

1912 - 012
Nansemond Co (Suffolk) Chancery Causes: Norfolk & Western Railway Co] vs E. L. Luke et al

Archer, Baker, Gemmell, Anglin

GEO. S. BERNARD

J. MORTON TOWNSEND

BERNARD & TOWNSEND

Attorneys at Law

ODD FELLOWS' BUILDING

Subject: {

PETERSBURG, VA., July 25th, 1912, ~~XXI~~

Mr. Bunting,

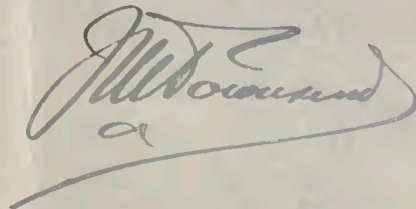
Clerk of the Circuit Court of Nansemond,

Suffolk, Va.

Dear Sir:

If an answer is filed in the case of Norfolk & Western
Railway Company v. E. L. Luke and others, will you kindly send me a
copy thereof as soon as possible.

Yours very truly,

A handwritten signature in dark ink, appearing to read "J. Morton Townsend", with a long, sweeping underline that extends to the left and then curves back under the signature.

IN THE CIRCUIT COURT OF HANSEMOND COUNTY, VIRGINIA.

Norfolk & Western Railway Company,

Against)Memorandum.

E. L. Luke, John B. Archer and A. H. Baker.

Summons in chancery to 2nd August Rules, 1912.

J. M. Townsend, f.c.

In the Circuit Court
of Massachusetts County.

Norfolk & Western
Ry. Co.

v. Σ Massachusetts

S. L. Lake, John
B. Archer and
A. H. Babers.

CHANCERY SUMMONS

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON

E. S. Duke John B. Archer and A. H. Baker

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for the
said Court, on the *third* Monday in *August 1913*, to answer

Bill in Chancery exhibited against

in the said Court by

them
Southern Railway Company

and have then and there this summons.

WITNESS, G. E. BUNTING, Clerk of our said Court, at his office, this *18* day of

July, 191*2*, in the 13th year of the Commonwealth.

A copy—Teste:

CLERK.

Teste:

G. E. Bunting, CLERK.

Exhibit this 23 day of July 1912, by delivering a true copy of
the within Summons and a copy of information to John Baker &
C. L. Baker and A. H. Baker in person.
By J. H. Baker, D. C.
J. H. Baker, D. C.

J. M. Townsend p. q.

Folk & Western
Railway Company

vs.

In Chancery

E. L. Duke, John B. Baker
and C. H. Baker

1912

August Rules,
Third Monday.

NANSEMOND CIRCUIT COURT.

Process Book No. 3

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Sherriffs per panel

KNOW ALL MEN BY THESE PRESENTS, That we,

L. P. Holland

J. M. Townsend and

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA, in the just and full sum of Twenty-five Dollars, current money of Virginia, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our exemptions as to this obligation, and also any claim or right to discharge any liability to the Commonwealth of Virginia arising under this bond, or by virtue of the office, post or trust hereinafter mentioned with coupons detached from bonds of the State of Virginia. Sealed with our seals and dated this 18th day of July, A. D. 1912

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the above bound Torfolk Houston Railway Company

on its bill in chancery, against E. L. Lake, John B. Procher and R. H. Baker

Circuit Massachusetts County addressed to the Judge of the Hastings Court of the City of Petersburg, obtained from the Judge an injunction to injoin and restrain R. H. Baker, Sheriff of Massachusetts County from carrying on any of the property of the Torfolk & Houston Railway under the execution of E. L. Lake, issued by justice John B. Procher upon a judgment rendered by said Procher for \$800 & costs on the 8th day of April, 1912, and an injunction restraining said Procher from issuing any other execution on said judgment until the further order of this Court.

and whereas, it is provided by the order of the said Judge awarding the said injunction, that the same shall not take effect until bond be given before the Clerk of the said Hastings Court of the City of Petersburg, in the penalty of \$ 25.00 with security to be approved by the said Clerk and conditioned to pay all such costs as may be awarded against the party obtaining the injunction and all such damages as may be incurred in case the injunction shall be dissolved, and that the said injunction shall be effective only until the 1st day of the next term of said Circuit Court of Massachusetts County, unless previously enlarged as provided by section 3435a of Pollard's Code as amended.

