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CH 41

Item A 01 Certified copy of Opinions

1898 (3)
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THE STATE OF INDIANA,

In the Appellate Court, May Term, 1898.

On the 1st *day of* July *1898, being the* 35th *Judicial day of said May Term, 1898.*

2448

HON. WILLIAM J. HENLEY, CHIEF JUDGE.
HON. JAMES B. BLACK,
HON. DANIEL W. COMSTOCK,
HON. ULRIC Z. WILEY,
HON. WOODFIN D. ROBINSON,
} JUDGES.

IN THE CASE OF

Indiana, Decatur & Western R. R. Co.

vs.

Eliza Zilly

APPEAL FROM THE

Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises, gave the following opinion and judgment pronounced by Henley, C. *J.*

THE STATE OF INDIANA,

In the Appellate Court, November Term, 1896.

On the 2nd. *day of* April *1897, being the* 113th *Judicial day of said November Term, 1896.*

17884.

HON. DANIEL W. COMSTOCK, CHIEF JUDGE.
HON. ULRIC Z. WILEY,
HON. WOODFIN D. ROBINSON,
HON. WILLIAM J. HENLEY,
HON. JAMES B. BLACK,
} JUDGES.

IN THE CASE OF

William E. Hinshaw,

vs.

State of Indiana

APPEAL FROM THE

Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises, gave the following opinion and judgment pronounced by McCabe *J.*

THE STATE OF INDIANA,

In the Appellate Court, November Term, 18

On the 29th *day of* March *1898, being the* 110th *Judicial day of said November Term, 1897.*

2636

HON. WOODFIN D. ROBINSON, CHIEF J
HON. WILLIAM J. HENLEY,
HON. JAMES B. BLACK,
HON. DANIEL W. COMSTOCK,
HON. ULRIC Z. WILEY,
} JUDG

IN THE CASE OF

Board Commissioners of Hendricks Co.

vs.

John W. Trotter

APPEAL FROM THE

Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficie advised in the premises, gave the following opinion and judgment pronou by Black, *J.*

Read

THE STATE OF INDIANA,

In the Appellate Court, May Term, 1899.

On the 30th *day of* June *1899, being the* 35th *Judicial day of said May Term, 1899.*

2767

HON. DANIEL W. COMSTOCK, CHIEF JUDGE.
HON. ULRIC Z. WILEY,
HON. WOODFIN D. ROBINSON,
HON. WILLIAM J. HENLEY,
HON. JAMES B. BLACK,
} JUDGES.

IN THE CASE OF

Florence Q. Bray

vs.

Thomas J. Miles, Exr. et al.

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Comstock, C. *J.*

Dissenting Opinion, Wiley, J.

Petition for a rehearing overruled.

Opinion Per Curiam.

Dissenting Opinion, Wiley, C. J.

Per

THE STATE OF INDIANA,

In the Appellate Court, May Term, 1898.

On the 8th *day of* June *1898, being the* 15th *Judicial day of said May Term, 1898.*

2511.

HON. WILLIAM J. HENLEY, CHIEF JUDGE.
HON. JAMES B. BLACK,
HON. DANIEL W. COMSTOCK,
HON. ULRIC Z. WILEY,
HON. WOODFIN D. ROBINSON,
} JUDGES.

IN THE CASE OF

George B. Cooper, et al

vs.

The Hocking Valley National Bank, &c.

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises, gave the following opinion and judgment pronounced by Henley C. *J.*

Pet

R.

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, November Term, 1901.

On the 29th *day of* April, *190*2, *being the* 134th
Judicial day of said November Term, 1901.

HON. DANIEL W. COMSTOCK, CHIEF JUDGE.
HON. FRANK S. ROBY,
HON. ULRIC Z. WILEY, } JUDGES.

No. 3593

IN THE CASE OF

Samuel A. Hogue, et al.

vs.

State ex rel., Board of School Commissioners, etc.

APPEAL FROM THE

Hendricks Circuit

COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Wiley, *J.*

R

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, May Term, 1901.

On the 22nd *day of* October, *1901, being the* 128th
Judicial day of said May Term, 1901.

HON. ULRIC Z. WILEY, PRESIDING JUDGE.
HON. FRANK S. ROBY,
HON. DANIEL W. COMSTOCK, } JUDGES.

3472

IN THE CASE OF

Levi A. Barnett

vs.

William T. Lucas.

APPEAL FROM THE

Hendricks Circuit

COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Roby, *J.*

And afterwards, to-wit: On the 2d day of May, 1902, the Court being fully advised overruled the petition for rehearing heretofore filed herein by appellant Comstock C. J. Black, Robinson & Roby J. J. concur & Henley & Wiley J. J. Dissent.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed *at the cost of the* appellant

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the appellee *recover of the* appellant *the sum of* Thirty and 30/100 Dollars *for his costs and charges in this behalf expended* ($30.30)

And afterwards, to-wit: On the 20th day of June, 1902, the Supreme Court being fully advised denied appellants petition to transfer to the Supreme Court.

THE STATE OF INDIANA,

APPELLATE COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio Clerk of the Appellate Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Appellate Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Appellate Court, at the City of Indianapolis, this 21st *day of* June *190*2

R. A. Brown C. A. C.

R.

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, November Term, 1901.

On the 30th *day of* January, *1902, being the* 58th *Judicial day of said November Term, 1901.*

HON. DANIEL W. COMSTOCK, CHIEF JUDGE.
HON. FRANK S. ROBY,
HON. ULRIC Z. WILEY, } JUDGES.

No. 3480

IN THE CASE OF

Samuel A. Hogue, et al.

vs.

State ex rel., Board of School Commissioners, etc.

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Roby, *J.*

R.

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, May Term, 19

On the 12th *day of* November, *1901, being the* 146th *Judicial day of said May Term, 1901.*

HON. ULRIC Z. WILEY, PRESIDING JU
HON. FRANK S. ROBY,
HON. DANIEL W. COMSTOCK, } JU

No. 4016

IN THE CASE OF

David C. Breedlove

vs.

Mayne Breedlove.

APPEAL FROM THE Hendricks Circu COURT.

Came the parties by their Attorneys, and the Court being sufficie advised in the premises gave the following opinion and judgment pronou by Roby, *J.*

THE STATE OF INDIANA,

In the Appellate Court, November Term, 1902.

On the 8th *day of* January *1903, being the* 40 *Judicial day of said November Term, 1902.*

4219

HON. FRANK S. ROBY, CHIEF JUDGE.
HON. WOODFIN D. ROBINSON,
HON. WILLIAM J. HENLEY,
HON. JAMES B. BLACK,
HON. DANIEL W. COMSTOCK,
HON. ULRIC Z. WILEY. } JUDGES.

IN THE CASE OF

MARY A. SPEARS ADMRX.

vs

ESTATE of JAMES W. THOMPSON, Dec'd.

APPEAL FROM THE

HENDRICKS Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises gives its opinion and judgment as follows, pronounced by Roby *C.J.*

THE STATE OF INDIANA.

In the Appellate Court, DIVISION NUMBER TWO, May Term, 1903.

On the 14th *day of* October *1903, being the* 123rd *Judicial day of said May Term, 1903.*

No. 4789

HON. DANIEL W. COMSTOCK, PRESIDING.
HON. ULRIC Z. WILEY,
HON. FRANK S. ROBY. } JUDGES.

IN THE CASE OF

Union National Bank of Muncie, Indiana,

vs.

Franklin School Township of Hendricks County, Indiana, et al.

APPEAL FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises gives its opinion and judgment as follows, pronounced by Wiley, *J.*

THE STATE OF INDIANA.

In the Appellate Court, DIVISION NUMBER TWO, May Term, 1903.

On the 8th *day of* October *1903, being the* 118th *Judicial day of said May Term, 1903.*

No. 4571

HON. DANIEL W. COMSTOCK, PRESIDING.
HON. ULRIC Z. WILEY,
HON. FRANK S. ROBY. } JUDGES.

IN THE CASE OF

Lincoln School Township

vs.

The American School Furniture Company.

APPEAL FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises gives its opinion and judgment as follows, pronounced by Wiley *J.*

THE STATE OF INDIANA.

In the Appellate Court, DIVISION NUMBER TWO

On the 22nd *day of* June, *1904, b*
Judicial day of said May Term, 1904.

No. 4661.

HON. FRAN
HON. DANI
HON. ULRIC

IN THE CASE OF

George Short

vs.

Aaron Acton.

APPEAL

Hendrick
CO

Come the parties by their Attorneys, and the Cou advised in the premises gives its opinion and judgment as by Roby, P. J.

Per-

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, November Term, 1904.

On the 24th *day of* February, 1905, *being the* 77th *Judicial day of said November Term, 1904.*

HON. DANIEL W. COMSTOCK, CHIEF JUDGE.
HON. ULRIC Z. WILEY,
HON. FRANK S. ROBY, } JUDGES.

No. 4965.

IN THE CASE OF

Lincoln School Township of Hendricks County

vs.

The Union Trust Company of Indianapolis.

APPEAL FROM THE Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises gives its opinion and judgment as follows, pronounced by Roby, *J.*

Petition for rehearing overruled May 11, 1905.

Opinion by Roby, J.

THE STATE OF INDIANA,

In the Appellate Court, May Term, 1908.

