
Nebraska City vs. Campbell.

possession; to invalidate his title, and to have the mortgaged property resold.

This is a direct and positive interference with the rightful authority of the State Court.

If there was error in the proceedings of the Court, a review can be had in the appellate tribunals of the State. If, as is charged, the decree is sought to be perverted and made the medium of consummating a wrong, then the Court, on petition or suppletal bill, can prevent it. If, as appears by the proceedings, the surplus money arising from the sale is still undisposed of, then the whole case is under the control of the Court, and no suppletal even is needed to prevent the wrong.

The decree dismissing the bill is affirmed.

NEBRASKA CITY *vs.* CAMPBELL.

1. Municipal Corporations upon which the duty is imposed to construct and repair, or to keep in repair streets and bridges, and upon which is also conferred the means of accomplishing such duty, are liable for any special damage arising from their neglect to perform it.
2. In an action for damages sustained by such neglect, evidence showing the business in which the plaintiff was engaged, its extent and the consequent loss arising to him from his inability to prosecute it, is relevant and pertinent, as enabling the jury to fix, with some certainty, the direct and necessary damages resulting from his injuries.

Error to the Supreme Court of the Territory of Nebraska.

John T. Campbell brought his action against Nebraska City in the Court of the Second Judicial District for Otoe County, and alleged in his petition that the defendant, being a municipal corporation, had, by its charter, the title and control of the streets, alleys, squares, wharves, and other highways and public grounds within its limits, and was bound to keep them in repair.

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That the defendant was so bound to keep in repair a certain bridge on South street, across Tabb Creek ; but, contrary to its legal duty, left that bridge without side-railing, and in other respects unsafe and defective, by reason of which, the plaintiff, a physician, visiting his patients, in a buggy, was thrown from the bridge and greatly injured, so as to prevent him for a long time from practising his profession.

The City denied its legal liability for such damages under any circumstances, and averred that the plaintiff got his injuries by his own fault; for he was thrown over the bridge in consequence of the viciousness of his horse, which he was carelessly driving without a whip, and which had taken fright at a paper posted on the bridge by a third party.

The jury found a verdict in favor of the plaintiff for \$3,000 damages, and after an unsuccessful motion by the defendant in arrest of judgment, the Court gave judgment on the verdict. The cause was taken, by the petition of the defendant, to the Supreme Court of the Territory, where the judgment was affirmed, and thence it came to this Court by writ of error sued out by the City.

Mr. Taylor, of Nebraska, for Plaintiff in Error.

Mr. Woolworth, of Nebraska, *contra*.

Mr. Justice NELSON. This is a writ of error to the Supreme Court of the Territory of Nebraska.

The suit was brought in the Court below by Campbell against the City to recover damages for injuries received by reason of a defective bridge in one of the streets in the City.

The charter vested in the City Council the title to all the streets within the corporate limits, and it is made their duty to construct and improve the same at the public's expense ; for this purpose, and others, the counsel are authorized to levy a tax on all the taxable property within the City. This provision in respect to streets necessarily embraces all bridges within the limits of the City and constituting a part of the street.

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There is also a general act referred to, which, among other things, confers upon all incorporated Cities exclusive jurisdiction over all streets, roads, bridges, and ferries within their corporate limits, and exempting the inhabitants from any assessment for road tax except by the corporate authorities of the same.

The law is well settled in respect to public municipal corporations, upon which the duty is imposed to construct and repair, or to keep in repair streets or bridges, and upon which is also conferred the means of accomplishing such duty, that they are liable for any special damage arising out of neglect in keeping the same in proper condition.

The principle was very fully considered at the last term in the case of *Weightman vs. The Corporation of Washington*, where all the authorities will be found collected and examined. 1 Black, pp. 39, 51, 52, 53.

The plaintiff was a practising physician, and in the course of the trial evidence was given, after objection, that he was engaged in extensive practice at the time of the injury, and also that it was a period of great sickness in the community.

The declaration states that the plaintiff was a physician at the time of the injury, and after describing the nature and extent of it, adds that by reason thereof, he was greatly bruised, sick and lame, and so continued for a long space of time, to wit, for the space of six weeks, and during all that time suffered great pain, and was prevented from transacting his ordinary business as a physician during that time.

Now, the evidence in question was relevant and pertinent, with a view to show the extent and amount of the ordinary business of the plaintiff in his profession, of which it is averred he was deprived during the time of his disability, and laid a foundation which enabled the jury with some degree of certainty to ascertain the direct and necessary damages sustained from the injuries.

In the case of *Wade vs. Leroy et al.*, (20 How., 34, 43, 44), which was an action for injuries to the plaintiff for carelessly navigating a ferry boat, the Court held that proof of the ordi-

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nary business in which the plaintiff was engaged, and that he was largely engaged in it, was admissible and pertinent upon the question of damages, though the fact was not set out in the declaration. The proof was regarded as showing the direct and necessary loss or damage from the injuries sustained.

The case before us is broken into many points, and prayers to the Court for instructions to the jury, but those noticed above cover all that is material to dispose of it.

Judgment of the Court below affirmed.

THE UNITED STATES *vs.* CHABOYA.CHABOYA *vs.* THE UNITED STATES.

A party claiming land in California produces no legal title, but bases his right solely on possession. It is shown that such possession as he had was temporary, partial, and subsidiary to the claim of another party whose rights he constantly recognized. *Held*, That this Court cannot confirm such a claim.

These were cross appeals taken from the District Court of the United States for the Northern District of California

Mr. Wills, of Washington City, for the United States.

Mr. Hepburn, and *Mr. Wilkins*, of California, *contra*.

Mr. Justice MILLER. These are appeals from the District Court of the United States for the Northern District of California.

The appellant, Petro Chaboya, on the 2d day of March, 1853, filed with the Board of Commissioners to settle private land claims in the State of California his petition to have confirmed to him two leagues of land in the County of Santa Clara, bounded as follows: On the north by the lands of José de Jesus Vallejo; on the east by the rancho of Antonio Suñol and the road from San José to the Valley; on the south by the Canada