

fore, any ground for disturbing the verdict of a jury that the court would not have rendered such a verdict. It must appear that all reasonable men would agree that it was not supported by the evidence, and should be annulled. The constitutional right of the citizen to have the facts of his case tried by a jury must not be encroached upon by the courts, under any pretext. "It is of the greatest consequence," said Lord Hardwick, "to the law of England, and to the subject, that these powers of the judge and jury be kept distinct; that the judge determine the law, and the jury the fact; and if ever they come to be confounded it will prove the confusion and destruction of the law of England." *Rex v. Poole*, Cas. t. Hardw. 28. It is of equal consequence to the laws of this country and its people that the separate powers of the judge and jury be sedulously maintained.

The court charged the jury that it was the duty of the engineer to keep a lookout for stock upon the track. The correctness of this charge is no longer an open question in this court. *Railway Co. v. Washington*, 4 U. S. App. 121, 1 C. C. A. 286, 49 Fed. Rep. 347; *Railway Co. v. Johnson*, 54 Fed. Rep. 474.

The judgment of the court below is affirmed.

GULF, C. & S. F. RY. CO. v. WALLACE.

(Circuit Court of Appeals, Eighth Circuit. January 27, 1893.)

No. 146.

In Error to the United States Court in the Indian Territory. Affirmed.

E. D. Kenna, J. W. Terry, and C. L. Jackson, for plaintiff in error.

Before CALDWELL and SANBORN, Circuit Judges, and SHIRAS, District Judge.

CALDWELL, Circuit Judge. This action was commenced by J. M. Wallace, the defendant in error, against the Gulf, Colorado & Santa Fe Railway Company, the plaintiff in error, before a United States commissioner, in the Indian Territory, to recover the value of a colt alleged to have been killed by the negligent operation of the defendant's trains. The plaintiff recovered a judgment before the commissioner, and the railway company appealed the case to the United States court for the territory, where the case was tried de novo, and a judgment rendered for the plaintiff, and the defendant sued out this writ of error. The only error assigned, not disposed of by numerous decisions of this court, is this one: That the court refused at the close of the whole evidence to instruct the jury to return a verdict for the defendant. We have read the evidence very carefully, and think the court below rightfully refused to give the instruction prayed for. *Railway Co. v. Ellis*, 54 Fed. Rep. 481.

The judgment of the court below is therefore affirmed.

GULF, C. & S. F. RY. CO. v. SEIFRED.

(Circuit Court of Appeals, Eighth Circuit. January 27, 1893.)

No. 151.

In Error to the United States Court in the Indian Territory. Affirmed.

E. D. Kenna, J. W. Terry, and C. L. Jackson, for plaintiff in error.

Before CALDWELL and SANBORN, Circuit Judges, and SHIRAS, District Judge.

CALDWELL, Circuit Judge. This action was commenced by W. F. Seifred, the defendant in error, against the Gulf, Colorado & Santa Fe Railway Company, plaintiff in error, before a United States commissioner, in the Indian Territory, to recover the value of four head of cattle alleged to have been killed by the negligent operation of the defendant's trains. The plaintiff recovered a judgment before the commissioner, and the railway company appealed the case to the United States court for the territory, where the case was tried de novo, and a judgment rendered for the plaintiff, and the defendant sued out this writ of error. The only error assigned, not disposed of by numerous decisions of this court, is this one: That the court refused, at the close of the whole evidence, to instruct the jury to return a verdict for the defendant. We have read the evidence very carefully, and think the court below rightfully refused to give the instruction prayed for. *Railway Co. v. Ellis*, 54 Fed. Rep. 481. The judgment of the court below is therefore affirmed.

GULF, C. & S. F. RY. CO. v. MATTHEWS.

(Circuit Court of Appeals, Eighth Circuit. February 20, 1893.)

No. 149.

In Error to the United States Court in the Indian Territory.

Action by William M. Matthews against the Gulf, Colorado & Santa Fe Railway Company for killing stock. Judgment for plaintiff. Defendant brings error. Affirmed.

E. D. Kenna, J. W. Terry, and C. L. Jackson, for plaintiff in error.
Isaac H. Orr and H. L. Christie, for defendant in error.

Before CALDWELL and SANBORN, Circuit Judges, and THAYER, District Judge.

PER CURIAM. This case was submitted without oral argument, on the assumption, no doubt, that it presents the same state of facts and the same questions of law which were considered in the cases of *Railway Co. v. Wallace*, 54 Fed. Rep. 485, and *Railway Co. v. Seifred*, Id. 485, (decided at the December term of this court, at Little Rock, Ark.) in which the same counsel were engaged. We have examined the record, and have reached the conclusion that such assumption on the part of counsel is correct, and that the judgment must be affirmed, in conformity with the opinion announced in those cases.

It is so ordered.

GULF, C. & S. F. RY. CO. v. CONLEY.

(Circuit Court of Appeals, Eighth Circuit. February 20, 1893.)

No. 148.

In Error to the United States Court in the Indian Territory.

Action by James R. Conley against the Gulf, Colorado & Santa Fe Railway Company for killing stock. Judgment for plaintiff. Defendant brings error. Affirmed.

E. D. Kenna, J. W. Terry, and C. L. Jackson, for plaintiff in error.
Isaac H. Orr and H. L. Christie, for defendant in error.

Before CALDWELL and SANBORN, Circuit Judges, and THAYER, District Judge.

PER CURIAM. This case was submitted without oral argument, on the assumption, no doubt, that it presents the same state of facts and the same questions of law which were considered in the cases of *Railway Co. v. Wal-*