On the 23rd *day of* June, *1908, being the* 26th *Judicial day of said May Term, 1908.*

HON. JOSEPH M. RABB, CHIEF JUDGE.
HON. WARD H. WATSON,
HON. CASSIUS C. HADLEY,
HON. DAVID A. MYERS,
HON. DANIEL W. COMSTOCK,
HON. FRANK S. ROBY, } JUDGES.

No. 6360.

IN THE CASE OF

James A. Clay, Treasurer, etc.

vs.

The Wrought Iron Range Company.

APPEALED FROM THE Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by Comstock, J. Rabb, C. J., Myers, Hadley and Watson, J.J. concur. Roby, J. absent.

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, November Term, 1905.

On the 10th *day of* January, 1906, *being the* 39th *Judicial day of said November Term, 1905.*

HON. FRANK S. ROBY, CHIEF JUDGE.
HON. DANIEL W. COMSTOCK,
HON. ULRIC Z. WILEY, } JUDGES.

No. 5590.

IN THE CASE OF

Amos D. Mc Cormick, et al

vs.

William Higgins, Admr.

APPEAL FROM THE Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises gives its opinion and judgment as follows, pronounced by Roby, C. J.

THE STATE OF INDIANA,

In the Appellate Court, November Term, 1909.

On the 13th *day of* May (1910) *, being the* 149th
Judicial day of said November Term, 1909.

HON. DAVID A. MYERS, CHIEF JUDGE.
HON. DANIEL W. COMSTOCK,
HON. FRANK S. ROBY,
HON. JOSEPH M. RABB,
HON. WARD H. WATSON,
HON. CASSIUS C. HADLEY. } JUDGES.

No. 6864

IN THE CASE OF

American Car and Foundry Company.

vs.

William A. Smock

APPEALED FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Roby, J.- Myers, C. J., Watson, & Comstock J. J. Concur.
Rabb, P. J. dissents.

1910- Nov. 29, appellant's petition for rehearing overruled

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, November Term, 1905.

On the 7th *day of* March, 1906, *being the* 87th
Judicial day of said November Term, 1905.

HON. FRANK S. ROBY, CHIEF JUDGE.
HON. DANIEL W. COMSTOCK,
HON. ULRIC Z. WILEY. } JUDGES.

No. 5649.

IN THE CASE OF

Terre Haute and Indianapolis Railroad Company

vs.

Del Pritchard.

APPEAL FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises gives its opinion and judgment as follows, pronounced by

Comstock, J.

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, November Term, 1908.

On the 18th *day of* February 1909 *, being the* 76th
Judicial day of said November Term, 1908.

HON. DANIEL W. COMSTOCK, PRESIDING JUDGE.
HON. FRANK S. ROBY,
HON. JOSEPH M. RABB, } JUDGES.

No. 6604.

IN THE CASE OF

William W. Spencer, et. al.

vs.

Carrie B. Smith

APPEALED FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Roby, J.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed at the cost of the appellant all of which is ordered to be certified to said Court,

And it is further considered by the Court, that the appellee recover of the appellant the sum of —$29.80— for her costs and charges in this behalf expended

THE STATE OF INDIANA }
APPELLATE COURT }

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court, and ex-officio Clerk of the Appellate Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Appellate Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Appellate Court, at the City of Indianapolis, this 14th day of February 1910

Edward V. Fitzpatrick, C. A. C.

Pet. R

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, May Term, 1909.

On the 27th day of October, 1909, being the 135th Judicial day of said May Term, 1909.

HON. FRANK S. ROBY, PRESIDING JUDGE.
HON. JOSEPH M. RABB, } JUDGES.
HON. DANIEL W. COMSTOCK, }

No. 6729.

IN THE CASE OF

Indiana Union Traction Company.

vs.

Mayme Ohne

APPEALED FROM THE Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Rabb, J.

R

THE STATE OF INDIANA

In the Appellate Court, DIVISION NUMBER TWO, November Term, 1910.

On the 8th day of March, 1911, being the ~~89th~~ 87 Judicial day of said November Term, 1910.

HON. MOSES B. LAIRY, Presiding Judge.
HON. JOSEPH G. IBACH, } Judges.
HON. ANDREW A. ADAMS, }

No. 7169.

IN THE CASE OF

John Broderick, by Mary Broderick, His Next Friend, Appellant.

vs.

The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, Appellee.

APPEALED FROM THE Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Ibach, J.

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, November Term, 1911.

On the 17th *day of* May, 1912, *being the* 149th *Judicial day of said November Term, 1911.*

HON. JOSEPH G. IBACH, Presiding Judge.
HON. ANDREW A. ADAMS, } Judges.
HON. MOSES B. LAIRY, }

No. 8197

IN THE CASE OF

Virgil Patterson

vs.

Middle School-Township, Hendricks County, Indiana.

APPEALED FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Adams, J.

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, November Term, 1911.

On the 26th *day of* April, 1912, *being the* 131st *Judicial day of said November Term, 1911.*

HON. JOSEPH G. IBACH, Presiding Judge.
HON. ANDREW A. ADAMS, } Judges.
HON. MOSES B. LAIRY, }

No. 7570

IN THE CASE OF

Joel T. Barker, et al

vs.

Wm. R. McClelland, et al

APPEALED FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Ibach, P.J.

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER ONE, November Term, 1911.

On the 20th *day of* February, 1912, *being the* 74th *Judicial day of said November Term, 1911.*

HON. EDWARD W. FELT, Chief Judge.
HON. MILTON B. HOTTEL, } Judges.
HON. DAVID A. MYERS, }

No. 7506.

IN THE CASE OF

Belle M. Smith

vs.

Phillip McDonald

APPEALED FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Felt, C. J.

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER ONE, November Term, 1911.

On the 13th *day of* March, 1912, *being the* 93rd
Judicial day of said November Term, 1911.

HON. EDWARD W. FELT, Chief Judge.
HON. MILTON B. HOTTEL, } Judges.
HON. DAVID A. MYERS,

No. 7499

IN THE CASE OF

Miami Coal Company

vs.

John Gardner

APPEALED FROM THE Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Hottel, J.

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER ONE, November Term, 1911.

On the 28th *day of* November, 1911, *being the* 2nd
Judicial day of said November Term, 1911.

HON. EDWARD W. FELT, Chief Judge.
HON. MILTON B. HOTTEL, } Judges.
HON. DAVID A. MYERS,

No. 7348.

IN THE CASE OF

Charles F. Martin,
Guardian of Nancy Groover
deceased

vs.

Harvey M. Caldwell,
et. al.

APPEALED FROM THE Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Hottel, J.

CH 41

Item D05 Report - condition of County Jail

1869
1870
1881
1882
1892 (2)
1894
1895

State of Indiana Hendricks County, ss.

Whereas, on this 12th Judicial day of the November Term 1869 of the Hendricks Circuit Court, being the 20th day of November 1869 said Court among other things following proceedings were had in said Court- to wit:

Came now the Jurors of the Grand Jury and present their report of their inspection and condition of the County jail, as follows, to wit:

Hendricks Circuit Court Nov. Term 1869.

To the Hon. Cyrus C. Hines, Judge &c.

Sir:

In obedience to your special charge and direction, We have carefully examined the County jail, with respect to its present condition, the manner in which kept, and the sufficiency of the same for the safe keeping of prisoners &c and would respectfully submit this our report.

We found the jail in good condition as to cleanliness; the prisoners healthy, and accommodations for personal comfort ample.

We would recommend that the board of County Commissioners order some changes made in the manner of fastening the iron bars on top of the inner cells, they are now fastened to their places by bolts and screws— we deem them

Grand jury room November 26th 1870

We the Grand jury empannelled and sworn for the fall term of the Circuit Court of Hendricks County, did on the 25th day of November 1870, it being the eleventh day of the Term of the Circuit Court for this judicial district, in a body (being accompanied by the Bailiff of said Grand jury) proceed to the Jail of said Hendricks County- and did then and there make a thorough examination of the Jail of said Hendricks County in compliance with the Statute, in such cases made and provided.

We the said Grand jury, do therefore ask leave to make the following report.

That so far as the keeping of said jail is concerned, we find all thing in good order as to cleanliness, and all other matters that pertain to comforts and health. and further would take pleasure in commending the Sheriff of our County for his care and diligence in the discharge of his duty as jailor.

We also find, and would earnestly report the fact, that the jail is in an unsafe, ~~condition~~ and insecure condition, and would recommend such repairs as would put said jail in the condition-

insecure, and would recommend the substitution of rivets in their stead.

Respectfully Submitted

Edward T. Doyal Foreman.

Whereupon the Court orders and directs the Clerk of this Court to make out and transmit a Copy of the above report to the Board of Commissioners of Hendricks County at their next term.

State of Indiana }
Hendricks County } Ss.

I Nicholas T. Hadley Clerk of the Hendricks Circuit Court hereby certify the foregoing to be a true Copy of the report filed in said Court by the Grand Jurors at the November term of said Court 1869. together with the order of the Court thereon,

In Testimony whereof I hereto set my hand and affix the seal of said Court at Danville this 2nd day of December 1869.

N. T. Hadley Clerk.

= contemplated in the erection of such buildings.

All of which we said Grand jury would most earnestly report with the hope, and expectation that the necessary steps will immediately be taken to make said jail such as it should be.

E. K. Vaughan

Foreman

To his Honor the Judge of the H.C.C.C.

