

1907-21

Southampton County Chancery

Seaboard Air Line Railway vs. Porter, B.L. et al

"Injunction"

Bishop J. J.

"Enjoined and restrained
from selling iron safe"

VIRGINIA, IN VACATION, IN THE CIRCUIT COURT OF SOUTHAMP-
TON COUNTY, OCTOBER 5th, 1905.

-----O-----

SEABOARD AIR LINE RAILWAY, a
Corporation,

v.

B. L. Porter and J. F. Bishop,
Constable.

-----O-----

On motion of the complainant, ~~by its counsel~~, an in-
junction is awarded it in accordance with the prayers of the
bill enjoining and restraining B. L. Porter and J. F. Bishop
Constable, their agents, employees, and all other persons,
from selling or otherwise interfering with one certain iron
safe in the office of complainant at Handsoms, Virginia, or
any other property of the complainant under authority of the
warrant of August 8th., 1905, issued by T. A. Bishop, Justice
of the Peace, in favor of B. L. Porter, for nine and 50/100
(\$9.50) dollars on account of one dog killed, until the fur-
ther order of this court. But before the said complainant
shall have the benefit of this order, it, or some one for it,
shall enter into bond before the clerk of this court in the
penalty of fifty (\$50.00) dollars, conditioned to pay the
value of the property levied on by J. F. Bishop, Constable,
namely, one iron safe, and to pay all such costs as may be
awarded against the said complainant, and all such damages
as may be incurred in case the injunction shall be dissolved.
All of which is certified to the clerk of the Circuit Court
of Southampton County to be entered in the Chancery Order of
Book.

Robert R. Hunt

TO THE HONORABLE ROBERT R. PRENTIS, JUDGE OF THE CIRCUIT
COURT OF SOUTHAMPTON COUNTY:

Seaboard Air Line Railway, a Corporation, }

v. }

B. L. Porter and J. F. Bishop, Constable. }

Complaining, sheweth unto the court your complainant,
Seaboard Air Line Railway, a Corporation, that on the 8th.
day of August, 1905, B. L. Porter, of the county of South-
ampton, sued out before T. A. Bishop, a Justice of the Peace
for the said county, a warrant against your complainant, ^{for the purpose of} sum-
moning it to appear at Handsoms on the 26th. day of August,
1905, to answer the complaint of the said B. L. Porter upon
a claim for nine and 50/100) (\$9.50) dollars, which it is
alleged by complainant was for damages sustained by him by
reason of a dog, which he claims to have owned, having been
killed by one of the company's locomotives, or trains, some-
time in October, 1904; that at the trial of this case, and
without proof of negligence being introduced, or required by
the court, a judgment, on the 26th. day of August, 1905, was
granted the plaintiff for the sum of nine and 50/100) (\$9.50)
dollars, and one (\$1.00) dollar costs, and an execution is-
sued thereon on the same date, and placed in the hands of
the constable, J. F. Bishop, and on the 7th. day of September
1905, the said execution was levied on one iron safe belong-
ing to the company, situated at Handsoms, Virginia, and the
said iron safe is now advertised for sale under and by virtue
of the said execution, by J. F. Bishop, Constable, the sale to
be had at Handsoms, Virginia, on the 7th. day of October, 1905,

warrant and
as will appear by a copy of the said notice herewith filed
marked exhibit "B".

Your complainant respectfully represents that a warrant was brought by the same complainant, B. L. Porter, on the 26th day of November, 1904, based on the same cause of action as herein set forth; that a judgment was granted upon the said warrant, and upon the bill filed by the railroad company an injunction was granted; and by a decree entered on July 19th., 1905, the said injunction was made perpetual. The action, however, in this case being against the Seaboard & Roanoke Railroad Company instead of against the Seaboard Air Line Railway Company.

