Minnesota District Court (Carver County) Civil and criminal case files

Version 3
August 20, 2018

No. 176391

DISTRICT COURT,

Carver County, Minnesota

Mrs. A. O. Wheeler
Plaintiff

vs.

Herman Hartell et als
Defendant

P. R. Curran
Plaintiff's Attorney

John J. Fahey
Defendant's Attorney

Date of Entry Feb. 25 1914

Register of Actions, E Page 177

Term Tried 191

Judgment for

Amount of Judgment, $ 50.70

Date of Judgment June 29th 1914

Judgment Book D Page 468

Default Judgment Book Page

Date of Docketing June 29th 1914

Illegible
(Light Ink)

State of Minnesota, the
County of Carver } H. vs. Otto and August Hartelt and
Mrs A. O. Wheeler

STATE OF MINNESOTA) ss
County of Carver)

Mrs. A. O. Wheeler, being duly sworn, deposes and says, she is the plaintiff herein, that certain carpet cleaners, of her personal property, is at this time wrongfully detained from her by Henry Heinen Constable and Herman Otto and August Hartelt at Norwood in said County, that she, the said plaintiff, is entitled to the immediate possession thereof; that the said property was not taken from her by any process legally and that the value of said property is 16.40 Dollars, according to the best knowledge and belief of this affiant.

Mrs. A. O. Wheeler

Otto
NOTARY PUBLIC, Carver County, MINN.
My Commission expires June 1, 1917

Subscribed and sworn to before me this 2
Day of January A.D. 1914.

filed
2nd day of Feb, 1914 #176
a F Hellquist
Justice of the Peace

FILED
DISTRICT COURT,
FEB 28 1914
CARVER COUNTY
O. L. Sundstrom
Clerk of Court.

(No 1)

State of Minnesota } ss
County of Carver }

In Justice Court
Before A. F. Keitkamp
Justice of the Peace.

Mrs. A. C. Wheeler plaintiff
against
Herman, Otto, and August Hartelt, and Henry Heinen.

Know all men by these presents, that we, Mrs. A. C. Wheeler plaintiff in the above entitled action, as principal, and

and

are held and firmly bound unto Herman Otto, and August Hartelt and H. Heinen as sureties, defendant in the above entitled action, in the sum of Thirty-two $\frac{80}{100}$ dollars, lawful money of the United States, to be paid the said defendant, his heirs, executors, administrators or assigns; for which payment, well and truly to be made, we jointly and severally bind ourselves, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated this second day of February, 1914.

The condition of this obligation is such that, whereas, an affidavit has been duly made in this action, that the said defendants wrongfully detains from said plaintiff certain personal property therein described, of the value of sixteen $\frac{40}{100}$ dollars, and said plaintiff claims the immediate delivery of such property to ~~him~~ her, according to the statute in such case provided.

Now, therefore, if the said plaintiff shall appear on the ~~the return~~ day of the writ and prosecute her action to judgement, and return the said property to said defendant, if a return thereof is ordered by the court, and also pay all costs and damages that may be adjudged against him, then this obligation shall be void; otherwise to remain in full force and effect.

In testimony whereof, We have hereunto set our hands and seals this day of February. A.D. 1914.

Signed, Sealed and delivered in presence of:

Wit.
J. J. Kloth

Mrs A. O. Wheeler Seal
G. Perbix Seal
Colbert Thaemert Seal

State of Minnesota
County of Carver } ss.

On this 2 day of Feb. 1914, before me personally appeared Mrs A. O. Wheeler, G. Perbix, Albert Thaemert, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

J. J. Kloth

NOTARY PUBLIC, Carver County, MINN.
My Commission expires June 1, 1917.

State of Minnesota
County of Carver } ss

Mrs A. O. Wheeler & Albert Thaemert they being duly sworn says each for himself, That he is one of the sureties within named; that he resident and free holder of the state Minnesota and that he is worth the sum of Thirty Two 50/100 Dollars above his debts and liabilities, and exclusive of his property exempt from execution

Subscribed and sworn to before me this 2 day of Feb 1914

J. J. Kloth

NOTARY PUBLIC, Carver County, MINN.
My Commission expires June 1, 1917.

Filed this 2d Day of Feb. 1914
A. F. Keithamp
Justice of the Peace

#176
No 7

FILED
DISTRICT COURT,
FEB 28 1914
CARVER COUNTY,
Clerk of Court.

FILED
DISTRICT COURT,
1914
CARVER COUNTY,
Clerk of Court.

Illegible

(Light Ink)

Original

No 3

State of Minnesota)
County of Carver (ss
)

The State of Minnesota, to Any Constable or Sheriff of Said County:
Whereas Mrs. A. O. Wheeler of said county, complains that Herman, Otto, and August Hartelt has taken and does unjustly detain the following described personal property, of the value of (16.40) sixteen Dollars and fourty cents, to wit: Eight Golden Rod Vacumn Cleaners,

Therefore you are commanded that youcause the same property to be replevied without delay, and if within two days after the service of this writ the said Mrs. A. O. Wheeler ..... shall require a return of the property, and shall execute to the plaintiff a good sufficient bond, duly approved by me, according to the statute in such case made and provided, that you deliver the said property to her, but, if said bond is not given at the expiration of the two days, that you cause the said property to be delivered to the said, Mrs. A. O. Wheeler and also that you summon the said Herman, Otto, and August Hartelt. to be and appear before me, one of the justices of the peace in and for said county, on the 9th day of February, 1914, at 1. o'clock in the afternoon, at my office in the village of Young America, in said county, to answer complaint of Mrs. A. O. Wheeler.

Given under my hand this 2nd day of February, A.D. 1914.

A. F. Heitkamp, Justice of the Peace.

Herman, Otto, and August Hartelt, doing business as

HARTELT'S

Filed this 2nd day of Feb 1914
A. F. Heitkamp
Justice of the Peace

State Minnesota. }
County of Carver } SS.

#176

#177

I hereby certify that, by virtue of the within writ, on the 2 Day of Jan. 1914 in said county, I replevied the personal property therein described, and retained possession thereof two days. ~~(and no bond for return to defendant being given within two days I delivered the same to the plaintiff, on the 5 day of Jan 1914.~~ I further certify and return, that on the 2 day of Jan. 1914. in said county, I served the within writ upon the within named defendant personally (by reading the same to the said defendant and delivering a copy thereof to him.

Fees Mileage 2 miles	$ .20
Service of writ	.50
copy of writ	.15
	.85

C. J. Trowe
Constable.

Original

State of Minnesota
County of Carver } ss

The state of Minnesota to any Constable or sheriff of said County Whereas Mrs A C. Wheeler of said County complains that H Heimen has taken and does unjustly detain the following described personal property, of the value of 16.40 to wit: 8 Golden Rod Vacuum Cleaners. Therefore you are commanded that you cause the same property to be replevied without delay and if within two days after the service of this writ the said Mrs. A C Wheeler shall require a Return of the property, and shall execute to the Plaintiff a good sufficient Bond duly approved by me according to the statute in such case made and Provided, that you the said property to her, but if said Bond is not given at the expiration of the two days, that you cause the said property to be delivered to the said

A. F. Hettkamp
Justice of the Peace

Mrs A. O. Wheeler and also that you summon the said H. Heinen to be and appear before one of the Justices of the peace in and for said county on the 9th day of Feb. 1914 at one o'clock in the afternoon at my office in the Village of Yorkville in said county to answer complaint of Mrs A. O. Wheeler given under my hand this 2 day of Feb., A.D. 1914.

A. F. Hettkamp
Justice of the Peace

State Minnesota
County of Carver } SS.

I hereby certify that, by virtue of that with in writ, on the 2 day of Jan 1914, in said County, replevied the personal property there in described, and retained possession there of two day ~~and no bond for return to defendant being given with in two days I delivered~~ I further certify and return, that on the 2 day of Jan 1914, in said county, with in named defendant upon the by reading the same to the said defendant and delivering, a copy there of to him.

Fees Mileage 2 miles	$ .20
Service of writ	.50
Copy of writ	.15
	$ .85

Writ of Replevin
Filed this 2nd day of Feb. 1914
A. F. Hettkamp
Justice of the Peace

#176
Plf

FILED
DISTRICT COURT,
FEB 28 1914
CARVER COUNTY,
Clerk of Court.

E 177

Writ of Replevin
Filed this 2nd day of Feb 1914
A F Hettkamp
Justice of the Peace

State of Minnesota } In Justice Court
County of Carver } Before A. F. Heitkamp Justice

Mrs A. O. Wheeler - Plaintiff -

- vs -

H. Herman and Herman, Otto and Aug. Hartelt (or Hartelt)

The plaintiff complains of said defendants and alleges:
(1) That the said defendants now holds and wrongfully detains certain personal property, namely Light Golden Rod Vacuum Cleaner, valued at $39.11 from the plaintiff.
(2) That the said plaintiff is the owner of said property and entitled to the possession thereof.

Wherefore plaintiff demands judgment:
(1) For the return of said property or the value thereof of $39.11
(2) For her costs and disbursements of this action.

O. K. Cummings
Atty for Plaintiff -
Young America, Minn.

State of Minnesota } ss
County of Carver }

Mrs A. O. Wheeler being duly sworn says, that she is the plaintiff in the above entitled action; that she has read the foregoing complaint and knows the contents thereof: that the same is true of her own knowledge.

Mrs A O Wheeler

Subscribed and sworn to before me this 8 day of Feb - 1914.

A. F. Heitkamp Justice of the Peace.

Justice Court

State of Minnesota

County of Carver

Mrs A.O. Wheeler,
Plaintiff

-vs-

F. Herman, Herman,
Otto and Augusta Lutzke,
Defendants

Complaint.

Filed this 16th
day of Feb. 1914
A. H. Kittlaus
Justice of the Peace

E177

#176
No 5

FILED
DISTRICT COURT,
FEB 28 1914
CARVER COUNTY,
O. Lundstrom
Clerk of Court.

Filed this 16th day Feb. 1914
A. F. Heitkamp
Justice of Peace

State of Minnesota,
County of Carver.

Mrs. A. O. Wheeler Plaintiff.

-vs-

Herman Hartert, Otto Hartert
Aug. Hartert and Henry Heinen
Defendants

---

1 Comes now the Defendant Henry Heinen and for ~~his~~ Defendants answer to the Complaint, alleges.

Denies each and every allegation thereof.

2. That said plaintiff in the above entitled action, failed to file an affidavit of title upon this Defendant before commencing suit for recovery of personal property.

Wherefore Defendant demands judgment that the action be dismissed, for his costs and disbursements of this action.

#176

Albert Bitzenburg
Appearing for defendant
Norwood, Minn

State of Minn
County of Carver }

Henry Henrien Lewis duly sworn deposes and says that he one of the defendants in the above entitled action; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge and belief

Henry Henrien Lewis

Sworn and subscribed to before me this 16th day of February 1914

A. F. Heilkamp
Justice of the Peace

No 6

FILED
DISTRICT COURT,
FEB 28 1914
CARVER COUNTY,
O. Lundstrom
Clerk of Court.

E177

State of Minnesota } In Justice Court
County of Carver } Before A. J. Hettrauss
Justice of the Peace.

Mrs. A. O. Wheeler Plaintiff

-vs-

Herman Harbet Otto Harbet Aug. Harbet
and Henry Heim Defendants.

Come now the Defendants, Herman Harbet Otto Harbet and Aug. Harbet and for their Answer to the complaint herein.

1. Deny each and every allegation, matter and thing therein complained.

Wherefore Defendants demand Judgment that this action be dismissed for the costs and disbursements of this action

Albert Gleason
Attorney for Defendants

State of Minn
County of Carver } ss

Albert E Klaeske being duly sworn
says that he ~~the~~ attorney for defendants
that he has read the answer herein and
knows the contents thereof; that the same is
true of his own knowledge and that the
reason this affidavit is made by him is
that the defendants are absent

Albert E Klaeske

A. F. Heitkamp
Justice of the Peace
Carver Co. Minn

No 7

Filed this 16th day
of Feb. 1914
A F Heitkamp
Justice of the Peace

FILED
DISTRICT COURT,
FEB 25 1914
CARVER COUNTY,
Clerk of Court.