In obedience to the requirements of the Statutes of the State of Indiana, We the grand jury of the September term of Court 1881 have examined into the condition and management of the County prison and would report that we found every thing connected with the keeping of the prison in good condition

J. K. Moore
Foreman

March 24th 82 Met pursuant to adjournment, at 8 o'clock A.M. and repaired to the jail to inspect the same. We found no inmates, We also report the same to be in good condition at present.

Thos J. Jessup Foreman

State of Indiana, Hendricks County, ss:

Report of Grand Jury.

vs.

HENDRICKS CIRCUIT COURT,

May Term, 1897

BE IT REMEMBERED, That on the 28th day of May, 1897, the same being the 24th judicial day of the May Term, 1897, of the Hendricks Circuit Court, begun, held and continued at the Court House in Danville, commencing on Monday, the 2nd day of May 1897, before the Honorable John V. Hadley, Judge of said Court, the following judgment and decree was rendered in the above entitled cause, to-wit:

To The Honorable John V Hadley Judge of the Hendricks Circuit Court

In accordance with your instructions We the Grand Jurors for the January Term of the Hendricks Circuit Court have inspected the County Asylum for the poor and find that it is in a clean and well kept condition in Every particular

The inmates are all well pleased and well satisfied with the Care and Treatment received from The Superintendant Mr Parker and wife We Especially commend them for Carpeting the Private rooms of the inmates Making it more home like. and comfortable

We have ~~also~~ also inspected the County Jail and recommend that you Order the County Commissioners to Make some necessary repairs as to the water works. We found the pipes frozen which should be remedied if possible. Otherwise we find Every thing in good Order

James E Hunstar
Foreman

38

"State of Indiana, County of Hendricks:

To the Honorable John V. Hadley,

Judge of the Hendricks C. C.

We, the Grand Jury for the May Term of the Hendricks C. C., have visited the County Poor Farm and County Jail, as we were instructed, and have the following report to make:

Concerning the County Poor Farm we have no complaint to make in any way as to its present management. So far as we were able to see, it is kept in a clean condition and in good order.

We found the floor in the hall worn through in places, and consider it in need of repair.

Our visit to the County Jail has resulted in our disapproval of the present system of water works. Under the present circumstances it is impossible to keep the sanitary condition of the Jail as it should be.

We understand that every Grand Jury for the last two years have made a like report, with no effect, and we would like to add that it is nothing short of a disgrace to the County for such a condition of affairs to continue. Besides, it works quite a hardships on the Sheriff and endangers the health of the prisoners.

State of Indiana }
County of Hendricks } S.S.

To the Honorable Judge of the Hendricks County Judical Circuit.

The Grand Jury for the September term of Court 1894 beg leave to submit the following report. Having made our visit to the County Jail and the Poor Department we found in good repair but would urge upon the County Commissioners to see that the beds and bedding be made better for they are not fit for a person to lay on. The ventilation under the floor is not sufficient to protect good health for the floor will mildew and not dry out from one scrubbing to an other. The dwelling department needs over hauling, especially the kitchen, dining room and office needs repapering and the office plastering patched for it is in splendid shape for harboring bugs that detend people can not tolerate. We find Mr. Taylor, sheriff, a genial host and the inmates well cared for and every thing nice & clean.

Mercer Stuart,
Foreman.

State of Indiana }
County of Hendricks } S.S.

To the Honorable Judge
of the Hendricks County Judicial
Circuit:-

The Grand Jury for the
September term of Court 1894
beg leave to submit the following
report. Having made an visit
to the County Jail and the Prison
Department we found in good repair
but would urge upon the County
Commissioners to see that the beds
and bedding be made better for
they are not fit for a person to
lay on. The ventilation under the
floor is not sufficient to produce
good health for the floor will sweat
dew and not dry but from one
scrubbing to an other. The dwelling
department need over hauling
especially the kitchen, dining room
and office needs repapering and the
office plastering patched for it is
in splendid shape for harboring
bugs that defend people can not
tolerate. We find Mr. Taylor
sheriff a genial host and the
inmates well cared for and every
thing nice & clean.

Mercer Stuart,
Foreman.

To The Honorable John V. Hadley
Judge Hendricks Circuit Court.

We the Grand Jury of Hendricks
Circuit Court for September
Term 1892 would respectfully
report, that according to your
instructions we have
visited the County Jail ~~and~~
and as far as we were able
to observe found the same
in good condition.

We have also visited
the County poor farm
and find that the wash
founder is in such bad
repair as to command the
attention of the proper
officers. We find this place
in an orderly, clean and
well kept condition and
every thing highly
satisfactory.

Respectfully Submitted
This 15 day of September
1892.

Thomas M Reynolds
Foreman

To The Honorable John V Hadley
Judge of the Hendricks Circuit Court

In accordance with your
instructions We the Grand Jurors
for the January Term of the Hendricks
Circuit Court have inspected the
County Asylum for the poor and
find that it is in a clean and well
kept condition in Every particular.

The inmates are all well
pleased and well satisfied with the
Care and treatment received from
The Superintendent Mr Parker and
wife We Especially Commend them for
Carpeting the Private rooms of the inmates
Making it more home like. and comfortable

We have ~~also~~ also inspected the
County Jail and recommend that you
Order the County Commissioners to Make
some necessary repairs as to the water
works. We found the pipes frozen which
should be remedied if possible.
Otherwise we find Every thing in
good Order.

James E Hunsicker
Foreman

CK 41

Item A02 Results of Hearing

1889
1899
1900
1901
1902
1903
1904
1905
1906
1908
1909
1910
1911
1912

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, November Term, 1911.

PRESENT:

Hon. Joseph G. Ibach, Presiding Judge
Hon. Andrew A. Adams Hon. Moses B. Lairy

IN THE CASE OF

Joel T. Barnes Etal

VS.

William R. McClelland

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, J. FRED FRANCE, Clerk of the Supreme Court, and ex officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 26th *day of* April *1912*

J. Fred France
Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number One, November Term, 1911.

PRESENT:

Hon. Edward W. Felt, Chief Judge
Hon. Milton B. Hottel Hon David A. Myers

IN THE CASE OF

Virgil Patterson

VS.

Middle School Township of Hendricks County

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number One, has on this day Reversed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, J. FRED FRANCE, Clerk of the Supreme Court, and ex officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 17th *day of* May *1912*

J. Fred France
Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number One, November Term, 1911.

PRESENT:

Hon. Edward W. Felt, Chief Judge

Hon. Milton B. Hottel Hon David A. Myers

IN THE CASE OF

The C. C. & St. L. Ry Co.

VS.

James T. Griswold

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number One, has on this day Affirmed (Conditionally) the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, J. FRED FRANCE, Clerk of the Supreme Court, and ex officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 27th day of March 1912

J. Fred France

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number One, November Term, 1911.

PRESENT:

Hon. Edward W. Felt, Chief Judge

Hon. Milton B. Hottel Hon David A. Myers

IN THE CASE OF

The Miami Coal Co.

VS.

John Gardner

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number One, has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, J. FRED FRANCE, Clerk of the Supreme Court, and ex officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 13th day of March 1912

J. Fred France

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number One, November Term, 1911.

PRESENT:

Hon. Edward W. Felt, Chief Judge

Hon. Milton B. Hottel Hon David A. Myers

IN THE CASE OF

Bella McDonald Smith

VS.

Phillip McDonald

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number One, has on this day Reversed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, J. FRED FRANCE, Clerk of the Supreme Court, and ex officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 20th day of February 1912

J. Fred France

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number One, November Term, 1911.

PRESENT:

Hon. Edward W. Felt, Chief Judge

Hon. Milton B. Hottel — Hon David A. Myers

IN THE CASE OF

Advance Veneer & Lumber Co

VS.

Charles P. Hornaday

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number One, has on this day Affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, J. FRED FRANCE, Clerk of the Supreme Court, and ex officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 13th *day of* December *1911*

J. Fred France

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number One, November Term, 1911.

PRESENT:

Hon. Edward W. Felt, Chief Judge

Hon. Milton B. Hottel — Hon David A. Myers

IN THE CASE OF

Chas. F. Martin Gdn

VS.

Harvey M. Caldwell Etal

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number One, has on this day Affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, J. FRED FRANCE, Clerk of the Supreme Court, and ex officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 28th *day of* November *1911*

J. Fred France

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, May Term, 1911.

PRESENT:

Hon. Moses B. Lairy, Chief Judge

Hon. Joseph G. Ibach — Hon. Andrew A. Adams

IN THE CASE OF

Charles H. H. Sherman

VS.

Indpls. Frac & Ferm Co.

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Reversed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, J. FRED FRANCE, Clerk of the Supreme Court, and ex officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 17th *day of* November *1911.*

J. Fred France

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, November Term, 1910.

PRESENT:

Hon. Moses B. Lairy, Presiding Judge

Hon. Joseph G. Ibach **Hon. Andrew A. Adams**

IN THE CASE OF

John Broderick

VS.

P. C. C. & St. L. Railway Co.

APPEALED FROM THE

7169

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, J. FRED FRANCE, Clerk of the Supreme Court, and ex officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 8th *day of* March *1911.*

J. Fred France

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, November Term, 1909.

PRESENT:

Hon. Joseph M. Rabb, Presiding Judge.

