

May 1867

Fortier, Benonie

vs.

Ball, John

Appeal

Defendant appealed from JP
B.S. Kepp on \$25 damages for
killing one hog; bill of exceptions;
Second District Court; depositions

at Johnson's residence
properly and did not take possession of

Shirley Allan

Ohio Academy 30th St

Parent's Section

Shedd and Thorne to

See also Mr. Thib's 30th January 1844

22 Rebay

Justice of the Peace

No 1

Bernard Hartner
vs

John Ball

Statement of Cause
of action

John Kolbacher
George E Kolbacher
And: More

Filed May 1st 1867.
E. F. Honey &

Benonie Fortia, - Plaintiff } Before B. S. Keffy
Against } a Justice of the
John Ball, - Defendant } peace,

Benonie Fortia, the Plaintiff, states
that John Ball, the Defendant, on or about
the 20th day of December 1866, at the County
of Jefferson, Missouri, by his agent or employee,
did unlawfully & wrongfully kill a certain
stock hog, the property of the Plaintiff, - of the
value of fifty dollars, and Plaintiff says that by the wrongful
acts & doings of Defendant as aforesaid, Plain-
tiff has been damaged in the sum of fifty
dollars, and for which he asks judgment,

Benonie Fortia
Plaintiff

Benoni Horton

vs,

John Ball

Answered

Statement of
perad to be filed
before the Justice
- It overruled by
the Justice,

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. } SS.

TO William Armstrong and L. D. Collier

YOU are hereby commanded, that, all excuses and delays being set aside, you personally be and appear before the undersigned, a Justice of the Peace within and for the Township of St. Louis, in the County of St. Louis, on the 23rd day of February 1867, at the hour of 10 o'clock, A. M., at his office in said Township, to testify on the trial of a case wherein Barbara Dichter plaintiff, and Paul Adam Ball defendant,

on the part of the Defendant; and of this you are not to fail at your peril.

Given under my hand this 23rd day of January 1867.

J. F. McPhay, JUSTICE.

SUBPOENA.

Benjamin Fortier

VERSUS

John Bell

B. S. Ruppberg Before
Justice of the Peace

Witness for Defendant
William Armstrong
J. D. Collins

I executed this writ in the Town
Ship of Valle in the County of Jef
ferson on the 5 Day of Feb 1867
by reading the same in the pres
ence and hearing of S. D. Collins
and ~~Wm~~ Armstrong the within
Named

The 50th B. Washburn
cons

THE STATE OF MISSOURI,

To ^{the} Constable of St. Louis Township, in St. Louis County—GREETING:

We command you to summon

John Ball

to appear before the undersigned, one of the Justices of the Peace of St. Louis Township, in St. Louis County, on the *25th* day of *February* 186*7*, at *10* o'clock in the *fore* noon, at his office in the said Township, to answer the complaint of *Benjamin*

Benjamin

and subpoena defendant as witness for the plaintiff.

Given under my hand this *25th* day of *January* 186*7*.

B. S. Hays, JUSTICE.

No 21

SUMMONS.

No. 186

VERSUS

DAY OF TRIAL:

Amount of Debt \$50.00

Costs

1.05

I executed this writ in the Town
ship of Valle in Jefferson County
Mo on the 30 day of Jan A D 1867
by reading the same in the pres
ence and hearing of John Ball
the within Named Defendant

Fee 35cts

R. Washburn
Clerk

STATE OF MISSOURI,

COUNTY OF ST. LOUIS. } SS.

TO

John Kohlhaas George R. Kohlhaas
and Frederick Moore

YOU are hereby commanded, that, all excuses and delays being set aside, you personally be and appear before the undersigned, a Justice of the Peace within and for the Township of St. Louis, in the County of St. Louis, on the *24th* day of *February* 186*7*, at the hour of *10* o'clock, *A*. M., at his office in said Township, to testify on the trial of a case wherein *Bernard Shorter* is plaintiff, and *John Ball* is defendant,

on the part of the *Plaintiff*; and of this you are not to fail at your peril.

Given under my hand this *25th* day of *January* 186*7*

W. H. H. H. H.
JUSTICE.

SUBPŒNA.

Benoma Harten

VERSUS

John Ball

Before

Benjamin Justice of the Peace

John Kohlbacker

Plaintiff George E. Kohlbacker

Fred Moore

I executed this writ in the County
of Jefferson this 5 Day of Feb
A D 1867 by reading the same
in the presence and hearing of
John Kohlbacker Fred Moore
and Geo. E. Kohlbacker the within
Name

Fee \$ 1.10

R Washburn
Cans

STATE OF MISSOURI, }
COUNTY OF ~~ST. LOUIS~~ ^{Jefferson} } ss.