#176

E177

Illegible
(Light Ink)

Hartelts Plaintiffs,

vs

State of Minnesota,)
) SS G. Perbix, Defendant.
County of Carver.)

I hereby certify that by virtue of the within writ, on the 3rd day of December, 1913, I attached the right, title and interest of the within named Defendant, in the following described personal property, viz:

Eight Golden Rod Vacumn Cleaners

The same being in said County and State and now hold the same as provided by law.

Dated, Norwood, Minn., Dec.3rd, 1913. Henry Heimen
Constable.

Exhibit a (Plaintiff)

No 4

95 Writ of Attachment Levy on Crops Revised Laws 1905 Sec. 6812 WALTER S. BOOTH & SON, TOWNSHIP AND LEGAL BLANK PUBLISHERS, MINNEAPOLIS

State of Minnesota,
County of CARVER } ss.

The STATE OF MINNESOTA, To the Sheriff or any Constable of said County:

You are hereby commanded to attach the personal property of G. Perbix *or so much thereof as shall be sufficient to satisfy the sum of* Sixteen & 40/100 *Dollars, with interest and costs of suit, in whosesoever hands or possession the same may be found in your County, and so provide that the personal property so attached may be subject to further proceeding thereon, as the law requires; and also to summon the said* G. Perbix *Defendant, if to be found, to be and appear at my office in the* Village *of* Norwood *in said County, on the* 11th *day of* December *19* 13, *at* 10 *o'clock in the* fore- *noon, to answer to the complaint of* Herman Hartelt, Otto Hartelt and August Hartelt doing business as Hartelts *Plaintiffs, in a civil action, wherein the Plaintiff claim the sum of* Sixteen & 40/100 *Dollars* ($16.40), *with interest thereon from the* 13th *day of* June *19* 11, *at the rate of* 8 *per cent per annum; and have you then and there this Writ.*

Given under my hand and dated this 3rd *day of* December *19*13

Oliver E. Klauncke
Justice of the Peace

Exhibit B. (Plaintiffs)

No 9

#176

IN JUSTICE'S COURT

County of .....

WRIT OF ATTACHMENT

Special Return--Levy on Crops

Returned and filed this .....

day of ..... *19* .....

Justice of the Peace

State of Minnesota,

County of ..... } *ss.*

I hereby certify that the within is a true copy of a Writ of Attachment, against the within named Defendant, and of my return of levy by virtue thereof.

Dated ..... *19* .....

Constable

Filed in my office this 28th

day of February 1914

O. L. Lundstrom

Clerk

118500

E177

STATE OF MINNESOTA,

COUNTY OF ..... } ss.

I hereby certify and return that by virtue of the within Writ, on the .....day of .....19....., I attached all the right, title and interest of the within named Defendant, in and to the growing crop of .....sown and planted in the spring of 19....., on the following described real estate situate in said County and State, viz: .....

.....

.....

and now hold the same as provided by law,--and on the same day personally served the said Writ by reading the same to the Defendant, and delivering a copy of said Writ, with a certified inventory of the property attached, to .....; that on the .....day of .....19....., I filed with the Clerk of the Town--in which the said property is situated, a certified copy of said Writ and my return of levy thereon.

FEES—Mileage, ...Miles, $.....

Service, .50

Clerk's fees, .25

Copies, ...

Total, $.....

Constable

NO PROTEST.
Take this off before presenting.

$39 11/100

Bank of Norwood,
No. 3636
Norwood, Minn.

Chicago, Aug 5th 1913

At Sight Pay to

the order of Banks of Norwood, Norwood, Minn

Thirty nine and 11/100 Dollars

WITH EXCHANGE

For B/L atta Bills collection charges

Value received, and charge to account of

To C. Perbix,
Norwood Minn

No.

HUGHES MANUFACTURING CO.

J. W. Evans
Supt
per G

S.D. Childs & Co. 198 So. Clark St. Chicago. 17B

G. Perkins. #176

Paid by M. V. R. R. Co. Nov. 7th 1913 in full $9.11

FILED
DISTRICT COURT,
SEP 18 1914
CARVER COUNTY,
O. C. Sundstrom
Clerk of Court.

No 10.

Ex C (Bowing)

F 177

NO CLAIMS WILL BE ENTERTAINED FOR SHORTAGE OR DAMAGE IN TRANSIT UNLESS SPECIFICALLY ACKNOWLEDGED ON EXPENSE BILL BY YOUR LOCAL FREIGHT AGENT

TELEPHONES HARRISON 7322 7323

THE HUGRO MANUFACTURING CO.

MANUFACTURERS OF

VACUUM CLEANERS

HAND OPERATED AND ELECTRIC VACUUM CLEANERS

HOUSEHOLD AND METAL SPECIALTIES

GENERAL OFFICES
431 SOUTH DEARBORN STREET
CHICAGO

FACTORY
WARSAW, IND.

ALWAYS REFER TO INVOICE NO. 4542 AND GIVE DATE

Buyers Order No. 8/4/13

Shipped by C. M. & St.P. ~~Frt.Collect~~

TERMS Dft.Attached

PAYABLE BY DRAFT IN CHICAGO OR NEW YORK

CHICAGO, 8/4/13 191

Sold to G. Perbix,

Address Norwood, Minn.

Ship to The Hugro Mfg. Co., Notify- G. Perbix,

Address Norwood, Minn.

QUANTITY			
18	Golden Rod "W" Vacuum Cleaners @ $2.50	$45.00	
1	Queen V.C.	1.85	
		$46.85	
	Paid by Mrs. A. M. Wheeler G. Perbix	PAID 8.75	
			$38.10
		Due on old A/C	1.01
		Draft Attached	$39.11

#176 Nov. 7th 1912.

For the consideration
to me paid, Thirty-nine
Dollars and 11/100 - ($39.11) $1
by Mrs. A. C. Wheeler for which
I sell and release to her
Oil St. (S) Golden Rule
Vacuum Cleaner.

G. Perkins.

FILED
DISTRICT COURT,
FEB 28 1914
CARVER COUNTY,
A. Lundstrom
Clerk of Court.

E177

Ex B. (Plaintiffs)

No 11

Illegible

(Light Ink)

105—Appeal Affidavit

State of Minnesota, } ss.
County of Carver

In Justice's Court,

Before A. F. Heitkamp, Esq.,
Justice of the Peace

Mrs. A. O. Wheeler, Plaintiff.

-vs-

Herman, Otto, and August Hartelt and H. Heinen,
Defendants.

State of Minnesota, } ss.
County of Carver.

Herman, Otto and August Hartelt and H. Heinen

the Defendants each in this action, being duly sworn, says that he each for himself appeals to the District Court in and for said County, from the judgment rendered by said Justice of the Peace in the cause, on the 19th day of February 19 14, in favor of said Mrs. A. O. Wheeler, Plaintiff,

and against said Herman, Otto and August Hartelt and H. Heinen, Defendants

therein; and that the said appeal is made in good faith, and not for the purpose of delay.

Herman Hartelt Otto Hartelt August Hartelt
H Heinen

Subscribed and sworn to before me this 26th day of February 19 14.

Albert Krauck Justice of the Peace

#176

IN JUSTICE'S COURT

County of Carver.

Mrs. A. O. Wheeler,
Plaintiff.
-vs-
Herman Hartelt et als,
Defendants.

APPEAL AFFIDAVIT

Filed this 26th *day of* February, *A.D. 19* 14.

A. F. Heitkamp
Justice of the Peace

1181000

No 12

FILED
DISTRICT COURT,
FEB 28 1914
CARVER COUNTY.
O. A. Sundelrud
Clerk of Court.

E177

Illegible
(Light Ink)

State of Minnesota, } ss.
County of Carver.

In Justice's Court,
Before A. F. Heitkamp, Esq.,
Justice of the Peace

Mrs. A. O. Wheeler, Plaintiff.

-vs-

Herman, Otto and August Hartelt and H. Heinen, Defendants.

Know all Men by these Presents, *That we* Herman Hartelt, Otto Hartelt, August Hartelt and H. Heinen

as principals and

Fred F. Kloth and Henry E. Bovy

as sureties,

are held and firmly bound unto Mrs. A. O. Wheeler, Plaintiff,

in the sum of

One Hundred & No/100 *Dollars, lawful money of the United States, to be paid unto the said* Mrs. A. O. Wheeler, Plaintiff,

her *heirs, executors, administrators or assigns, for which payment well and truly to be made, we jointly and severally bind ourselves and each of our heirs, executors and administrators, firmly by these presents.*

Sealed with our seals and dated this 26th *day of* February 19 14

The condition of this obligation is such, that whereas the said Herman Hartelt, Otto Hartelt, August Hartelt and H. Heinen

appeal to the District Court, in and for said County, from a certain judgment rendered by said Justice of the Peace in said cause, on the 19th *day of* February 19 14, *in favor of said* Mrs. A. O. Wheeler, Plaintiff *and against said* Herman Hartelt, Otto Hartelt, August Hartelt and H. Heinen, Defendants

for the sum of Forty-three & 71/100 *Dollars.*

NOW, THEREFORE, If the said Appellant shall prosecute his appeal with effect, and abide the order of the Court therein, then this obligation shall be void; otherwise to remain in full force and effect.

IN TESTIMONY WHEREOF, We have hereunto set our hands and seals this 26th *day of* February *A. D.* 1914.

H Heinen (SEAL)
Herman Hartelt (SEAL)
Otto Hartelt Seal
August Hartelt Seal
Seal
Henry E. Bovy Seal
(SEAL)

Signed, Sealed and Delivered in Presence of

John J. Fahey
Albert C. Kramore

State of Minnesota,

County of Carver } ss.

On this 26th day of February A. D. 1914, before me, a Notary Public within and for said County, personally appeared Herman Hartelt, Otto Hartelt, August Hartelt, M. Heinen and Fred F. Kloth and Henry E. Bovy

to me known to be the persons described in and who executed the foregoing instrument, and acknowledged thatt hey executed the same as their free act and deed.

John J. Fahey

Notary Public Carver Co. Minn. My Commission Expires Apl. 21, 1920

State of Minnesota,

County of Carver. } ss.

Fred F. Kloth and Henry E. Bovy

being duly sworn, say, each for himself, that he is one of the sureties within named; that he is a resident and freeholder of the State of Minnesota, and worth double the amount for which he justifies herein, above his debts and other liabilities, and exclusive of his property exempt from execution.

Subscribed and sworn to before me this 26th day of February 1914

John J. Fahey

Notary Public Carver Co. Minn. My Commission Expires Apl. 21, 1920

F. F. Kloth — Amount of Justification, $ 100.00

Henry E. Bovy — Amount of Justification, $ 100.00

General Laws 1907, Chap. 311, Sec. 1

State of Minnesota,

County of ..... } ss.

being duly sworn, say, each for himself, that he is one of the sureties within named; that he is a resident and freeholder of the State of Minnesota, and worth the amount for which he justifies herein, below stated, above his debts and liabilities, and exclusive of his property exempt from execution.

Subscribed and sworn to before me this ..... day of ..... 19.....

Amount of Justification, $.....

Amount of Justification, $.....

Amount of Justification, $.....

In Justice's Court

County of Carver.

Mrs. A.O. Wheeler, Plaintiff.

-vs-

Herman Hartelt et als, Defendants

APPEAL BOND

I hereby approve the within Bond and the sureties thereon.

Dated February 26th 1914

A. F. Weidhaas
Justice of the Peace

The within Bond filed this 26th day of February 1914.

A. F. Weidhaas
Justice of the Peace

128 1000

FILED
DISTRICT COURT,
CARVER COUNTY,
FEB 26 1914
Clerk of Court.

#176

E177

Illegible
(Light Ink)

Notice of Appeal

State of Minnesota, } In Justice's Court,
} ss
County of Carver. } Before A.F.Heitkamp,Esq.,Justice of the Peace.

Mrs. A. O. Wheeler, . Plaintiff.

-vs-

Herman, Otto, and August Hartelt and H. Heinen, Defendants.