NOW, THEREFORE, if the said J. M. Townsend and L. P. Holland shall pay all such costs as may be awarded against Chief Clerk Torfolk & Houston Railway Co. and all such damages as shall be incurred in case the said injunction shall be dissolved, then the above obligation shall be void, otherwise to remain in full force and virtue.

J. M. Townsend [L. S.]
L. P. Holland [L. S.]

[L. S.]

IN THE CLERK'S OFFICE of the Circuit County of Massachusetts Court of the City of Petersburg, on 18th day of July, 1912

I, G. E. Bunting Clerk of said Court, do hereby certify that J. M. Townsend and L. P. Holland whose names are signed to the writing above, bearing date on the 18th day of July, 1912 have severally acknowledged the same before me in my office aforesaid. And I do further certify that the said L. P. Holland this day made oath before me in my said office, that after the payment of all his just debts, and those for which he is bound as surety for others and expects to have to pay, he is worth at least the sum of \$ 25.00 over and above the Exemptions allowed by law.

Whereupon the said writing with this certificate is admitted to record.

Teste:

G. E. Bunting Clerk.

J. M. Townsend
203 Injunction
Board

The Commonwealth.

Recorded in Official
Bond Book No. 2.
Page 101.

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.

To E. L. Luke, John B. Archer and A. H. Baker:

Take notice that on the 26th day of September, 1912, at the offices of J. M. Townsend, in the Odd Fellows' Building, in the city of Petersburg, Virginia, between the hours of 9 A. M. and 6 P. M., of that day the Norfolk & Western Railway Company will proceed to take the depositions of W. L. Anglin and A. H. Gemmell and perhaps others to be read as evidence in behalf of said Norfolk & Western Railway Company in a certain suit in equity depending in the circuit court of Nansemond county wherein said Norfolk & Western Railway Company is plaintiff and you are defendants; and if from any cause the taking of said depositions be not commenced, or if commenced, be not concluded on that day, the taking thereof will be adjourned from day to day at the same place and between the same hours until the same shall have been completed.

Given under my hand this 21st day of September, 1912.

Norfolk & Western Railway Company

By

J. M. Townsend

Its attorney.

Ex-emp. This 24 day of Sept 1912
by delivering a true copy of
the within written to
E. L. Luke & B. Archer and
attorneys and persons in the
County of Nansemond in the
City of Norfolk Va.

IN THE CIRCUIT COURT OF
NANSEMOND COUNTY, VIRGINIA.

Norfolk & Western Railway Co.

v) Notice to take Depositions.

E. L. Luke, John B. Archer and
A. H. Baker.

In the Circuit Court of Nansemond County, Virginia:

Norfolk & Western Ry. Co.,

Complainant,

vs.)

E. L. Luke, John B. Archer and A. H. Baker, Respondents.

Depositions of A. H. Gemmell and W. L. Anglin, witnesses, taken before me, M. B. Cogbill, a notary public in and for the City of Petersburg, in the State of Virginia, on the 26th day of September, 1912, and other days hereinafter mentioned, in pursuance of the annexed notice, at the office of J. M. Townsend, in the Odd Fellows Building, in the City of Petersburg and State of Virginia, between the hours of 9 A. M. and 6 P. M., to be read in evidence in a suit in which the Norfolk & Western Railway Company is complainant and E. L. Luke, John B. Archer and A. H. Baker are respondents, pending in the Circuit Court of the County of Nansemond, in the State of Virginia.

Present:

J. M. Townsend, Attorney for the Complainant;

No appearance for the respondents.

There being no appearance of any of the respondents, nor of any counsel to represent them, and it being more convenient to take the depositions of the complainant's witnesses on the 27th instant, on motion of the complainant, the taking of these depositions is adjourned until to-morrow morning, September 27th, 1912, at 9 A. M., at the same place.

Pursuant to the adjournment noted on yesterday, the above notary was present at the office of J. M. Townsend, in the Odd Fellows Building, Petersburg, Virginia, on Friday morning, September 27th, 1912.

Present:

J. M. Townsend, Attorney for the Complainant;

No appearance for the respondents.

A. H. GEMMELL, a witness of lawful age, being first duly sworn, deposes as follows:

1st question by attorney for the complainant: Please state your name, age, occupation and residence?

Answer: A. H. Gemmell; 39; Claim Adjuster Norfolk & Western Ry. Co.; Roanoke, Virginia.

2nd Q. by same: Please state whether you know anything about the killing of a pig belonging to E. L. Luke, near Myrtle, on the 4th of April, 1910?

