

JOHN E. LOGAN, as Administrator
of the Estate of Jacob H. Reichert,
deceased,

Plaintiff.

versus.

JEROME H. SHEIP, et als.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY,
ALABAMA.

Now comes the plaintiff in the above entitled cause
and dismisses his suit in said cause and respectfully moves the
court to enter an order of dismissal of said cause.

Harold Smith & Co.

ATTORNEYS FOR PLAINTIFF.

Reichart
vs

Sheep et al

Motion for Dismissal

Filed Mar 28th/93

W. H. Harrison
Clerk

STATE OF ALABAMA.

BALDWIN COUNTY.

Before me, T. W. Richerson, Clerk of the Circuit Court in and for said state and county, personally appeared T. M. Stevens and N. R. Leigh, Jr., who, being first duly sworn, doth each depose and say:-

That they were attorneys representing the defendants in the trial at the present term of the Circuit Court of Baldwin County, Alabama, ~~in~~ the case of Jacob H. Reichart versus Jerome X. Sheip and Fannie I. Becker; that both of them were actively engaged in the said trial from its beginning to its end; that when the said case was called for trial the attorneys for the plaintiff demanded a struck jury; that lists were furnished as provided by law and the jury was struck in the manner prescribed by the statutes of Alabama. That after the jury ~~was~~ so obtained by striking and had been empaneled and the attorney for the plaintiff ~~was~~ stating his case to the jury, one of the jurors, Reuben E. Stapleton made known that he had been a juror on a previous trial of the case. Thereupon the following occurrences took place:

Mr. Harry T. Smith: (One of the attorneys for the plaintiff) said in substance: "One of the jurors says that he was a juror in the former trial of this case and that he did not understand the question. I have no doubt that he did not understand the question and calls attention to the fact that he was on the other jury".

Juror Reuben E. Stapleton then stated: "I was on the jury that tried the case about two years ago."

Mr. T. M. Stevens: (One of the attorneys for defendant) then turned to Mr. Harry T. Smith and said in substance: "Do you challenge the juror on that ground?" Mr. Harry T. Smith replied "Yes Sir". The Court then said "Let the juror step aside". Mr. Stevens then stated to the court "We ~~except~~". Thereupon the court propounded to the Juror Reuben E. Stapleton the following questions and received the following replies: Question: Do you think you can give a fair and impartial trial of this case on this occasion? Answer: I think so, yes sir. Question: And that you will not be prejudiced by any of the facts given before on any former trial of this case? Answer: No sir. Question: You will not be prejudiced by having set on the jury on the trial of this case before? Answer: No Sir.

The Court then said "Alright, now step aside. Call around the next juror on the list". Mr. Stevens then stated to the court "We ~~except~~ to the excusing of this juror."

Thereupon Juror Baggett was called around and the court propounded to him and he answered the usual questions propounded in qualifying a juror, after which the court told the said T. M. Baggett to take his seat on the jury giving to neither party an opportunity to object to ~~or~~ challenge ~~to~~ the juror. Thereupon Mr. T. M. Stevens stated to the court as follows: "We were satisfied with the jury and we wish to reserve an ~~exception~~ ~~to~~ the acceptance of this juror at this time."

Mr. Harry T. Smith then stated to the court in substance that he was satisfied with the juror but suggested to the court in substance that the proper practice under such circumstances was to take the case away from the jury and re-strike the jury. That neither of these affiants can recall or remember any

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statement by the court to the effect that the procedure had gone through without objection. That in truth and fact they had clearly ~~excepted~~ for the defendant first to the excusing of the juror Stapleton and second, to the substitution of Juror Baggett and in support of their recollection of the matter suggest that the court could not have ~~said~~ in the face of these clearly reserved exceptions that the procedure had gone through without any objection; that the best recollection of the affiant W. R. Leigh is that the court did say at that time and told Mr. Harry T. Smith that "the procedure has gone through without any objection from you" but affiant T. M. Stevens stated that he has no recollection of having heard any statement by the court of the kind indicated.

That nothing further was done with reference to the selection of a jury and the jury thus selected tried the case.

Sworn to and subscribed
before me this 10th. day
of December, 1927.

T. M. Stevens

A. R. Leigh Jr.

F. W. Williamson

Clerk of the Circuit Court, Baldwin
County, Alabama.