

Jefferson County Circuit Court
Case Files - CIVIL

Box

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May 1866 - No. 79

Murphy, John

vs

Smith, Thomas O.

Assault & Battery

Plaintiff accuses Defendant of gouging out
his eye; seeking damages of \$25,000;

John Murphy. Plaintiff } In the Circuit Court of
v } Jefferson County
Thomas Smith. Defendant } May Term A.D. 1866.

Plaintiff states that on the fourth day of July 1865, at the town of Victoria in the County of Jefferson, in the State of Missouri, the defendant violently assaulted the plaintiff and forcibly and with great violence seized and threw him upon the ground, and gave and struck him a great many violent blows in the face and breast; and also then and there, with great force and violence, whilst he held plaintiff prostrated on the ground, maliciously and wickedly thrust and pressed his finger, or some metallic instrument, into the right eye of plaintiff, by reason of which the ball of the said eye was so injured as to entirely destroy the sight thereof; whereby the plaintiff was then and there greatly hurt, bruised and wounded, and became and was sick, sore and disordered, and so remained for the space of three months, during all which time the plaintiff thereby suffered and underwent great pain, and was hindered and prevented from performing & transacting his necessary affairs and business as a farmer, to his loss and damage in the sum of Five Hundred Dollars; and also thereby was obliged to lay out and expend and did lay out and expend the sum of fifty dollars in procuring medical attendance and for medicines in endeavoring to cure himself; and also thereby is greatly incapacitated from conducting and carrying on his business by the permanent loss of the sight of his right eye, as aforesaid, to his damage in the sum of Fifteen Thousand dollars.

Wherefore, by reason of the premises, the plaintiff has been damaged in the sum of Twenty Five Thousand Dollars for which he asks judgment.

Wm. T. Mason
p. q.

John Murphy, Plaintiff, makes oath and says he believes
the above petition and the matters therein, as stated, are true.

Subscribed & sworn to before me } John Murphy

This 23^d day of Dec 1865

Samuel A. Peppye Clerk

John Murphy

vs

Thomas C. Smith

Original Petition

4.50 Paid by Plaintiff

Filed Dec 23^d 1865.

Samuel A. Peppye Clerk

The State of Missouri, } ss.
COUNTY OF JEFFERSON.

The State of Missouri

To the Sheriff of the County of Jefferson---Greeting:

We command you, that you summon

Thomas O. Smith

if he be found in your County, that he
be and appear before the Hon. Judge of our Circuit Court, on the first day
of the next term thereof, to be begun and held at the town of Hillsboro, within
and for the County of Jefferson, on the second Monday ~~after the fourth~~
Monday of May next, then and there to answer unto

John Murphy

upon his original petition, a copy whereof is hereunto annexed and ac-
companies this writ, and have you then there this writ.

S. A. Reppy

Witness, ELIAS F. HONEY, Clerk of our said Circuit

Court, with the seal thereof hereunto affixed, at office

in Hillsboro, this Eighth

day of February A. D. 1866.

Saml. A. Reppy

Clerk Circuit Court.



I Executed the within writ in the County of
Jefferson State of Missouri on ^{7th} day of
March 1866 by leaving on Thos O Smith the within named
Defendant by leaving a true copy of the writ and annexed
petition with a white person over the age of fifteen years
and a member of his family at his usual place of
abode

C. C. Fletcher Sheriff

79

TO JEFFERSON CIRCUIT COURT

2486
May Term, 1866

John Markham
vs Edmund

Thos O Smith

C. C. Fletcher Sheriff fees 1.50

che

John Murphy, - Plaintiff } In the Circuit
Against } Court of Jefferson
Thomas Smith, - Defendant } County.