Answer: A report of that was given to me shortly after that date, and I went to the home of E. L. Luke, and saw him; I spoke to him about it; handled the claim about that time. My investigation of that showed that the pig was killed on a public crossing, near the home of E. L. Luke, and the result of my investigation showed that the Company was not liable for the killing. I found, upon examination, that the Sheffield guards at the crossing, the wing fences and the right of way fences were all intact and in good order. I turned my report in to the Roanoke office, and I heard no more of the case for some time. Several months after having seen E. L. Luke, I met him at Kilby Crossing, near Mile-Post 26, and he asked me what had been done about the claim. I replied that I had turned the report in to Roanoke, and that all papers were in the office; that if he wanted to take the matter up, it would be necessary for him to write to Mr. Battle.

My next information that the claim was still alive was that I was notified by the office of a summons for the Company to appear at the office of John B. Archer, Justice of the Peace, near Myrtle, Virginia, on the 25th day of March, 1912, at 10 o'clock A. M. I appeared before Mr. Archer on the morning above mentioned, and called Mr. Archer's attention to the fact that the summons was dated on the 19th and was returnable on the 25th, which did not give us ten days in which to appear, as the law requires; and I asked him to dismiss this warrant at the plaintiff's costs. Mr. Archer replied that he had recently been appointed Justice of the Peace, and that this was one of his

first cases, and that my information to him was new to him. I insisted upon his dismissing the warrant, but he was obstinate and refused to do so. Before the trial began, I asked him to issue summons for Mr. W. L. Anglin, Road Master for the Norfolk & Western Railway Company, and for myself, which he did, and Mr. Anglin and myself acknowledged service of the summons. When I made the objection that the proper notice had not been given, Mr. Archer stated that he would dismiss the case if the plaintiff said so, but that if the plaintiff was not willing he would not. The trial then proceeded, and Mr. Luke's brother stated that he witnessed the accident; that at the time of the killing, the pig was running across the track, on the crossing, with the train a short distance from the crossing, and that he did not think the train had time to stop to avoid the accident. After hearing the evidence, Mr. Archer rendered judgment for the plaintiff, amounting to four dollars and costs. On the following day Mr. Archer wrote to me, stating that, since the trial, he had changed his mind and dismissed the warrant at the cost of the plaintiff, and, with his letter, enclosed a statement showing the amount of costs to be twenty-five dollars and twenty-nine cents.

On the 26th of March, 1912, another warrant was issued for the killing of said pig, which warrant was returnable on the 8th day of April, 1912. On said date I appeared before Mr. Archer and asked him to issue an execution, amounting to \$25.29, which he refused to do; and he then went ahead with the trial and rendered judgment against the Company for the sum of eight dollars and costs, giving me as his reason for doing so that Mr. Luke had been put to a great deal of trouble in the matter, and giving as his chief reason that the Company was at fault because they had been a long time sending their Claim Adjuster to see Mr. Luke. At this trial a brother of the plaintiff testified that he witnesses the accident, and that the pig was running across the tracks on the crossing when killed, and that the engine was close on it.

After this trial, the matter was turned over to the legal department, and my connection with the case ceased.

And further this deponent saith not.

A. A. Gemmel

W. L. ANGLIN, a witness of lawful age, being first duly sworn, deposes as follows:

1st. question by Attorney for the complainant: Please state your name, occupation and residence?

Answer: W. L. Anglin, Road Master Norfolk & Western Railway; Petersburg, Virginia.

2nd Q. by same: Please state what you know about the killing of a pig belonging to E. L. Luke, who lives near Myrtle, in the month of April, 1910, and any connection you may have had with the matter?

Answer: I know nothing about the killing of the pig, except that my Section Foreman reported the matter to me. It was killed on April 4th, at a road crossing between Kilby and Myrtle.

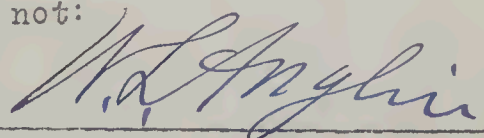
3rd Q. by same: Please state the condition of the right of way fences, the wing fences, and the cattle-guards, if any, at this point, and what their condition was in the month of April, 1910?

Answer: The right of way was fenced on both sides, and the road crossing was enclosed by cattle-guards on each side. The cattle-guards and fences were in first-class condition.

4th Q. by same: Were you present at a trial of this case, at the office of John B. Archer, near Myrtle, on the 25th day of March, 1912, and, if so, please state what occurred there?