Hon. Daniel W. Comstock. Hon. Frank S. Roby.

IN THE CASE OF

American Car and Foundry Co.

VS.

William A. Smock

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said court, this 13th *day of* May *1910.*

Edward V. Fitzpatrick

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, November Term, 1909.

PRESENT:

Hon. Joseph M. Rabb, Presiding Judge.

Hon. Daniel W. Comstock. Hon. Frank S. Roby.

IN THE CASE OF

Vandalia R. R. Co.

VS.

Leonard Keys, By his next friend Jerry Keys

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said court, this 10th *day of* March *1910*

Edward V. Fitzpatrick

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, November Term, 1909.

PRESENT:

Hon. Joseph M. Rabb, Presiding Judge.

Hon. Daniel W. Comstock. Hon. Frank S. Roby.

IN THE CASE OF

Julius Kaminsky, et al

VS.

The Hoosier Construction Co.

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day dismissed the appeal under Rule #36 ~~*the judgment of the Court below*~~ *in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said court, this 10th *day of* January *1910.*

Edward V. Fitzpatrick

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, November Term, 1909.

PRESENT:

Hon. Joseph M. Rabb, Presiding Judge.

Hon. Daniel W. Comstock. Hon. Frank S. Roby.

IN THE CASE OF

The Indianapolis & Martinsville Rapid Transit Company VS. Hallie Walsh

APPEALED FROM THE Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said court, this 14th day of December 1909

Edward V. Fitzpatrick
Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, May Term, 1909.

PRESENT:

Hon. Frank S. Roby, Presiding Judge.

Hon. Joseph M. Rabb. Hon. Daniel W. Comstock.

IN THE CASE OF

Indiana Union Traction Company VS. Mayme Ohr

APPEALED FROM THE Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 27th day of October 1909.

Edward V. Fitzpatrick
Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, May Term, 1909.

PRESENT:

Hon. Frank S. Roby, Presiding Judge.

Hon. Joseph M. Rabb. Hon. Daniel W. Comstock.

IN THE CASE OF

Margaret Dondono VS. City of Indianapolis

APPEALED FROM THE Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Reversed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 13th day of October 1909.

Edward V. Fitzpatrick
Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, May Term, 1909

PRESENT:

Hon. Frank S. Roby, Presiding Judge.

Hon. Joseph M. Rabb. Hon. Daniel W. Comstock.

IN THE CASE OF

Thomas Madden Son and Company. VS. Ralph Wilcox, by next friend

APPEALED FROM THE Hendricks Circu COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Numbe Two, has on this day Reversed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court, and ex-officio cler of the Appellate Court of said State, certify that the above is a tru statement of the decision of said Appellate Court in the above entitle cause.

WITNESS, my name and the seal of said Court, thi 25th day of June 1909.

Edward V. Fitzpatrick
Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, May Term, 1908.

PRESENT:

Hon. Joseph M. Rabb, Chief Judge.

Hon. Ward H. Watson. Hon. David A. Myers.

Hon. Cassius C. Hadley. Hon. Daniel W. Comstock.

Hon. Frank S. Roby.

IN THE CASE OF

James A. Clay, Treas. &c

VS.

Wrought Iron Range Co.

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State has on this day affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 23 *day of* June *1908.*

Edward V. Fitzpatrick

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, November Term, 1907.

PRESENT:

Hon. Frank S. Roby, Chief Judge.

Hon. Joseph M. Rabb. Hon. Daniel W. Comstock.

IN THE CASE OF

James O. Vannice

No. 6155

APPEALED FROM THE

VS.

James A. Dungan, admr. etal.

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 10th *day of* January *1908.*

Edward V. Fitzpatrick

Clerk Appellate Court.

THE STATE OF INDIANA

In the Appellate Court, Division Number Two, November Term, 1906.

PRESENT:

Hon. Ulric Z. Wiley, Presiding Judge.
Hon. Frank S. Roby. Hon. Daniel W. Comstock.

IN THE CASE OF

Laura F. Sturms et al

VS.

Emma McHaffie et al

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 27 *day of* Nov *1906.*

R. A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA

In the Appellate Court, Division Number Two, May Term, 1906.

PRESENT:

Hon. Daniel W. Comstock, Presiding Judge.
Hon. Ulric Z. Wiley. Hon. Frank S. Roby.

IN THE CASE OF

Indianapolis & Martinsville Rapid Transit Co

VS.

John Le Ruder

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day dismissed the appeal from *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 9 *day of* Octob *1906.*

R. A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA

In the Appellate Court, Division Number Two, November Term, 1905.

PRESENT:

Hon. Frank S. Roby, Chief Judge.
Hon. Daniel W. Comstock. Hon. Ulric Z. Wiley.

IN THE CASE OF

Bd. Comrs of Hendricks Co.

VS.

Henry F. Eaton

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 15th *day of* May *1906.*

R. A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA

In the Appellate Court, Division Number Two, November Term, 1905.

PRESENT:

Hon. Frank S. Roby, Chief Judge.
Hon. Daniel W. Comstock. Hon. Ulric Z. Wiley.

IN THE CASE OF

Ellis M. Weaver

VS.

Reuben Webster, etal

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 19th day of April 1906.

R. A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA

In the Appellate Court, Division Number Two, November Term, 1905.

PRESENT:

Hon. Frank S. Roby, Chief Judge.
Hon. Daniel W. Comstock. Hon. Ulric Z. Wiley.

IN THE CASE OF

T. H. & I. RR. Co.

VS.

Del Pritchard

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 7 day of March 1906

Robert A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA

In the Appellate Court, Division Number Two, November Term, 1905.

PRESENT:

Hon. Frank S. Roby, Chief Judge.
Hon. Daniel W. Comstock. Hon. Ulric Z. Wiley.

IN THE CASE OF

I. T. M. Rapid Transit Co.

VS.

John C. Reeder, admr.

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed. the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 1st day of February 1906.

R. A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA

In the Appellate Court, Division Number Two, November Term, 1905.

PRESENT:

Hon. Frank S. Roby, Chief Judge.
Hon. Daniel W. Comstock. Hon. Ulric Z. Wiley.

IN THE CASE OF

Amos D. McCormick, etal

VS.

William Higgins, Admr.

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Reversed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 10th day of January 1906

R. A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA

In the Appellate Court, Division Number Two, May Term, 1905.

PRESENT:

Hon. Ulric Z. Wiley, Chief Judge.
Hon. Frank S. Roby. Hon. Daniel W. Comstock.

IN THE CASE OF

Lucie A. Barnett

VS.

Mary E. Thomas et al

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Reversed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 24 *day of* May *1905.*

R. A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA.

In the Appellate Court, Division Number Two, November Term, 1904.

PRESENT:

Hon. Daniel W. Comstock, Chief Judge.
Hon. Ulric Z. Wiley. Hon. Frank S. Roby.

IN THE CASE OF

William Townsend et al

VS.

Dora Hensley

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 11 *day of* May, *1905.*

R. A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA.

In the Appellate Court, Division Number Two, November Term, 1904.

PRESENT:

Hon. Daniel W. Comstock, Chief Judge.
Hon. Ulric Z. Wiley. Hon. Frank S. Roby.

IN THE CASE OF

Lincoln School Township of Hendricks County

VS.

Union Trust Company of Indianapolis

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 24 *day of* Feby *1905.*

R. A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA.

In the Appellate Court, Division Number Two, November Term, 1904.

PRESENT:

Hon. Daniel W. Comstock, Chief Judge.

Hon. Ulric Z. Wiley. Hon. Frank S. Roby.

IN THE CASE OF

Raymond R. McDaniel
et al

vs.

Cyrus Axtom, et al

APPEALED FROM THE

Hendricks Circuit

COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 8" *day of* Dec. *190*4.

R. A. Brown

Clerk Appellate Court.

THE STATE OF INDIANA.

In the Appellate Court, Division Number Two, May Term, 1904.

PRESENT:

Hon. Frank S. Roby, Presiding Judge.

Hon. Daniel W. Comstock. Hon. Ulric Z. Wiley.

IN THE CASE OF

George Short

vs.

Aaron Acton

APPEALED FROM THE

Hendricks Circuit

COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Reversed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 22 *day of* June *1904.*

Robert A. Brown

Clerk Appellate Court.

THE STATE OF INDIANA.

In the Appellate Court, Division Number Two, November Term, 1903.

PRESENT:

Hon. Ulric Z. Wiley, Presiding Judge.

Hon. Frank S. Roby. Hon. Daniel W. Comstock.

IN THE CASE OF

C. C. C. & St. L.
Ry. Co.

vs.

Leonia Lindsay
Admts.

APPEALED FROM THE

Hendricks Circuit

COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Reversed *the Judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 11" *day of* March *190*4.

R. A. Brown

Clerk Appellate Court.

THE STATE OF INDIANA.

In the Appellate Court, Division Number Two, May Term, 1903.

PRESENT:

Hon. Daniel W. Comstock, Presiding Judge.
Hon. Ulric Z. Wiley. Hon. Frank S. Roby.

IN THE CASE OF

Eldridge R. Ellis, Admr.

VS.

Ella Baird

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State Division Number Two, has on this day Reversed the Judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 17 day of June 1903.

Robert A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, May Term, 1902.

