney and moves the court for a continuance of this case on account of the absence of John Scaggs a material witness for the defendant, who resides at or near Sedalia in this county, that defendant has used due diligence in attempting to obtain said witness at this time of court; that it ordered a subpoena for said witness on the 2^d day of July 1888 that the same was placed in the hands of the sheriff of this county by the clerk a day or two thereafter; that said sheriff has been unable to serve the said witness; that said witness lives in this county and is at work somewhere on the farm or on the roads thereof and therefore affiant has reasonable grounds of belief that the attendance of said witness can and will be procured at the next term of this court; that said witness will testify that at the time of the damages alleged in plaintiff's petition

~~that~~ he said scays together with another
men whose name affiant does not
know were at work in the field in
question and did set fire to a pile
of brush for the purpose of burning
the same and preparing the said field
for winter cultivation; that the surrounding
grass and stubble in said field
was very dry owing to the extreme
drysness and heat of the weather at
that time of the year, that the said fire
in spite of their efforts to prevent
the same escaped from said pile of
brush so set fire to by them and the
alleged damages were occasioned
by the said fire so set out by him. ~~And~~
Affiant further states that it knows of no
other person whose evidence or attendance
he could have procured at that time
by whom could be proved or so fully
proved the same facts; Affiant
further states that such witness is
not absent by the connivance, consent
or procurement of the applicant and
this application is not made for
negation or delay, but in good
faith for the purpose of obtaining a
fair and impartial trial.

Wm. Benton
Atty for Afft.

Wm. Benton states that he is the attorney
for the defendant and that he believes

the witnesses will prove the facts above
set forth and that said other
facts above set forth are true & the
best proof being — Geo H Butler

Subscribed & sworn to
before me this 13th day
of May 1884 —
D. B. Stearns Clerk Cir. Ct.

#28

John A. Thomas

Chas

Wm. Wm. Wm.

Wm.

Wm. Wm. Wm.

Wm. Wm. Wm.

Wm. Wm. Wm.

John D. Perry

^{of}
West. Louis, Iron Mountain
Ry Co.

The Court instructs you gentlemen of
the jury as follows-

If you believe and find from the
evidence in this cause that John D.
Perry, Plaintiff herein, owned a field
adjoining to and near defendant's
railroad and that in June 1887
~~fire escaped from one of~~ defendant's
employers in charge of one of its
locomotive engines negligently and
carelessly permitted fire sparks to
escape from such engine which
communicated to grass standing on
defendant's right of way near Plaintiff's

said field and that defendants agents and
employees carelessly and negligently
permitted dry grass to remain upon
its right of way at the point where
said sparks ~~escaped~~ if any escaped
from said engine and that the fire
thus kindled in the grass by such escape
of fire spread and extended to plaintiff's
field and consumed and destroyed some
of the fencing ^{owned by plaintiff} then around said field
then you will find the issues for the
plaintiff and assess his damages at
~~such sum~~ as you may find from
the evidence he has sustained by reason
of the destruction of said fences.

It is not necessary that plaintiff should
make out by direct evidence all of the

facts necessary to be found by you to entitle
the him to recover but such facts may
be established by circumstantial evidence.
but it is for you to say whether any
fact has been proved either by direct
or circumstantial evidence. The
burden of proving that sparks escaped
from defendant's engine and caused
the fire which destroyed plaintiff's
fencing ~~but~~ is on the plaintiff and
this he must show by the greater weight of
evidence but when he has shown this
by the greater weight of evidence then
the burden of proof is shifted to the defendant
to show that its employees in charge of
its engines were not guilty of negli-

since in permitting sparks & escape
from its engine and set fire to the
dry grass.

If you find from the evidence that
the fire which destroyed Plaintiff's
fencing did not originate from defendant's
engine communicated to dry grass
on said right of way, then you will
find the issues for the defendant.

The Court instructs the ^{jury} ~~jury~~ that
if ^{you} ~~they~~ believe from the evidence
that the fire ~~did~~ not originate
within the limits of defendant's
right-of-way but in a field
adjacent thereto and three
hundred feet away from
said right-of-way ~~that~~ ^{you} are
not ~~perme~~ authorized from that
fact alone to infer that
the fire was occasioned by
sparks from defendant's
locomotives passing along said
track owing to the negligence of
defendant's employees and
^{you} ~~the~~ verdict should be for the
defendant.

The measure of damages in this case is
the value of the fencing destroyed at
the time it was destroyed and nothing
more.