Answer: It has been so long ago that I do not remember very well what took place. I do remember that Mr. Gemmell had himself and myself summoned as witnesses, and tried to get the warrant dismissed, and I heard Mr. Archer tell Mr. Gemmell that if Mr. Luke was willing he would dismiss it. But I do not remember much about the testimony, except that either Mr. Luke or his brother,--I do not remember which one it was,--said that he saw the pig run down the road and that it tried to cross the track in front of the train.

And further this deponent saith not:



State of Virginia,
City of Petersburg:

I, M. B. Cogbill, a notary public for the City of Petersburg, in the State of Virginia, do hereby certify that the foregoing depositions were duly taken, reduced to writing, and signed by the witnesses respectively before me, at the place and the times therein mentioned, pursuant to the annexed notice.

In witness whereof, I have hereunto set my hand and affixed my official seal, at Petersburg aforesaid, this 30th day of September, 1912. My commission expires February 25th, 1913.

M. B. Cogbill,

Notary Public

• No tax required
on Seal

Notary's fee \$1.50; paid by complainant.

In the Circuit Court
of Hancock County,

Norfolk & Western R. Co

v { Depositions

E. L. Luke, John B.
Pichea & R. H. Baker,

In the Circuit Court of
Harrison County, Virginia

Norfolk & Western Railway Company.

v.
E. L. Lake, John B. Archer & H. Baker.

This cause came on this day
to be further heard upon the bill
of the plaintiff, taken for confessed as
to all of the defendants, the exhibits
filed with said bill, the injunction
granted pursuant to the prayer of
said bill, and the depositions taken
pursuant to notice in this cause, and
was argued by counsel.

Upon consideration whereof
the Court doth adjudge, order and
decree that the injunction heretofore
granted in this cause enjoining the
levying of an execution issued by
Justice of the Peace John B. Archer
upon a judgment rendered by him
for eight dollars in favor of
E. L. Lake against the Norfolk &
Western Railway Company and restrain-
ing ~~the~~ the issuing of any other
execution on said judgment, be made
perpetual and that the defendants E. L.
Lake and John B. Archer pay the
costs of these proceedings.

In the Circuit Court
of Worcester County

Norfolk & Western Ry. Co.

v.  Note for Deceit

E. L. Lake, John B.
Parker & H. W. Baker

Enter Octo. 16. 1912.

James M. Moore,

Entered in Chancery
Order Book No. 4-

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IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.

Norfolk & Western Railway Company

v) Bill

E. L. Luke, John B. Archer and A. H. Baker.

To the Honorable Jas. L. McLemore, Judge of said court
in chancery sitting:

Humbly complaining sheweth unto your Honor your complainant,
the Norfolk & Western Railway Company, the following case:

Your complainant is a railway company, incorporated under
the laws of the state of Virginia and owning and operating a steam
railroad line running from Norfolk, in the state of Virginia, west-
wardly thorough said state, and especially through the county of Nansemond
in said state.

On the 4th day of April, 1910, one of the trains of your
complainant's road ran over and killed a black and white pig, the pro-
perty of E. L. Luke, at or about a point 2640 feet east of mile post
28 on your complainant's said railroad line as measured from Norfolk,
and in said Nansemond county between the stations of Kilby and Myrtle
on your complainant's said line. Said pig was killed at the intersection
of a public road with your complainant's said railway line at a point
where your complainant's right of way is fenced by a substantial wire fence,
built in accordance with the law of the state of Virginia in such cases
applicable, up to said public road and where wing fences parallel with said
public road adjoin said right of way fences and Sheffield cattle guards
prevent the passage of stock from the public road to the enclosed part
of the right of way of your complainant, all of which fences and cattle
guards were in good condition at the date of said accident. It has been
admitted by the owner of the said pig that said pig came down the public
road and went on the track of your complainant in front of an approaching
train and that it would not have been possible for the engineer in charge
of said train after said pig could have been seen to have stopped said
train in time to have prevented the killing of said pig, and your com-
plainant was guilty of no negligence in respect to the killing of said pig

and is not liable in damages for the killing thereof.

On the 18th day of May, 1910, said E. L. Luke wrote to the claim agent of your complainant making claim for damages for the killing of said pig, and on the 13th day of June, 1910, he wrote again to your complainant's said claim agent, in which last mentioned letter he stated that the value of said pig was \$4.00. Both of which letters marked respectively "E.L.L.1" and "E.L.L.2" are herewith filed and prayed to be taken as parts of this bill.