The Defendant for Answer to Plaintiff's petition, denies that he, on the fourth day of July 1865, at the Town of Victoria, in Jefferson County Missouri, violently assaulted the Plaintiff, and forcibly seized and threw him upon the ground and struck and beat him, and maliciously and wickedly thrust some metallic instrument into the right eye of Plaintiff, and by reason of which the ball of his eye was so injured as to entirely destroy the sight thereof. On the contrary, the Defendant says that the Plaintiff, on the fourth day of July 1865, at Victoria aforesaid, and just before the assault stated in his petition, did make a violent assault upon the Defendant, and struck him violently twice with his fists, and would have beat, bruised and done great bodily injury to the Defendant, if he had not immediately defended himself against the assault and battery of the Plaintiff; and thereupon, the Defendant did defend himself against the assault and battery of Plaintiff, as he had a lawful right to do, for the Cause aforesaid, - and in doing so, the Defendant did necessarily beat and bruise the Plaintiff, and Defendant says that while said fight going on, the Plaintiff, ^{first} thrust his thumb into the eye of Defendant, and attempted to do great injury thereto, and the Defendant then in his defense did thrust his thumb into the eye of Plaintiff, and probably did some injury thereto,

But, Defendant says that whatever injury or damage may have happened to Plaintiff in said fight, was caused and brought about by the assault and battery, which Plaintiff first made upon the Defendant, and while Defendant was defending himself against the assault and battery of Plaintiff as aforesaid made upon the Defendant, and which is the same supposed assault & battery stated in Plaintiff's petition. Wherefore, Defendant denies that Plaintiff has been damaged in the sum of five hundred dollars or in any other sum by any wrongful act or assault & battery made on him by Defendant, - and Defendant denies that Plaintiff is entitled to recover fifty dollars, or any other sum for his ~~Costs & expenses~~ ^{for his} ~~Costs & expenses~~ incurred for medicine, & medical treatment, in getting himself cured of injuries brought upon himself by his own wrongful conduct as aforesaid. And Defendant says, if Plaintiff lost the sight of his eye, by reason of the fight aforesaid, it was occasioned by his own wrongful and malicious conduct as aforesaid, as Defendant denies that he made any assault on Plaintiff at the time & place aforesaid, until after Plaintiff had violently assaulted the Defendant, and had struck him twice, and Defendant then struck in self-defence. - The Defendant therefore denies that Plaintiff is entitled to recover fifteen thousand dollars, or twenty five thousand dollars, or any sum whatever, from Defendant, for any injuries Plaintiff may have received in the fight aforesaid, as they were the result of Plaintiff's own willful and malicious conduct, in making

the assault and battery upon Defendant as afore-
said, And Defendant denies that Plaintiff
has sustained twenty five thousand dol-
lar damages, or any damage whatever, by
any unlawful act, or wrongful conduct, or
^{unlawful} assault made on him by Defendant.

Abner Green
Attorney for Defendant

Thomas Smith Defendant, make oath
and says the above Answer and the
matter therein as stated he believes
to be true.

Sworn to & subscribed before me

Oct 12th 1886

Wm. Mullin Clerk of Court

Thos. O. X. Smith
mark

[Faint, illegible handwriting, likely bleed-through from the reverse side of the page.]

In Circuit Court
of Jefferson County

John Murphy

vs.

Thomas Smith

Defendants

Answer

Filed Oct 1 1866,
Samuel H. Hays
Recorder



John Murphy, - plaintiff } In the
Against } Circuit
Thomas Smith, - defendant } Court of
Jefferson County
Missouri

The Defendant comes and moves
the Court to rule the Plaintiff to give
security for costs in the above cause for
the following reasons,

- 1 - Because the Plaintiff is a non-resi-
dent of the County, and is unsettled,
and has no known place of residence,
- 2 - The Plaintiff is unable to pay the costs,
and has no property liable to the
process of law.

A. Green
Attorney for Defendant

John Murphy
vs.
Thomas Smith

Motion for
Accounty for Costs

Motion overruled by the
court Dec 8th 1866

Filed Nov 8 1866
Samuel H. May Clerk

John Murphy
vs
Thomas O. Smith }

The Court instructs the jury that if they believe from the evidence that Defendant on the 4th of July 1865 at Jefferson Co. Mo. assaulted Plaintiff without a just provocation & by means of his ^{hands} ~~fingers~~ or otherwise put out ^{an} eye of Plaintiff & did other injuries to Plaintiff they will find ~~the issues~~ for Plff.

