

DOCKET NO. 174

NUMBER TERM YEAR

366 May 1961

Robert H. Beauseigneur

VERSUS

New York Central Railroad

Company

COMMON PLEAS COURT, **CLEARFIELD** COUNTY.

No. 366 May Term 1961

ROBERT H. BEAUSEIGNEUR

Plaintiff ,

against

NEW YORK CENTRAL RAILROAD COMPANY

Defendant .

IT IS HEREBY STIPULATED and AGREED, by and between the attorneys for the respective parties hereto, that the above-entitled action be discontinued without costs to either party as against the other, and that a stipulation to that effect may be filed with the Clerk of this Court by either party without further notice.

Dated May 24 1961.

1961.

Wm. H. Curran
Attorney for the Plaintiff.

Bell, Alberhadt & Sonne
J. M. L. Alberhadt
Attorneys for the Defendant.

Sir:

Please take Notice that the within is a copy of Consent of Discontinuance duly entered herein, and filed in the Office of the Clerk of the

on the.....day of.....19.....

Dated19.....

Yours, &c.,

Attorney for

Room 1100, No. 466 LEXINGTON AVE.,
BOROUGH OF MANHATTAN,
NEW YORK 17, N. Y.

To

Attorney for

Room 1100, No. 466 LEXINGTON AVE.,
BOROUGH OF MANHATTAN,
NEW YORK 17, N. Y.

CONSENT OF DISCONTINUANCE

Robert H. Beauregard
Plaintiff
against
Defendant.

Mailed by me at 466 Lexington Ave., New York City, addressed to attorney for

on the.....day of

19

Attorney for

Due and Mailed HAGERET of a copy of the within Consent of Discontinuance is hereby admitted.

FILED
DEC-2 1961

....., being duly sworn, says that he resides in.....; that he is upwards of the age of eighteen years, and is employed in the office of..... the attorney for the

in the above entitled action; that on the..... day of....., he served upon.....

the attorney for the herein, the annexed Consent of Discontinuance by depositing a copy thereof, properly endorsed in a post-paid wrapper, in United States Post Office mailbox at entrance to 466 Lexington Avenue, Borough of Manhattan, New York 17, N. Y., addressed to said attorney at.....

.....
Sworn to before me this.....

day of....., 19.....

J. St. G. (Signature)
Attorney for

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOBERT H. BEAUSEIGNEUR :
VS. : No. 366 May Term, 1961
NEW YORK CENTRAL RAILROAD COMPANY : In Trespass

PRELIMINARY OBJECTIONS TO THE COMPLAINT

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF SAID COURT:

The New York Central Railroad Company, thru its attorneys, Bell, Silberblatt & Swoope, file Objections to the Complaint as follows:

Motion for more specific pleading

(1). In Paragraph four (4) of the Complaint it is averred that the Defendant Company on May 8, 1957 caused a fire to start between mile posts 15 and 16. At the end of the Paragraph, it is averred that said fire was eventually carried onto the Plaintiff's land. There is no averment as to the location of the Plaintiff's land, with respect to mile posts 15 and 16 on the railroad right of way, or how far the fire had to travel or when it arrived at the Plaintiff's land.

(2). In Paragraph five (5) the Plaintiff avers that several fires originated between mile posts 15 and 16. There is no averment as to which of these fires traveled to the Plaintiff's land.

(3). In Paragraph seven (7) after averring that there were several fires, the paragraph says that the resulting conflagration was carried to the Plaintiff's land.

(4). In Paragraph eight (8) of the Complaint, there is an averment that the Defendant's employees notified the State Fire Warden and others present that they would put out the fires, and failed to do so. The identity of who gave such information on the part of the railroad and to whom it was given, nor the authority of the parties to act on such information is not stated. The

paragraph infers that the State Fire Warden was notified and present.

(5). Paragraph eight (8) also avers that the Defendant employees were negligent and acting within the scope of their employment without identifying said employees by name, occupation, or say information that would identify them.

(6). Paragraph ten (10) avers that twenty acres of the Plaintiff's land was completely destroyed and twenty acres partially destroyed without identifying what portion of the one hundred and forty one acres, mentioned in Paragraph two (2), were injured.

(7). Paragraph eleven (11) avers that the fires originated on both the Defendant's right of way and lands of other owners, without any identification of the location of said fires or the names of the other owners.

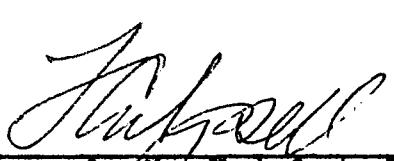
The Defendant requests that the Plaintiff be required to plead more specifically, as to the matters complained of in the preceding paragraphs.