Your complainant begs to state, that the said B. L. Porter at the time of the killing of the dog, claimed twenty-five (\$25.00) dollars as damage therefor, as is evidenced by a copy of the report made to the complainant company at the time of the accident, and yet, while claiming this amount as the damage sustained, he has brought action for nine and 50/100 (\$9.50) dollars for the manifest purpose of bringing the amount under ten (\$10.00) dollars, and thereby defeating the company's right of appeal:

Your orator states further that this warrant was brought for the killing of a dog, and a judgment was granted against the company by T. A. Bishop, Justice of the Peace, without any evidence of negligence on the part of the company, the said justice basing his judgment upon the Code, Sections 1261 (Ed. 1904), in which he construed the law to require no evidence of negligence in this case. All of which will appear by reference to a signed statement from the said Justice of the Peace filed herewith marked Exhibit "A". By reference to the aforesaid sections of the Code of Virginia,

it will be observed that the law applicable to fencing the tracks by railroad companies, does not in terms apply to dogs, and certainly there is every reason why it should not be stretched or construed so as to embrace them, a sufficient reason being that it is impossible, in the nature of things, to fence any property against this class of trespassers, and therefore, the law could not be so intended by implication. *That no warrant or other legal notice was served on the complainants in accordance with the statutes of Virginia*

Your complainant further represents, that there is no record evidence that this dog claimed to have been killed by the company was ever listed for taxation as required by section 499-A of the Code of Virginia, edition 1904, ^{*or that any taxes were ever paid thereon.*} and therefore, the said dog is not personal property, of such a nature as, in any event, to allow a recovery for its killing. All of which will more fully appear by reference to a certified abstract from the property books of the county of Southampton filed herewith as exhibit "E" and prayed to be read as a part of this bill.

Your complainant avers and charges, that this warrant was unlawfully sued out, unlawfully prosecuted and heard by the Justice, and the entire proceedings had thereon are illegal, void and of no effect, for the reasons following:

First,-The amount of damage claimed to have been actually sustained was \$25.00, whereas the warrant was brought for \$9.50 for no other purpose than to reduce same below the jurisdictional amount of an appeal, thereby depriving your complainant of the right of trial by a jury;

Secondly,- That the case was heard and judgment rendered with no other evidence than the fact, that a dog was found dead on the tracks of the company, the common law requisite ^{*proof*} of negligence on the part of the defendant in the warrant being ignored under a misconception of the law bearing on

Thirdly,- The record shows that the said dog was not personal property, and therefore, no judgment can be sustained based upon the killing of same.

your complainant
W. Lemon Corbitt
P. 9.

by

its Asst to Pres

To-wit:

CITY OF PORTSMOUTH.

I, J. B. Brown, a Notary Public for
City aforesaid, in the State of Virginia, do hereby cer-

tify that A W Jowlesy, Asst. To
President of the Seaboard Air Line Railway Company,
whose name is signed to the above bill of complaint, person-
ally appeared before me in my city aforesaid, and made oath
that the statements contained therein, so far as made of his
own knowledge, are true, and so far as made upon information
derived from others, he believes them to be true.

Given under my hand this 9th day of October, 1905.

My term of office expires 19 day of Feb'y, 1908.

I hereby certify that this is a case in which, by the
laws of Virginia, no fee is required upon the seal.

J. H. Bontwing
Notary Public.

J. H. Bontwing
Notary Public.

Bond and Security has
been given in this
case.

B. F. M. Larnox ac

Seaboard Air Line
Railway, a Corporation
v } Injunction
Porter & Bishop

Served Oct 6th
1905 by delivering a
copy of the within
notice to each of the
within names

For Byron's Keph
for
J. L. Gullett's shop

Virginia, In Vacation, In the Circuit Court of Southampton
County, October 5th, 1905.

-----O-----

Seaboard Air Line Railway, a
Corporation,

v

B. L. Porter, and J. F. Bishop,
Constable.

-----O-----

On motion of the complainant, an injunction is awarded it in
accordance with the prayers of the bill enjoining and restrain-
ing B. L. Porter and J. F. Bishop Constable, their agents,
employees and all other persons, from selling or other wise
interfering with one certain Iron safe in the Office of Com-
plainant at Handsoms, Virginia, or any other property of the
complainant under authority of the ~~plain~~ warrant of August
8th 1905, issued by T. A. Bishop, Justice of the Peace, in
favor of B. L. Porter, for \$ Nine and 50/100 (\$ 9.50) dollars
on account of one dog killed, untill the further order of this
Court. But before the said complainant shall have the benefit
of this order, it or some one for it, shall enter into bond
before the Clerk of this Court in the penalty of Fifty (~~\$50~~
(50.00) dollars, conditioned to pay the value of the property
levied on by J. F. Bishop, Constable, namely, One Iron safe
and to pay all such costs as may be awarded against the said
complainant, and all such damages as may be incurred in case
the injunction shall be dissolved.