Words will ~~not~~ not justify an assault.

If the jury believe ^{from the evidence} that Plaintiff and Defendant came together to fight or strike each other it is an assault in both and it is immaterial which struck the first blow.

If the jury believe from the evidence that Plaintiff assaulted and struck Defendant first ~~and~~ in order to justify Defendant for ^{enormous} ~~the~~ injuries ~~he~~ inflicted on Plaintiff they must believe that ~~the~~ injuries were inflicted in defending himself and that.

they were in proportion to the nature
of the injuries offered ^{him by plaintiff}, otherwise defendant-
becomes himself the aggressor

1
If the Jury find from the evidence
that James & John Murphy on the
4 day of July 1865 left the saloon
after the first difficulty had
been made up and then came
back and renewed the said
difficulty of their own accord,
and the said plaintiff began
the assault upon Smith, and
Smith in the defence of his person
used the same means to overcome
his adversary, that said adversary
used to wound him, and in said
defence said Smith gouged the
plaintiff for the purpose of
overcoming him & not for the
purpose of destroying his eye
then the Jury will find for
the defendant.

Graham

Monday
a

South

Left Houston
and

2. If the Jury should find from the evidence that Thomas O. Smith & Plaintiff got into a quarrel & from that voluntarily entered into a fight, then the fact that Murphy struck Smith is no justification but such fact can only go in mitigation of damages - & under such circumstances the Jury should take into consideration in assessing damages the injuries received by both parties.

3. Although the Jury may find that Plaintiff was as guilty as Smith in bringing on the ^{difficultly} fight still if ^{afterwards} Smith willingly & voluntarily entered the fight then he is liable for any injuries he may have inflicted.

If the Jury find from the evidence
 that the defendant ^{plaintiff} brought on
 the fight ^{himself} & struck
 Smith & Smith in return ^{inflicted}
 himself & in so doing injured the
 plaintiff's eye as to ~~destroy~~ the
 sight & this injury was done in
 self defence & to prevent the
 the plaintiff from doing him
 some ^{injury} ^{harm} then the
 Jury will find for the defendant.

Given

3
Let the jury find that the plaintiff's
lost his eye right by negligence
or want of proper medical attention
in time to prevent inflammation that
from the injury resulted by death,
then the jury will not consider
the loss of eye right in the estimation
of damages -

41. If the jury should find from the evidence that Smith acted in self defence in repelling force with force & after he had succeeded in getting into a situation so that he could not inflict any further injury upon ^{him} he went on & put out the eye of Platt, then the plea of self defence will not avail him and they should find for Platt & the such damages as he may have sustained.

5. In assessing the damages in this case the jury are not confined simply to the actual damage sustained but they may take into the calculation the pain & suffering inflicted as well as the disfiguring of Plaintiff by putting out his eye.

Given

Off the very fine for the Plaintiffs and
also his damage at one hundred dollars
Do not want foremen

350
390
120
866

Sletcher Summons 150
 Serve 22 Wit 110
 Summons Jury 1.00
 For calling case 5 for call-
 ing each party 10 for call 125
 22 Wit 110 1485-

Reppy Wit 9 per 200
 copy of same & affidavit & Stamp
 150 Dockets 20 ifue & Spas 200
 File Motion for costs & overrule
 ing same 40 Swearing & oath
 Jury 50 100 Jury 50
 Swearing 20 Oaths 100 8.80
 File ans 90 20
900

Jury Fee 2400
 J. A. H. Hoard 628
 Fred Mabee 560
 L. M. Leadwelder 496
 W. Parks 576
 J. Berry 528
 J. Vaughn 560
 Jas. Vaughn 576
 John Williams 432
 Jas. Howell 432
 Tho. Ogle 592
 S. Green 480
 Jas. Murphy 560
 John Martin 312
11417 11459