PRESENT:

Hon. Ulric Z. Wiley, Chief Judge.
Hon. Frank S. Roby. Hon. Daniel W. Comstock.

IN THE CASE OF

Asbury Hollingsworth

VS.

John T. Hollingsworth

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State Division Number Two, has on this day Dismissed the appeal from the Judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 9" day of Oct. 1902.

R. A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, May Term, 1902.

PRESENT:

Hon. Ulric Z. Wiley, Chief Judge.
Hon. Frank S. Roby. Hon. Daniel W. Comstock.

IN THE CASE OF

Georgiana Bowen, Admrx.

VS.

Robert L. O'Hair, Gdn.

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State Division Number Two, has on this day Reversed the Judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 26 day of June 1902.

R. A. Brown
Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, November Term, 1901.

PRESENT:

Hon. Daniel W. Comstock, Chief Judge.

Hon. Frank S Roby. Hon. Ulric Z. Wiley.

IN THE CASE OF

Samuel A Hogue et al

VS.

State ex rel Board of School Commrs

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State Division Number Two, has on this day Affirmed *the Judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 29 *day of* April *190*2

R A Brown

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, November Term, 1901.

PRESENT:

Hon. Daniel W. Comstock, Chief Judge.

Hon. Frank S Roby. Hon. Ulric Z. Wiley.

IN THE CASE OF

Guilford School Township

VS.

Alice E Roberts

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State Division Number Two, has on this day Reversed *the Judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 7 *day of* February *190*2

Robert A Brown

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, November Term, 1901.

PRESENT:

Hon. Daniel W. Comstock, Chief Judge.

Hon. Frank S Roby. Hon. Ulric Z. Wiley.

IN THE CASE OF

Samuel A Hogue et al

VS.

State of Indiana Ex rel Board of School Commissioners.

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State Division Number Two, has on this day Affirmed. *the Judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 28 *day of* January *190*2

Robert A Brown

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, May Term, 1899.

PRESENT:

Hon. Daniel W. Comstock, Chief Judge.

Hon. Ulric Z. Wiley. Hon. William J. Henley.

Hon. Woodfin D. Robinson. Hon. James B. Black.

IN THE CASE OF

Florence L. Bray

VS.

Thomas J. Miles Exr.

APPEALED FROM THE

Hendricks Circuit

COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State has on this day

Reversed *the judgment*

of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this

30 *day of* June *1899.*

Robert A. Brown

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, November Term, 1897.

PRESENT:

Hon. Woodfin D. Robinson, Chief Judge.

Hon. William J. Henley. Hon. Daniel W. Comstock.

Hon. James B. Black. Hon. Ulric Z. Wiley.

IN THE CASE OF

Board Commissioners of Hendricks Co. etc

VS.

John W. Trotter

APPEALED FROM THE

Hendricks Circuit

COURT.

To the Clerk of the Circuit Court of Hendricks **County, Greeting:**

You are hereby notified that the Appellate Court of said State has on this day

Affirmed *the judgment*

of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ALEXANDER HESS, Clerk of the Supreme Court, and ex-officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this

29 *day of* Mch *189*8

Alex Hess

Clerk Appellate Court.

C

THE STATE OF INDIANA,

IN THE APPELLATE COURT.

In the case of

Levi A Barnett

vs.

William T Lucas

No. 3472

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13, 1885, and the rules of the Appellate Court, adopted in relation thereto.

WITNESS my hand and the seal of said Court, this 4 day of July, 1900.

R A Brown
Clerk Appellate Court.

THE STATE OF INDIANA,

IN THE APPELLATE COURT.

In the case of

Samuel A Hogue et al

vs.

State ex rel Board of School Commrs.

No. 3480

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13, 1885, and the rules of the Appellate Court, adopted in relation thereto.

WITNESS my hand and the seal of said Court, this 11 day of July, 1900.

R A Brown
Clerk Appellate Court.

THE STATE OF INDIANA,

IN THE APPELLATE COURT.

In the case of

Guilford School Township

vs.

Alice E. Roberts

No. 3543.

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13, 1885, and the rules of the Appellate Court, adopted in relation thereto.

WITNESS my hand and the seal of said Court, this 17 day of September, 1900.

Robert A Brown
Clerk Appellate Court.

THE STATE OF INDIANA,

IN THE APPELLATE COURT.

In the case of

Samuel A Hogue et al

vs.

State ex rel Board of School Commissioners

No. 3593.

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13, 1885, and the rules of the Appellate Court, adopted in relation thereto.

WITNESS my hand and the seal of said Court, this 14 day of December, 1900.

R A Brown
Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, November Term, 1901.

PRESENT:

Hon. Daniel W. Comstock, Chief Judge.

Hon. Ulric Z. Wiley — Hon. William J. Henley.

Hon. Woodfin D. Robinson. — Hon. Frank S. Roby.

Hon. James B. Black.

IN THE CASE OF

Citizens Street R. R. Co.

VS.

Samuel Heath

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 26 day of November 1901.

R A Brown

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, May Term, 1901.

PRESENT:

Hon. Ulric Z. Wiley, Presiding Judge.

Hon. Frank S. Roby. — Hon. Daniel W. Comstock.

IN THE CASE OF

David C. Prudlow

VS.

Wayne Prudlow

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed the Judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 12" day of Dec. 1901.

R A Brown

Clerk Appellate Court.

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, May Term, 1901.

PRESENT:

Hon. Ulric Z. Wiley, Presiding Judge.

Hon. Frank S. Roby. — Hon. Daniel W. Comstock.

IN THE CASE OF

Levi A. Barnett

VS.

William F. Lucas.

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Affirmed. the Judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 22 day of October 1901.

Robert A Brown

Clerk Appellate Court.

THE STATE OF INDIANA,

IN THE APPELLATE COURT.

In the case of

Mary A. Astom

vs.

Douglas Hall, et al

No. 4135.

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13th, 1885, and the rules of the Appellate Court in relation thereto.

WITNESS my hand and the seal of said Court, this 2"

day of Oct. *190*1.

R. A. Brown

Clerk Appellate Court.

THE STATE OF INDIANA,

IN THE APPELLATE COURT.

In the case of

Asbury Hollingsworth

vs.

John T. Hollingsworth

No. 4058.

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13th, 1885, and the rules of the Appellate Court in relation thereto.

WITNESS my hand and the seal of said Court, this 27"

day of July *190*1.

R. A. Brown

Clerk Appellate Court.

In the Appellate Court, from ..... County.

Spears, Admx

vs.

Estate Thompson

No. 4219

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by law, and the rules of the Court, adopted in relation thereto.

Indianapolis, Dec 6 1901 ROBERT A. BROWN, Clerk.

FILED DEC 9 1901 Evans & Duncan C.C. Clerk Hendricks

THE STATE OF INDIANA,

In the Appellate Court, Division Number Two, November Term, 1900.

PRESENT:

Hon. Daniel W. Comstock, Presiding Judge.

Hon. Ulric Z. Wiley. Hon. Frank S. Roby.

IN THE CASE OF

Augustine C. Stout et al

vs.

Spears, Scott & Leo.

APPEAL FROM THE Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State, Division Number Two, has on this day Reversed the Judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court, and ex-officio Clerk of the Appellate Court of said State, certify that the above is a true statement of the decision of said Appellate Court in the above entitled cause.

WITNESS my hand and the seal of said Court, this 27th day of April 1901.

R. A. Brown

Clerk Appellate Court.

THE STATE OF INDIANA,

IN THE APPELLATE COURT.

In the case of

Georgiana Bowen

vs. Admx.

No. 3625

Robert L. O'Hair, Adm.

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13th, 1885, and the rules of the Appellate Court in relation thereto.

WITNESS my hand and the seal of said Court, this 9th day of February 1901

R A Brown

Clerk Appellate Court.

CH41

Item BOI affidavit

1853
1861
1870 (2)
1871

State of Indiana } In the Court of
Hendricks County } Common pleas

Henry Horn vs Edwin S. Meek & Simon Rammel Judgment on Transcript from Jesse S Woodard docket for Thirty five dollars and 30 cents Joseph S. Miller agent for the said Henry Horn says upon his oath that the Judgment is ~~unpaid in~~ wholey unpaid that there remains due the amount of thirty five dollars and thirty cents ~~for~~ principal and one dollar and ninty six cents Interest and Two dollars and seventeen cents Cost

November 22.d 1853 Joseph S. Miller

Subscribed and sworn to before me Nov 22. 1853
John Irons clerk

James T. Mattock } Transcript on file in the
vs. } Court of Com. Pleas.
John W. Smith. }

Judgt rendered before Esqr Singer Nov 11. 1865
for $125.10.
Interest to Jany 27. 1866 1.56
Cost before Justice 4.45
" in

State of Indiana }
Hendricks County } ss.

On this 27th day of January A. D. 1866.- personally appeared before the Clerk of the Court of Common Pleas of said County. James T. Mattock, the plaintiff in the above entitled cause, who being duly affirmed upon his affirmation says that the above judgment remains wholly unpaid, that there is now due thereon, of principal the sum of $125.10
Interest to this date. 1.56.
Cost accrued before J. P. 4.45
$131.11

besides the costs accrued in this Court

James T. Mattock.

