

DeForsen Country Circuit Court
Case Files - Civil

May 1866

Box

17 Folder 41

Murray, Owen

vs

Bayne, Edwin

Assault and battery

Assaulted plaintiff with a large
stone; \$500 damages; bill of exceptions;
defendant appealed to 2nd District
Court

Owen Murray, - Plaintiff } In the Circuit
 Against } Court of Jef=
 Edwin Boyne, - Defendant } ferson County
 Missouri

The Plaintiff states that the Defendant on the 26th day of March 1866, at the County of Jefferson aforesaid, wrongfully and maliciously assaulted and beat the Plaintiff, by striking him several times on the head and in his face, with a large stone, inflicting thereby ^{several} dangerous wounds, - by reason of which, Plaintiff has been deprived and prevented from performing his daily work and business and has had to lay out and expend money in getting cured of said wounds, and has suffered and endured great bodily pain and anguish. By reason of which wrongful and malicious acts of Defendant as aforesaid, Plaintiff has been damaged in the sum of five hundred dollars, and for which he asks judgment.

Abner Green
 Attorney for Plaintiff

Owen Murray, Plaintiff, makes oath and says the above petition and the matters therein as stated he believes to be true.
 Sworn to and Subscribed Owen ^{his} Murray
 before me, this 2^d day of April 1866. mark
 Samuel H. Peppy Clerk

In Circuit Court
Jefferson County

Queen Murray
vs.

George Boyne

Petition

Account of the

Let summing

same, given

for the

West April 2, 1866

Samuel A. B. B. B.
300 Paid by B. B.

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 *Edwin Byrne*

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

Owen Murray

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



E. F. Honey
Witness, **ELIAS F. HONEY**, Clerk of our said Circuit
Court, with the seal thereof hereunto affixed, at office
in Hillsboro, this *Thirteenth*
day of *April* A. D. 1866

Samuel A. Reppy
Clerk Circuit Court.

I Executed the within writ at the County of
Jefferson State of Missouri on the 14 day of April
1866 by delivery on Edwin Boyne by delivering to him
a true copy of this writ and annexed petition as furnished
to me by the Clerk

C. C. Fletcher
Sheriff

42-
2/6/67
TO JEFFERSON CIRCUIT COURT

May Term, 1866

Owen Murray

vs
Summons

Edwin Boyne

C. C. Fletcher Sheriff 150

Owen Murray, Plaintiff
against
Edwin Bayne, Defendant. } In the Circuit
Court of Jefferson
County Missouri
May Term 1864

The above named defendant in answer to plaintiffs petition in the above entitled cause, denies that he at the time mentioned or at any other time wrongfully and maliciously assaulted and beat the plaintiff by striking him several times on his head and in his face with a large stone, inflicting thereby several dangerous wounds; defendant further denies, that plaintiff by reason of such striking has been deprived and prevented from performing his daily work and business and has had to lay out and expend money in getting cured of such wounds and has suffered and endured great bodily pain and anguish. Defendant further denies that by reason of the premises plaintiff has been damaged in the sum of Five hundred dollars or any other amount.

~~Plaintiff~~ Defendant alleges, that, if he did strike plaintiff at the time mentioned in said petition, he did so upon an assault, made upon him by plaintiff, and in his defence,

and that the damage, if any accrued to
plaintiff in consequence of such striking,
was no more than was necessary for
his defendants defence,

Thames Sherris
Atty for defts,

Edwin Boyne, defendant, uprakes
oath and says, that the above answer,
and matters, as therein stated he be-
lieves to be true.

Sworn to and subscribed
ed before me, this 15th
day of May A.D. 1866,
Henry F. Sherris
Notary public,

Edwin Boyne

Herbert Hunt
of Upper New South
Wales born 1846.

May 1846
New South

against
John Wayne,

Chambers,

Ed May 15th 1846,
Sam. A. O. P. P. 1846

Owen Murray
by
Edwin Boyne

Now at this day comes said Defendant
& moves the Court to set aside the verdict in
the above entitled cause and grant him a new
trial for the following reasons.

1. Because said verdict is against the
evidence.
2. Because the Court refused proper instruc-
tions.
3. Because the Court gave improper instructions

John L. Thomas
H. F. Ahlbeck
Attys for Defendants

Murray

27

Boyne

Motion for New
trial

Feb 13 1867

G. A. Murray att

Oliver Murray }
2 } Arroult & Battery.
Edwin Boyne. }

Now at this day comes the defendant & moves the
Court to require Plaintiff to give security for the
Costs in this case.

Because he is insolvent & unable to pay
Costs.

John L. Thomas.

