

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

Circuit Court, E. D. Louisiana.

January 2, 1888.

REFERENCE—PROOF OF DAMAGES—EXCEPTIONS.

The intervener filed a claim against defendant company for damages. The evidence was not sufficiently certain as to the extent of the damage. *Held* that, as the complainant should have made his case and the extent of his damage reasonably certain by proof, his exceptions to the master's findings against his claim should be overruled, and the master's report confirmed.

In Equity. On exceptions to master's report.

A claim was filed by E. L. Dehoney against the receivers of the Texas & Pacific Railway Company for damages caused by the burning of his meadow by fire ignited by a locomotive of the railway in passing. The claim was for \$2 an acre damage to the meadow, and \$40 for 4 acres of millet destroyed. The master allowed the claimant the \$40 damage to the millet, but nothing for general damages. The claimant excepted to the master's report.

Foster & Wilson, for claimant.

W. W. Howe, for receivers.

PARDEE, J., (*orally*.) The evidence in this case is not sufficiently certain as to the extent of damage by fire to the meadow which was burned over. The meadow had been mown, and the grass was dried out by the weather. A fire was likely to do no injury except by kindling the roots of the grass. The evidence shows that after the fire the grass did not come up in spots. How extensive the spots were, and whether the failure in such spots was on account of the fire or the drouth, does not appear with any such certainty as to furnish the basis for the master or court to assess the damage. The complainant should have made his case and the extent of his damage reasonably certain by proof.

The exceptions will be overruled and the master's report confirmed.

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