TO *Michael Stanley and Thomas M. Gore*

YOU are hereby commanded, that, all excuses and delays being set aside, you personally be and appear before the undersigned, a Justice of the Peace within and for the Township of *St. Louis* ^{St. Louis}, in the County of *St. Louis*, on the *20th* day of *July* 1867, at the hour of *10* o'clock, *P* M., at his office in said Township, to testify on the trial of a case wherein *Benjamin Stutts* is plaintiff, and *Arthur Hall* defendant, on the part of the *Plaintiff*; and of this you are not to fail at your peril.

Given under my hand this *12th* day of *July* 1867. *Wm. S. Phelps*, JUSTICE.

SUBPOENA.

Benoni Hartis

VERSUS

John Ball

I executed ^{Justice} this writ in the
Township of Vall in Jefferson
County on the Day of Feb
4th 1864 by reading the same
in the presence and hearing
of Michael Brinley and
Thomas McGee the within
named
Fees go to Rudolph Washburn
Clerk

THE STATE OF MISSOURI,

Walter
W. A. Rogers
To my Constable of St. Louis Township, in St. Louis County—GREETING:

W. A. Rogers
YOU ARE HEREBY COMMANDED, that you cause to come before me, a Justice of the Peace within and for said Township, at my office in the city of St. Louis, good and lawful men of the Township aforesaid, by whom the truth of the matter may be better known, to make the jury between

Benjamin Sharbier plaintiff, and

John Ball defendant, in an action of

because as well as the said *Benjamin Sharbier*

defendant, as the said plaintiff, between whom the controversy is, have put themselves upon a jury, and have you then there this writ. *on the 25th day of Decr 1867 at 10 o'clock A.M.*

Given under my hand, this *19th* day of *April* 1867

W. A. Rogers JUSTICE.

In Obedience to the Command of the
within writ I have summoned as Jurors
Frederick Sacket James. Roddison ~~John~~ ~~Stephen~~
John. Mackee Samuel. ~~Bunker~~ ~~James~~ (Bredel)
James Mahlum Bredel T. Brederton

Sir Yeast and Lowdell men residents and
Siblings of Wells Township in Jefferson County
to be and appear at the time and
place within mentioned

This 25 Day of Feb 4 3 1869
Free & free
Bredel T. Mahlum
James of Wells

Township

THE STATE OF MISSOURI,

John Ball
To ~~any~~ Constable of *St. Louis* Township, in *St. Louis* County—GREETING:

John Ball
YOU ARE HEREBY COMMANDED, that you cause to come before me, *John Ball* a Justice of the Peace within and for said Township, at my office in the city of St. Louis, *John Ball* good and lawful men of the Township aforesaid, by whom the truth of the matter may be better known, to make the jury between

Penman Foster plaintiff, and

John Ball

defendant, in an action of

John Ball

because as well as the said

John Ball

defendant, as the said

Penman Foster

plaintiff, between whom the controversy is, have put themselves upon a jury, and have you then there this writ. *on the 16th day of March last my next day*

Given under my hand, this

Sixteenth day of *March*

1867

John Ball JUSTICE. *of the Peace*

Am likewise to the command of the
within sent I have summoned as shown
to wit John. Hades Henry Whitham
John. Haden Henry Black J. Buckel
Geo. Breckinridge

Sitt Good and Lawfull men residents
and Citizens of said township of Wells
in the town of townships to do and appear
at the time and place within mentioned
this 16 Day of March A D 1867

Y
do \$ 1.00

Breckinridge. Whitham
do

525
485
600
650
23.05

State of Missouri &
County of Jefferson & So

Bénonie Fortier

vs

John Ball.

Plaintiff urges and Request. that the
former Judgment Be Set aside and
and a new trial Granted &c. March 18th / 67
Bénonie Fortier

father

Before 1811
Dated 8th Decr

Constant

agreement of Mansuet entered
 & advice by the Director and
 his co. were on the 20th day
 took them at the office of
 Messrs. J. & J. Brown & Co. Messrs.
 J. & J. Brown & Co. 1864
 J. & J. Brown & Co.
 J. & J. Brown & Co.

