

Blanch S Broadwood et al } Circuit Court
 vs } Baldwin County
 } Alabama
 Aaron Moog }

Motion to retax costs

Comes the defendant, Moog and moves a re-taxation of the costs in this cause, and in support of said motion alleges and shows to the Court as follows:

That in said suit the plaintiff claimed damages for the alleged conversion by the defendants of a number of crosses claimed to have been owned by the plaintiff; that said suit was brought some time prior to the Fall Term, 1895 of said Circuit Court; that many more than two witnesses were unnecessarily summoned by the plaintiff to prove one state of facts and that twenty eight witnesses were without necessity subpoenaed at the instance of plaintiffs to attend the Fall Term, 1895 of said Court and that twenty nine witnesses were without necessity summoned at the instance of the plaintiff to attend the Spring Term 1896 of said Court, and that at the Fall Term, 1896 of said Court when said case was finally disposed of only three of the said twenty nine witnesses were subpoenaed by the plaintiff; thus showing that plaintiff recognized the uselessness and wrong of having subpoenaed the other twenty six witnesses; That at the Fall Term, 1896 of said Court, the plaintiff caused to be subpoenaed only three of the said original witnesses, and eleven other witnesses who had not been theretofore subpoenaed by the plaintiff, with the exception of a witness named James Bishop who had been at all times subpoenaed by the defendant.

Defendant alleges that these said eleven other witnesses were not necessary to the maintenance of plaintiff's suit and that the said above twenty six witnesses who were not subpoenaed by the plaintiff at the fall term 1896 were not necessary to the maintenance of plaintiff's demand and that plaintiff well knew

this all the time or should have known it. Defendant alleges and shows that the costs of the Cause have been taxed against the defendant and the taxation of said costs is excessive in charging against the defendant the costs of the issuance and execution of said witness subpoenas and in the taxation against the defendant of the certificates of attendance issued by the clerk for said various witnesses. Defendant alleges and shows that by the said unnecessary, unreasonable and unjust creation of costs by the plaintiff in causing said witnesses to be subpoenaed, the plaintiff has created improper, unlawful and unnecessary charges against defendant to the extent of a large sum of money, to wit: the sum of two hundred and twenty dollars. Defendant shows that the witnesses subpoenaed at the instance of the defendant to attend the fall term, 1895 of said Court are as follows:

John Bonner, George Bonner, Willie Bonner, Charlie Wilson, Jim Wilson, Frank Wilson, Robert Wilson, Robert Stafford, Henry Sanders, Jim Brass, Richard Mitchell, Robert Mitchell, Walter Mitchell, Peter Wilson, Henry Hawkins, Stephen Ward, W. J. Hieronymous, Monroe Williams, Louis Brennan, Ed Cook, Sayko Nelson, Jim Miller, Jesse Buttrick, Ed O'Leary, Percy Schowalter, Dr N M^cR Schowalter, Dan Allen and Stephen M^cDonald.

The witnesses subpoenaed by the plaintiff to attend the Spring term 1896, of said Court are the same as those subpoenaed to the Fall term, 1895 of said Court with the addition of one witness, to wit: one John De Silva. That at the Fall term, 1896 of said Court at which term the case was disposed of, plaintiff did not have any of said twenty nine witnesses subpoenaed, except three, to wit: Percy Schowalter, a brother of plaintiff, one John Bonner and Robert Stafford, but that in place of said twenty nine witnesses plaintiff had eleven other witnesses subpoenaed whose names are as follows:

Geo Pierce, John Wallace, Emanuel Wallace, James Bishop, Tom Wallace, John De Silver, George Pierce, Jr, James F Nelson, J M^cDuffey, John Pierce, Sr, S D Archer.

Defendant alleges and shows that said eleven

Motion re grand jury subpoenaed witnesses
 and re grand jury subpoenaed witnesses

This Motion is refused & debt excepto

Apr 1st 1898
Wm. S. Anderson Judge

other witnesses were unnecessarily and improperly subpoenaed.

Defendant alleges and shows that at the fall term 1895, witness certificates to the amount of thirty eight dollars and forty cents was issued to said plaintiff witnesses. That at the Spring term, 1896, witness certificates to the amount of seventy four dollars and thirty cents were issued to plaintiffs witnesses, and that at the Fall term 1896, witness certificates to the amount of twenty two dollars and forty cents were issued to plaintiffs witnesses. Defendant alleges and shows that said amounts together with the costs of the issuance and execution of all said witness subpoenas have been taxed against the plaintiff and that the same are excessive and contrary to law for the reasons hereinbefore set forth.

In consideration of the premises, defendant moves the Court to retax the costs and tax the said plaintiff in this cause with the costs created by the plaintiff in causing unnecessarily and improperly the said above named witnesses, exclusive of the three specially above named, to be subpoenaed and in causing the issuance and execution of said subpoenas; or at least not to tax defendant with the costs of said extra and unnecessary witnesses as hereinbefore set out.

Geo E Mitchell,
Contra.

Pillans Torrey & Hanaw
Atty for Motion

Filed March, 18th, 1897.

Geo S Hoyle, Clerk.

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