121

Alway

2

Boyer

Alway to require the
Hill to give security for
the cost.

overrules

Filed May 13 1867
E. J. Horney cler

Owen Murray
vs
Edwin Boyne }

Now at this day comes said Defendant &
moves the Court to arrest the judgment in this
cause for the following reasons,

1. Because the petition is insufficient, indefinite & void.
2. Because said petition does not allege facts sufficient to constitute a cause of action.
3. Because said petition is fatally defective in this that it blends matters in one count which cannot be so blended, but must be separately stated.
4. Because said petition does not allege any damage by reason of loss of time.

Thomas & Shlvey
Attys for Defendant.

Oliver Murray

17

Oliver Bayard

Motion in arrest of

Judgment—

Filed May 14th 1867
G. F. Wemyer, Clerk

Owen Munday } In the Jefferson Circuit
Edwin Boyne } Court,
May Term 1867.

Edwin Boyne makes oath & says that
he has not taken an appeal in the above
entitled cause for vexation or delay but
because he feels himself aggrieved by
the judgment of the Circuit Court.
Sworn to & subscribed
before me May 22
1867

Elias H. Honey Clerk of Court
By E. Tho. Norine Deputy

Over Money

27

Edwin Doyle

affidavit for appeal

Filed May 2 3 1867

C. F. Hooley

Recorder

Owen Murray } In the Jefferson Circuit Court
by } May Term 1867.
Edwin Boyne }

We Edwin Boyne as principal and
Oliver McAlhatten & Gust. Homel
as securities acknowledge ourselves to be indebted
to Owen Murray in the sum of Four hundred
dallars for the payment of which we bind our
selves, our heirs, & executors and administrators
firmly by these presents. The condition of
the above Bond is such that whereas the
said Edwin Boyne has taken an appeal in
the above entitled Cause to the district Court
of the district of Missouri
now if the said Boyne shall prosecute his
said appeal with due diligence to due vision
in the said district Court and shall perform
such judgment as shall be given by said
district Court, or such as the district Court
may direct the Circuit Court to give, and if
the judgment of the Circuit Court shall be
affirmed, or any part thereof, he shall perform
and comply with the same so far as it may
be affirmed and shall pay all damages &
costs which may be awarded against the
appellant by said district Court, then this
bond shall be void, otherwise it
shall remain in force and virtue in

law.

Witness our hands and seals this 22nd day
of May 1864.

Edw. C. Boyne
O. Mitchell

Jack Hamel



Approved this 23rd May 1864.

E. F. Honey, clerk in ch.

By C. H. Keorine Deputy

Oliver Murray

(27)

Edwin Boyne

Special Bond

Filed May 23^d 1867.

E. J. Murray

Recorder

Owen Manay
Edwin Bayne

Be it remembered that on this
day of May 1867 it being the judicial
day of the May Term of the Jefferson Circuit
Court for 1867 the above entitled Cause
coming on to be heard all the matters in issue
were submitted to the jury and the Plaintiff
to sustain the issues on his part introduced
three witnesses who were women & two fullers
^{to wit Mrs. Maguire, Mrs. Toole & Mrs. Gibson} all
well sisters-in-law to Plaintiff who testified
that in March 1866 at De Soto in said County
the defendant struck Plff in the forehead
with a stone: that Manay then threw Plff
down that they were parted: that Plff
again struck Plff in the face with a stone
that Plff again knocked Plff down - that
they were again parted & clinched again
& Plff was again thrown down. That
Plff, after the fight was very bloody - had
two wounds on his head & that he was
unable to do any thing for a long time,
three or four weeks, & had to hire a hand to fill his place
in sawing wood for the Railroad Company. - Said witnesses
were all present when said fight between Plaintiff and
Defendant first commenced, within a few steps of the
pratties, and saw Defendant strike Plaintiff first, & before
Plaintiff had made any attempt to strike Defendant.

Plaintiff also introduced John ^{Toole} ~~Lee~~ who testified to about the same as the other witnesses above. Also several other men who swore that Deft & Plff got into a quarrel & Deft struck Plff - that the ^{Plff} ~~Defendant~~ threw Deft down - that they were parted - that Plff again rushed on Deft & threw him down; that they were again parted & that Plff again threw Deft down & were at last separated; that after the fight, Plff was quite bloody. - That witness was present and saw the beginning of the fight, - and did not see Plaintiff make any motion to strike Defendant, until after Defendant had struck him. After the fight was over, witness took a stone out of Defendant's pocket, - He also saw Defendant strike Plaintiff with a stone.

