

MISSOURI PAC R. CO. v. TEXAS & P. RY. CO., (TANDY, INTERVENOR.)¹

Circuit Court, E. D. Louisiana.

January 2, 1888.

RAILROAD COMPANIES—NEGLIGENCE—FIRES.

In an action against a railroad company for damages by fire from its locomotives, the only evidence offered by the company was the affidavits of their master mechanic as to the condition of certain locomotives at the time, as to stack-nets, ash-pans, etc. The evidence did not disclose whether these were the engines by which the *Are* was caused. *Held*, that a finding by the master of damages for claimant was proper.

In Equity. On exceptions to master's report.

G. E. Tandy filed a claim in intervention against the receivers of the Texas & Pacific Railway Company for damage by fire ignited by one of the locomotives of the company to some mixed sedge and mesquite grass on his land, at the rate of \$1.25 per acre. The master allowed the claimant one dollar per acre. The receivers excepted to the master's report, on the grounds that they were not liable for damages, and that the amount allowed was excessive.

W. W. Howe, for receivers.

PARDEE, J., (*orally*.) The only evidence offered by the receivers to rebut the presumption of negligence in causing the fire complained of by intervenor consists of the affidavits of their master mechanic at Longview Junction, a place 200 miles distant from the fire, that on various days from August 6th to August 11th, inclusive, engines 653, 662, and 663 were inspected at Longview, and stack-nets, ash-pans, and dampers were in good condition. The evidence does not disclose whether the fire of August 8th complained of was caused by fire from either or all of said numbered engines. The master's finding as to amount of damage is less than that fixed by the evidence. However, only the intervenor testified as to such amount, and the master seems to have discounted his evidence 20 per cent.

Let the exceptions be overruled, and the report be confirmed.

¹ Reported by Charles B, Stafford, Esq., of the New Orleans bar.