Motion to Strike

(1). The Defendant requests that Paragraphs twelve (12) and thirteen (13) be stricken from the Complaint as being in violation of Rules of Civil Procedure 1044 (b), which provides that any pleading for unliquidated damages shall not claim a specific sum, but merely set forth as to whether they are more or less than five thousand dollars.

WHEREFORE, the Defendant prays that the Plaintiff's Complaint be stricken and the averments of damages, and that he be required to plead in greater detail as to the matters herein complained of.

BELL, SILBERBLATT & SWOOP
By



Attorneys for New York Central
Railroad Company

W. Alvin Ramer

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
No. 366 May Term, 1961
In Trespass

HOBERT H. BEAUSEIGNEUR

VS.

NEW YORK CENTRAL RAILROAD COMPANY

PRELIMINARY OBJECTIONS
TO THE COMPLAINT

7/10/61 Service Received
*W. Alvin Ramer
for*

BELL, SILBERBLATT & SWOOPPE
ATTORNEYS AT LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PENNA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOBERT H. BEAUSEIGNEUR : : No. 366 May Term, 1961
vs : : IN TRESPASS
NEW YORK CENTRAL RAILROAD COMPANY :

COMPLAINT

The plaintiff, Hobert H. Beauseigneur, claims to be entitled to recover from the defendant, New York Central Railroad Company, damages justly due and payable to said plaintiff upon a cause of action whereof the following is his complaint:

1. The plaintiff herein, Hobert H. Beauseigneur, is a resident of Girard Township, Clearfield County, Pennsylvania.
2. The plaintiff is the owner of two tracts of land situate in Girard Township, Clearfield County, Pennsylvania, descriptions for which are attached hereto, made a part hereof, and marked Plaintiff's Exhibit "A".
3. The defendant is a corporation and a common carrier of freight and passengers, and in the month of May, 1957, maintained and operated its railroad line upon its own property or right of way through Girard Township, Clearfield County, Pennsylvania. On May 8, 1957, the defendant's right of way or land in the vicinity of its railroad tracks in Girard Township aforesaid, was so negligently and carelessly maintained by it and permitted to be covered in part and strewn with dead leaves, dead grass, brush, bracken, and other combustible and inflammable material to which and from which fire was readily communicable; that said right of way of the defendant had been maintained in such negligent condition as to inflammable material for a period of several weeks

prior to the dates hereinbefore mentioned; that defendant's negligence and carelessness consisted, inter alia, of the aforesaid negligent maintenance of its right of way.

4. On May 8, 1957, the defendant, in the operation of its freight engine No. 1049, between the defendant's mileposts Nos. 15 and 16, did so operate its said locomotive so as to cause escaping live or red hot cinders from defendant's said locomotive to fall upon the combustible material on the defendant company's right of way. The fire in said inflammable material on said right of way was eventually carried onto the lands of the plaintiff, causing damages herein averred.

5. It is averred that several fires originating in various spots at points between defendant's mileposts Nos. 15 and 16, along its said track and on its right of way in Girard Township, all originating at or about the same time that defendant's engine No. 1049 passed by the said point or points, resulting in one large conflagration.

6. The defendant failed to maintain a dequate supervision or to patrol and prepare against fires under the circumstances of the dryness of the weather and the dry and inflammable material negligently and knowingly maintained on its right of way.

7. All of the fires before averred originated within close proximity one with the other, at or about the same time, to wit: May 8, 1957, between defendant's mileposts Nos. 15 and 16, and at approximately 11:35 o'clock a. m., or immediately following the passing of said points by defendant's freight engine No. 1049. Defendant's said freight engine was then and there under the control of defendant's agents, employees, and servants, and was

so negligently and carelessly equipped and operated by said defendant that large quantities of live cinders were permitted to escape, and did escape from said locomotive at said time and place. The resulting conflagration was carried onto the lands of the plaintiff herein described and was not fully extinguished until May 9, 1957, at or about 6:00 o'clock p. m., having burned for an excess of 31 hours.

8. It is averred that the defendant was also negligent in that when its agents, employees, and servants discovered said fires along its right of way, they fought said fires on May 8, 1957, and informed the State Fire Warden and others there present and attempting to extinguish said fires, that they, the railroad company's employees, would carry on to final extinguishment of said fires but that they failed to do so and, in fact, left the scene before said fires were thoroughly extinguished, and permitted said fires to spread to the plaintiff's land without making sufficient effort to extinguish the same. In so doing said agents, representatives and employees of the defendant railroad company were acting within the scope of their employment and the course of their duties, which duties they performed in a negligent manner as aforesaid.