I enclose this Notice in the Township
of Wells in Jefferson County the day
meeting the same in the presence and
of ^{James} John Ball the within named
Declarant on the 9th Day of March
A D 1867

the 35th

R. M. Ashburn Deans

THE STATE OF MISSOURI,

To ^{the} Constable of ^{St. Louis} Township, in ^{St. Louis} County—GREETING:

YOU ARE HEREBY COMMANDED, that you cause to come before me,

Wm. P. Phelps a Justice of the Peace within and for said Township, at my office in the city of St. Louis, *Wm. P. Phelps* good and lawful men of the Township aforesaid, by

whom the truth of the matter may be better known, to make the jury between

Bernard Stodier plaintiff, and

John Ball defendant, in an action of

Ball because as well as the said *John Ball*

defendant, as the said *Bernard Stodier*

plaintiff, between whom the controversy is, have put themselves upon a jury, and have you then there this writ. *on 28th day of April at 10 o'clock AM at my office*

Given under my hand, this *21st* day of *March* 18*67*

Wm. P. Phelps JUSTICE. *St. Louis*

In Obedience to the Command of the
within writ I have Summoned as
Gideon to wit ~~John. Thees~~ Richard. H.
Shute Denis. ~~Thomas~~ James
Bedelton A. G. Lee

James. Jackson

Sir Gave and Successful Men residents
and Citizens of the Township of Wells in
Western County Mo to do and appear
at the time and Place within mentioned
this 20 Day of April A D 1867

4
\$20 1.00
R. Washburn Clerk
of said Township

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. } SS.

TO John Robbester George Robbester William Thompson &c.

Callins Thacker Brinkley Thomas M. Lee and James Washburn

YOU are hereby commanded, that, all excuses and delays being set aside, you personally be and appear before the undersigned, a Justice of the Peace within and for the Township of St. Louis, in the County of St. Louis, on the 20th day of April - 1867, at the

hour of 10 o'clock, A M., at his office in said Township, to testify on the trial of a case wherein

Benjamin Chafer is plaintiff, and

John Ball is defendant,

on the part of the Plaintiff; and of this you are not to fail at your peril.

Given under my hand this 21st day of March 1867.

W. J. Ripley, JUSTICE of the Peace

SUBPOENA.

Benson's Lister

VERSUS

John Ball

B. S. Reppy

Justice of the Peace
Law day April 20th A.D. 1867

I executed this writ in the
Township of Valle in Jefferson Co
this 30 Day of March A.D. 1867
by reading the same in the
Presence and hearing of Wm
Armstrong Geo. Mc Ge James
Washburn Michael Brinley
L. D. Collins John Kohlbecker
Geo. Kohlbecker
the within named

Fee \$ 2.25 R. Washburn
10 m
Cans

Beverly Hudson

Is
John Ball -) Don't forget to pay Justice of the Peace

We the Jury find for the Plaintiff in sum of \$25.⁰⁰
and Costs

Geo W. Caldwell
for the Defendant Foreman

Circuit Court Jefferson County
John Ball Appellant

vs
Benoni Foster
Respondent

State of Missouri
Jefferson County S.D.

John Ball being duly sworn deposes and says
that he is appellant in an action entitled
as above wherein Benoni Foster was
plaintiff and John Ball defendant before
J. S. Kessler a Justice of the Peace and that
Judgment was rendered against the ap-
pealant for the sum of twenty five dollars
and costs of suit and that he ap-
peals from the said judgment and
that the same is not made for vexatious
or delay but because he believes the
appellant is injured by the judgment
of the jury and Justice in said action

Subscribed & sworn to
before me this 29th day John Ball
of April 1867.

Wm Leonard
Notary Public
Jeff Co Mo.

Levee & Street
Leffman Co.

John Ball
Appellant
vs
Devin Foster
Respondent

Leffman Co.

Filed May 1 1867
C. J. Honey Clerk



Justice Court
Benoin Foster
Plaintiff
vs
John Ball
Defendant

Before B. S. Rippy
Justice of the Peace

Bond on Appeal. We the undersigned
John Ball of the State of Tennessee County No
and William G. Herold
of the same place as surety acknowledge our-
selves indebted to Benoin Foster in the sum
of one hundred dollars to be void upon this
condition, whereas John Ball has appealed from
the judgment of B. S. Rippy a Justice of the Peace
in an action between Benoin Foster Plaintiff
and John Ball defendant now if on such appeal
the judgment of the justice be affirmed or if on the
trial herein the appellate Court judgment be
given against the appellant and he shall satisfy
such judgment or if his appeal shall be dismissed
and he shall pay the judgment of the justice together
with the Costs of this Appeal this recognizance
shall be void

Approved April 29th 1867
B. S. Rippy
Justice of the Peace

John Ball
Wm. G. Herold

General Bond

John Ball

~~Appelland~~

27

Alvin Foster

Respondent

Bond

Transcript of Appeal

Benonia Foster

vs 2686

John Ball

Filed May 1st 1867

Elias J. Honey Clerk

Recorded

Nov. Term 1867

COUNTY OF JEFFERSON.