On the 23rd day of August, 1910, A. H. Gemnell, your complainant's claim adjuster, had an interview with said E. L. Luke and declined to pay said claim of \$4.00 on the ground that the accident occurred at a public road crossing and at a point where your complainant's right of way was fenced up to said crossing, and that in the absence of negligence on the part of your complainant there was no liability upon it for the killing of said Luke's pig.

On the 19th day of March, 1912, said E. L. Luke caused to be issued by John B. Archer, a justice of the peace of Nansemond County, a warrant against your complainant returnable on the 25th day of March, 1912, which warrant sought to recover the sum of \$8.00 damages from your complainant by reason of the killing of said pig on the 4th day of April, 1910. The said warrant was served on your complainant's agent at Myrtle, Virginia, on or subsequent to said 19th day of March, 1912, and did not give your complainant the ten days notice required by law in such cases. On the 25th day of March, 1912, your complainant's claim adjuster, said A. H. Gemnell, and your complainant's road master, W. L. Anglin, appeared at Myrtle before said John B. Archer, justice of the peace, and were duly summonsed to testify as witnesses at the hearing of said warrant. Before going into the trial of said warrant, your complainant's said claim adjuster called the attention of said magistrate to the fact that said warrant did not give the ten days notice to your complainant as required by law and asked the magistrate to dismiss said warrant at the plaintiff's cost. This said magistrate refused to do, and after hearing the evidence, gave judgment for the plaintiff, said E. L. Luke, for the sum of \$4.00 and his costs amounting to \$1.50.

On the day after the trial of said warrant, said John B. Archer, justice of the peace as aforesaid, wrote to your complainant's said claim-adjuster that ^{he found} he was in error in not dismissing the warrant ^{subsequently} tried on the previous day and stated that he ~~had~~/dismissed said warrant at the plaintiff's cost, and said justice also sent to your complainant's claim-adjuster a statement of the costs of the trial which included attendance fee and mileage of your complainant's said claim adjuster and road-master and which amounted to the sum of \$25.29. Your complainant filed herewith said warrant dated March 19th, above mentioned marked "J.B. A. 1", said letter dated March 25th, 1912, marked "J.B. A. 2.", and said statement of costs marked "J. B. A. 3", and prays that said papers be read as parts of this bill.

On said 26th day of March, 1912, said John B. Archer, justice of the peace as aforesaid, issued another warrant for the killing of said pig, which warrant was returnable on the 8th day of April, 1912, and is hereto attached marked "J. B. A. 4", and prayed to be taken as a part of this bill. On the return day of said ^{last mentioned} warrant, your complainant's said claim-adjuster appeared at Myrtle before said justice and requested said justice to issue an execution for your complainant's costs amounting to \$25.29 above mentioned, which said justice refused to do, and proceeded with the trial of said second warrant, and rendered judgment against your complainant ^{and costs} for the sum of \$8.00, stating as his reason for giving judgment for twice the amount of his former judgment, that the plaintiff in said warrant had been put to considerable trouble in the matter. Both the plaintiff in said warrant and his brother, who were the only eye-witnesses to the killing of said pig, testified that said pig was killed in attempting to cross the track of your complainant on the public road in front of an approaching train. Said magistrate gave as his reason for giving judgment against the company that he thought the railway company was negligent because it did not send its claim adjuster to see the plaintiff until for more than four months after said pig was killed!

On the 12th day of April, 1912, your complainant served a notice on said E. L. Luke notifying him that it would apply to said John B. Archer, justice of the peace, for a new trial of said last mentioned warrant on the 25th day of April, 1912, a copy of which notice and the

return thereon is hereto annexed marked "N" and prayed to be taken as a part of this bill.

On the 25th day of April, 1912, your complainant appeared by attorney before said Justice Archer and made argument for a new trial. Said justice took the matter under consideration and promised to let your complainant's attorney hear from him later in regard to the matter.

On the 24th day of May, 1912, said Archer wrote to your complainant's counsel that he would grant your complainant a new trial if your complainant would guarantee the costs of a re-hearing, and requested that a fee be paid him by your complainant for having done *said letter, marked "J.B.A.S." is herewith filed and prayed to be read as a part hereof* what was his legal duty to do, to-wit, to hear application for a new trial, *N*

Upon receipt of said letter your complainant's attorney wrote to said Archer that he would take the matter up with your complainant's officers and would let said Archer hear from him later, and on the 22nd day of May, 1912, your complainant's counsel, wrote to said Archer a letter, a copy of which marked "J. M. T. 1" is hereto attached and prayed to be read as a part of this bill, and on the 24th day of May, 1912, he wrote to said Archer a supplementary letter a copy of which is hereto attached marked "J. M. T. 2" and is prayed to be read as a part of this bill. Before receiving either of said last mentioned letters of your complainant's counsel, however, said Archer had issued an execution on said judgment and had placed the same in the hands of the sheriff of Nansemond County.