All of which is certified to the Clerk of the Circuit Court
of Southampton County to be entered in the Chancery Order
Book.

Robert R. Prentis.

Teste: B. F. McLemore, C. C.

A Copy,

Teste: B. F. McLemore C.C.

24400-606
A BOARD
AIR LINE RAILWAY.

DIVISION.

REPORT OF SECTION FOREMAN.

STOCK KILLED OR INJURED

Oct 26th 1904
Owner's Name B. L. Porter

Description 1 dog

Where Killed 24 miles north H. 69 MP.

INSTRUCTIONS.

Section Foreman must fill up one of the blanks and forward to Roadmaster immediately, when stock is killed or injured on his division. All questions must be correctly answered.

The Section Foreman will endeavor to have the damages estimated by two disinterested persons acting with himself, without any interference from the owner, and will also have appraisers ascertain, if possible, how and where the stock got on the tracks, and have the same inserted, together with any other facts they may know or ascertain, in their Statement.

NOTICE.—When Live Stock is killed or injured by a train, it is still the property of the owner, and this Company has no interest or control over the same, and has no right to appropriate either hide or carcass. It is the legal duty of the owner to take care of it, and make the most profitable use of it, so as to render the damages as light as possible. Section Foremen, and others in the employ of this Company, are, therefore, strictly forbidden to appropriate in any way the hide or any part of an animal killed or injured by a train, and are required to notify the owner, if known, at once, in every case. If the owner of such animal, after being notified, neglect or refuse to remove the same off the right-of-way, the Section Foreman shall do so; and if the animal be dead, he must make such disposition thereof as will be for the best interest of the Company.

As soon as practicable after an injury is done by a train to stock, the Section Foreman must report to the Roadmaster the amount of actual damage done in his opinion, taking especial care to ascertain the cash marketable value of such stock at the time and place when and where the injury was done, and, when practicable and advisable, by procuring an estimate of such damages by two disinterested men not in the employ of the Company, in whose judgment he has confidence, and forward his Report to the Roadmaster.

This report is intended for the correct information of the Railway authorities; and should be fairly and honestly made. If it is found complete and satisfactory, the Roadmaster will take a copy thereof and forward the original, approved by him, to the Superintendent.

No claim will be considered until such Report is received by the Claim Agent.

Where an owner makes claim to a Section Foreman for damages to stock, the Section Foreman should direct him to write to the Claim Agent, who will give the matter necessary attention.

Section Foremen must not, under any circumstances, admit liability on part of the Railway.

When Section Foremen, in passing over their sections, discover gates or bars down, they should close them, whether there is stock in pasture or not.

SEABOARD

AIR LINE RAILWAY

REPORT OF STOCK KILLED.

SUPERINTENDENT'S DIVISION No. _____

- 1 Owner's name B. S. Porter White or colored white
- 2 Address Guinn Va
- 3 Nearest what station does owner live? Hudson
- 4 How far from the Railway does he live? Do Not Know
- 5 Describe what was killed or injured 1 dog
- 6 In what condition, poor or fat, and probable weight? _____
- 7 About what age? _____ Marks and brands _____
- 8 Describe injury Killed
- 9 Foreman's estimate of damage to stock I don't think it was worth anything
- 10 Give nearest mile-post, with distance and direction therefrom 14 mile north 46 M.P.
- 11 Name the nearest station Southampton County and State Va.
- 12 Was it in the corporate limits of any city or town? If so, what? None
- 13 Date of accident Oct 26th Time A. M. P. M.
- 14 What train and which section of it? Do Not Know
- 15 Names of conductor and engineer " " "
- 16 Where did stock get on track? " " "
- 17 Was stock struck on curve or straight track? straight
- 18 Was roadway fenced where stock was struck no If so, who built the fence, and what kind is it?
- 19 Was roadway fenced where stock got on track? "
- 20 Was fence in good condition, and how did stock get through?
- 21 Who owned the land where stock got on track? Company
- 22 Was alarm given by whistle or otherwise? Do Not Know
- 23 Was stock in charge of any one; if so, whom? None
- 24 What disposition was made of meat or hide, and what was value of same?
- 25 Did accident occur at wagon crossing (if so, public or private), and was the proper signal given at the proper place? Did Not
- 26 If at crossing, had cattle-guards been erected and were they in good order?
- 27 Do fencing and cattle-guards form an enclosure? If so, was it in good order?
- 28 State pecuniary condition of owner of stock Do Not Know
- 29 How far did stock go on track before train struck it? " " "
- 30 How far did train drag stock? " " "
- 31 Names and addresses of any witnesses to accident other than trainmen None
- 32 Is stock liable to be killed at this place? If so, why, and what would be necessary to prevent it?

