

## Statement of the Case.

JONES *v.* EAST TENNESSEE, VIRGINIA AND  
GEORGIA RAILROAD COMPANY.ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF TENNESSEE.

No. 253. Argued April 4, 1895. — Decided April 8, 1895.

The record showed that plaintiff asked six instructions, of which the court gave two, declined to give one, and declined to give the other three except as covered by the general charge. The whole charge was contained in the bill of exceptions, which thus concluded: "To which refusal and charge of the court and the exclusion of evidence offered, and to the action of the court in refusing a new trial, plaintiff excepted and tendered this bill of exceptions, which was signed and sealed by the court and ordered to be made a part of the record in this cause." *Held*, that this exception was insufficient.

THE case is stated in the opinion.

*Mr. Henry H. Ingersoll* for plaintiff in error.

*Mr. Leon Jourolmon* appeared for defendant in error, but the court declined to hear him.

THE CHIEF JUSTICE: This was an action on the case to recover damages for injuries received through the alleged negligence of the defendant. Ten errors were assigned, two of which relate to the exclusion of evidence. As to one of these, it was properly admitted at the bar that the evidence in question was not excluded, and that so much of the record as showed the contrary was taken from the record of a former trial of the case. As to the other, no exception to the action of the court was preserved. The remaining errors assigned relate to the refusal to give certain instructions requested by plaintiff, and to parts of the charge. The record shows that plaintiff asked six instructions, of which the court gave two, declined to give one, and declined to give the other three except as covered by the general charge. The whole charge is contained in the bill of exceptions, which thus concludes:

## Syllabus.

“To which refusal and charge of the court and the exclusion of evidence offered, and to the action of the court in refusing a new trial, plaintiff excepted and tendered this bill of exceptions, which was signed and sealed by the court and ordered to be made a part of the record in this cause.” This exception was insufficient. Rule 4; *Rogers v. The Marshal*, 1 Wall. 644; *Harvey v. Tyler*, 2 Wall. 328; *Insurance Co. v. Sea*, 21 Wall. 158; *Beaver v. Taylor*, 93 U. S. 46; *Block v. Darling*, 140 U. S. 234, 238.

*Judgment affirmed.*

LAST CHANCE MINING COMPANY v. TYLER  
MINING COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT.

No. 831. Argued March 6, 7, 1895. — Decided April 15, 1895.

When the course of a mineral vein is across a claim, instead of in the direction of its length, the side lines of the location of the claim become, in law, the end lines, and the end lines become the side lines.

When the jurisdiction of a controversy by a court is unquestioned, and the cause proceeds to final judgment, and no review is sought for, the judgment is conclusive upon the parties to the suit as to the matters decided, but not as to matters which might have been decided, but were not.

In an action, brought under the provisions of Rev. Stat. §§ 2324, 2325, by an adverse claimant to a part of a mineral claim as located, the plaintiff alleged a priority of location, and rested his right to recover upon it. The defendant answered, but subsequently and before judgment withdrew his answer, and amended his application for a patent so as to exclude the tract in controversy. At the trial the defendant did not appear, but the plaintiff introduced evidence, oral and documentary. The court made a finding of fact that the tract in controversy had already been located by the plaintiff as a part of his mining claim when the defendant located his claim upon it, and that, consequently, it was not subject to location by the defendant. Upon that finding it was adjudged that, by reason of the law and premises, the plaintiff was the owner of the disputed tract, that he was entitled to the possession of it, and that he recover possession of it from the defendant. *Held*,

- (1) That it appeared by the record that the court had in that case passed upon and determined the question of priority of location,