Your complainant is advised and here charges that the judgment rendered by said E. L. Luke, although entirely unjust, is within the final jurisdiction of said magistrate, and that, however unjust it may be, your complainant has no right of appeal and no redress whatsoever ^{at law} but your complainant is advised that it is entitled to an execution for its costs of the first trial above mentioned amounting to \$25.29 upon which a judgment was rendered by said Archer, and upon which said Archer has refused and still refuses to issue an execution. Your complainant is further advised that it has no remedy at law to compel the issuance by said Archer of an execution on its said judgment for costs, and your complainant is therefore in the position of having a judgment against E. L. Luke for \$25.29, which judgment it cannot collect, while said E. L. Luke

has^a judgment against your complainant for \$8.00 and costs upon which there is an execution in the hands of the sheriff of Nansemond County, and under which said sheriff has notified your complainant he will levy upon and sell the goods of your complainant in said county.

In tender consideration of the premises and for as much as your complainant is without relief save in a court of equity where such matters are properly cognizable, your complainant therefore prays that said E. L. Luke, said John B. Archer and said A. H. Baker be made parties defendants to this cause and be required to answer the allegations hereof, but not under oath, answers under oath being hereby waived, and that said A. H. Baker be perpetually enjoined from levying the execution in his hands rendered on said judgment of E. L. Luke for \$8.00 and costs and, in the event that he has made a levy under said execution, that he be perpetually enjoined from making sale of the property so levied upon under said execution, and that said John B. Archer, justice of the peace as aforesaid, be perpetually enjoined from issuing any other execution on said judgment until he shall have issued execution on your complainant's judgment for \$25.29 hereinbefore mentioned, and for such other, further, special and general relief as the nature of your complainant's case may require, and as is conformable to the rules of equity in such cases governing.

And your complainant will ever pray *sc.*

Norfolk & Western Railway
do hereby pay,
By J. H. Edwards,
its attorney.

State of Virginia,
City of Roanoke, To-wit:

This day personally appeared before me, W. W. Gwaltney,
a notary public, in and for the city aforesaid, in the state of Virginia,
A. H. Gemmell, claim adjuster of the Norfolk & Western Railway Company,
and agent of said company, in this behalf, and made oath before me
in my said city that the matters in the foregoing bill stated as of
his own knowledge are true, and those stated upon the information
of others he believes to be true.

Given under my hand this 15th day of July, 1912.


Notary Public.

My Commission Expires April 15, 1913.



S. 8578

"E.L.L.I."

6

Suffolk, Va.
May 18, 1910,

Dear Sir,

I will write
you in regards of my
hog which was killed
April, 4. 1910.

Yours truly,
E. L. Luke
R. F. D. #2, Box, 67.

8-8518 To East, 5/13/10 Suffolk Va R.R.

June 12-10
"E.L.L. 2"

W. S. Battle, Jr.
Roanoke Va.
Dear Sir:-

Sometime ago I wrote
you making claim for one
hog killed by your train Apr 4-10
near M. P. 28 valued @ \$4.00
but to the present time have heard
nothing from you in regard to same.

Hoping you will investigate
this matter and advise
I remain-

Yours very truly
W. S. Battle

Mr. Gemmell:

For your attention. Papers to you May 13th.

W. S. Battle, Jr.

Myrtle Va, March 19th 1912.

The Norfolk & Western RRY CO?

TO E.L.Luke ? Dr

To I One mail shoat killed by train # 3 on the 4th day of April 1910.

"J.B.A.I."

(\$8.00)

To ~~A. H. Baker Sheriff~~ *Od. J. Saunders*, Constable of Said County.

YOU ARE HEREBY COMMANDED TO SUMMON *The Norfolk & Western R Ry Co.*

if to be found in your county, to appear at *My office* at *Myrtle Va.*
in said County, on the *25th* day of *March*, 19 *13*, at *10* o'clock *A* M.,
before me, or such other Justice as may then be there to try this warrant, to answer the complaint of

E. L. Luke

As per bill attatched

upon a claim for money, for the sum of *Eight* (\$8.00) Dollars due by

Account

And then and there make return of this warrant.