The Df then testified to the same as the
and that ^{Defendant} did strike him in the back with a stone before he made
any motion ^{to strike} ^{Defendant}
first witnesses above spoken & also that

" he told Def. before the fight commenced
that if he had been a gentleman he would
have come over & given him a fair fight
instead of hanging his (Def's) wife over
there to swear a lie against him: that
the fight occurred ^{soon afterwards} ~~in the street~~ that
they had just had a law suit between him
self & Boyne's wife. He also testified
that he was unable to do any work for
4 or 5 weeks - that he sawed wood
for R. K. Co & had during that time
to hire hands. that the doctor advised
him not to work at sawing wood

Df here exhibited the scars caused by the wounds received
in the fight which scar was very small, not more
than 1/4 inch long right over the right eye;

The defendant to sustain the issue, on his
part introduced witnesses who testified
that Deft & Plff commenced quarreling; that
~~defendant Plff accused Deft of having~~
~~and his wife to swear a lie against him;~~
that both seemed to be angry; that Plff was
making some demonstrations with his
hands during the quarrel; that they finally
got into a fight - that Deft struck Plff
with his fist; that Plff then threw Deft
down - that they were parted; that Plff
& Deft moved together again & Deft was
again thrown down - that they were
again parted - & again moved together
& Plff then Deft down the third time
& when they were finally parted - that they
saw Plff going around afterwards as usual,
that they saw him making fence a few days
afterwards.

Sanderby swore that before the Jury commenced
he heard ~~Defendant~~^{Plff} say to Deft why did you not
come over & give me a fair fight instead of
having your wife to come over & swear false
against me.

Deft swore to about the same as his witnesses &
also that when he struck Bluff, the latter
was raising his hand to strike him: that
he had ^{no} rock in his hand until ~~the~~ he
was thrown down the third time, when
he picked one up with his left hand
& struck Bluff on the head with it.

~~That Plaintiff asked the Court~~ That
the Court on its own motion gave the following
instructions to jury viz: (here copy Nos 1, 2, 3
4, 5,) to the giving of Nos 1 & 2
defendant then & there objected and accepted.
That defendant asked the Court to declare
the law as follows (here copy instructions
asked for by deft) which the Court refused
to do, to which action of the Court in refusing
to declare law as proposed ^{by deft} defendant then
& there objected & accepted. The
jury then returned the following verdict
(here copy) upon which That defendant
then filed motion for new trial, in words

& figures as follows (here copy motion for new trial) which motion the Court overruled to which action of the Court left them & then objected and accepted. That the defendant filed a motion in arrest of judgment which is in words & figures as follows (here copy motion in arrest) but the Court overruled said motion in arrest of judgment & gave judgment for Plaintiff as follows (here copy judgment) to which action of the Court in overruling said motion & giving judgment for the Plaintiff left them & then objected & accepted & then tendered this his bill of exceptions and prays that it may be signed, read & filed as part of the record in this case which is accordingly done in open Court.

J. H. Bail Judge.

Low and Murray
as
Edwin Boyne
Roll of Expositions

Filed June 5th 1867
C. P. Hawley Clerk

Murray }
or }
Boyer }

Refused
The Court instructs the jury that if they believe from the evidence that Plaintiff by any misconduct on his part wilfully brought on the fight & went into the fight voluntarily then he must take the consequences of his own misconduct.

Refused
If the jury believe from the evidence that Plaintiff desired a fight ~~in order to obtain a fight~~ resorted to abusive language ~~then~~ towards Boyer, in order to get him to assault Plaintiff then Plaintiff should be held the aggressor.

Refused
That raising the fist in a threatening manner within striking distance is an assault & if the jury believe from the evidence that Plaintiff did so assault the ^{Defendant} ~~Plaintiff~~, then Defendant had a right to repel force by force to prevent a reasonably apprehended danger & that Defendant used no more force than was necessary to get rid of his antagonist then they should find for Defendant.

Murray
do
Boydne-
Andhuchino
refused

Refused

If the jury believe from the evidence
that after the first assault and battery,
the parties were separated, and suffi-
cient time had not elapsed before
they came together again for their blood
to cool, then in ^{law} ~~all~~ it is all regarded
as one fight.