To Mrs. A. O. Wheeler, Plaintiff and to P. R. Curran, Esq., her Attorney:

Please take notice that the above named Herman, Otto and August Hartelt and H. Heinen, Defendants, appeal to the District Court in and for said County from the judgment rendered by the said Justice of the Peace in the above entitled cause, on the 19th day of February, 1914, in favor of said Mrs. A. O. Wheeler, Plaintiff, and against said Herman, Otto and August Hartelt and H. Heinen, Defendants therein, for the sum of Forty-three & 71/100 Dollars ($43.71) and that said appeal is taken upon the question of both law and fact.

Dated this 26th day of February, 1914.

John J. Fahey
Attorney for said Defendants,
Norwood, Minnesota.

State of Minnesota,
County of Carver. ss

John J. Fahey, being duly sworn, says that he is the attorney of the Defendants in the above entitled action; that P. R. Curran is the attorney of the ~~defendants~~ plaintiff in said action; that at Norwood, Minnesota, on the 26th day of February, 1914, he deposited in the United States Post Office at said Norwood, a true and correct copy of the above notice, properly enclosed in an envelope, properly sealed, addressed to the said P. R. Curran, at his Post Office address, to-wit, Young America, Minnesota, with sufficient postage thereon, the same being duly prepaid. That affiant resides at said Norwood and that said P. R. Curran resides at said Young America, and that there is a regular communication by mail between said Norwood and said Young America.

John J. Fahey

Subscribed and sworn to before me this 26th day of February, 1914

Albert Kaucke
Justice of the Peace,
Carver County, Minnesota

County of _____

_____ being first duly sworn upon oath says that he is _____ the _____ in the foregoing and within entitled action; ~~that he~~ has heard read the foregoing _____ that the same is true _____ of his own knowledge, except as to matters therein stated on information and belief, and as to such matters he believes it to be true.

_____

_____

_____

Subscribed and sworn to before me this _____ day of _____ 19__

_____

Notary Public _____ Minnesota.

My Commission Expires _____

State of Minnesota, } ss. _____ COURT.

County. _____ JUDICIAL DISTRICT.

_____

_____ Plaintiff.

AGAINST

_____ } SUMMONS

_____

_____ Defendant.

The State of Minnesota to Above Named Defendant:

You _____ are hereby summoned and required to answer the complaint of the Plaintiff in the above entitled action, which complaint is hereto annexed and herewith served upon you _____ Court, at the _____ County of _____ and State of Minnesota, and to serve a copy of your answer to the said complaint on the subscriber , at _____ office, in the _____ of _____ in said County of _____ within _____ days after service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of _____ Dollars, ($_____) with interest at the rate of _____ per cent per annum since the _____ day of _____ 19__

_____

_____

_____

together with Plaintiff's costs and disbursements herein.

Dated _____ 19__

_____

Plaintiff's Attorney.

_____ Minn.

#176

ORIGINAL

State of Minnesota

County of Carver.

In Justice's Court.

Mrs. A. C. Wheeler,

Plaintiff.

vs.

Herman Hartelt et als

Defendant.s

Notice of Appeal and Proof of Service

~~Due and personal service of the within~~

Filed this

admitted

this 26th day of Feby

1914.

A. F. Heitkamp

Justice of the Peace

~~Attorney for~~

J. J. FAHEY

Norwood, : Minn.

Attorney for

No 14 E177

FILED
DISTRICT COURT,
FEB 28 1914
CARVER COUNTY,
O. L. Lundstrom
Clerk of Court.

State of Minnesota,

County of } ss.

being first duly sworn upon oath deposes and says, that at the in said County and State, on the day of , 19 , he served the within the upon therein named, personally by leaving with said at the house of the usual abode of said with , a person of suitable age and discretion, then resident therein, a true and correct copy of said

Subscribed and sworn to before me this day of 19

Notary Public County, Minn.

My Commission Expires

Illegible

(Light Ink)

State of Minnesota,)
(ss.
County of)
Carver

In Justice Court,
Before A.F.Heitkamp Justice of the Peace

Mrs.A.O.Wheeler, Plaintiff
against
Herman,Otto, and August Hartelt and H.Heinen,Defendants

I hereby certify and return that the within is a true and correct copy of all the proceedings had in said matter before me including papers numbered from 1 to 14 inclusive, in said matter.

A. F. Heitkamp
Justice of the Peace.

Given under my hand thisn 26th day of February A.D.1914.

Young America, February 2nd 1914. Plaintiff filed affidavit in Replevin , duly verified , stating that Eight Golden Rod Vacumn Cleaners of her personal property is at this time wrongfully detained from her by said Defendant s and that and that she is entitled the immediate possesion thereof , and that the value of said property is Sixteen and 40/100 Dollars. Bond in Replevin in double the value of the property approved and filed . Writ of Replevin issued, returnable at my office in the Villiage of Young America in said County , on the 9th day of February 1914,at 1 o'clock P.M.,and delivered to constable C.J.Truwe for service.

February 2nd 1914 Writ of Replevin returned by constable C.J.Truwe with his certificate thereon,that on the 2nd day of February 1914,he replevied the property therein described,and retained possession thereof two days. (property still retained by Defendant) and on the same day he served the within Writ upon the Defendants personally,by reading the same to said Defendants and delivering a copy thereof to them,in said county. Constable fees $1.70 . Writ filed.

February 9th 1914, 1P.M. case called,postponed on request of the Plaintiff. Postponed until February 16th 1914. 1 P.M. by agreement by the parties. Pleadings to be filed on said day

February 16th 1914. case called, Plaintiff present with P.R.Curran as counsel. Defendant also present with A.C.Klancke as counsel. Pleadings filed H.Heinen, and Hartelts separate answers. Postponed until February 18th 1914, 1 o'clock P.M. by consent of parties. objection made on all papers ; objection overruled.Exception by Defendants allpapers filed by Plaintiff.

February 18th 1914, case called. Plaintiff appeared with P.R.Curran as Attorney. Defendant appeared with A.C.Klancke as counsel with J.J.Fahey as associate,case opened by P.R.Curran. H.Heinen Defendant sworn and cross examined under the statute. G. Perbix sworn and examindd on part of Plaintiff. Plaintiff rests. G.Perbix cross examined by A.C. Klancke. Defendant rests. Mrs.A.O.Wheeler sworn and examined on part of Plaintiff. Mrs.A.O.Wheeler cross examined by Defendant Klancke , was she the owner of the property. Objected, overruled. Exception. The pleadings amended by the ruling of court from $16.40 to $39.11 .Amount allowed. Plaintiff rests. At the conclusion of the Plaintiff's evidence,the Defendants Herman,Otto,and August Hartelt move to dismiss this action as to them on the ground that there is no evidence in this case to show that said Defendants are detaining said property,or are holding the possession thereof from said Plaintiff. Motion denied.Exception. The Defendant H.Heinen at the conclusion of the Plaintiff, evidence moved to dismiss on the grounds and for the reason that the evidence does not show that he is illegally and wrongfully withholding possession of said property described in complaint from the Plaintiff Motion denied. Exception. Defendant rests. Plaintiff rests. Testimony closed. After considering the evidence adduced herein, it is therefore adjudged that the Plaintiff retain possession of the personal property described in the complaint herein,and that Plaintiff recover of the Defendant the cost of this action,taxed at $4.60

A. F. Heitkamp
Justice of the Peace.

IT is therefore adjudged that the Plaintiff have judgment against the Defendant for the return of the personal property described in the complaint therein,or,if a return cannot be had,that Plaintiff recover of the Defendant the sum of $39.11 the value said property,together with the sum of $_____ damages for the detention thereof,and the costs of this action,taxed at $4.60 , total judgment $43.71

Dated Feb.19th 1914.

A. F. Heitkamp
Justice of the Peace.

February 26th 1914.
The said Defendants duly filed their Affidavit of Appeal in said matters ,their Appeal Bond which was duly approved by me and their Notice of Appeal with Proof of Service thereon. Defendants paid me Two Dollars for Return Appeal allowed. Transcript delivered to the Clerk of District Court.

A. F. Heitkamp
Justice of the Peace.

#176

E177

Illegible
(Light Ink)

No. 1071.—JUDGMENT ROLL. Class 2.

State of Minnesota, } ss. DISTRICT COURT.
County of Carver 8th. Judicial District.

Mrs. A. O. Wheeler,
Plaintiff.
-vs-
Henry Heinen, and Herman, Otto, and August Hartelt, as Hartelts, Defendants,
Fred Kloth, and Henry E. Bovy, as Sureties.

JUDGMENT.

The above entitled action having been duly tried in Justice Court before A. F. Heitkamp, Esq., one of the Justices of the Peace in and for said County of Carver, and Judgment therein having been entered in favor of said Plaintiff and against said defendants for the return of the personal property described in the Complaint in said action or, if return thereof could not be had, that plaintiff recover of defendants the sum of $39.11 and the costs of the action taxed at $4.60, which said Judgment was entered in said Justice Court on February 19th. 1914;

And said defendants having within the time fixed by law attempted to appeal to the District Court of the Eighth Judicial District in and for the County of Carver from the Judgment so entered in said Justice Court, and having given bond on appeal to said District Court in the sum of $100.00, in which said bond said defendants were principals and Fred F. Kloth and Henry E. Bovy were sureties, and which said bond was duly approved by and filed with said Justice Heitkamp;

And said plaintiff having moved said District Court to Dismiss said appeal so attempted to be taken from said Justice's Judgment and to affirm said Judgment, and the said District Court having, on considering said motion, ordered that the appeal so attempted to be taken by said defendants be dismissed and that the said Judgment of said Justice of the Peace be affirmed.

Now, Therefore, On motion of P. R. Curran, Eqq., attorney for said plaintiff, It is hereby determined and Adjudged that the Judgment heretofore entered in favor of said plaintiff and against said defendants in said Justice Court as aforesaid be and the same hereby is affirmed, that plaintiff have and ~~recover~~ recover of said defendants the personal property described in the complaint in said action, or, if such recovery cannot be had, that plaintiff have and

DISTRICT COURT,

County of .....

.....

.....

AGAINST

.....

.....

.....

JUDGMENT ROLL.

Filed ..... *A. D. 190*.....

.....

Clerk of the District Court.

No. 1071.

Illegible
(Light Ink)

No. 1071.—JUDGMENT ROLL.

State of Minnesota, } ss.
County of .....

DISTRICT COURT.

.....Judicial District.

.....
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.....
.....

JUDGMENT.

~~that plaintiff have and~~ recover of said defendants and of said Fred F. ~~K~~ Kloth and Henry E. Bovy, as sureties on the appeal bond aforesaid, the sum of $43.70 and interest thereon at the rate of 6% per annum from February 19th. 1914, together with the fees of the Clerk of said District Court in the sum of $7.00.

Dated June 29th. 1914.

By the Court,

O. L. Lundstrom
Clerk.

#176

DISTRICT COURT,

County of Carver

Mrs A. D. Wheeler
Plaintiff

AGAINST

Henry Heinenchals

JUDGMENT ROLL.

Filed June 27th A. D. 1904

O. S. Lundstrom
Clerk of the District Court.

No. 1071.

D 468

No. 17/3392

DISTRICT COURT,

Carver County, Minnesota

John Edberg
Plaintiff

vs.

The Minneapolis & St Louis Railroad Co.
Defendant

H. A. Welch, Hall Dautges & Loeffler
Plaintiff's Attorney

W. H. Brenner, W. C. Abell
Defendant's Attorney

Date of Entry March 2nd 1914

Register of Actions, E Page 175

Term Tried 191

Judgment for Settled & Dismissed

Amount of Judgment, $

Date of Judgment 191

Judgment Book Page

Default Judgment Book Page

Date of Docketing 191

19174

STATE OF MINNESOTA SUPREME COURT

OCTOBER TERM A. D. 1914.

John Edberg,

Respondent,

vs.

Minneapolis & St. Louis
Railroad Company,

Appellant.

ORDERED, pursuant to the stipulation of the parties, that the appeal from the order of the district court of Carver County herein, be and the same hereby is dismissed.

Dated January 22, 1915.

STATE OF MINNESOTA }
SUPREME COURT } ss.

