

**HERON V. GAYLOR, 1947-NMSC-062, 52 N.M. 23, 190 P.2d 208 (S. Ct. 1947)**

**HERON  
vs.  
GAYLOR et al. (two cases). SAME v. JAYNES et al.**

Nos. 4956, 4957, 4958

SUPREME COURT OF NEW MEXICO

1947-NMSC-062, 52 N.M. 23, 190 P.2d 208

November 10, 1947

Appeal from District Court, Rio Arriba County; Albert R. Kool, Judge. Actions by Kenneth A. Heron against Hayden Gaylor and another, against C. F. Jaynes and others, and against D. H. Gaylor and another. Judgments for defendants, plaintiff appeals.

Motion for Rehearing Denied March 9, 1948

**COUNSEL**

Kenneth A. Heron, of Chama, per se.

Harry L. Bigbee, of Santa Fe, for appellees.

**JUDGES**

Brice, Chief Justice. Lujan, Sadler, and Compton JJ., and E. T. Hensley, Jr., D.J., concur. McGhee, J., did not participate.

**AUTHOR: BRICE**

**OPINION**

{\*23} {1} These are companion cases and may be disposed of by one opinion.

{2} The trial court at the close of the testimony in each of these cases announced in effect that he would discard all of the testimony of the appellant, a witness in his own behalf, and upon which his right to recover depended; and he then proceeded to determine each case upon the testimony introduced by the respective defendants.

{3} We have examined the appellant's testimony carefully, and are of the opinion that there was no such inherent improbability as to the truthfulness of appellant's testimony that would authorize such action on the part of the trial court.

**{4}** We are of the opinion that the appellant did not have a fair and impartial trial in each of these cases, because of the unwarranted refusal of the trial court to consider his testimony in making its decision; **{\*24}** and that justice requires a new trial in each case. Testimony of a witness, interested or not, cannot arbitrarily be disregarded by the trier of the facts. *Chesapeake & Ohio R. Co. v. Martin* 283 U.S. 209, 51 S. Ct. 453, 75 L. Ed. 983; *Medler v. Henry*, 44 N.M. 275, 101 P.2d 398.

**{5}** The judgment in each of the respective causes is reversed with instruction to the trial court to set it aside and grant to the appellant a new trial. It is so ordered.