The State of Missouri,

To Arch. Merrill Williams demanding J. D. Leathrie
and Geo. Wallhaster

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the first day of December
and 1867 at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

Reverie Carter is

Plaintiff, and John Fall is

Defendant, on the part of Plaintiff and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereto affixed, at office, this 21st day of October . . . A. D. 1867.

Elias Honey Clerk.

By E. D. Stone Del

SUBPENA.

TO

Jefferson Circuit Court

Nov. TERM, 1867.

Porter
vs
Ball

For Plaintiff

Frederick Moore
Wm. Armstrong
L. D. Collins X
Geo. Kohlbecker X

John Williams
Sheriff per \$2.00

I certify that within in Jefferson County Mo
on the 28th day of October 1867 by
hearing the same to L. D. Collins
George Kohlbecker and
others more William Armstrong not found
in my county
John Williams
Sheriff per

COUNTY OF JEFFERSON.

The State of Missouri,

To John W. Hatcher and Edward Moore vs. Thomas
McLester & Oliver Sprindley

You are Hereby Commanded, That setting aside all manner of excuse and delay, You appear
before our Circuit Court for the County aforesaid, on the first day of
November 1867 at Hillsboro, then and there to testify and the truth to say in a certain
matter of controversy, now pending in our said Court, wherein

Seneca Station is

Plaintiff, and

John Ball is

Defendant, on the part of Plaintiff and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with
the seal thereof hereto affixed, at office, this 21st day
of October . . . A. D. 1867.

Elias F. Honey

Clerk.

SUBPÆNA.

TO

Jefferson Circuit Court

N.A. . . . TERM, 1867.

Foster
vs
Ball,

For Plaintiff

John Kohlbecker x
Aaron Moore x
Thomas McGee x
Mike Brindley x

John William
Sheriff fee \$2.00

I executed the within in Jefferson County Mo
on the 28th day of October 1867 by
executing the same to Kohlbecker & Moore
More McGee & Michael Brindley
John William
Sheriff

Benoni Fortie, - Plaintiff } In the Circuit
Against } Court of Jef-
John Ball, - Defendant } ferson County
- On Appeal.

State of Missouri }
County of Jefferson }

Michael Brinaley, a witness
in the above Cause, being duly sworn
on his oath states, that he knows the
Hog sued for, by Plaintiff in the above
entitled Cause, - that he was a large
White & black spotted Boar, - was of
a good stock of hogs, - and would
consider him worth fifty dollars, to
keep as a stock hog, - that witness
considers himself a good judge of the
breed of hogs. Michael ^{his} Brinaley
mark

I, Ira Leonard, Attorney for the Defendant
in the above cause, and I, Abner Green, Attorney
for Plaintiff, agree and consent that the above
Affidavit may be read in evidence by the
Plaintiff in the trial of the above cause,
without any objection whatever thereto.

November 6th 1867 } Abner Green
Subscribed & sworn to before me this Nov 6th 1867 } Attorney for Plaintiff
E. D. Honey cler. cir. ch } Ira Leonard
By E. D. Honey Dep. } Appr. Atty

Forbes
or
Balls

Defendants
of
The Bank

John J. Stone & others
vs
The Bank

We the very friends for the thanks
The sum of fifty dollars

~~perman~~ William Hall

perman

Circuit Court Jefferson County

Benoni Fortier

Respondent

against

John Ball

Appellant

Now comes the defendant by his Attorney and moves the Court for a new trial in the above Cause for reason of the following errors:

1st The Court erred in instructing the jury that if they believed from the evidence that William Armstrong was acting as a General Agent in managing defendant's farm and that he employed Fred Moore for help to assist in doing defendant's work and that while so employed by an injudicious & negligent act done in furtherance of the defendant's business he shot plaintiff's hog. The jury will find for the plaintiff in the sum proved to be the value of the hog.