9. It is averred that the plaintiff's land herein described was covered with a healthy growth of timber, some of which was saw timber of oak, pine, hemlock, spruce, and mixed hardwoods, and some of which timber was suitable for mine timbers and paper wood, and said land was covered in part with some trees not yet of commercial size but rapidly growing in value, and with large trees of commercial value; and the ground or surface thereof was well covered with many years deposit of leaves and decayed

vegetable matter needful to the healthy growth of said timber and the fertilizing of said land for such timber growth, as well as for the germination of new timber growth.

10. Plaintiff further avers that at the times hereinbefore mentioned, live cinders from the locomotives of the defendant ignited, burned and destroyed inflammable and combustible materials in the nature of leaves, grass, bracken, brush, and other debris, resulting in conflagration of such intensity on both dates hereinbefore mentioned that the same swept over and across plaintiff's lands before being extinguished, and that in doing so it completely destroyed all timber growth, commercial and non-commercial, as well as the humus on approximately 20 acres of plaintiff's land and so parched the surface thereof as to destroy all vegetation thereon for years to come, rendering the same valueless; also, said fires damaged approximately 20 additional acres of mature timber having some salvage value, as well as the destruction of the fertility of the soil and the seedlings and saplings growing on the entire 40 acres of land affected by said fires.

11. It is averred that said fire originated both on defendant's right of way and on lands of owners adjacent thereto.

12. Plaintiff further avers that the conflagration, communicated to his property by the alleged negligence and carelessness of the defendant, New York Central Railroad Company, on the 8th day of May, 1957, resulted in the complete loss of 20 acres of thrifty young timber ranging in size from 4 inches to 12 inches in diameter, having a value of \$50.00 per acre, or \$1,000.00, and 20 acres of mature timber, part of which is salvageable. Damage

to said mature timber amounts to \$20.00 per acre, or \$400.00. In addition thereto, plaintiff suffered loss from said fires of the destruction of seedlings, saplings, and future growth, as well as the fertility of the soil and the destruction of humus, constituting an additional loss to the plaintiff of \$1,000.00, or a total loss of \$2,400.00.

13. The above 40 acres of woodland, destroyed by the aforementioned fire, had no value except for the growing of timber thereon, and said 40 acres had a value of \$2,400.00, which amount, with compensation for delay from the time of the injury inflicted, the plaintiff seeks herein to recover from the defendant.

Attorney for Plaintiff

STATE OF PENNSYLVANIA: : SS:
COUNTY OF CLEARFIELD :

Before me, the undersigned officer, personally appeared HOBERT H. BEAUSEIGNEUR, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Complaint are true and correct.

Sworn to and subscribed before
me this 16th day of June, 1961.

Wm T. Haystry

PROTHONOTARY
My Commission Expires
1st Monday Jan. 1962

Henry P. Beauseigneur and : G.W.D.
Elizabeth, his wife : Dated: April 9, 1938
and : Ack: April 11, 1938
Hobert H. Beauseigneur : Cons.: \$1.00
: Rec.: April 27, 1938
: Deed Book 321, page 84

CONVEYS: All those certain tracts or parcels of land,
situated in Girard Township, Clearfield County,
Pennsylvania.

DESCRIPTION: The first thereof, Beginning at a White Oak
stump, thence along land of Henry Martell, form-
erly Bengamen Jury. 4 22/100° east 162 perches to
a stone pile; thence south 87° east, 32.5 perches
to a stone pile; thence north 4° west, 32 perches
to a stone pile; thence south 69.5° west along
lands of Beauseigneur Estate, 131 perches to a
large yellow pine; thence south, 20° east, along
land of Beauseigneur Estate, 48.5 perches to a
Rock-oak; thence south 31° east, 63 perches to
a white oak; thence south 28° east, 36 perches to
a white pine; thence east 4 perches to a white
oak and place of beginning.

CONTAINING: 56 acres and 49 perches more or less

The Second thereof, Beginning at a white oak
corner, being 39 perches west of division line
between tracts No. 1839 and No. 3648. thence
west 82 perches to a post corner; thence south
191 perches to a stone corner; thence east
52 perches to stones; thence north 32 perches
to stones; thence east 30 perches to stone
corner; thence north 159 perches to a white oak
corner, and place of beginning.

CONTAINING: About 85 acres, more or less

Wm. Albert Ramey
Attn: H. Beauseigneur
Hobert H. Beauseigneur
May 1961

IN THE COURT OF COMMON PLEAS
OR CLEARFIELD COUNTY, PENNA.

No 366 May Term, 1961

HOBERT H. BEAUSEIGNEUR

vs

NEW YORK CENTRAL RAILROAD
COMPANY

COMPLAINT

To the within Defendant:

You are hereby required
by law to make Answer to the
within Complaint within
twenty (20) days from date of
service.

W. ALBERT RAMEY

Attorney for Plaintiff

W. ALBERT RAMEY
ATTORNEY AT LAW
CLEARFIELD, PENNA.