I, I. A. CASWELL, Clerk of said Supreme Court, do hereby certify

that the foregoing is a full and true copy of the order dismissing the appeal

in the cause therein entitled, as appears from the original, remaining of record

in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom, and of the whole thereof.

WITNESS my hand and seal of said Supreme Court at the Capitol,

in the city of St. Paul, January 22 191 5

I. A. Caswell *Clerk.*

#177

E178

State of Minnesota | District Court
County of Carver | Eighth Judicial District

John Edberg, Plaintiff,	:	
vs	:	
	:	Stipulation of Dismissal
The Minneapolis & St. Louis Railroad Company,	:	
Defendant.	:	

The above entitled case having been fully settled, it is hereby stipulated and agreed by and between the parties hereto, that the same may be and hereby is dismissed with prejudice, each party to pay their own costs, and the above entitled court is authorized to enter a dismissal herein in accordance with the terms hereof.

H. A. Wolf and Hall Tarpen & Joffer
Attorney for Plaintiff

W. S. & Brenner
F. M. Miner
W. C. Odell
Attorneys for Defendant

Form 317 LD 500 5-14—W

STATE OF .....
County of ..... } ss

..... being duly sworn, says that he is the ..... of the MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, the ..... in the above entitled action; that he has read the foregoing ..... and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on information and belief and as to those matters that he believes it to be true. That the reason why this verification is not made by some officer of said ..... is that all of the officers of said ..... are absent from the County of ....., wherein resides affiant, its attorney.

.....

Subscribed and sworn to before me this ..... day of ....., 19.....

.....

Notary Public ..... County .....

My Commission expires ....., 19.....

[SEAL]

STATE OF .....
County of ..... } ss

..... being duly sworn says that on the ..... day of ....., 19....., at ..... , he served the within ..... upon ..... the ..... in said action personally by ..... leaving with said ....., at ....., with ..... , a person of suitable age and discretion, then ..... a true and correct copy of said .....

.....

Subscribed and sworn to before me this ..... day of ....., 19.....

.....

Notary Public ..... County, ...

My Commission expires ....., 19.....

[SEAL]

#177

STATE OF Minnesota

County of Carver

District COURT

John Edberg

Plaintiff

vs.

M & St. L. R.R.

Defendant

Stipulation of Dismissal

Due service of the within by copy is hereby admitted at .....

..... *this* .....

day of ....., *A. D. 19* .....

.....

Attorney for .....

W. H. BREMNER
F. M. MINER

Attorneys for defendant

1104 Metropolitan Life Bldg.
Minneapolis, Minn.

FILED
DISTRICT COURT,
Jan. 22. 1915
CARVER COUNTY,
O. Chandelson
Clerk of Court.

E178

STATE OF MINNESOTA DISTRICT COURT,

COUNTY OF CARVER. 8TH JUDICIAL DISTRICT.

John Edberg, Plaintiff,

-vs-

The Minneapolis & St. Louis Railroad Company, Defendant.

YOU WILL PLEASE TAKE NOTICE, that the plaintiff in the above entitled action herewith submits the following amendments, alterations and additions to the proposed case of the defendant in the within action:

1. Change the fourth line on page 151 of proposed case to read as follows:"A. Oh, the height of the headlight is placed in the same relative position, is it not, on each engine."

2. Change the 24th line, page 174, to read as follows: "Q. Well, was the train uncoupled at the time you saw it standing there?"

3. Add to page 212, between lines 19 and 20, as follows:"Q Well, now, if there had been a party of people ahead of you on the platform, you would have seen them wouldn't you? A. Well, I don't know as I would. Q. When you came up to the platform, you went into this door that is right back of the window, didn't you? A Yes sir, right the other side of the window. Q. If a truck had been standing right up about where the truck had been standing now, or thereabouts, and some people around it, wouldn't you have noticed them? A. I might; the chances are I would have. QWell, did you? A Not that I recollect. Q. You walked right into the station, did you? A Yes sir. Q. Well, you didn't see anybody on the plat-

form then? A Not that I recollect; I didn't pay any attention."

4.Change the tenth line of page 216 to read as follows: "Q How long did 51 stand there on the passing track before the passenger came by? "

5. Add and insert between lines 7 and 8, page 216½ as follows: "Q. Directly after the injury happened, the engine was within a hundred feet of where you were standing by the injured man, wasn't it? A Yes sir. Q. Didn't occur to you to go and ask them then, did it? A Yes sir, but I had other things to do."

6. Add and insert between lines 8 and 9, page 234, as follows: "Q What is the station beyond New Prague, south of New Prague? A Montgomery. Q Do you remember what you did at Montgomery? A Yes sir. Q Do you mean to say that you can recollect now and tell the jury what you did at each of the stations on your run that night? A Yes sir. Q You can now give a detailed account of what you did and every movement you made at e very station on your run that night? A Yes sir. Q Have you sat down and refreshed your memory in order to prepare yourself for examination in this case? A No sir. Q Can you say on any other night? A Yes sir. Q You mean to say that you have a memory that enables you to recollect, single out any night, and you can tell the jury what you did at each station along your run if you were called upon to do it? A Yes sir. Q You made no notes of memorandum of what took place that night? A No sir. Q But no small details on your run escaped your mind, you can recollect them all. A The principale things."

7. Add and insert between lines 2 and 3, page 238, as follws: Q Isn't it true that you very often pass those with a freight of that sort and not whistle? A No sir. Q. You are not expected to take any passengers? A No sir.

Q You were trying to make up time, weren't you? A No sir. Q Don't you try to make up time when you lose it? A No sir."

8.Add and insert between lines 2 and 3, page 239, as follows: " Q Have you a distinct recollection of doing it? A Yes sir. Q Can't be possible that you made a mistake? A No sir. Q Get a little tired at the end of ten hours run? A No, I don't get tired on that run."

9. Add and insert between lines 1 and 2, page 24o, as follows: "Q Threw a fine flood of light so that you could see everything on the platform, anybody around the platform, if you looked, that's right, ain't it? A I saw no one on the platform. Q I didn't suppose you did, that's what you want to fall back on; I say, the kight from your headlight, when it is running thows a full light that covers the whole platform and you can see it from yourposition as you come into that station, can't you? A Yec sir."

10. Add and insert between lines 26 and 27 page 240, as follows: "Q Anything peculiar about that Carver station so far as the front of it is concerned, so that it is darker than the most of them, or different from any of the other stations along the line? A No sir. Q But you have noticed that as you have drawn into Carver, 150 feet away it is a dead blank, can't see it? A About that distance."

11. Add and insert between lines 5 and 6, page 241, as follows: Q I say, his was on the left hand side as you go; you have got the same opportunity of seeing from the lefthand side, or at least one sitting in the fireman's seat has got the same opportunity of looking ahead, that you have on the right side? A Yes sir."

12. Ad d and insert between lines 1 and 2, page 244, as follows: "Q Now, if you were running only 4 or 5 miles an hour as you approached the water tank, you could have brought your engine to a stop without any trouble, couldn't you? A.

Yes sir. Q But it ran by, and you had to back up? A Yes sir."

13. Add and insert between lines 17 and 18, page 346 as follows: "Then, your running time was at least ten miles an hour, or was it twenty miles an hour, if you made the two miles in six minutes, how about that? A Yes sir. Q That's right, is that your running time? A No sir."

14. Add and insert between lines 24 and 25, page 367, as follows: "Q Do you know how far apart the poles are, the telegraph poles? A No sir. Q Ever measure it by the telephone poles along the track? A No sir. Q Ever measure it by the distance between signal posts? A No sir."

15. Add and insert between lines 29 and 30, page 367, as follows: "Q That's a faint guess, isn't it? A Yes sir. Q Well, had it thrown any light on the platform of that station before you got off the seat and went back on the tender? A I don't know. Q Did you ever see the platform of that station in the light of that headlight before you left it, before you left it and went back on the tender? A Why, no, I couldn't see the station. Q You haven't any recollection at all of seeing that platform? A No sir. Q In the light of the headlight? A No. Q Could you see that the station was dark? A It wasn't dark. Q You could see the lights clearly? A When we passed the stat ion. Q Before you got to it? A I could'nt see the station at all. Q You mean to say that up to the time you left your point, your seat, you hadn't seen the station at all? A No sir. Q Nor any light on the station? A No sir."

16. Add and insert between the last line on page 367 and the first line on page 368 as follows: "Q How far by? A Why, I don't know. Q Well, you remember it had passed you? A Yes, it had passed."

17. Add and insert between lines 2 and 3, page 368 as follows: "Q. Well, it doesn't take very long to walk from your place back to the back end of the tender, does it? A No sir. Q How long? A Why, I can go back in three seconds if I want to.

Q Well, if you want to go slow and take it easy you can get back there in four or five seconds? A Yes sir. Q. About the time it would take you to walk fifteen feet, is that about it? A Yes sir. Q About fifteen, taking five steps, and you were going back there for the purpose you say of standing up so that the engineer could spot the right place to stop his train? A Yes sir, in one sense of the way, I was. Q Well, how many senses were you going back there in? A Well, all the senses I have. Q Well, what other sense did you have in going back there? A Well, take water."

18. Add and insert between lines 11 and 12, page 368, as follows: "Q You mean he wouldn't have stopped unless you had been out there to give him a signal? A Sure, he stopped."

19. Add and insert between lines 13 and 14, page 368 as follows: "Q Why didn't he obey? A Why he cen't always stop where you want it."

20. Add and insert between lines 12 and 13, page 369 as follows: "Q What was the matter then? A. Why, I wasn't standing right on the edge of the tank, I was standing in the center of the tank. Q Well, you were standing where you could see the water tank? A Yes sir. Q You were standing where you could see the spout from where you stood? A When I got down there I could. Q No, but when you were standing there watching for that spout that you wanted to spot, couldn't you see that? A Well, it depends on where I was. Q Do you mean to say that the roof of the cab was higher than where you stood on top of the coal? A I didn't stand on top of the coal, I stood on the tank."

21. Add and insert betwen lines 10 and 11, page 272, as follows:"Q See anything of the men moving around? A No sir. "

22. Add and insert between lines 12 and 13, page 272, as follows: "Q Wasn't it a good deal less than that? A I don't know. Q Wasn't it less than 40 feet? A I don't know. Q Well, you don't remember, who gave you the signal to go for-

ward? A I don't remember. Q Were you watching for signals? A Why, I looked out once in awhile, yes sir. Q Isn't it your duty when you are on a train standing still to keep a lookout back for signals? A Why, yes, in a way. Q And you were on the side next to the depot, and you were the one to expect signals, were you not? A Why, not altogether, no."

A. A. Welch & Hall Lawrence Hoyt
Attorneys for plaintiff.

TO W. H. Bremner, Esq.,
and W. C. Odell, Esq.,
Attorneys for defendant.

(COPY)

STATE OF MINNESOTA

COUNTY OF CARVER.

DISTRICT COURT.

John Edberg

-vs-

The Minneapolis & St.
Louis Railroad Company.

AMENDMENTS TO PROPOSED

CASE.

Filed 7/24/14

FILED
DISTRICT COURT,
OCT 16 1914
CARVER COUNTY,
O J Sundstrom
Clerk of Court.

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(Light Ink)

STATE OF MINNESOTA DISTRICT COURT

County of Carver Eighth Judicial District

----------:----------

John Edberg

Plaintiff

vs

The Minneapolis & St. Louis
Railroad Company

Defendant

----------:----------

Sirs:

You will please take notice that on the 1st day of September, 1914, at 10 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, at the Chambers of the Judge of said Court in the Village of Norwood in said County and State, said defendant will move said Court for judgment for and in favor of said defendant notwithstanding the verdict upon the grounds: 1st, That the evidence does not show that the defendant was guilty of any negligence which caused or resulted in the injury to recover for which plaintiff brings this action; 2nd, Because the evidence fails to show that plaintiff was injured in the way and manner claimed in his complaint and affirmatively shows that he was not so injured; 3rd Because the evidence shows affirmatively and conclusively that the plaintiff was guilty of contributory negligence and that such contributory negligence on the part of said plaintiff was the proximate and efficient cause of the accident; 4th, Because said defendant at the close of the proof moved said Court to direct a verdict for and in favor of said defendant, and such motion was denied.