2nd The Court erred in giving the following instruction to the jury. But if the jury believe from the evidence that Fred Moore was employed by defendant or by William Armstrong to do defendant's work. he willfully shot plaintiff's hog to effect some design of his own. Then the jury shall find for the defendant for costs of this suit.

3rd The Court erred in the following instruction to the jury. That if the negligence of the plaintiff was the cause of his hog being killed the jury must find for the defendant.

4 The Court erred in instructing the jury that in trespass

all are principles and those who direct a trespass or assent to it after it is committed, for his benefit are equally guilty with those who commit it

5th The Court erred in giving the jury the following instruction asked by the defendant & appellant. That if they find that the hog was killed without the procurement of the appellant, by the direction of a servant in his employment, without his consent or knowledge he is not liable -

6th The Court erred in not giving the following instruction asked by the defendant. That the appellant is not responsible if the damage was caused by his servant without his consent or knowledge -

7th The Court erred in not giving the following instruction to the jury asked by the appellant. That if the negligence of the plaintiff in any way contributed to the ~~happening~~ bringing about the accident he cannot recover.

8th The Court erred in refusing the following instruction to the jury asked by appellant. "That the appellant cannot be made responsible for the acts of servants employed by servants unless the master has given specific direction for the employment and that must be affirmatively shown -

9th The Court erred in refusing the following instruction asked by the appellant. That if the servant employed by Armstrong was so employed without the knowledge or consent of the appellant he is the servant of Armstrong & not of Ball

& Ball cannot be made liable for his acts -
10th This was an action of trespass and the verdict
of the jury is erroneous. They ^{do} not find the defendant
& appellant guilty but their verdict is "We the
jury find for the plaintiff the sum of fifty dollars -
William Foster foreman
and do not find the defendant guilty."

Ira Leonard

Atty for appellant

Lucius Lewis
Jefferson County

Benoni Foster
Jefferson County

John H. Gall
Jefferson County

Milton J. Smith
Jefferson County

John Leonard
Jefferson County

John H. Smith
Jefferson County

Circuit Court Jefferson County Mo
Benoni Fortier

Respondent

against

John Ball

Appellant

Bond on Appeal

Know all men by these presents that we John
Ball as principal and Ira Leonard &
Charles Vinzard as securities
acknowledge ourselves indebted to Benoni Fortier
Respondent in above entitled cause in the sum
three hundred dollars to be levied of our goods
and chattes lands and tenements if default shall
be made in the following conditions to wit: Whereas
John Ball as principal has appealed to the Supreme
Court in the above entitled action from a judgment
rendered in the Circuit Court of Jefferson County
Mo. at the November Term thereof 1867. Now the
condition of this obligation is such that if the appellant
shall prosecute his appeal with due diligence to a
decision in the Supreme Court and shall perform
such judgment as shall be given by the Supreme Court
or such as the Supreme Court may direct the Circuit
Court to give and if the judgment of such Court
or any part thereof be affirmed then he will com-
ply with and perform the same so far as it
may be affirmed and will pay all damages
and costs that may be awarded against

the appellant, by the Supreme Court and shall pay the judgment costs and interest that accrued in the Circuit Court if said judgment shall be affirmed, then this recognizance shall be void otherwise it shall remain in full force and effect.

Witness our hands and seals this 15th day of November 1867.



John Ball
vs E. Leonard
Clerk of the Court
Very truly
yours
John Ball

Circuit Court
Jefferson County

Berwin Foster
Respondent

vs
John Ball
Appellant

Recognizance as above

Circuit Court Jefferson County Mo.
Benoin Fortier

Respondent

Against

John Ball

Appellant

Affidavit for Appeal

John Ball being duly sworn says that his appeal in the above entitled Cause is not made for vexation or ~~de~~ delay but because the affiant believes that he is aggrieved by the judgment and decision of the Court in said Cause.