John D. Seely
and

W. D. M. & Co. Dry. Co.

Providence

Under January 13 / 1888
W. D. M. & Co. Dry. Co.
@ 11

That ^{Court} instructs the jury that if they
believe from the evidence that the
defendant had ~~not~~ permitted
inflammable ~~matter~~ & materials
to accumulate on its right-of
way and that the burning of
the plaintiff's fence was not
occasioned by fire set to inflammable
material along the right-of-way
of the defendant's railroad by
sparks from defendant's engine
and from said right-of-way
communicated to across
Ruthorn's field to plaintiff's
fence, your verdict must
be for the defendant.

Penny

R. R. Co.

Refused by.

Filed January 14/1888

D. B. Weaver
Clerk

1	~~Samuel Gouard~~	~~D~~	
2	W. J. Haverstick	1	
3	~~Full Frazier~~		
4	~~Eric Pauls~~	1	
5	~~Chas. H. Parks~~	2	
6	~~Henry Marx~~	~~D~~	
7	James Lafoon	2	
8	William Heller	3	
9	Frank Lee	4	
10	B. M. Lankham	5	
11	~~Wm. Dahl~~	3	
12	F. B. Moss	6	
13	Jas T. Moss	7	
x 14	Nellis Beavers	8	3
15	Joseph Beatt	9	7
16	Edward Huskey	10	5
17	~~Wm. Parks~~	~~D~~	
18	Thos. Kage	11	3
	~~Thos. Beckley~~		
18	Thos Beckley	12	1

John D. Perry
1712 1/2 St. N. W. D. C.

Paid

Filed June 13/1888
H. D. Perry
Clerk

We the jury find the issues for the plaintiff
in the Case of John D. Pesay against
The St. Louis, Iron Mountain & Southern
Railway Company and assess his
damages at the sum of one hundred
and twenty five

dollars.

Geo. J. Moss

We the jurors find the issues for the
defendant in the case of John D. Perry
against The St. Louis, Iron Mountain
& Southern Railway Company.

John D. Berry
vs

W. J. M. & Co. Co.

Deed

Filed January 18/1888
H. D. Mearns
Clerk

John A. Perry
St Louis Iron Mountains and
Southern Railway Company } In the Circuit Court
Plaintiff & Judge against defendant for } Term 1888
Verdict for \$125.00
Book 13 page 233

Bill of Costs
N. B. Veazey Clerk
12 files ⁶⁰ / 4 alder ²⁰ / Copy pet ⁵⁰ / C. S. ⁵⁰ 230
With Copy ¹¹⁰ / 5 Spas ²⁵⁷ / Ans ³⁰ 265
Cont ²⁵ / Apr ⁸⁰ / Juny ⁷⁵ / Verd ³⁰ 130
Judge ⁵⁰ / Noe Judge ¹⁰ / Satisfaction ²⁵ 85
8 affd to wit Claines ⁴⁰ / Fee bill ¹⁰ 30
Costs ²⁵ / Copy ²⁵ / Copy Judge C. S. ⁷⁵ 30
~~30~~ 9.05

Geo W. McFry Sheriff
With ¹⁰⁰ / 10 Spas ⁵⁰⁰ / 1 hour with ²⁵ 625
10 calls ⁵⁰ 50
675
635

Witnesses
James Gowan 4 days ⁴⁰⁰ / 20 miles ¹⁰⁰ 500
A. McSpadeu 4 " ⁴⁰⁰ / 26 " ¹⁰⁰ 530
Jas Reynolds 4 " ⁴⁰⁰ / 16 " ⁸⁰ 480
Jacob Hammers / " ¹⁰⁰ / 16 " ⁸⁰ 180
Wm Clifton 4 " ⁴⁰⁰ / 20 " ¹⁰⁰ 500
Jas Bradford 4 " ⁴⁰⁰ / 64 " ³²⁰ 720
Jasper Scaggs 1 " ¹⁰⁰ / 16 " ⁸⁰ 180
R. E. Mochler / " ¹⁰⁰ 100
3190

Jury - 6 men regular 600
Jas T. Moss Salesman 1 day 100
Willis Beavers " 1 " 100
Joseph Beatt " 1 " 100
Edward Huskey " 1 " 100
Thos Kage " 1 " 100
Thos Buckley " 1 " 100
1200
5855
5970

John M. Perry
At L. M. & Ry. Co

Bill of Costs

Filed Feb 3/1888
A. B. Weaver
clerk