And if said above mentioned motion be denied said defendant will move said Court at the time and place aforesaid for an order setting aside and vacating the verdict in this action and granting a new trial thereof upon the following grounds, viz:

1st. Excessive damages, appearing to have been given under the influence of passion and prejudice.

2nd. Errors of law occurring at the trial and excepted to at the time.

3rd. Errors of law occurring at the trial and not then excepted to, and which are hereinafter clearly and particularly assigned and specified.

4th. That the verdict is not justified by the evidence.

5th. That the verdict is contrary to law.

The errors of law occurring at the trial and not then excepted to and which are here assigned and specified are as follows:

a. The defendant excepts to that portion of the charge of the court which is in the following words, viz: "he (the plaintiff) charges, in effect, and claims the negligence to be in this case, that the defendant failed to operate train no. 51 at the time and under the conditions and circumstances existing at the time of the injury so as to convey due and reasonable warning or signalling of its approach and passage by the station platform. They state that they failed and omitted to blow any whistle announcing its approach to the station, or to ring the engine bell while approaching that station, or to have a headlight lighted in front of the engine as it approached, and that said train was coasted and run silently into and past such station in consequence of which the plaintiff claims that he has sustained the injury complained of", and here assigns the same as error.

b. The defendant excepts to that portion of the charge in which the court used the following language, viz: "Now, if you find, Gentlemen of the Jury, that the Company was negligent in the way and manner stated to you, and that such negligence was the proximate cause of the injury, and that plaintiff was free from negligence, that is, that he exercised ordinary care for his own safety, then and in that case plaintiff would be entitled

to recover", and here assigns the same as error.

c. The defendant excepts to that portion of the charge in which the court used the following language, viz: "If you find from the evidence that the defendant so operated its train, or so failed and omitted to give such signals or warning of the train's approach, or either of them, and that reasonable care on the defendant's part in the premises required that it give such signal or signals of the train's approach, that such action or omission by defendant was the cause of the injury to plaintiff, and that no negligence by him contributed to such injury, then your verdict should be for the plaintiff", and here assigns the same as error.

d. The defendant excepts to the failure and omission of the court to explicitly instruct the jury that under the facts and circumstances developed by the evidence in the case it was incumbent on the plaintiff, in the exercise of ordinary care, to both look and listen for an approaching train before placing himself in a position of danger, and that, if the plaintiff neglected to either look or listen for an approaching train before placing himself in a position of danger, and because thereof he contributed to the accident which happened, he was guilty of contributory negligence and could not recover, and to the neglect and refusal of the court to so charge as expressly requested by the defendant, and here assigns such failure, omission and refusal to so charge as error.

e. The defendant excepts to the omission and failure of the court to explicitly instruct the jury that under the facts and circumstances developed by the evidence in the case it was the duty of the plaintiff in the exercise of ordinary care for his own protection to both look and listen for the approach of a train before placing himself in a position of danger, and that if he did so look and listen and disregarded the warning which came to him by the exercise of his sense of sight or hearing in placing himself in a position of danger he was guilty of contrib-

utory negligence and could not recover, and to the neglect and refusal of the court to so charge as expressly requested by the defendant, and here assigns such failure, omission and refusal to charge as error.

Upon the hearing of said motion and in support thereof said defendant will read the records and files in said action, including the Settled Case, or so much thereof as it may deem pertinent.

Yours &c.,

W. C. Odell, F. M. Miner, W. H. Brenner
Attorneys for Defendant.

To
Harold A. Welch, Esq., and
Hall, Tautges & Loeffler,
Attorneys for Plaintiff.

Original #177

District Court
Carver County

John Edberg Plff.
vs.
The M. & St. L. Rd. Co.
Deft.

Notice of Motion for a New Trial, etc.

FILED
DISTRICT COURT,
OCT 6 1914
CARVER COUNTY,
O. A. Lundstrom
Clerk of Court.

W. C. Odell, F. M. Miner, W. H. Brenner
Attys. for Deft.

E 178

Office Clerk of Supreme Court

St. Paul, Minn. 12/8 1914

Received and filed this day:

Return	O
Printed Record—Ten Copies	O
Appellant's Brief—Ten Copies	O
Respondent's Brief—Ten Copies	O
Appellant's Reply—Ten Copies	O
Stipulation	O
Satisfaction of Judgment	O
	O

In Case of

Edling

vs.

Mostl

I. A. CASWELL, Clerk

Cases are now placed on Calendar without the filing of note of issue or notice of argument.

ST. PAUL, MINN.
DEC 8
1 30 P.M.
1914

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THIS SIDE OF CARD IS FOR ADDRESS ONLY

Clerk District Court

Attorney and Counselor at Law,

Chaska

MINNESOTA.

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

EIGHTH JUDICIAL DISTRICT

John Edberg,

Plaintiff.

vs

SUMMONS

The Minneapolis and Saint Louis Railroad Company,

Defendant.

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, which is hereto annexed and herewith served upon you, and to serve a copy of your answer to said complaint on the subscriber, Harold A. Welch, at his office in the city of Chaska, County of Carver, Minnesota within twenty days after service of this summons upon you, exclusive of the day of service, and if you fail to answer said complaint within time aforesaid, the plaintiff in this action will have the amount he is entitled to recover ascertained by the Court or under its direction, and take judgement against you for the amount so ascertained, together with his costs and disbursements.

Date February 9th 1914

Harold A. Welch
Attorney for Plaintiff.

CHASKA, MINN.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF CARVER EIGHTH JUDICIAL DISTRICT

John Edberg,

Plaintiff.

vs

The Minneapolis and Saint Louis Railroad Company,

Defendant.

****

Plaintiff as and for his complaint in the above entitled action, complains of defendant and alleges:-

(I) That the defendant is now and was at all times mentioned in this complaint, a corporation duly organized and existing under and by virture of the laws of the State of Minnesota. That at the time plaintiff was injured as hereinafter stated and for a period of fifteen years prior thereto did and does now own and operate a line of railroad for the transportation of passengers and freight for hire, extending from the city of Saint Paul, Ramsey County, Minnesota to the city of Minneapolis, Hennepin County, Minnesota, thense in a Westerly and Southerly direction through the Counties Hennepin, Carver, Scott, LaSuer, Waseca and Freeborn to the city of Albert Lea, in said County of Freeborn, from thense to the city of DesMoines, Iowa.

(2) That the Village of Carver, in said County of Carver, is a station upon defendant's said line of railroad, at which all local passenger and freight trains are skeduled to stop; said defendant having and operating a ticket office, express agency and freight depot, for the purpose of selling tickets , receiving and shipping express and freight over its line of railroad.

(3) That during all the times mentioned in this Complaint said plaintiff owned and operated a dray and express business which he personally conducted, hauling freight and express with a team to and from said station and cars standing on tracks

to the persons the goods were consigned to; that as such he was upon the defendant's premises lawfully and at their express invitation when this injury occured.

(4) That on the I6th. day of December, A. D. I9I3 between the hours of five and six o'clock in the evening, at which time the sun had set and it was dark, the plaintiff was on the defendant's station platform in the performance of his duties as dray and expressman, standing between the truck used and maintained for hauling baggage and express from and to defendant's trains, and the outer edge of the platform next to and running parallel to the main track of defendant's railroad upon which all freight and passenger trains entering said station run upon; that while so standing and in the act of arranging express on the said truck in a safe manner, preparatory to placing in the express car of defendant's passenger train for shipment to the stations on defendant's railroad East of the station of Carver, the defendant by its servants and employees negligently and without warning of their approach and without the head-light in the engine being lighted ran their train into said station on the main track, next to and parallel to said platform, said train striking this plaintiff first on the left and then the right side of the head with great force and thereby throwing plaintiff around and off his feet, causing his right foot to be thrown under the wheels of said train and severing the same from his body at or about the instep of his foot. That at the time of said accident there were no lights on the platform or on the outside of station building.

(5) That because of said injuries so received, plaintiff suffered severe pain in the head and concussion of the brain and caused his hearing to be permanently impaired; that he was rendered sick and sore and the permanent loss of his right foot at the arch or instep; that the plaintiff was wounded and disabled to such an extent as to require his immediate removal to the hospital where he suffered great mental and bodily pain

and the right foot was so bruised and mangled as to require its amputation at the instep.

That prior to said injuries plaintiff was a strong healthy man capable of doing hard work as was required by his business; that he was earning on an average of Eighteen Hundred Dollars annually,; that since the injuries above mentioned he has been obliged to hire a man to conduct his business for which he has incurred liability therefore; that he has required constant nursing and medical attention and hospital services for which he has incurred liability in the sum of Seven Hundred fifty Dollars; that by reason of and in consequence of defendants negligence, plaintiff has suffered damages for bodily pain and mental anguish and loss of time and the permanent loss of his right foot at the arch or instep, injury to and partial loss of hearing in the sum of Twenty five thousand dollars.

WHEREFORE, Plaintiff prays that he may be given judgement against this defendant in the sum of 25,750.00 Dollars and the costs and disbursements of this action.

Harold A. Welch
Attorney for Plaintiff.
CHASKA, MINN.

Hull - Santyes & Sroffler
of Counsel.
Minneapolis, Minn.

Charles Arine being first duly sworn says that he served the annexed Summons and Complaint on defendant by leaving a copy thereof with Archibald Funk defendants station agent at Carver, Minnesota.

Chas Arine

Subscribed and sworn to before me this 9th day of February 1914

A Knoblauch
Notary Public

Carver County, Minnesota

My Commission expires Oct. 2d 1914

Original

177

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

EIGHTH JUDICIAL DISTRICT

John Edberg,
Plaintiff.

vs

The Minneapolis & St. Louis Railroad,
Defendant.

##################

SUMMONS & COMPLAINT

FILED
DISTRICT COURT,
MAR 2nd 1914
CARVER COUNTY,
O. S. Lundstrom
Clerk of Court.

Harold A. Welch
Attorney for Pltf.
CHASKA, MINN.

Hall, Tautges & Loeffler
of Counsel.
Minneapolis, Minn.

E 178

STATE OF MINNESOTA DISTRICT COURT,

COUNTY OF CARVER. 8TH JUDICIAL DISTRICT.

John Edberg, Plaintiff,

-vs- REPLY.

The Minneapolis & St. Louis Railroad Company, Defendant.

Plaintiff for his reply to the answer of the defendant herein,

Denies each and every allegation, matter and thing in said answer contained, except wherein said answer admits the allegations of plaintiff's complaint.

WHEREFORE,, plaintiff prays for judgment as in his complaint demanded.

Harold A. Welch, and

Mall, Tautges & Loeffler,

Attorneys for plaintiff,
722-726 New York Life Bldg.,
Minneapolis, Minnesota.

177

STATE OF MINNESOTA

COUNTY OF CARVER.

DISTRICT COURT.

John Edberg,

-vs-

The Minneapolis & St. Louis Railroad Company.

REPLY.

Service of the within reply is hereby admitted this 5th day os March 1914.

W. H. Brenner
F. M. Nunn
Attorneys for defendant.

FILED
DISTRICT COURT,
MAR 6th 1914
CARVER COUNTY,
O. S. Lundstrom
Clerk of Court.

E178

No. 863—Verdict for Plaintiff

Class 4

State of Minnesota,

County of Pierce } ss.

IN DISTRICT COURT OF SAID COUNTY,

8th Judicial District

March Term, 1914.

IN THE MATTER OF

John Edberg

vs. Plaintiff

The Minneapolis & St. Louis Railroad Co.

Defendant

We, The Jury in the above entitled action, find in favor of the plaintiff and assess his damages in the sum of Ten Thousand Seven Hundred and Fifty 10.750 00 DOLLARS.

Ed. Fink.

Foreman.

Dated at Chaska this 18th day of March A. D. 1914.

177

DISTRICT COURT

8th Judicial District

March Term, 1914

State of Minnesota, } ss.
County of Pierce

VERDICT FOR PLAINTIFF

In the Matter of

John Edberg

vs. Plaintiff

The Minneapolis & St. Louis Railroad Co.

