

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v. DAVENPORT.

Opinion delivered October 8, 1906.

RAILROAD—CONSTRUCTION—DAMAGES TO LAND.—Where a railroad company is sued jointly with its contractor for damage done by the latter in constructing the road, and the evidence shows that the damage was done by those engaged in the construction of the railroad for the company, it devolved upon the company to show that the injury was done by an independent contractor, for whose conduct it was not responsible.

Appeal from Marion Circuit Court; *E. G. Mitchell*, Judge; affirmed.

B. S. Johnson, for appellant.

Woods Bros., for appellee.

MCCULLOCH, J. The plaintiffs, S. A. Davenport and W. L. Davenport, brought this action against the St. Louis, Iron Mountain & Southern Railway Company and J. H. Reynolds, contractor, and Ben Reynolds, subcontractor, for alleged damages done to the plaintiffs' farm lands in constructing the railroad

through the same. Plaintiffs conveyed to the railroad a right of way over the land, and the damage is claimed to have been done to the remainder. The defendants filed a joint answer, denying that any damage had been done to the land. No separate defense was made by the railway company on the ground that the alleged damage was done by an independent contractor.

The case was submitted to the court sitting as a jury—no declarations of law were asked or given, and the court found for the plaintiffs, assessing damages at \$85. Judgment was rendered accordingly against all of the defendants, and they appealed to this court.

We think there was evidence sufficient to sustain the finding of the court. The relations between the railway company and the contractors were not drawn out in the evidence, but it is shown that the damage was inflicted by those engaged in the construction of the railroad for the company, and it devolved upon the latter to show that the same was done by an independent contractor for whose conduct the company was not responsible.

Affirmed.