Subscribed and affirmed to before me Jany 27. 1866
Levi Ritter Clerk F

State of Indiana }
Hendricks County }

Wilson McKenzie being first duly sworn upon his oath says that one Andrew M. Robbords on or about the 20" day of August 1869 at and in said County and State, he the said Robbords not being then and there licensed according to law to sell intoxicating liquors at retail, unlawfully sold to him, said affiant, intoxicating liquor in a less quantity than a quart at a time: towit: the quantity of one gill, at and for the price of ten cents. Contrary to the form of the Statute in such case made and provided Wilson McKenzie

Subscribed and sworn to before me June 8. 1870.
N. T. Hadley Clerk.

State of Indiana }
Hendricks County }

Wilson McKenzie being first duly sworn upon his oath says that one Andrew M. Robbords on or about the 15th day of September 1869 at said County and State, he the said Robbords not being then and there licensed according to law to sell intoxicating liquors at retail, unlawfully sold to him, said affiant, intoxicating liquor in a less quantity than a quart at a time, towit: the quantity of one gill for and at the price of ten cents. Contrary to the form of the Statute in such case made and provided Wilson McKenzie

Subscribed and sworn to before me June 8. 1870
N. T. Hadley Clerk.

The State of Indiana, Hendricks **County:**

Hendricks COURT OF COMMON PLEAS, June TERM, 1871

THE STATE OF INDIANA, vs. William Williams } AFFIDAVIT.

George W Vaughan swears as he verily believes, that on or about the 4th day of March, A. D. 1871, at the County of Hendricks and State of Indiana, William Williams did maliciously and mischeviously injure and cause to be injured a certain dwelling house the property of one Burdett R. Vaughan situate in Stilesville in said County of Hendricks and State of Indiana by then and there throwing and upon the front side and door of said house a great number of Eggs and other missles to the damage of said Burdett R. Vaughan Ten dollars Contrary to form of the Statutes of Indiana and against the peace and dignity of the State of Indiana.

George W Vaughan

Subscribed and sworn to before me, this 6th day of March, A. D, 1871.

N. T. Hadley Clerk

The State of Indiana, Hendricks **County:**

Hendricks COURT OF COMMON PLEAS, June TERM, A. D 1871.

THE STATE OF INDIANA, vs. William Williams } INFORMATION.

I David T. Burns by J. G. Adams Deft District Prosecutor for the 12th Judicial District, composed of the Counties of Marion and Hendricks, informs the Court that on or about the 4th day of March, A. D., 1871, at and in the County of Hendricks, and State of Indiana That One William Williams was guilty of a malicious trespass. That said William Williams did on or about the 4th of March 1871 at and in said County of Hendricks and State of Indiana and in the Town of Stilesville unlawfully maliciously and mischievously throw a great number of Eggs and other missles against the door and side of the house of Burdett R. Vaughan To the damage of said Vaughan Ten dollars Contrary to the form of the Statute made and provided and against the peace and dignity of the State of Indiana

David T. Burns by J. G. Adams Deft
District Prosecutor.

Ct 41

Item A03 order To Stay

1909

THE STATE OF INDIANA, TO WIT:

IN THE APPELLATE COURT.

Advance Veneer and Lumber Company

vs.

Charles P. Hornaday

APPEAL FROM THE Hendricks Circuit COURT.

On application of the appellant, **IT IS ORDERED** *by the undersigned, one of the Judges of the Appellate Court, that execution and other proceedings on the judgment of the Court below* **BE STAYED,** *as the law directs, whenever the appellant shall have given bond according to law.*

This 12th *day of* August *190*9.

Cassius C. Hadley

Judge of the Appellate Court.

STATE OF INDIANA, SS:

I, the undersigned, Clerk of the Supreme Court and ex-officio Clerk of the Appellate Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the record on file in my office Bond for Eighteen Hundred Dollars with The United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety filed & approved.

WITNESS my name and official seal, this 12th *day of* August *190*9.

Edward T. Fitzpatrick

Clerk Appellate Court of Indiana.

CH41

Item A04 Opinion and Judgment

1901
1909

is hereby acknowledged, the undersigned hereby releases any and all claims against said company or any other person, growing out of a certain accident to my wife Sarah Heath on or about the 1st day of October, 1895, on the Virginia Avenue Line of cars of said company at or near Stevens street in Indianapolis, and I hereby acknowledge full payment and satisfaction for any injury to person or property arising from said accident and hereby release and discharge any and all claims against said company of every nature whether arising from said accident or from any other matter.

"Witness (Signed) Samuel Heath.
John Green
W.R.Purkess."

The answer of appellant, which set up this release as a complete bar to appellee's action, was properly held sufficient by the trial court. Appellant's defense in this case was that appellee's claim had been settled before the commencement of this action. This settlement was evidenced by the above contract in writing signed by appellee. Of the two attesting witnesses to the written contract of settlement was one John Green. He appeared at the trial as a witness for appellee. The character of the issue, and the fact that this witness was present and ~~testified~~ attested the signature of appellee at the time the settlement was made, necessarily resulted in his evidence being of the utmost importance if believed by the jury trying the cause. He went on the witness stand apparently a disinterested witness. Purkess, the other witness, testified that Heath signed the release and that Green signed as a witness to it. Appellee Heath, an interested party, testified that he did not sign the release. Witness Green testified that he did not sign as witness and that the signature of Samuel Heath was not

dence of Green be discredited before the jury?

Upon cross-examination, certain letters were exhibited to Green and he was asked if he had written them. He acknowledged that he wrote, signed, and caused to be mailed, the letters exhibited to him. The letters were offered separately. One of them was in the following words:

"121-2 North Delaware St. Room 10
21 Sept. 1896.

Beaupre v. C. St. Ry. Co.

"A. L. Mason, Esq.

"Sir:- I know sufficient in the above case, which in my opin-

the record. The questions thus raised are argued at length by both sides. It is also urged that if the evidence is in the record that in the briefs of appellant's counsel a rule of the Supreme Court has been disregarded, and that the questions raised by the motion for a new trial are waived. We have, however, for the consideration of this case, without deciding the questions thus raised, treated the record as perfect, and the briefs of counsel as substantially complying with the rules of the Supreme Court. We find no reversible error.

Judgment affirmed.

Henley and Wiley, JJ., Dissent.

Henley, J.

I can not agree with the prevailing opinion in this case, in so far as it holds that the court properly excluded a certain letter hereinafter set out.

"It is a well recognized rule that any fact tending to impair the credibility of the witness by showing his interest, bias, ignorance, motives, or that he is depraved in character, may be elicited on cross-examination; but the extent to which such cross examination may be carried is within the sound discretion of the court." Houk v. Branson, 17 Ind. App. 119; 1st Wharton on Ev. §567.

It is apparent from an examination of a large number of cases, that, where the courts of appeal in this State have considered the question here raised, and have refused to reverse the judgments, that such refusal was in cases where it was claimed that too much latitude had been given upon cross-examination to discredit the witness, and not where the complaining

Freeman v. Hutchinson, 15 Ind. App. 539; Houk v. Branson, supra; Ledford v. Ledford, 95 Ind. 283; Wachstetter v. State, 99 Ind. 290; Real v. People, 42 N.Y. 270; Johnson v. Wiley, 74 Ind. 233; Parker v. State, 136 Ind. 284.

The appellant introduced in evidence the following paper:

"Indianapolis, Ind. Nov. 9", 1895.

"In consideration of the sum of Twenty Five Dollars paid to me by The Citizens Street Railroad Company of Indianapolis, receipt of which

purpose of the proposed evidence. When upon cross-examination of a witness the court sustains an objection to a question propounded to a witness, it is not necessary to save the question that the examining party should state what he proposes to prove. A witness may be asked upon cross-examination as to particular acts for the purpose of affecting his credibility as a witness. The reason for the rule is stated in Beal v. The People, 42 N.Y. 270. It has been accepted in many cases in that state and has been cited by our Supreme Court. The rule is recognized in Parker v. State, 136 Ind. 284; City of South Bend v. Hardy, 98 Ind. 577; Bessette v. State, 101 Ind. 85; Conrad v. State, 132 Ind. 254; Blough v. Parry, 144 Ind. 463; Spencer v. Robbins, 106 Ind. 580.

It has been held in many states that a witness may be cross-examined as to specific acts of immorality or misconduct to affect his credibility. The decisions of our courts and those of other states, so far as we are advised, hold that the cross-examination of a witness upon collateral matters and specific acts of immorality rests largely, if not entirely, in the discretion of the trial court. In Spencer v. Robbins, supra, the trial court rejected evidence offered on cross examination of a witness to affect her credibility. The court said: "This was to impeach her character and discredit her testimony. This method of discrediting a witness can rarely, if ever, be competent. The rule is well settled that specific acts of immorality can not be proved for the purpose of impeaching the moral character of the witness. It may be proper, however, under extraordinary circumstances, to ask questions of a witness on cross-examination for the purpose of showing his character and antecedents. Bessette v. State, 101 Ind. 85; City of South Bend v. Hardy, 98 Ind. 577 (49 Am. Rep. 792). This is a matter, however, within the sound discretion of the trial court, to be exercised in each case as necessity may seem to require. In order to justify a reversal there must have been a clear abuse. We can not say that there was an abuse of discretion in this case."