Given under my hand this *19th* day of *March*, 19 *12*

Geo. B. [Signature], J. P. [SEAL]

Chuckatuck District School Board

W. B. ARCHER, Clerk

Myrtle, Va.

Mr. A. H. Gimmell,

Roanoke,

Virginia.

March 26th 1912.

Copy

"J. B. A. 2."

My dear sir=

I wish to acknowledge to you after looking in the case of
EL. Luke V S Norfolk & Western R Ry Co.

I find that I was in Error and dismissed the case at the Plaintiff cost as
per your request at beginning of trial, And have issued a new warrant
setting the trial for Monday April 8th please advise whether or not you
wish me to summons Mr. Anglen ~~on~~.

Trusting same may not inconvenience you in any way.

Yours very respectfully.

J. B. Archer
-----J P

P S Am delivering Mr. W. F. Shaw a copy of this letter to make his report by,

Myrtle Va, March 25th 1912.

To Norfolk & Western Ry Co,
To
E.L. Luke, Dr.

To I One mail boat killed by train #3 on the 4th day of April 1910
\$8.00

"J. B. A. 4."

To J. L. Bando-, Constable of Said County.

YOU ARE HEREBY COMMANDED TO SUMMON

The Norfolk & Western Ry Co
if to be found in your county, to appear at my office
in said County, on the 8 day of April, 1912, at 10 o'clock a M.,
before me, or such other Justice as may then be there to try this warrant, to answer the complaint of

E. J. Luper

upon a claim for money, for the sum of Eight ^{\$}(8.00) Dollars due by
as per bill attached

And then and there make return of this warrant.

Given under my hand this 26-day of March, 1912

J. W. B. Aiken, J. P. [SEAL]

W. S. Barker Jr. Rearden Va. 3/27/04

Statement of cost in matter of E.L. Luke Vs Norfolk & western R.Ry Co,

Justice -----	1.00
Clerk of the County Court -----	.45
Witness Mr. Gimmell -----	.50
Witness Mr. Anglin -----	.50
Milage for Mr. Gimmell for 514 miles @ 4¢	20.06
Milage for Mr. Anglin for 82 " " " " " " " "	3.28

Total \$25.29

Wm. F. Blucher JP

Subject to corection

W. F. Blucher

"J.B.A 3."

Filed 510 pm

J. V. L. B.
678 pm

"N."

Copy -

E. L. Luke

vs.) Notice of application for new trial.

Norfolk & Western Railway Company.

You are hereby notified that the Norfolk & Western Railway Company will, at Myrtle, Virginia, on the 25th day of April, 1912, apply to John B. Archer, a justice of the peace of the county of Nansemond, Virginia, for a new trial in the above styled case in which you are plaintiff and in which on the 8th day of April, 1912, a judgment was rendered in your favor for the sum of eight dollars (\$8.00) and costs for damages alleged to be due for the killing of one male sheep by train No. 3 on the 4th of April, 1910.

April 12th, 1912.

Norfolk & Western Railway Company,
By *Attorneys*, its attorney.

Executed this 13 day of April, 1912 by delivering a true
copy of the within process to E. L. Duke in person.

A. H. Baker Sheriff

Handwritten signature and notes, possibly "E. L. Duke" and "April 13, 1912".

Myrtle Virginia. May 4th 1912.

Mr J. Morton. Townsend, Atty.

Petersburg,

Virginia.

"J. B. A. S."

My dear sir=

After consulting over the matter of E. L. Luke Vs N & W R Ry Co, I see no grounds that the Company is intitled to a new trial as you* or aware the case case was continured frome first hearing about 15 days which in my oppinion was alowing* ~~was~~* defendant ample time to fight the claim, But at the same time I donot wish to ack obstenate in the matter, and if your people will gurantee the cost of the of the rehearing I will grant same on those grounds only, as I have spent allready lots time unnesary in the matter, And feel that I am justily due a fee in complying with your request of the 12th of April, but will leave that for your people to decide on , Trusting you may understand my position in the matter and awaiting your early reply.

I am yours verry respectfully.

J. B. A. S. -Jp

May 22nd, 1912,

xxx

John B. Archer, Esq.,

Justice of Peace,

Myrtle, Va.

Colly

"J.M.T."

Dear Sir:

I wrote you on the 10th instant telling you that I would let you hear further from me in answer to your letter of the 4th instant, and this is the first opportunity I have had of writing you.

