

1959

# T. Collins Jackson v. Kenderick Harward et al : Brief of Appellant

Utah Supreme Court

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Ben D. Browning; John H. Allen; Attorneys for Appellant;

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IN THE SUPREME COURT

of the  
STATE OF UTAH

**FILED**  
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Clerk, Supreme Court, Utah

T. COLLINS JACKSON,  
*Plaintiff and Appellant,*

—vs.—

KENDRICK HARWARD, BLAIN  
C. CURTIS, HEBER CHRISTIAN-  
SON, McKAY LARSON, TEX R.  
OLSEN, SPENCER OLIN,  
*Defendants and Respondents.*

Case No. 9000

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BRIEF OF APPELLANT

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BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On June 24, 1958, Appellant, who was Plaintiff below, filed a Complaint against Respondents in Six Causes of Action. Interrogatories were served by Respondents and answered by Appellant. Respondents moved for

Summary Judgment, which was granted after hearing and submission of briefs to the Honorable John L. Sevy, Judge of the District Court for Sevier County, Utah. Appellant took a timely appeal from the Summary Judgment.

## STATEMENT OF FACTS

Since the Respondents have not filed an Answer in this case, the allegations of the Complaint, the Answers to Interrogatories, and the admissions on file must be taken as true, and there can be no dispute as to the facts contained therein. The sole question to be determined by this Court then is: As a matter of law are Respondents entitled to Summary Judgment under the circumstances of this case?

## STATEMENT OF POINTS

### POINT I.

THE COURT BELOW ERRED IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BECAUSE MATERIAL ISSUES OF FACT ARE OUTSTANDING.

## ARGUMENT

### POINT I.

THE COURT BELOW ERRED IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BECAUSE MATERIAL ISSUES OF FACT ARE OUTSTANDING.

Respondents make no attack on the pleadings ,but claim that as a matter of law Appellant has no right which the Court will protect. (Respondents Brief in Support of Motion For Summary Judgment)

Plaintiff pleaded Six Causes of Action.

The First Cause of Action is pleaded in tort for trespasses to Appellant's property and business interests arising by reason of Respondents' action in jamming and interfering with the signal Appellant was supplying to his customers. The unresolved question of fact is: Are they jamming and interfering with his signal? Evidence must be taken to show the nature of and extent of the alleged trespass, and the evidence will come largely through the testimony of expert witnesses.

The Second Cause of Action proceeds on the theory that Respondent's actions are negligent as distinguished from intentional as pleaded in the First Cause of Action. The factual question is whether or not they are negligently jamming and interfering with Appellant's property interest. Respondents have not denied these allegations. Evidence is required to support and prove the allegations, and the fact questions to support negligence are yet outstanding.

The Third Cause of Action proceeds on the theory that both public and private nuisances are involved in Respondent's conduct. If the trespasses are continuous, they amount to nuisances. The question of fact is whether or not their acts are trespasses. Such acts are neither admitted nor denied, and the questions of fact to support trespass have not been resolved.

The Fourth Cause of Action proceeds on the theory that Respondents have induced Appellant's customers to breach their contracts with him. The questions of fact are:

(1) Have Respondents induced breaches of contract?

(2) Are contracts in existence to be breached?

Respondents have not resolved these issues either by pleading or proof. The questions of fact to support the allegations remain.

The Fifth Cause of Action alleges a conspiracy between Respondents to commit the acts pleaded in the foregoing four causes of action. The question of fact is: Have they conspired to commit the wrongs complained of? Evidence of the acts of conspiracy and acts of wrongdoing remain to be proved.

Sixth Cause of Action alleges malice in committing the torts complained of with a prayer for punitive relief. The question of fact is whether or not their acts are wrongs and are accompanied by malice for which the courts will give redress.

*Rule 56 (c) of the Utah Rules of Civil Procedure* provides:

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. *The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.* A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. (Italics supplied).

This Court has held that if there is any genuine issue as to any material fact, a Motion for a Summary Judgment should be denied. *Young vs. Felornia*, 121 Utah 646, 244 Pac. (2d) 862.



## CONCLUSION

The Court below erred in granting the Motion for Summary Judgment because outstanding issues of fact are apparent in each of the six Causes of Action. This Court should remand this cause to the District Court with instructions for the Court below to vacate the Summary Judgment thereby requiring Respondents to answer to Appellant's Complaint on file, and allow this cause to proceed to trial in an orderly manner.

Respectfully submitted,

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