In Blough v. Parry, supra, this question is considered and a number of cases cited. The court held it was not error to exclude questions on cross-examination of a witness collaterally to the issue relating to his antecedents. The witness upon cross-examination was asked if he did not get $500 from a girl under a promise of marriage,

MMMM is that the language with reference to the consideration is not contractual; it is merely by way of recital of a fact, viz., the amount of the consideration and not an agreement to pay it, and hence such recitals may be contradicted." Referring to the general rule that parol evidence can not be admitted to contradict the terms of a written contract, the court further says: "Out of this grows the exception to the rule first above stated, that where the contract is complete upon its face, a stipulation as to the consideration becomes contractual, and where there is either a direct and positive promise to pay the consideration named, or an assumption of an encumbrance on the part of the grantee in a deed which becomes binding upon its acceptance, then the ordinary rules with reference to contracts apply, and the consideration expressed can no more be varied by parol than any other portion of the written contract." In Stwart v. Chicago,etc.R.Co., 141 Ind. 55, upon this subject, and in which the character of a release substantially identical in the recital of the consideration with the one before us, the Supreme Court say, at page 59: "We have no doubt that the cases, correctly applying the rule that no parol inquiry can be made into the consideration expressed, are those whose consideration consists in the performance of some duty which is, by the terms of the writing, undertaken by the one side for the benefit of the other. Such duties can not be diminished or enlarged by parol. As we have said, the consideration of in the contract before us involves the performance of no duty. The contract recites as a consideration for the relinquishment therein stated, the payment to the appellant of a sum of money. If this recital is false, the same right exists to prove that fact by parol, as exists in any possible case, where the consideration alone of a contract may be attacked by parol."

Counsel for appellant cite a number of cases in support of their position. They are cases, however, applying to the rule that parol inquiry can not be made into the consideration expressed, where the consideration xxxxxxx consists in the performance of some duty which by the terms of the writing is undertaken on the one side for the benefit of the other. Stewart v. Chicago,etc.R.Co., supra, is decisive of the character of the contract of the consideration in the release before us.

"The defendant made no offer to show that he was misled or prejudiced by the amendment, but did nothing more than except to the ruling of the court. Our decisions establish the rule that where it does not appear that the defendant was prejudiced by the amendment, the judgment will not be reversed, although the attempted amendment was not made until after the court had announced its finding." Judd v. Small, 107 Ind. 398. Burns v. Fox, 113 Ind. 205; Hay v. State, 58 Ind. 337; Wabash,etc.R.Co. v. Morgan, 132 Ind. 430; Chicago,etc.R.Co. v. Hunter, 126 Ind. 213; Blaser v. North, 107 Ind. 544.

The third paragraph of reply is claimed to have been insufficient for defects that are set out in appellant's brief. It is stated in appellee's brief that it nowhere appears in the transcript that any ruling was made upon their demurrer. Appellant does not cite the court to the page of the transchipt showing such ruling. We take it, in the absence of any counter statement in the reply brief, that such showing ~~was~~ does not appear. The question of the sufficiency of these paragraphs is not therefore presented. Fleming v. Clapham, 1 Ind. App. 537; Memphis v. Pickle Co., 142 Ind. 304.

It is assigned as causes for the granting of a new trial separately as to each, that the court erred in refusing to submit to the jury the 6th, 8th, 14th, 16th, 20th, 21st, 22d, 23d, and 24th interrogatories submitted by the appellant.

The complaint alleged that the defendant had negligently injured his wife. The defendant answered (1) by general denial; (2) plea of settlement. Appellee replied (1) by general denial; (2) no consideration; (3) fraud of procurement of settlement; (4) non est factum.

Appellant introduced no evidence to show that the accident and injury of appellee's wife did not occur as alleged in the complaint and testified to by appellee's witnesses. The defense made to the action was that appellee had released appellant for whatever claim he had on account of the injuries to his wife for $25.

The 6th, 8th, 14th and 16th interrogatories refer only to the issues raised by the third paragraph of reply. The jury found specially in favor of appellee on the issue raised by the second and fourth paragraphs of reply; (1) that there was no consideration for the execution of the release; (2) that the plaintiff did not execute the release.

alight, and that in response to her notice the car was stopped at said point, "And this plaintiff's wife proceeded with due diligence and care to alight from said car, but the plaintiff says that while his said wife was in the act of alighting from said car, and without fault or negligence on her part, or on the part of this plaintiff, the defendant negligently started said car, and negligently threw this plaintiff from said car to the ground, without fault or negligence on her part, or without fault of negligence on the part of the plaintiff, negligently injuring this plaintiff's wife" etc. The whole occurrence is detailed in the complaint, and every fact that occurred from the time the defendant was notified to stop its car until the plaintiff was thrown to the street and injured, is set forth.

The only reasonable inference to be drawn from these averments is that the plaintiff was without fault on her part, injured by the negligence of appellant. While the pleading shows that certain negligent acts of the defendant caused the injury, and that the plaintiff was without fault in respect to those acts, the pleading shows that there was no contributory negligence. The complaint alleges no act that could have caused plaintiff's injury except of being thrown from the car. This act is alleged to have been negligent and that plaintiff and his wife were free from fault. The injury is charged to be so directly the result of the negligent acts of the defendant as to negative every inference that such injury was caused or aggravated by the negligence of the plaintiff, or that there had been any want of ordinary care on the part of the plaintiff or his wife.

Appellant next contends that the court erred in allowing appellee to amend the second paragraph of reply after the [illegible] progress several days. This is made the fifth specification of errors. The original second paragraph of reply by the amendment was taken out of the record. It is not claimed that this paragraph as amended was insufficient. The right to amend pleadings is given the trial court subject to be reviewed by the appellate court. §§345 and 397 Burns 1901, Horner 1891, Sec. 343, 394. It is insisted by counsel for appellee that no showing was made by appellant that the issues were changed by the amendment, or that appellant was surprised or prejudiced by this action of the court. We are not referred by appellant's counsel to any page of the record where such showing is made.

Appellee, who was plaintiff below, recovered a judgment for $5,500 in the court below in an action for the loss of services of his wife and for expenses incurred on account of an injury to her, alleged to have been caused by negligence on the part of appellant while his wife was a passenger upon one of appellant's cars. The action was commenced in the Marion Superior Court, and tried upon change of venue in the Hendricks Circuit Court.

The first and second specifications of error question the sufficiency of the complaint. Counsel for appellant contend that it contains no general allegation that the injuries to appellee's wife were sustained without any fault or negligence on her part. It is claimed that it is necessary before any recovery can be had on account of the injuries complained of to aver that no negligence on the part of the wife contributed to such injury. The general allegation that the injury for which suit is brought was caused without fault upon the part of the plaintiff is the proper one to be made. "It relates directly to the cause of action and include the acts which caused the injury, as well as the injury itself and negativing contributory negligence as to all the matters concerning which its existence would defeat a recovery." The freedom from contributory negligence may, however, be shown by the general averment stated and by specific facts alleged. If it appears from the allegations of the complaint that the injured party was without fault contributing to his injury, the complaint is good as against a demurrer. A pleading is to be judged by its general scope and a reasonable construction given its averments; a strained construction is not justified.

In Chicago etc R Co. v. McDonald, [illegible] say: "A strained construction can not be placed upon a pleading, as against the pleader, to invalidate his pleading, if a fair and reasonable construction will sustain it, and especially is this true in this court in relation to a pleading construed and held good by the trial court."

The complaint before us alleges that plaintiff's wife desired to alight at the intersection of Greer Street and Virginia Avenue in the city of Indianapolis, said point being a regular stopping place for defendant's cars; that she notified defendant of her intention to there

THE STATE OF INDIANA,

In the Appellate Court, November Term, 1901.

On the 26th *day of* November, *1901, being the* 2nd *Judicial day of said November Term, 1901.*

HON. DANIEL W. COMSTOCK, CHIEF JUDGE.
HON. ULRIC Z. WILEY,
HON. FRANK S. ROBY,
HON. WOODFIN D. ROBINSON,
HON. WILLIAM J. HENLEY,
HON. JAMES B. BLACK,
} JUDGES.

No. 3747

IN THE CASE OF

Citizens Street Railroad Company

vs.

Samuel Heath.

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Comstock, C. *J.*

Dissenting Opinion, Henley, J.

Wiley, J., Concurs.

THE STATE OF INDIANA,

In the Appellate Court, DIVISION NUMBER TWO, November Term, 1909.

On the 14th *day of* December, *being the* 20th
Judicial day of said November Term, 1909.

HON. JOSEPH M. RABB, PRESIDING JUDGE.
HON. DANIEL W. COMSTOCK, } JUDGES.
HON. FRANK S. ROBY, }

No. 6814

IN THE CASE OF

Indianapolis and Martinsville Rapid Transit Company.
vs.
Hallie Walsh,

APPEALED FROM THE Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Rabb, P.J.-

The appellant owns and operates an interurban electric railway between the city of Indianapolis and the City of Martinsville. Appellee was a passenger on one of its cars from Indianapolis to Mooresville, a town on its line. She claims to have been injured by the negligence of the appellant in starting its car, with a sudden jerk, while she was in the act of alighting therefrom, at one of its regular stations, where the car had stopped, thereby throwing her to the ground. This action is brought to recover damages for said alleged injury.

Appellant's demurrer to the complaint was over-ruled, issues were formed, a jury trial had, resulting in a verdict in favor of appellee, appellant's motion for a new trial over-ruled, and judgment rendered on the verdict.