The railroad company is willing to guarantee the costs of a new trial in this case if they are not successful in the new trial. Of course if the railway company wins the case, Mr. Luke will have to pay the costs.

In the event that a new trial is granted, I think it would be well to have it in Suffolk, as Mr. Luke is almost as close to Suffolk as he is to Myrtle, and you will be able to get two justices to hear the case with you much more easily there. I have no doubt that Mr. J. U. Burges, the Commonwealth's Attorney, will let us use his office for the purpose of trying the case.

We will be perfectly willing if you care to do so, to have you enter up a judgment at this time in this case for \$10 and costs so that we can appeal the case to the circuit court, and, if you decide to do this, I will be obliged to you to let me hear from you at once so that I can arrange to give bond and take the appeal. Of course, if this is done, we will make no point about the value of the hog upon the hearing of the case in the circuit court.

I shall be glad to hear from you at your convenience about the matter.

Yours very respectfully,

J. M. T.

L. Luke vs. N. & W. Ry. Co.

COPY.

May 24th, 1912. xxx

John B. Archer, Esq.,
Justice of Peace,
Myrtle, Va.

"J. M. T. 2."

Dear Sir:

In my letter to you of the 22nd instant, I said:

"We will be perfectly willing if you care to do so, to have you enter up a judgment at this time in this case for \$10.00 and costs, so that we can appeal to the circuit court &c."

I should have said for \$10.25, as the statute allows an appeal only where the amount of the judgment is more than \$10.00

Yours very respectfully,

Yours very respectfully
Wm. Horwood

An injunction is granted in accordance with the prayer of the foregoing bill enjoining and restraining A. H. Baker, sheriff of Nansemond County, from levying on any of the property of the *Norfolk & Western Railroad Company*, complainant, under the execution of E. L. Luke, which execution was issued by Justice John B. Archer upon a judgment rendered by him for \$8.00 and costs against the complainant on the 8th day of April, 1912, and an injunction is also granted restraining John B. Archer, justice of the peace, from issuing any other execution on said judgment until the further order of this court. But the complainant shall not have the benefit of this order until it, or some one for it, shall have entered into a bond in the clerk's office of the circuit court of Nansemond County in the penalty of \$25.00 with security to be proved by the clerk of said court payable to E. L. Luke indemnifying said E. L. Luke against any loss by reason of the issuing *of said judgment and costs and damages any* ~~of this injunction~~ and conditioned upon the payment of the costs of this suit in case this injunction shall be dissolved.

It is further ordered that the injunctions above granted shall not be effective ~~after~~ after the first day of the next term of the circuit court of Nansemond County unless previously enlarged.

To the Clerk of the Circuit
Court of Nansemond County, Virginia:

J. M. Murrell,
Judge -
Hastings Court,
Petersburg, Va

Costs, \$5.37

IN THE CIRCUIT COURT OF
HANSFORD COUNTY, VIRGINIA.

Norfolk & Western Railway
Co.

v) Bill & Exhibits.

G. L. Luke, John B. Archer
and A. H. Baker.

Bill
Filed Aug. 19, 1912
J.M. *G.E. Bunting,*
~~BERNARD & TOWNSEND~~ *Clark*
ATTORNEY AT LAW
ODD FELLOWS' BUILDING
PETERSBURG, VA.

JEWELL & CO. INC., PHILA., PA.

CIRCUIT COURT

Second Monday in January, March, May
July and October

HON. JAMES L. McLEMORE, Judge
GEO. E. BUNTING, Clerk
J. U. BURGESS, Commonwealth's Attorney
ALEX. H. BAKER, Sheriff
C. R. FULGHAM, County Treasurer
LEE BRITT, Commissioner of Accounts

Nansemond County Clerk's Office

SUFFOLK, VA.,

Folk + Western Railway Company, Plt.
vs In Chancery

E. L. Duke, John B. Archer and A. H. Baker, Defs.

1912

July 18, Summons issued, returnable to 2nd Aug. Rules
Third Monday 1912

Aug. 9, 1912 Sum. returned executed,
Bill filed and decree nisi.

Sept. 3, Bill taken for confessed and
set for hearing

Clark's notes.

Norfolk & Western
Railway Co.
vs. E. In Chancery
E. L. Luke vrs.

Returned and Aug. 1864.

Unit Tax	\$1.50
Clark	4.87
Sharps	1.00
Atty.	15.00
H.P.	.50
J.P. & Mts. clm.	2.50
	<u>\$25.37</u>