Subscribed & Sworn to

before me this 15th day of

Nov. 1867

Elias J. Honey clerk

John Ball

(11)

Wendell Smith
Deputy Secretary
" " " " " "
James Foster
Superintendent
Accounts
John Ball
Comptroller
" "
Officer Smith for
Appraisal

Circuit Court Jefferson County Mo
Benjamin Foster
Respondent
November Term
1867
against
John Ball
Appellant

Be it remembered that this cause coming on
to be tried at the November Term of the Circuit Court
of Jefferson County, upon the following pleadings -
(see inside the Complaint)

L. D. Collins. was sworn as a witness and
testified as follows: I am acquainted with plain-
tiff & defendant. I was present when the hog was
killed & owned by Foster, ^{in December, 1866} It happened in this
way the defendants wife Mrs Ball sent for
me and requested me to come down on Sunday
to see about killing their hogs during the week I
went there and agreed as to the day it should
be done the defendant Ball was not at home
he was in Louisiana on the day it was agreed
to kill hogs I went down to the house and I was
giving directions about the work I oversee the
killing and apportioned the work to the different
men, William Armstrong and Fred Moore was
to do the shooting of the hogs. When Foster hog was
killed the hogs that belonged to Ball were in
a pen by themselves and two of them broke out

one of them jumped into the horse lot which
was fenced up and another got out into the woods
Armstrong & Fred Moore took their guns and ran
around the pen one on one side & the other on
the other side of the pen and Fred Moore ~~halled~~
to kill the hog that ^{broke} jumped into ^{the} woods and
as Fred Moore came round in sight of the
Forsters hog which was up by the pen ~~the~~ Moore
halled to Armstrong and said ^{is that the hog,} Shall I shoot
~~him~~ & Armstrong said yes kill it. when Moore
shot and killed the hog of Forster. Then Armstrong
and Moore went up to the hog to stick it. and
Armstrong said ~~why~~ that isn't the hog that
broke out that ~~is~~ isn't Ball's hog. when the
old man Kolbecker came up and said it was Forster's
hog. It was all done in a hurry and accidentally. After
the hog had been killed the old man Kolbecker went
over to Forsters house & got him to come over and
Forster came over & went into the house and
Mrs Ball wanted him to take the hog away but
he would not so then I went with Armstrong
and took the hog to De Soto and had it weighed
at Knorpps and it weighed one hundred and
seventy seven pounds. ~~I believe~~ Mr Ball was
away from home and Armstrong ~~was~~ ^{and I know} attending to the work on the
^{and acting as a general superintendent & Agent for Ball}
fairly the Ball ~~thunk~~ paid me for the day work
in killing hogs.

(2).

John Kohlbecker being sworn says. That he was at Balls killing trap on or about the 20th day of December 1876 and saw the hog of Fortier killed. That Wm Armstrong and Fred Moore shot the hogs and he stuck the hogs & gutted them, that the hogs to be killed were all in a pen and that some of the hogs while they were killing broke out of the pen one went into the horse lot that was enclosed and another broke out and started into the woods that, Armstrong ran around on one side of the pen to shoot the hog and Fred Moore ran around the other side to shoot and as he got around and saw the ~~boar~~ belonging to Fortier Fred Moore says to Armstrong ^{is that the hog} ~~shall I shoot~~ and Armstrong says yes shoot, ^{him} and Fred Moore shot the boar of Fortier which was close up to the pen looking in and I then went up to stick it and ~~said it was a boar and~~ and as I went up to it Fred Moore says old man let me stick it & took the knife out of my hand and ran up and stuck it and when I got up to it I says it is a boar and Armstrong says ~~by George~~ that aint Balls hog whose hog was it he, and I went up & looked at it and says you have killed Fortiers boar and we talked the matter over and it was agreed that I should go over & tell Fortier & have him

come over and I went over and told him
and he went into the house and saw Mrs Ball
and staid to dinner & came out and went
off I dressed the hog and hung it up in the
Smoke house and went with Armstrong
to De Soto to have the hog weighed it weighed
177 lbs. Armstrong came after me to go &
help kill hogs. it was all done in a hurry
after the hog broke out of the pen I don't
think Fred Moore killed the hog maliciously
but ~~it~~ he thought it was Ball's hog. Armstrong
was Ball's hired man Ball was away
from home and Armstrong seemed to
have charge of the farm ~~as~~ his Agent,

Aaron Moore being sworn said that
Wm Armstrong came after him to go to Ball's
& help kill hogs but he told him he couldn't
go but his brother Fred. would and that
Fred Moore went, that Ball was gone
& Wm Armstrong seemed to have general charge
of the farm — The Defendant admits the hog in question
was worth ^{fifty dollars} ~~herein~~ ^{herein} ~~insert~~ ^{sup} affidavit of Michael
Brindley)

Benoni Foster, being sworn says that he
owned the hog that it was a valuable stock
hog & was worth \$50.00 that he never kept
it shut up but always let it run at large

that at the time the hog was killed people were generally killing their hogs and that he never had it ^{in a pen} but let it ^{run in} the woods, ^{could have kept it up if he wanted to} that Mrs Ball wanted him to take it away after it was killed and he refused to do it, and never did take it away. That when Ball came home he saw him and he said he was not too blame and would not pay for it - Whereupon the said cause was submitted to the jury under the written instructions of the Court, to which instructions the Appellant excepts -

(Insert the Instructions given by Court)

The appellant asked the Court to give the following instructions to the jury in said cause ~~which were refused by reason~~

(^{insert} here instructions asked by Appellant) which instructions were refused to which appellant excepted.

