

1962

John G. Powers and Emma Stillman v. Marvin S. Taylor : Brief of Respondents

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Powers v. Taylor*, No. 9732 (Utah Supreme Court, 1962).

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IN THE SUPREME COURT
of the
STATE OF UTAH

JOHN G. POWERS, and EMMA
STILLMAN,

Plaintiffs and Respondents,

vs.

MARVIN S. TAYLOR,

Defendant and Appellant.

Case No.
9732

BRIEF OF RESPONDENTS

Appeal from the Judgment of the
Third District Court for Salt Lake County
Honorable Merrill C. Faux, Judge

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BRIEF OF RESPONDENTS

STATEMENT OF THE KIND OF CASE

Defendant appeals from an order of the trial court finding him in contempt of court. In violation of the court's order he permitted one of his horses to trespass upon the property of plaintiff Powers.

DISPOSITION IN LOWER COURT

The original actions were brought by two plaintiffs and consolidated for trial. They were tried to the court

sitting with a jury, the Honorable Merrill C. FAUX presiding. The jury returned a verdict in favor of plaintiffs and against the defendant and judgment was entered thereon. The court further ordered the defendant to refrain from allowing his horses to trespass upon the property of the plaintiffs.

About two weeks subsequent to the court's order, the defendant again allowed one of his horses to trespass upon the premises of plaintiff Powers causing further damage to his property. Powers caused the lower court to issue an order to show cause why defendant should not be held in contempt. A hearing was had and the defendant was found to be in contempt of the court's previous order. He was fined and ordered to serve ten days in jail, which sentence was subsequently reduced to five days in jail. From this order he appeals. See case number 9694 in this court wherein the defendant appealed from the jury's award of actual and punitive damages for his actions.

STATEMENT OF FACTS

About two weeks after the appellant had been restrained from allowing his horses to continue their trespass upon the respondent's property, a horse of the appellant was again found on the property of Powers causing further damage. (Tr. 11 and 12). Pursuant to an order to show cause, appellant was punished as previously stated. From the court's finding of contempt, this appeal was taken.

POINT URGED FOR AFFIRMANCE

THE COURT WAS CORRECT IN FINDING THE APPELLANT GUILTY OF CONTEMPT OF COURT AND DID NOT ERROR IN IMPOSING SENTENCE UPON HIM.

ARGUMENT

After trial in the lower court, the appellant was ordered to restrain his horses and prevent any further trespassing upon the premises of respondent. See case number 9694. The testimony of appellant's wife and that of respondent Powers clearly indicates that subsequent to the court's order, appellant failed to adequately maintain a fence around his horses so that one of them again went upon the premises of Powers causing further damage. (Tr. 9-10-12-13).

Appellant argues that the court was in error in imposing a sentence because he had been advised by his counsel that he need not remove the horses from his property until the matter had been decided on appeal. The court clearly indicated that the fine and jail sentence were imposed as a result of appellant's failure to restrain the horses pursuant to the court's previous order. The court stated, "Certainly he had no right to permit his horses to get upon Mr. Power's property." (Tr. 16.)

The judgment, which was prepared by counsel for the appellant, clearly states that one of the appellant's

horses again trespassed upon respondent Powers' property. The judgment erroneously states that appellant's premises are known as 3690 Mill Creek Road, Salt Lake City, Utah. Respondent Powers resided at this address. The judgment does state in paragraph 1, and correctly so, that the permitting of appellant's horses to be upon the premises of Powers was in violation of the court's injunction and restraining order. (Tr. 18).

The appellant, for obvious reasons, is attempting to persuade this court that the lower court's fine and jail sentence were imposed upon him for his failure to remove the horses from his own premises. This was not the basis for the lower court's ruling. At the conclusion of the evidence, the court stated, "The court is seriously concerned about the advice of counsel, that is, advice Mr. Bybee has given his client. If Mr. Bybee is right, then Mr. Taylor had a right to keep the horses on his property. *Certainly he had no right to permit his horses to get upon Mr. Powers' property.*" (Tr. 16). (Italics ours).

The evidence shows without contradiction that the appellant, after being ordered to refrain from doing so, permitted his horse to again go upon the premises of Powers causing additional damage thereto. For this he was found to be in contempt.

CONCLUSION

It is respectfully submitted that the appellant disobeyed the court's order and continued to allow his horse to trespass upon Powers' property. The court imposed a fine and jail sentence upon him for failing to restrain the horse. The trial court's order should be affirmed.

Respectfully submitted,

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