

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

Circuit Court, E. D. Louisiana.

January 2, 1888.

RAILROAD COMPANIES—NEGLIGENCE—FIRES—REFERENCE.

Where a claim is filed against defendant railroad company for damages by fire originating from their locomotives, and the evidence proved the cause of the fire as alleged, and the damages as allowed by the master, and there was no evidence in the record to rebut the presumption of negligence, the finding of the master should be confirmed.

In Equity. On exceptions to master's report.

Joseph Schmidt filed a claim against the receivers of the Texas & Pacific Railway Company for damages caused by the destruction of millet by fire caught from a locomotive operated on the railway. The master's final report was:

"That on the fifteenth day of December, 1886, and at Paris, Tex., he took testimony, and on the twentieth of said month reported thereon, in the matter of Joseph Schmidt, claimant, for a quantity of millet destroyed by fire; that in the taking, on the twenty-second of September, 1887, of the evidence, digested in the Latimer Report (No. 238) next preceding this, it appeared that

the same fire visited the premises, both of said Joseph Schmidt and D. F. Latimer, against the former of whom a disallowance was, and to the latter of whom an allowance is, recommended; that this variance is due to evidence submitted in the more recent hearing, warranting a conclusion against said receivers, and identifying the fire in both cases as one incident. Wherefore, no action having been taken upon said report No. 108, the master reconsiders it, in view of the said later evidence, and recommends an allowance in compensation for the loss of said Joseph Schmidt, while absent from the scene, in the measure of 20 tons Of millet, at \$12 per ton, or \$240, to be paid when he shall have executed a receipt to the receivers in full of all damages sustained.”

The receivers excepted to the findings of the report, on the grounds that the facts did not establish a presumption of negligence against them; that the claimant was not entitled to recover the amount allowed him, the evidence not showing that the alleged injuries were a legal basis for any recovery by him; and that the evidence and reports, in the matter of the claim, show that the neglect of the claimant contributed to the alleged injury.

W. W. Howe, for receivers.

PARDEE, J. The intervention is a claim for damages caused by a fire originating from the railway locomotives operated by the receivers. The evidence proves the cause of the fire as alleged by the intervenor, and the damages as allowed by the master, and there is no evidence in the record to rebut the presumption of negligence. If this class of fire claims are to be resisted by the receivers, their attention is called to the case of *Railroad Co. v. Benson*, 5 S. W. Rep. 822.

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

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