33 State other facts, if any known, and if necessary use the back of this sheet. I know nothing about the value of this dog owner claims \$250.00 damage

The Section Foreman must have the following appraisement made, if practicable, by two (2) disinterested parties, in addition to his own estimate of damage under Question 9. If this cannot be done, Section Foreman must fill out form of appraisement.

We, the undersigned, have examined the stock herein referred to, said to have been injured by the trains of the Seaboard Air Line Railway, and are of the opinion that the value of the stock was \$_____, and that it was damaged to the amount of \$_____.

Road Master _____ Sub-Division _____

Section Foreman _____

"A"

Handspan Va

Sep 15th / 1905

Geo L. McDermott Esq

Suffolk Va

Dear Sir

Yours of the 11 inst - to hand. the evidence in the case refers to in your letter was as follows. the Dog was found on the track cut to pieces by the train and one saw it. Dan. Mr Porter was offered \$25. Cash for the Dog some time before the killing. Mr Porter had two or three witnesses. The company made no defence. So I did not put them all on the Stand, trying to save your Co Costs. Your Co ask too much work of me in their cases. & pay me no fee for letters, copies, & as I have no Secretary

Respectfully Yours
J. A. Bishop

"B."

Notice

On the 7 Day of Oct 1905-at 11 o'clock
A.M. I will Sell at public Auction
at Handsam Va for Cash one Iron
Safe to Satisfy a Judgment & Execution
in my hands

J. F. Bishop Const

Sep 23th 1905-

B. L. Parter

^{vs}
S. A. L. Rway

Executed by
Delivering a copy
to D. J. Davis Agt for
the S. A. L. Rway at
Handsom ^{vs} Aug 12
1905-

J. F. Bishop Cast.

Handsom ^{vs}
Levy on one Iron
Safe to Satisfy within
Judgement
Sep 2nd 1905-

J. F. Bishop Cast.

50 cts
for this copy
quarter fee

"B"

COMMONWEALTH OF VIRGINIA:

To J. F. Bishop

Constable Southampton County:

YOU ARE HEREBY COMMANDED TO SUMMON *Seaboard Air Line Rail way*
copulation to appear before me, or some other Justice of the Peace for same county, *at Handsome*
on the 26 day of *Aug* 1905, to answer the complaint of *B. E. Porter*
for the nonpayment of *nine* Dollars and 50 Cents,
due by *acc for one Dog killed*. And make due return how you have
executed this warrant.

Given under my hand and seal this 8 day of *Aug*, 1905.

J. A. Bishop

J. P. [SEAL.]

JUDGMENT is granted the plaintiff against the defendant for *nine*
Dollars and 50 Cents with interest from the 26 day of *Aug*, 1905,
till paid, and \$1.00 costs.

Given under my hand and seal this 26 day of *Aug*, 1905.

J. A. Bishop J. P. [SEAL.]

I command you that of the Goods and Chattels of the defendant you cause to be made
the sum of *nine & 50/100* Dollars with interest to satisfy the above Judgment
and costs.

Given under my hand and seal this 26 day of *Aug*, 1905.

J. A. Bishop J. P. [SEAL.]

Seaboard Air Line Ry
a Corporation.

By Bill & Exe

B. L. Porter & J. F. Bishop

1905. Oct. 5. Filed.

Renovated
May 1907

34
Exhibit
" E "

91
364

Courtland Va.,

Dec 8th 1904.

I B. F. McLemore, Clerk of Southampton Circuit Court, Do certify that the property named below, is a true transcript from the Property Book for the Year of 1904.. listed by Ben L.

Porter:

2 Horses or mules, valued at	\$ 140.00
18 hogs	valued at
	30.00
	\$ 170.00

I also certify that Ben L. Porter, listed no dogs

3 carts Bugies or wagons,	Valued at	\$ 45.00
Farming implements	" "	15.00
Clock	" "	2.00
House-hold & kitchen Furniture	" "	25.00
Shot gun	" "	3.00

Given under my hand this 8th, day of December 1904.