Murray
or

Boyer

Instructions
refused

Of the very best time from the evidence
that the time between

Owen Murray, } In the Jefferson Circuit Court,
 -vs- } May Term 1867
 Edwin Joynt } Appeared to Dr Dutrich
 court,

Fee Bill

J. H. Reppy Clerk, cop per 25 aff 15 40
 stamp 50 writ 11, cop 10 files 10 65 3 20
 case 20 cont 25 Index 5 aff 10 10 420

O. S. Henry Clerk, 74 pas \$1.15 4 motions 80 2, 55
 swearing & taking 35 vend 50 Index 40 rub 20 1, 45
 appeal 35 Bond 30 aff 15 Bill Ex 35 1 35
 16 calls 80 making costs 25 postage 25 1 30
 Transcript 4132 words @ 15 per line 6.19 aff 10 6 29 12, 94

C. C. Fletcher ser writ \$1.50 pas 7.25 8 8.75
 John Williams 19 pas 9.50 calls 90 10 40
 John Hopson 8 8.52 D. A. Maness 8.08 16, 60
 Wm Porter 5.56 John Cook 14.75 20, 31
 A. Francey 8.24 E. M. Guile 8.24 16 45
 Lizzie Gibson 7.60 Mary Cook 14.75 22, 35
 B. A. Maness 8.24 C. Mapp 5.12 13, 36
 L. H. Sanderson 8.24 Gust Hamel 5.12 13 36
 Rudolph Washburn 8 5-2 110, 98
 143, 07

Green Sherry
-125-
Edwin Fayal

Good Luck
J. H.

We the Jury find for the Plaintiff
and assess the damages against
Defendant at one thousand dollars

Wm Durrenmore
Foreman

Owen Murray } In the Second District Court
vs } Missouri

Erwin Murray } This was an action brought by
Plaintiff in the Circuit Court of Jefferson County
against defendant to recover damages for an as-
sault and battery. - The cause was tried by a jury
and after hearing the evidence they rendered a
verdict for plaintiff and assessed the damages to
one hundred dollars. - The jury is the judge of the
weight of the evidence, and if there is any evidence
to support a verdict, the Court will not disturb it.
Though the evidence might not be such as to satisfy
the mind of the Judge, yet the jury being made
the Judge for that purpose, it is sufficient if they
are satisfied with it; and the verdict which
they render is conclusive on that point.

There is no error in the instructions given or
refused by the Court. - There was no error in overruling
the motion in arrest of judgment. - The petition
states facts sufficient to constitute a cause of
action. It is a good petition for an assault and
battery and does not contain a count for special
damages. Nor are special damages claimed.
Filed July 18, 1863. If there are defects in the petition, there are none
but such as would be deemed to be waived unless
L. Sargeant demurred to. The judgment in this case is
Clerk affirmed. - Albert Jackson

Judges Barth & Vaie Concur.

State of Missouri }
Second Judicial District } I, the undersigned, Clerk
of the District Court within & for said Dis-
trict, Certify that the above is a true and
perfect copy of the opinion of the District
Court in the above entitled cause, as
fully as the same remains on file in
my office -- In testimony whereof
I witness my hand & the seal of said
Court hereunto affixed at St. Louis
in the City of Cape Girardeau this
1st day of August 1862
Leonard Sargeant - Clerk

In the Second District Court

Owen Murray Reple }
vs } Grant & Jefferson Co. Circuit
Edwin Boyne Apph } Court July Term 1868.
July 22, 1868 - - -

Now comes again this matter before the Court and it appearing that the mandate of the Supreme Court in this Cause has been filed in the office of the Clerk of this Court affirming the judgment of this Court given at its July Term 1867 - It is therefore adjudged and decreed by the Court, that the judgment of this Court at its July Term 1867 in this Cause, stand in full force and effect, in conformity with the action of the Supreme Court herein and that execution issue accordingly -

State of Missouri }
Second Judicial District } I, the undersigned, Clerk
of the District Court within & for said District
hereby certify that the above is a true copy of
the order of the District Court in the above
matter as therein appears, as fully as the same
remains of record in my office - In testimony
whereof witness my hand & seal of said
Court here affixed on office in
Cape Girardeau this 1st day of August
A.D. 1868 -

Leonard Sargeant Clerk

(Properly attested)

Owen Murray App^t } Office from Jeff. Ct. Court -
 as } Fee Bill in Dist Court
 Edwin Boyne App^t }

Fee Bill Certificate from Jeff. Ct. Court	\$6.20
Docket fee in District Court (Paid by App ^t)	10.00
Transcript to Sup. Court (Paid by App ^t)	8.50
Opinion & order of Court with fee bill (unpaid)	2.25-

State of Missouri }
 Second Judicial District } J. Leonard Sargeant, Clerk of
 the District Court within & for said District Certify
 that the above is a true copy in the aggregate from
 the fee book in my office in the above entitled
 Cause as fully as the same therein appears
 and that the App^t is liable for the same--

In Testimony Whereof with my hand
 & the seal of said Court hereunto affixed
 at office in Cape Girardeau this
 1st day of August 1862
 Leonard Sargeant Clerk

Green Murray

per
John Payne

Filed Aug 8th 1868,
C. F. Murray Clk