After which the jury rendered a verdict for Plaintiff in the sum of fifty dollars. ~~(Insert verdict)~~

After which and within due time the Appellant made a motion for new trial (^{insert} Motion for new trial) which motion was overruled to which Appellant excepts and appeals said cause to this Court for

reason of the errors of the court by reason
of the ~~errors~~ committed in said instruc-
tions & refusal to of the instructions of the
Appellant.

J. H. Vail. Judge ^{E. O.} Seal

Horton
Ball

Bill of exceptions

Filed Nov 16 4 der
E. H. Money clerk

Simon Fortin } In the Second District Court
 vs } of Missouri: February Term 1869
 John Ball & } February 13, 1869 - - -
 W. G. Herrod }
 Orm to Jefferson Circuit Court

Now the motion
 heretofore filed in this cause, to wit that
 the judgment heretofore rendered in the Jef-
 ferson Co. Circuit Court in this cause, be affirmed
 in compliance with the mandate of the Supreme
 Court, filed in this Court, which reverses
 the judgment of this Court heretofore rendered
 in this cause - Coming on to be heard and
 the Court being now sufficiently advised
 of and concerning the matter, doth consider
 & adjudge that said judgment of the Jefferson
 Co. Circuit Court, be in all things affirmed &
 stand in full force & effect and that said
 Fortin be restored to all things that he
 has lost by reason of said judgment in this
 Court and that he recover of said Ball &
 said Herrod his costs & charges in this behalf
 expended & have execution therefor -

Bill of Costs in District Court
 Writ of orm to Jeff Cir. Ct (pd by Ball) 1.00
 Docket fee " " 10.00
 Transcripts to Sup Ct (Unpaid) 12.25
 Certifd Copy of mon of Dist Court (Unpaid) 1.00
 & fee bill as herein
 \$13.25

State of Missouri }
Second Judicial District } I the undersigned
Clerk of the District Court, within & for
said District hereby certify that the above
& foregoing is a true copy of the order
of the said District Court as herein
appears together with the bill of
costs incurred in said Court in this cause
as fully as the same remain of record in
my office --- Witness my hand
& official seal this 17th
day of April 1869
Leonard Sayre Clerk

Forster
vs
Ball

Forster
vs
Ball & Oswald

Filed April 26/69
Wm. H. Connelley

B. Fortier } Hecution,
 }
 John Ball & } In the Circuit
 W. G. Herald } Court of
 } Jefferson County
 } Missouri

Now at this day come the Defendants
 and move the Court to quash
 the Hecution now in the
 hands of the Sheriff of
 the aforesaid County of
 Jefferson issued on the
 day of 1869
 on a Judgment of this Court
 in the above cause for the
 following Reasons, viz,

1st Because the same is illegal
 and unjust in that the
~~same is~~ Balance now
 due and unpaid on said
 Hecution is wholly for costs
 a large amount of which
 were paid before the Hecution
 was issued, and because
 a large amount of such
 Costs are not due from due
 from or Legally taxed upon
 said writ of Hecution

against the defendants
therein,

2nd Because said execution is
otherwise irregular & void

Jos. J. Williams
att. for Defts.

2686

A. Fisher

as

John Bull
21st

Motion to
quash return

Made Nov 16 1989
C. H. Newell

Seventeenth Section Security
Person's Office

Respondent

Against

John 13000

Appellant

Appellants' points

The Appellant asks the

Refused

Seventeenth Section Security
1st That if they find that the law was violated
without the procurement of the Appellant by
the direction of a servant in his capacity
without his consent or knowledge he is not liable

Refused

2 That the Appellant is not responsible if the
the damage was caused by his servant, ~~and~~
without his consent or approval -

3
Refused
That if the negligence of the Plaintiff in any
way contributed to the loss bringing about the
accident which he cannot recover.