Defendant

Filed in open Court the 18th

day of March 1914

O. S. Lundstrom

Clerk.

No. 863

E 178

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF CARVER EIGHTH JUDICIAL DISTRICT

John Edberg,

Plaintiff.

vs

The Minneapolis and Saint Louis

Railroad Company,

Defendant.

****

It is hereby stipulated and agreed by and between the parties and their respective attorneys in the above entitled action that an extention of the time for proposing ammendments to defendant's proposed settled case, be and is herewith extended for a period of fifteen days immediately following the expiration of the time prescribed by law, and that the stay heretofore allowed be correspondingly extended.

Dated July 8th. 1914.

W. A. Welch, Hall, Fantges & Loeffler,
Attorneys for Plaintiff.

W. B. Odell, F. M. Miner, W. H. Brunner
Attorneys for Defendant.

#177

State of Minnesota
County of Carver

John Edberg,
Plaintiff
vs
The Minneapolis & St. Louis Ry Co.
Defendant

Stipulation

FILED
DISTRICT COURT,
JUL 8 1914
CARVER COUNTY
O. L. Lundstrom
Clerk of Court.

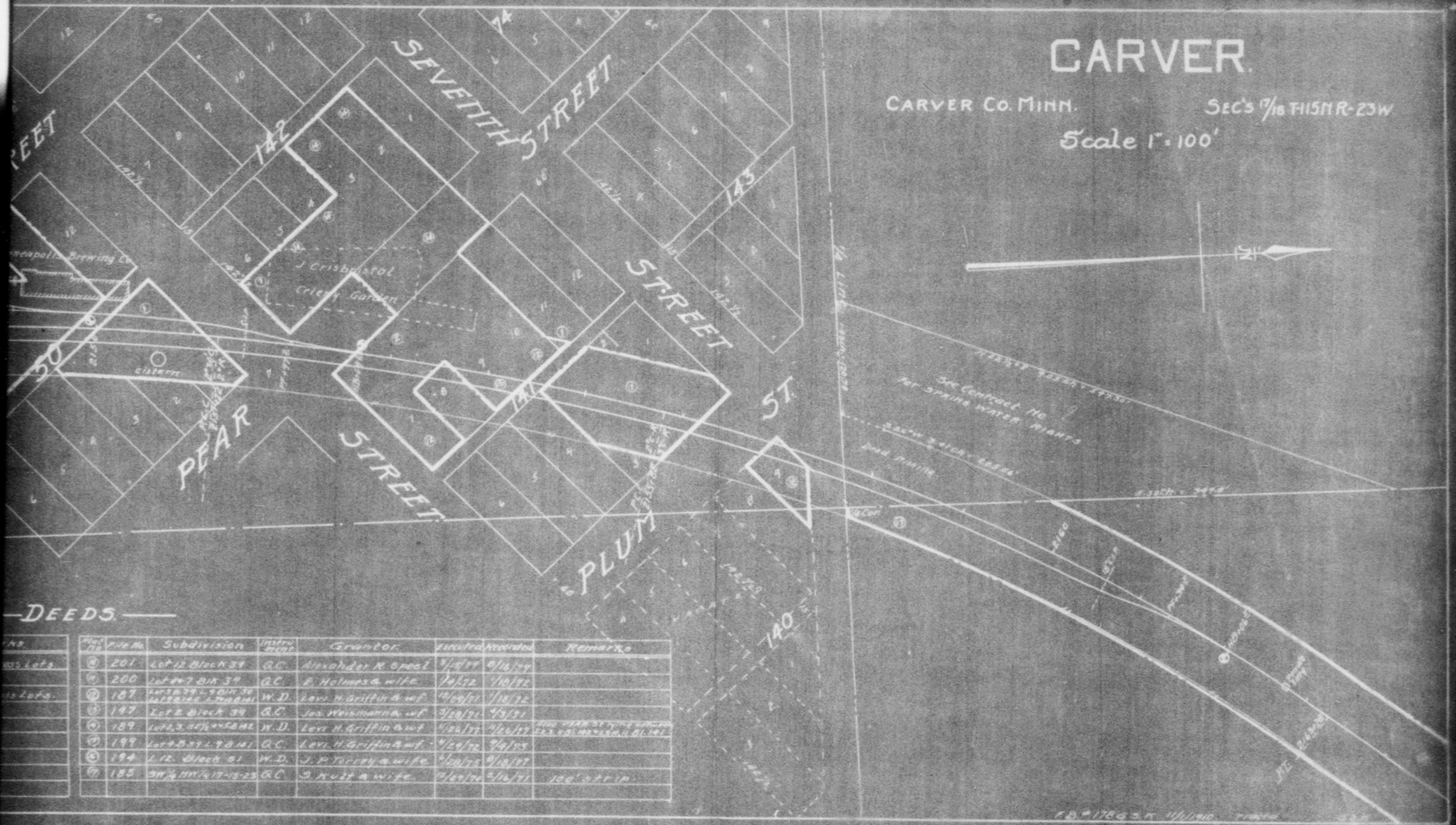
E178

Map No.	Site No.	Subdivision	Instrument	Grantor	Executed	Recorded	
1	202	[illegible]	Q.C.	Levi H. Griffin & wf.	5/13/75	5/13/75	[illegible]
2	188	[illegible] Block 16 [illegible] Lot 8 Blk. 161	W.D.	Do.	4/29/72	5/16/72	
3	203	Lot 11 Block 16	Q.C.	"	7/18/72	7/20/72	[illegible]
4	192	Lot 1 Block 16	W.D.	E. Holmes & wf. Mr. Holmes	1/2/72	2/7/72	
5	195	Lot 12 Block 28	W.D.	E. Holmes & wf. Geo. A. DuTeil	1/4/72	1/10/72	
6	191	[illegible]	W.D.	Enoch Holmes & wf.	1/4/72	1/7/72	
7	190	[illegible]	W.D.	Levi H. Griffin & wf.	1/3/72	1/7/72	
8	198	Lot 7B, 39 L. 11 Blk. 50	Q.C.	Sam. Fullerton & wife	7/8/72	9/22/72	
9	196	Lot 8B, 39 L. 9 Blk. 50	Q.C.	W. M. A. Griffin & wf.	5/27/71	7/12/71	

CARVER.

CARVER CO. MINN. SEC'S 17/18 T115N R-23W

Scale 1" = 100'



DEEDS

Block No.	File No.	Subdivision	Instrument	Grantor	Executed	Recorded	Remarks
38	201	Lot 12 Block 39	Q.C.	Alexander K. Speed	3/15/77	9/16/77	
38	200	Lot #7 Blk 39	Q.C.	E. Holmes & wife	1/4/72	1/10/72	
38	187	Lot 3 & 39 L-9 Blk 38 Lot 8 & 145 L-7 Blk 41	W.D.	Levi H. Griffin & wf.	4/09/71	1/18/72	
38	197	Lot 2 Block 39	Q.C.	Jos. Weismann & wf.	3/28/71	4/3/71	
38	189	Lot 2,3,4 L-7 & 8 L-58 & 142	W.D.	Levi H. Griffin & wf.	1/22/77	3/26/77	Also Pear St. lying between Blks. 38 & 41
38	199	Lot 4 & 39 L-9 Blk 41	Q.C.	Levi H. Griffin & wf.	9/29/72	7/4/73	
38	194	L 12 Block 31	W.D.	J. F. Torrey & wife	5/28/73	8/18/77	
38	185	SW¼ NW¼ 17-115-23	Q.C.	S. Kutt & wife	12/29/70	3/16/71	100' strip

54-16-10

No. 982—Clerk's List of Jurors. Herald Pub. Co. Chaska.

State of Minnesota, } ss. **DISTRICT COURT,**

County of Carver, Eighth *Judicial District*

John Edberg

Plaintiff

No. 18 *Against* **List of Jurors.**

The Minneapolis & St. Louis Railroad Co.

Defendant

Attorneys Mark Here		NAMES	REMARKS
	1	Emil Schmidt	
	2	Edward Campbell	
	3	August Schaenke	
	4	~~Frank Kucera~~	Pff # 3.
	5	~~Fred Hentz~~	Pff # 1
	6	Carl Zellmann	
	7	August Borg	
x	8	George Becker	
	9	~~John Ripple Jr~~	X
	10	Robert Demin	
	11	Edward Finke	
	12	~~Christ Finke~~	Pff # 2
	13	Rudolph Hilk	
	14	~~H. C. Oelfke~~	X
	15	Thos. Klingelhoty	
	16	Eelof Christofson	
	17	Thos. A. Broberg	
	18		
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No. 177

STATE OF MINNESOTA,

County of Carver,

DISTRICT COURT.

John Eedberg

Plaintiff

Against

The Minneapolis & St Louis Railroad Co.

Defendant

JURY LIST

FILED
DISTRICT COURT,
MAR 12 1914
CARVER COUNTY,
O. S. Lundstrom
Clerk of Court.

No. 862

E 178

Mpls. 12/19/13

J. F. Edberg, drayman at Carver Minnesota, says in regard to the injury to himself, 12/16/13 ~~about~~ somewhere between five and six P. M. My boy and myself had a load of express down to the depot. We had some bread baskets ~~and were empty baskets~~ that were empty, some eggs, and other things which I do not remember. I backed the wagon up to the platform just north of the depot. I started to load my empty baskets onto a truck that was standing near the edge of the platform. There was just room to stand between it and the edge of platform. I first saw the freight, when it was in front of the elevator. If I am not mistaken, they stopped north of the crossing and then came ahead. I did not notice whether the light was lit or not. Two of the bread baskets rolled off the truck and fell into the track. This was when the freight was still south of the depot. The last thing I remember, was putting the two baskets back on the truck. I do not remember whether I was standing on the track or not. I did not hear any bell ring. I did not know that the train moved after the time it was down at the elevator.

I have read the above to Mr. Edberg and heard him say that it is correct.

O. H. IM

E. B. McGrath.

Reference 5

177

FILED
DISTRICT COURT,
MAR 18 1914
CARVER COUNTY,
O. Schundstrom
Clerk of Court.

E178

STATE OF MINNESOTA DISTRICT COURT,

COUNTY OF CARVER. 8TH JUDICIAL DISTRICT.

John Edberg, Plaintiff,

-vs-

The Minneapolis & St. Louis Railroad Company, Defendant.

YOU WILL PLEASE TAKE NOTICE, that the plaintiff in the above entitled action herewith submits the following amendments, alterations and additions to the proposed case of the defendant in the within action:

1. Change the fourth line on page 151 of proposed case to read as follows:"A. Oh, the height of the headlight is placed in the same relative position, is it not, on each engine."

2. Change the 24th line, page 174, to read as follows: "Q. Well, was the train uncoupled at the time you saw it standing there?"

3. Add to page 212, between lines 19 and 20, as follows:"Q Well, now, if there had been a party of people ahead of you on the platform, you would have seen them wouldn't you? A. Well, I don't know as I would. Q. When you came up to the platform, you went into this door that is right back of the window, didn't you? A Yes sir, right the other side of the window. Q. If a truck had been standing right up about where the truck had been standing now, or thereabouts, and some people around it, wouldn't you have noticed them? A. I might; the chances are I would have. QWell, did you? A Not that I recollect. Q. You walked right into the station, did you? A Yes sir. Q. Well, you didn't see anybody on the plat-

form then? A Not that I recollect; I didn't pay any attention."

4.Change the tenth line of page 216 to read as follows: "Q How long did 51 stand there on the passing track before the passenger came by? "

5. Add and insert between lines 7 and 8, page 216½ as follows: "Q. Directly after the injury happened, the engine was within a hundred feet of where you were standing by the injured man, wasn't it? A Yes sir. Q. Didn't occur to you to go and ask them then, did it? A Yes sir, but I had other things to do."