B. F. McLemore C. C.

Know All Men by These Presents, That we, Jas L McInerney
for and on behalf of Diaboard Air Line Railway
a Corporation. and James H Corbitt

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA in the just and full sum of
Fifty DOLLARS,

to the payment whereof, well and truly to be made to the Commonwealth of Virginia, we bind our-
selves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

And we waive the benefit of our exemption as to this obligation, and also waive any claim or
right to discharge any liability to the Commonwealth arising under this bond, or by virtue of the
office, post or trust herein mentioned, with coupons detached from bonds of said State.

Sealed with our seals, and dated this 5th day of October in the year
of our Lord one thousand nine hundred and five, and in the 130 year of
the Commonwealth.

In Testimony Whereof, the said Jas L McInerney has
hereto set his hand and seal, and the said Jas H Corbitt as surety

has caused its corporate name to be hereto signed, and its
corporate seal to be hereto affixed, this 5th day of October in the year of our
Lord, one thousand nine hundred and five, and in the year of the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bound
Whereas, the Diaboard Air Line Railway, a Corporation, did
on the 5th day of October 1905. sue out of the Circuit Court
of Southampton County, in vacation, an order enjoining and
restraining B L Porter and J H Bishop Constable, their agents,
employees, and all other persons, from seeing or otherwise
interfering with one certain store room in the Office of
Complainants at Nansmond Co., or any other property of the
Complainants under authority of the warrant of Aug 8th 1905,
Issued by H A Bishop Justice of the Peace of said County in favor of
B L Porter for \$9.50 until the further order of this Court
Now if the said Jas L McInerney shall pay all such costs as
may be awarded against the said Complainants and all such damages
as may be incurred in case the injunction shall be dissolved
then this obligation to be void otherwise to remain in
full force and virtue

Jas L McInerney SEAL
For on behalf Diaboard Air Line SEAL
Railway Corporation SEAL
James H Corbitt SEAL
SEAL
SEAL

VIRGINIA:

In the Clerk's Office of the Circuit Court of Nansemond County, on the _____ day
of _____, 190_____:

The above bond was executed and acknowledged before me by the obligors to the same
(the securit_____justifying), and ordered to be recorded.

Teste:

Seaboard Air Line
Railway Co. - a Corporation
Stat: Rules
Porter & Bishop

Seaboard Air Line Railway -
A Corporation.

4

Stat: Rules.

B. L. Porter and J. F. Bishop, Constables.

1905. Oct. 5. Process up to 2nd Oct Rules

" 2nd " Rules - Process etc. Executed -

Bill & Ex: filed -

Decease nisi.

1905. 1 Nov: Rules. Bill taken for Confessed
Cause set for hearing -

Seaboard Air Line, Rail-
way, a Corporation

V S Spa in Chancy

B. L. Porter & J. F.

Bishop, Constable.

1905- 2nd Oct Rules

*Executed Oct 6th 1905
by Delivering a copy
of the within notice
to each of the
within names.*

*Geo Bayouk Depk
for
J. L. Grille shfb*

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON...B...L... Porter..and..J...F...Bishop...
Constable,

to appear at the Clerk's Office of our Circuit Court of Southampton County, at the Rules
to be holden for the said Court on the 2nd.....Monday in October 1905.....
~~next~~, to answer a Bill in Chancery exhibited against.....them.....in our said
Court by Seaboard Air Line Railway..a Corporation.....

And this..they.....shall in nowise omit under penalty of law. And have then there this
writ.

Witness, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this
..5th....day of..October....., 1905., in the ¹³⁰.....year of the Commonwealth.

Teste :

B. F. McLemore....., C. C.

-1907-

✓
Diabago Air Line By

v. 3 Decree

B. L. Porter, Jr.
Bishop, Cauch

Enter May 1907

Robert R. Meulid

Entered -

Q. 339.

Seaboard Air Line Railway

✓.
B. L. Porter and J. Bishop, Causeable,

This day this cause came on to be heard upon the bill and exhibits ^{with taken for perjury} and upon the injunction order issued against defendants, October 5, 1905 - and was argued by counsel.

On consideration whereof the Court doth adjudge order and decree that the injunction granted herein October 5th 1905 be made perpetual, and nothing further remaining to be done in the cause it is ordered that same be removed from the docket.