1902 Number 1st Case

R. B. Irwin Plaintiff /
L. & N. R.R. Co., Deft

In circuit court of Baldwin County, Ala

Comes the Defendant and moves the Court to set aside the verdict in this case and to grant them a new trial on the following grounds;

1st Because the verdict was contrary to the law in this case

2nd Because the verdict was contrary to the law and the evidence

3rd Because the Court erred in his general charge when he said: "if the defendant's engineer was guilty of any negligence in running defendant's train on plaintiff's cow, you must find for the plaintiff" thus ignoring (~~in the case~~) section 3451 of the code, which expressly states that negligence of ~~engineer~~ is immaterial, ~~when~~ if defendant's fence at the time and place of injury complained of was fenced in conformity to a notice or order from the Railroad Commission.

4th Because one of the jurors, the foreman of the jury, W. P. Hall, was a kinsman of the plaintiff's counsel and when the court asked if any of the jury were related either by blood or by marriage to either the ~~parties~~ plaintiff or the said W. P. Hall did not disclose his relationship and defendant's counsel did not know at the time that he was a kinsman to plaintiff's counsel.

5th Because the Court in ruling that the defendant in order to get the benefit of his plea No 2 (which he sustained against plaintiff's demurrer) must prove that the fence was in repair and good condition at the time and place of the alleged injury.

6th Because under the ruling of the court as to maintaining fence, he should have given the defendant the affirmative charge, as the defendant proved by the section foreman and his assistant that the fence was a substantial fence of 3 barbed wires in good repair to prevent stock against passing trains and proved in other respects by the witness W. P. Crowell that the fence was built in conformity to R.R. Commission rules & order.

7th Because Court erred in admitting evidence of the condition of the fence after 30th day of June 1901, the time alleged that the injury was done to plaintiff's stock by defendant's train.

8th Because Court erred in admitting evidence of the condition of defendant's fence prior to and at any indefinite time before the 30th day of June, the time alleged when injury to plaintiff's cow occurred.

9th Because the Court admitted illegal evidence ~~in~~ against defendant's objection & exception to the evidence of J. C. McKinney & Mathew Nesbitt to the effect that the fence was not properly repaired & the defendant's engineer testified at the trial of the case that he was not responsible for the injury from running the train at the time of the injury.

10th Because the verdict was not founded on the issues in the case, the evidence & the charge of the Court.

McKinney
Mathew Nesbitt