6. Add and insert between lines 8 and 9, page 234, as follows: "Q What is the station beyond New Prague, south of New Prague? A Montgomery. Q Do you remember what you did at Montgomery? A Yes sir. Q Do you mean to say that you can recollect now and tell the jury what you did at each of the stations on your run that night? A Yes sir. Q You can now give a detailed account of what you did and every movement you made at e very station on your run that night? A Yes sir. Q Have you sat down and refreshed your memory in order to prepare yourself for examination in this case? A No sir. Q Can you say on any other night? A Yes sir. Q You mean to say that you have a memory that enables you to recollect, single out any night, and you can tell the jury what you did at each station along your run if you were called upon to do it? A Yes sir. Q You made no motes of memorandum of what took place that night? A No sir. Q But no small details on your run escaped your mind, you can recollect them all. A The principale things."

7. Add and insert between lines 2 and 3, page 238, as follws: Q Isn't it true that you very often pass those with a freight of that sort and not whistle? A No sir. Q. You are not expected to take any passengers? A No sir.

Q You were trying to make up time, weren't you? A No sir. Q Don't you try to make up time when you lose it? A No sir."

8.Add and insert between lines 2 and 3, page 239, as follows: " Q Have you a distinct recollection of doing it? A Yes sir. Q Can't be possible that you made a mistake? A No sir. Q Get a little tired at the end of ten hours run? A No, I don't get tired on that run."

9. Add and insert between lines 1 and 2, page 24o, as follows: "Q Threw a fine flood of light so that you could see everything on the platform, anybody around the platform, if you looked, that's right, ain't it? A I saw no one on the platform. Q I didn't suppose you did, that's what you want to fall back on; I say, the kight from your headlight, when it is running thows a full light that covers the whole platform and you can see it from yourposition as you come into that station, can't you? A Yes sir."

10. Add and insert between lines 26 and 27 page 240, as follows: "Q Anything peculiar about that Carver station so far as the front of it is concerned, so that it is darker than the most of them, or different from any of the other stations along the line? A No sir. Q But you have noticed that as you have drawn into Carver, 150 feet away it is a dead blank, can't see it? A About that distance."

11. Add and insert between lines 5 and 6, page 241, as follows: Q I say, his was on the left hand side as you go; you have got the same opportunity of seeing from the lefthand side, or at least one sitting in the fireman's seat has got the same opportunity of looking ahead, that you have on the right side? A Yes sir."

12. Ad d and insert between lines 1 and 2, page 244, as follows: "Q Now, if you were running only 4 or 5 miles an hour as you approached the water tank, you could have brought your engine to a stop without any trouble, couldn't you? A.

Yes sir. Q But it ran by, and you had to back up? A Yes sir."

13. Add and insert between lines 17 and 18, page 346 as follows: "Then, your running time was at least ten miles an hour, or was it twenty miles an hour, if you made the two miles in six minutes, how about that? A Yes sir. Q That's right, is that your running time? A No sir."

14. Add and insert between lines 34 and 35, page 367, as follows: "Q Do you know how far apart the poles are, the telegraph poles? A No sir. Q Ever measure it by the telephone poles along the track? A No sir. Q Ever measure it by the distance between signal posts? A No sir."

15. Add and insert between lines 29 and 30, page 367, as follows: "Q That's a faint guess, isn't it? A Yes sir. Q Well, had it thrown any light on the platform of that station before you got off the seat and went back on the tender? A I don't know. Q Did you ever see the platform of that station in the light of that headlight before you left it, before you left it and went back on the tender? A Why, no, I couldn't see the station. Q You haven't any recollection at all of seeing that platform? A No sir. Q In the light of the headlight? A No. Q Could you see that the station was dark? A It wasn't dark. Q You could see the lights clearly? A When we passed the stat ion. Q Before you got to it? A I could'nt see the station at all. Q You mean to say that up to the time you left your point, your seat, you hadn't seen the station at all? A No sir. Q Nor any light on the station? A No sir."

16. Add and insert between the last line on page 367 and the first line on page 368 as follows: "Q How far by? A Why, I don't know. Q Well, you remember it had [illegible] A Yes, it had passed."

17. Add and insert between lines 2 and 3, page 368 as follows: "Q. Well, it doesn't take very long to walk from your place back to the back end of the tender, does it? A No sir. Q How long? A Why, I can go back in three seconds if I want to.

Q Well, if you want to go slow and take it easy you can get back there in four or five seconds? A Yes sir. Q. About the time it would take you to walk fifteen feet, is that about it? A Yes sir. Q About fifteen, taking five steps, and you were going back there for the purpose you say of standing up so that the engineer could spot the right place to stop his train? A Yes sir, in one sense of the way, I was. Q Well, how many senses were you going back there in? A Well, all the senses I have. Q Well, what other sense did you have in going back there? A Well, take water."

18. Add and insert between lines 11 and 12, page 268, as follows: "Q You mean he wouldn't have stopped unless you had been out there to give him a signal? A Sure, he stopped."

19. Add and insert between lines 13 and 14, page 268 as follows: "Q Why didn't he obey? A Why he cen't always stop where you want it."

20. Add and insert between lines 12 and 13, page 269 as follows: "Q What was the matter then? A. Why, I wasn't standing right on the edge of the tank, I was standing in the center of the tank. Q Well, you were standing where you could see the water tank? A Yes sir. Q You were standing where you could see the spout from where you stood? A When I got down there I could. Q No, but when you were standing there watching for that spout that you wanted to spot, couldn't you see that? A Well, it depends on where I was. Q Do you mean to say that the roof of the cab was higher than where you stood on top of the coal? A I didn't stand on top of the coal, I stood on the tank."

21. Add and insert betwen lines 10 and 11, page 272, as follows:"Q See anything of the men moving around? A No sir. "

22. Add and insert between lines 12 and 13, page 272, as follows: "Q Wasn't it a good deal less than that? A I don't know. Q Wasn't it less than 40 feet? A I don't know. Q Well, you don't remember, who gave you the signal to go for-

ward? A I don't remember. Q Were you watching for signals? A Why, I looked out once in awhile, yes sir. Q Isn't it your duty when you are on a train standing still to keep a lookout back for signals? A Why, yes, in a way. Q And you were on the side next to the depot, and you were the one to expect signals, were you not? A Why, not altogether, no."

Attorneys for plaintiff.

TO W. H. Bremner, Esq.,
and W. C. Odell, Esq.,
Attorneys for defendant.

(ORIGINAL) 177

STATE OF MINNESOTA

COUNTY OF CARVER.

DISTRICT COURT.

John Edberg,

-vs-

The Minneapolis & St.

Louis Railroad Company.

AMENDMENTS TO PROPOSED

CASE.

Service of the within notice of amendments is hereby admitted this 23rd day of July 1914.

W. C. Alec, F. M. Miner

Attorneys for defendant.

FILED
DISTRICT COURT,
JUL 31 1914
CARVER COUNTY,
O. Schwedstrom
Clerk of Court.

STATE OF MINNESOTA | DISTRICT COURT
COUNTY OF CARVER | EIGHTH JUDICIAL DISTRICT

John Edberg, Plaintiff,
vs.
The Minneapolis & St. Louis Railroad Company, Defendant.

A N S W E R.

Comes now the above named defendant, The Minneapolis & St. Louis Railroad Company and for its answer to the plaintiff's complaint herein, respectfully states as follows:

1. This defendant admits the allegations contained in the first subdivision of the plaintiff's complaint.

2. This defendant admits that Carver is a station upon its said line of railroad and that it operates a ticket office, express agency and freight depot at said station, but denies that all local passenger and freight trains are scheduled to stop at said station.

3. This defendant with respect to the allegations contained in the first part of subdivision three of the plaintiff's complaint wherein plaintiff says he operates a dray and express business, states that it has neither knowledge nor information sufficient to form a belief as to the facts therein stated, and therefore denies the same and specifically denies the last part of subdivision three in which it is stated that plaintiff was on defendant's premises at the express invitation of defendant at the time injury stated in said complaint occurred.

4. Further answering said complaint and except as hereinbefore admitted, this defendant denies each and every allegation therein contained and each and every part thereof.

5. Further answering said complaint, this defendant avers that if the said plaintiff at the time and place stated, received any injuries, that the same were received by plaintiff because of the failure on his part at said time and place to observe and exercise for

his own protection ordinary care and that such failure to use ordinary care on the part of plaintiff was the proximate cause of any injuries by him received at the time and place stated in said complaint.

Wherefore, this defendant prays that plaintiff's complaint be dismissed and that it be allowed to go hence with its costs and disbursements as provided by law.

W. H. Brenner
F. M. Miner
Defendant's Attorneys.

STATE OF .....
County of ..... } ss.

.....being duly sworn, says that he is the .....of the MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, the .....in the above entitled action; that he has read the foregoing .....and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on information and belief and as to those matters that he believes it to be true. That the reason why this verification is not made by some officer of said ..... is that all of the officers of said ..... are absent from the County of ....., wherein resides affiant, its attorney.

.....

Subscribed and sworn to before me this ..... day of ....., 19.....

.....

Notary Public ..... County .....

My Commission expires ....., 19.....

[SEAL]

STATE OF .....
County of ..... } ss.

.....being duly sworn says that on the ..... day of ....., 19....., at ....., he served the within ..... upon ..... the .....in said action personally by .....leaving with said ....., at ....., with ....., a person of suitable age and discretion, then ..... a true and correct copy of said .....

.....

Subscribed and sworn to before me this ..... day of ....., 19.....

.....

Notary Public ..... County, ...

My Commission expires ....., 19.....

[SEAL]

177

Original

STATE OF Minnesota

County of Carver

District COURT

John Edberg

Plaintiff

vs.

M. & S. L. R. R.

Defendant

Answer

Due service of the within by copy is hereby admitted at Minneapolis Minn. this 3 day of March, A. D. 19 14

Harold A. Welch Hall Fontyn & Fryer

Attorney for

W. H. BREMNER
F. M. Miner

Attorneys for defendant

1104 Guarantee Loan Building,
Minneapolis, Minn.

~~GEO. W. SEEVERS,~~
~~General Counsel.~~

FILED
DISTRICT COURT,
MAR 6th 1914
CARVER COUNTY,
O. Lundstrom
Clerk of Court.

F 176

Illegible
(Light Ink)

STATE OF MINNESOTA | DISTRICT COURT
County of Carver | Eighth Judicial District

John Eaberg

Plaintiff

vs

The Minneapolis & St. Louis
Railroad Company

Defendant

It is hereby stipulated and agreed by and between the parties to the above entitled action that the stay of proceedings therein be extended for a period of sixty days immediately following the expiration of the stay originally ordered in said action, and that the Court may without further notice make its order accordingly.

Dated May 18, 1914.

H. A. Eckstein Jr. Griffin
Attorneys for Plaintiff

F. M. Miner and W. C. Odell
Attorneys for Defendant

On the foregoing stipulation, It is Ordered, That the proceedings in the above entitled action be stayed for a period of sixty days beginning on the expiration of the stay originally ordered in said action.

Dated, May 19, 1914.

F. W. Morrison
Judge of said Court.

177

District Court
Carver County

John Edberg
Plff.

vs.

The M., St. L. Ry. Co.
Deft

Stipulation and Order for Stay of Proceeding

FILED
DISTRICT COURT
MAY 21 1901
CARVER COUNTY
O. S. Lundstrom
Clerk of Court.

E 176

No. 3043 177

DISTRICT COURT,

Eighth Judicial District,

County of Carver

John Edberg

vs Plaintiff

The Minneapolis & St. Louis

Railroad Co. Defendant

NOTE OF ISSUE

Issue of Law & Fact - Jury

LAST PLEADING SERVED

March 2nd. 1904

H. A. Welch, Hall Lautgen & Loffler

Attorney s for Plaintiff

W. H. Brenner, W. C. O'Dell

Attorney for Defendant

Will the Clerk please file this Note of Issue, and enter the cause on the Calendar for the March A. D. 1904 General Term of this Court.

Yours respectfully,

H. A. Welch

Attorney for Plaintiff

Filed March 2nd 1904

MILLER-DAVIS PRINTING CO., MINNEAPOLIS

E178

190—Notice of Trial

WALTER B. BOOTH & SON, TOWNSHIP AND LEGAL BLANK PUBLISHERS, MINNEAPOLIS, MINN.

State of Minnesota, } ss.
County of Carver

District Court

Eighth Judicial District

John Edberg, Plaintiff

-vs-

The Minneapolis & St. Louis Railroad Company, Defendant.