Refused
~~That if they find that the account of Mr. Hall also~~
That the appellants can not be made responsible
for the acts of account's employed by a servant
unless the master has given specific directions
to the employment ~~of~~ and that must
be affirmatively shown -

Refused
That if the account employed by ^{as} Clunthony
was employed without the knowledge or consent

of the appealant he is the decendant of
Armstrong & not of Ball & Boothman -
and he made liable for this only

If the jury believe from the evidence that
Wm Armstrong was acting as a general agent
in managing defendants farm and that
he employed Fred Moore for debt, to
assist in doing debts work and that
while so employed by an injudicious, negligent
or unskillful act done in furtherance of
of debts business he shot ~~Pliffs~~ ^{Pliffs} hog,
the jury will find for ~~Pliff~~ ^{Pliff} in the
sum proved to be the value of
the hog -

But if the jury believe, ^{from the evidence} that Fred Moore
was employed ^{by debt} by Wm Armstrong ~~for~~
to do debts work he wilfully shot
Pliffs hog to effect some design of
his own then the jury should find
for debt for costs of this suit.

That of the negligence of plaintiff was the
cause of his hogs being killed
the jury must find for the debt.

Indian Choir

The defendant objected to the trial of the cause before said court for the reason that the notice ^{opening said cause} was not sufficient and that it did not state the County & State in which said trial was had - The justice thereupon amended the notice in open court by amending ^{stating the County & State} said notice, which was objected to by said defendant & overruled by said Justice Court -

~~Objected~~ The defendant objected to ^{amending} ~~said~~ ^{complaint} plaintiffs filing an amended complaint -

The defendant also objects to opening of said cause for the reason that the docket of said justice does not show that the ~~cause~~ costs of non-suit in previous trial had not been paid - overruled by said court -

Plaintiff's Exhibit, - Plaintiff
Against
John Ball, - Defendant

Refused

The Plaintiff asks the Court to give
the jury the following instruction,

1 - If the jury believe that the hog in
question was killed by Jones, then
while he was engaged in doing
work for the Defendant, then the
Defendant is liable for the value of
the hog.

one way.

2-

In Treasures with our Friends, and
those who strict a Treason, or account
to it after it is committed for his
benefit are equally guilty with those
who commit it.

Refund

3 - If the Jury believe that McKee's
Amotions were acting as a ~~power~~
agent in managing the fund for the
servants, and that ^{the} ~~that~~ ^{of} ~~there~~ ^{there} was
engaging at his instance in shooting
Kago, and while so engaging, through
mistake shot P Lewis's dog, then
the Jury will find for P Lewis.



Refused

4 - If the Jury believe that William Armstrong at the time the hog was killed, was engaged by Defendant in superintending the business of Defendant, and that Fred, More was engaged in helping to kill Defendant's hogs, at the instance, or by the assent of said Armstrong - and that while engaged in shooting Defendant's hogs, said Fred, More, by the direction of said Armstrong, shot Plaintiff's hog, then Defendant is liable for the value of the hog, & the jury should so find.

Money Clerk

27 files - \$1.35,	motion 20 ^c rule 20 ^c	41.75-
~~27 files~~ 20 ^c	motion 20 ^c rule 20 ^c ,	40
Judgt. 30 ^c sub. 35 ^c	cut jury 50 ^c	1.35-
ord 20 ^c	ent mercliah. 35 ^c 2500ths, 36 @ 5 ^c	1.80
making costs 28 ^c	~~sub. 10^c~~ F.B. 40 ^c	.65-
Bill of Ex 35 ^c	ord 20 ^c	55-
2 Subpoenas 50 ^c	apps 10 ^c	60
		<u>7.10</u>

Money for Term 1867,

L.D. Collins	2-14,	3.12	
Jno Kohlbecker	2, 10	2.80	
Geo Kohlbecker	2-10	2.80	
S F McGe	2-14	3.12	
Arnon Mow	2-14	<u>3.12</u>	14.96

John Williams Sheriff	8 Mas.	4.00	
36 Cases, \$1.80,		<u>1.80</u>	5.80
Jury Fee,	\$12.00,		12.00

B. L. Lepp	Fee,	\$12.00	
K Washburn	"	8.70	
Witness Fee,		10.00	
Jury Fee,		8.50	39.20
			<u>79.06</u>

Money Trans 3100 wfig 15 per hundred 765-

Arthur
Lee,
of the Circuit
Court
Feb 1810