Sir : You Will Please to Take Notice, *That the issue of* law and fact *in the above entitled action will be brought on for* trial *at the next* General *Term of the District Court to be held in and for the County of* Carver *at the Court House, in the* City of Chaska *in said County, on the* 9th *day of* March *191* 4*, at the opening of said Court on that day, or as soon thereafter as Counsel can be heard.*

Dated March 5th *191* 4

Yours respectfully,

Harold A. Welch and
Hall, Tautges & Loeffler,

Attorneys for Plaintiff

To W.H.Bremner & F. M. Miner,

Attorneys for Defendant.

(ORIGINAL) 177

DISTRICT COURT

8th Judicial District

County of Carver

John Edberg

-vs-

The Minneapolis & St. Louis Railroad Company.

Notice of Trial

Due service of the within Notice is hereby admitted this day *of* March 1914, *at* Minneapolis

Attorney s *for* Defendant

Attorney for

113 3000

FILED
DISTRICT COURT,
MAR 6th 1914
CARVER COUNTY,
O. Ahnstrom
Clerk of Court.

E178.

It is hereby stipulated and agreed that the foregoing entitled action may be placed upon the March 9th 1914 General Term calendar of the above entitled court.
Dated March 5th 1914.

Attorneys for plaintiff.

W. F. Brenner
F. M. Kiner
Attorneys for defendant.

Plaintiff requests the Court to charge the Jury as follows:-

Ist. If the jury find from the evidence that plaintiff at the time of the accident, was upon defendant's station platform by invitation of defendant, and with defendant's knowledge and concent, plaintiff was then in the performance of services incident to the transportation of goods or express matter upon its trains. Then while plaintiff remained on the defendant's premises in the performance of such services, the defendant owed to him the duty to use ordinary care in the operation of its trains to avoid injury to him, and defendants failure or ommission to exercise such reasonable care or precaution, would be negligence by defendant and if you find such negligence was the proximate cause of the injury to the plaintiff and that plaintiff himself was free from any negligence or exercise of care for his own safety that contributed to such injury, then defendant would be responsible to plaintiff for the damages he thereby sustained.

Burden is upon R R Co by a fair preponderance of evidence

2nd. The negligence in this case charged by the plaintiff against defendant is that defendant failed to operate train number 5I at the time and under the conditions and circumstances existing at the time of the injury, so as to convey due and reasonable warning or signal of its approach and passage by the station platform.

That it then and there failed and ommitted to blow any whistle announcing its approach to the station or to ring the engine bell while approaching the station or to have a head light lighted in front of the engine as it approached; and that said train was coasted and run silently into and past said station.

If you find from the evidence that the defendant so operated its train or so failed and ommitted to give such signals or warnings of the trains approach or either of them; and that reasonable care on defendants part in the premises required that it give such signal or signals of the trains approach and that such action or ommission by defendant was the cause of the injury to plaintiff and that no negligence by him contributed to such injury, then your verdict should be for the plaintiff.

3rd. Plaintiff while on the premises of defendant was bound to exercise reasonable care and to make use of his senses to protect himself from coming in contact with passing trains. But if not withstanding he did use such ordinary care and precaution for his own safety and did exercise his faculties and senses to advise himself of approaching trains, he was caught or struck by defendant's train number 5I passing said platform and suffered injury thereby, and such collision and injury was caused by defendant's ~~failure to~~ operation of said train and its failure to give due, reasonable and seasonable signal of its approach as hereinbefore charged, then defendant would be liable for the injury and damages plaintiff sustained. Thereby.

STATE OF MINNESOTA | DISTRICT COURT
COUNTY OF CARVER | EIGHTH JUDICIAL DISTRICT

John Edberg,

Plaintiff.

vs

The Minneapolis and
St.Louis Railway Company,

Defendant.

NOTICE

****

You will please take notice.

The order of the Court in the above entitled action, denying the defendants montion for Judgement Notwithstanding the Verdict or in the alternative for a New Trial, has been filed with the Clerk of the above named Court on the I6th. day of October I9I4.

That the plaintiff herein will comply with said order.

Dated Nov.9th. I9I4.

H. A. Welch Hall-Tautges & Doffler
Plaintiff's Attorneys

To
W. C. Odell, Minor & Bremner
Attorneys for Defendant.

#177

State of Minnesota
County of Carver

District Court
Eighth Judicial District

John Edberg, Plaintiff
vs
Minneapolis & St. Louis
Railway Co. Defendants

Due service herewith
admitted this 10th day of
November 1914
W. C. Odell
Defendants Attorneys

FILED
DISTRICT COURT,
NOV 10th 1914.
CARVER COUNTY.
O. S. Lundstrom
Clerk of Court.

E178

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(Light Ink)

State of Minnesota | District Court
County of Carver | Eighth Judicial District.

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John Edberg, Plaintiff, against The Minneapolis & St. Louis Railroad Company, Defendant	ORDER DENYING MOTION FOR JUDGMENT and NEW TRIAL.

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The defendant in the above entitled action, upon all the records and files in said action, and the settled case therein, pursuant to notice duly given, made a motion for judgment in its favor notwithstanding the verdict rendered therein, upon the grounds and for the reasons stated and set forth in said notice of motion, and, in the event that such motion be denied, then for a new trial of said cause upon the grounds set forth and stated in said notice of motion; and the same was heard at Chambers in the Village of Norwood in said County on the third day of September, A. D. 1914.

W. C. Odell, Esquire, F. M. Miner, Esquire, and W. H. Bremner, Esquire, appeared as counsel for the defendant in support of said motion;

Harold A. Welch, Esquire, and Hall & Tautges, Esquires, appeared as counsel for the plaintiff in opposition to such motion.

After hearing the arguments of counsel for the respective parties and the evidence adduced at the trial, all of which was given due and careful consideration, the Court is led to the conclusion that the negligence of the defendant, and the contributory negligence of the plaintiff were for the jury to determine under the evidence adduced at the trial. It is the opinion of the Court, also, that the jury were liberal in their award of damages, but the Court is unable to say that the trial jury was influenced by passion or prejudice.

It is therefore ORDERED :

First. That the motion for judgment notwithstanding the verdict be, and the same hereby is, denied.

Second. That the motion for a new trial of said cause be, and the same hereby is, also denied.

Dated this 16th day of October, A. D. 1914.

F. W. Morrison
Judge of said Court.

#177,

State of Minnesota
County of Carver

John Edberg,
-vs-
Defd

Minneapolis &
St. Louis Rail-
road Company,
Deft

Order Denying
Motion for
Judgment, and
New Trial

FILED
DISTRICT COURT,
OCT 16 1914
CARVER COUNTY,
O. Schuldstrom
Clerk of Court.

E178

Plaintiff. That the motion for judgment notwithstanding the verdict be, and the same hereby is, denied.

Second. That the motion for a new trial of said cause be, and the same hereby is, also denied.

Dated this 16th day of October, A. D. 1914.

_____
Judge to said Court.

State of Minnesota)
)SS
County of Hennepin)

On this 28th day of November, 1914 before me, a Notary Public within and for said County and State, personally appeared F. M. Miner to me personally known, who being by me duly sworn upon oath did say that he is the General Attorney of The Minneapolis & St. Louis Railroad Company, a corporation created, organized and existing under and by virtue of the laws of the State of Minnesota; that the corporate seal affixed to the foregoing within instrument is the seal of said Company; that the said seal was affixed and the said instrument was executed by authority of its Board of Directors; and the said F. M. Miner did acknowledge that they executed the said instrument as the free act and deed of said Company.

E. S. Redell

Notary Public, Hennepin County, Minn.
My commission expires June 19, 1917.

Mpls. Form No. 19.

State of Minnesota,
COUNTY OF HENNEPIN. } ss:

On this 28th day of November 19 14, before me, a Notary Public within and for said County and State, personally appeared ..... and GEORGE E. MURPHY ..... WILSON, to me personally known, who being by me duly sworn upon oath did say that they are the Agents and Attorneys-in-fact of and for the UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation of Baltimore, Maryland, created, organized and existing under and by virtue of the laws of the State of Maryland; that the corporate seal affixed to the foregoing within instrument is the seal of said Company; that the said seal was affixed and the said instrument was executed by authority of its Board of Directors; and the said WILL WILSON and GEORGE E. MURPHY did acknowledge that they executed the said instrument as the free act and deed of said Company.

Maxwell Grossman
Notary Public, Hennepin County, Minnesota.

My commission expires November 18, 1920

State of Minnesota

County of Carver

District Court

Eighth Judicial District

John Edberg, Plaintiff	:	
vs	:	B O N D
The Minneapolis & St. Louis Railroad Company, Defendant	:	

****

Know all men by these presents that we, The Minneapolis & St. Louis Railroad Company, as principal, and United States Fidelity & Guaranty Company, as surety, are bound unto John Edberg, the plaintiff in the above entitled action, in the sum of Two hundred and fifty ($250.) dollars, to the payment of which to the said John Edberg, his heirs, executors, or administrators or assigns, we jointly and severally bind ourselves, our heirs, executors and administrators.

The condition of this obligation is such that whereas the defendant in the above entitled action has appealed to the supreme court from an order overruling defendants motion for a judgment notwithstanding the vervict, or for a new trial, entered in said action on October 16th, A. D. 1914.

Now, therefore, if the appellant shall pay all costs and charges which may be awarded against it on such appeal, not exceeding the sum of Two hundred and fifty ($250.oo) dollars, and shall pay all damages which are awarded against the appellant upon such appeal, if said order or any part thereof is affirmed, or said appeal dismissed, and abide and satisfy the judgment or order which the appellate court may give therein, then this obligation, which is given in pursuance of General Statutes 1913, Section 8002, 8004, shall be void; otherwise to remain in full force.

In testimony whereof we have hereunto set our hands this 27th day of November, 1914.

Executed in presence of:

E. S. Redel

O. M. Redel

Maxwell Newman

A. E. Johnson

The Minneapolis & St. Louis Railroad Company

By F. M. Miner

General Attorney

United States Fidelity & Guaranty Company

By Will Wilson.

and George B. Murphy

Its attorneys in Fact

District Court
Carver County

John Edberg
Plaintiff

vs.

The Minneapolis & St. Louis
Railroad Company
Defendant

Bond on Appeal to
Supreme Court

Original
#177

FILED
DISTRICT COURT,
DEC 7 1914
CARVER COUNTY
O. L. Lindstrand
Clerk of Court.

I hereby approve the within
Bond and the sureties therein
this 2nd day of December 1914
P. C. O'Malley
Judge of said Court.

F. M. Miner E178
W. C. Odell
W. H. Bremner
Attys. for Defts.

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STATE OF MINNESOTA DISTRICT COURT

County of Carver Eighth Judicial District

---:---

John Edberg

Plaintiff

vs

The Minneapolis & St. Louis
Railroad Company

Defendant

---:---

Sirs:

You will please take notice that said defendant appeals to the Supreme Court of the State of Minnesota from all that certain order made and filed in the office of the Clerk of said District Court on the 16th day of October, 1914, wherein and thereby the motion of said defendant, in the alternative, for judgment for defendant or for a new trial, is denied, and said appeal is taken from the whole of said order.

Dated, Chaska, Dec 2d, 1914.

F. M. Miner
W. C. Dale
Attorneys for Defendant

W. H. Brenner
Of Counsel

To
C. A. Weber, Esq., and Hall, Tautges & Loeffler,
Attorneys for Plaintiff

O. T. Lundstrom, Esq., Clerk of said District Court.

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District Court
Carver County

John Edberg Plff.
vs.
The Minneapolis & St. Louis Rd. Co.
Deft.

Notice of Appeal to Supreme Court

Original

Service of the within Notice by copy at Chaska, Minn., is hereby admitted this 7th day of Dec., 1914.

H A Welch Hall Sanborn & Loeffler
Attorneys for Plaintiff

O. L. Lundstrom
Clerk of said Court.

F. M. Miner,
W. C. Odell
W. H. Bremner
Attys. for Defendant

E 178

FILED
DISTRICT COURT,
DEC 7 1914
CARVER COUNTY,
O. L. Lundstrom
Clerk of Court.