The questions presented in this appeal relate to the action of the Court in over-ruling appellant's demurrer to the complaint, and its motion for a new trial.

After the formal allegations relating to appellant's business, and appellee's taking passage upon appellant's car, the complaint contains these allegations: "That when said car upon which plaintiff had so become a passenger, reached the said town of Mooresville, it was stopped by the motorman and conductor, employees of said defendant, then and there in charge and control thereof, at a place therein provided by defendant as a regular stopping place, for passengers to alight from and board its cars; * * * * * * that when said car had so reached and stopped at said point, in said town of Mooresville, as alleged, plaintiff immediately and without unreasonable delay, arose from her seat therein, passed to said rear platform thereof, leading her said child, and carrying some baggage she had with her, for the purpose of alighting therefrom; that upon reaching said platform, and handing her baggage to her sister, who had already alighted, plaintiff immediately and without unreasonable delay stepped to the lower step thereof, on the right hand, or westward side of said car, leading to said cinder walk or platform, and was in the act of stepping from said lower step to said cinder walk or platform, when the said motorman and conductor, so in charge of said car, negligently and carelessly started the same forward, with a sudden movement, while the plaintiff was in such perilous position, attempting to alight therefrom, and without giving her any warning, thereby jerking and swinging plaintiff around

and throwing her to the ground, etc."

The criticism urged against the complaint is that it does not charge that the said car had stopped at said point for allowing the plaintiff or other passengers to alight, or that the plaintiff knew it was a regular stopping place, or acted upon the assumption that it was such stopping place, or that any invitation was extended to the plaintiff to alight, or that the car was standing still at any or all times after she arose from her seat, and that from all that appears in the complaint, the sudden movement forward of the car, may have been simply an acceleration of speed.

None of the objections urged against the complaint are well founded. It was unnecessary to aver in the complaint that the car stopped to allow passengers to alight, if the point where it stopped was a regular stopping place. The passengers had a right to assume that it stopped for the purpose for which the place was provided. Nor was it necessary to set forth with more clearness than was shown, the fact that appellee acted upon the assumption that the car was stopped for the purpose of allowing passengers to alight therefrom. No further invitation was needed to be extended to passengers who desired to alight at a regular stopping place on appellant's line, than for the car to stop. We think it does clearly appear from the averments of the complaint that the car was standing still at all times from the time appellee arose until it is alleged she stepped from the car upon the lower step preparatory to leaving the car. It would require a very ingenious mind, indeed, to give to the complaint the interpretation contended for by appellant. To a person of just "common understanding", its meaning is very plain.

The appellant's motion for a new trial presents a multitude of questions. The first one suggested by appellant relates to the refusal of the Court to permit appellee's witness, Grace Morgan, to answer the following questions, on cross examination: "Q. 25. Did Mrs. Walsh claim that she had been injured in any way in the hip at that time? Q.26 I will ask you to state if it is not a fact that she did not claim to have been hurt in the hip or in the thigh at all at that time; made no complaint whatever? Q. 23. I will ask you if she did not state this in substance, that she got tangled in her skirts and fell to the ground, and she threw the grip which she had to the ground, and got up quickly, and got

the child off, before the car got away? Did she not state that, or that in substance, in your presence, Mrs. Morgan.?

The only fact elicited by the appellee from this witness in her examination in chief, was that on the day of the alleged accident to the appellee, witness observed the appellee's skirt, and that it was all balck, and that appellee said to witness, "just look at my skirt". This expression was a voluntary one on the part of the witness, not called for by any interrogatory. Nothing was asked by appellee with reference to what appellee said on that occasion, and the witness undertook to give no conversation. It was entirely competent for the appellant to have shown anything said by the appellee that would tend to disprove her case, but such statements could not be elicited by a cross examination of appellee's witness, who in her examination in chief had testified simply to her own observations of a physical fact or condition.

It is next complained that the Court erred in permitting the appellant to submit this interrogatory to appellee's witness, Kate Morgan, "Tell the jury what those complaints were that she made." This witness had already testified that the plaintiff had made complaints of pain on her second visit to the appellee. The answer to the interrogatory was as follows-: "The greatest complaint was her ankle and her hip". Complaints of this kind, made by the injured party are competent evidence. Indianapolis vs. Whittaker, 160 Ind. 125.

It is next complained that the Court erred in sustaining the plaintiff's objection to the following question, asked Rooker Morgan, plaintiff's witness, on cross examination, by the appellant: "Q. I will ask you if at the noon ajournment if I did not ask you and your wife to state to me what Mrs. Walsh said to you in your presence and hearing on the occasion that you have testified, that she was to your house, and if you did not decline, and instruct your wife to decline to tell me what she said?" It is insisted that the appellant was entitled to an answer to this question, for the reason that if it was answered in the affirmative it would tend to show bias and prejudice on the part of the witness, and would go to affect the weight and credibility of his testimony. No error intervened in sustaining the objection to this question. It was not shown in the interrogatory that the inquiry addressed to the witness and his wife, related to what Mrs. Walsh said in reference to the subject matter of the litigation. They had no right to inquire generally into Mrs.

Walsh's conversation on any occasion, unless it related to the subject of the law suit. If they had inquired of the witness, what, if anything, Mrs. Walsh said in reference to her injury, or in reference to the accident, out of which the law suit grew, and the witness had declined to answer, it might have been competent, but in the form in which it was put, it was clearly incompetent.

Complaint is made of the refusal of the Court to permit William Tiohnor to answer a question addressed to him with reference to the same inquiry made by appellant's counsel of the witness, Rooker Morgan, and the objection was properly sustained for the same reason.

It is next objected that the Court erred in giving to the jury the 23rd instruction, given by the Court on its own motion. No question is presented. No exception was taken to the giving of the instruction complained of.

It is next insisted that the Court committed error in sustaining the objection to the following questions addressed to appellant's witness Albert Morgan: "Q. 46. You may state whether or not there was any person on there that was not entitled to ride beyond this railroad crossing? Q. 47 I will ask you if any one who had epaid a fare that would permit him to ride any further than the railroad crossing?" No error intervened in this ruling, as it was irrelevant, to the issue, immaterial, and the first question called for a legal opinion from the witness.

Complaint is made of the refusal of the Court to give certain instructions requested by the appellant, and to the giving of certain instructions claimed to have been requested by the appellee. The instructions are not brought into the record by a bill of exceptions. Appellant undertakes to bring them in under the provisions of section 561 Burns Ann. Statutes, 1908.

Much of the proceedings in the trial of an action in Court, including instructions given to the jury, do not ordinarily belong to the record made by the Court of the cause. If it is desired to bring any action had by the Court, or anything transpiring in the course of the trial, that do not properly belong to the record, into the record for any purpose, it is usually necessary to do this, by a proper bill of exceptions, and by such bill everything that transpires in the history of the case, in the process of its passing through the Court, may be made part of the record. The section of the code referred to provides a simpler method

of bringing into the record, the action of the trial court, with reference to instructions to the jury, but in order to entitle instructions given or refused, to a place in the record, under the provisions of this section they must be identified and authenticated in the manner provided by the law.

Instructions requested must be authenticated and identified by the signature of the party or his attorney requesting them, and by a memorandum made by the Judge of the number of those given and those refused, and this attested by his signature, and when so indentified and attested, such instructions become apart of the record, by simply filing them with the Clerk. Unless so attested, they can only become part of the record, by a proper bill of exceptions. Speck vs. Kenoyer, 164 Ind. 431; Baker vs. Gowland, 37 App. 364; Petree vs. Ludwig, 41 App. 310; Delaware etc vs. Fiske, 40 App. 438; Mace vs. Clark, 42 App. 506;

The transcript before us recites that appellant requested the Court to give certain instructions to the jury. The request is set out, as are the instructions, all of which are properly numbered, and the transcript recites that these instructions were filed at the close of the instructions given, butthese instructions were none of them signed by the appellant or its counsel,nor are they authenticated by the memorandum required by the statute indicating the number of those given and those refused signed by the Judge; hence they have no legitimate place in the record, and are not present for our consideration.

The transcript recites that the appellee requested the Court to give instructions numbered from one to four inclusive, to the jury, and the written request of appellee is copied into the transcript, but the instructions numbered one to four do not appear.

The transcript also recites that the Court on its own motion gave to the jury instructions numbered one to eight, inclusive, but no set of instructions answering this description appears in the record.

The only instructions properly appearing in the record are the instructions given to the jury. These are numbered from one to twenty-six inclusive, and include two numbered twenty-three. These instructions are properly signed by the Judge, and are filed, and are a part of the record, and must be treated as the instructions given by the Court on its own motion, and are the only instructions of which this Court can take

cognizance.

At the close of the instructions, the appellant excepted to the giving of each of the following numbered instructions: One, two, three and four, of the instructions tendered by the plaintiff. No instructions appearing in the record, no question is presented.

No error appearing in the record, the judgment of the Court below is affirmed.

CH41

Item A05 notice of appeal
1902

STATE OF INDIANA.)
) SS.
HENDRICKS COUNTY.)

In the Hendricks Circuit Court.

Cyrus Osborn,
vs.
James O. Winsted,
Helen D. Winsted,
Henry S. Cox, Assignee of James O. Winsted,
Columbus Manufacturing Company,
Rude Brothers Manufacturing Company,
The Harrison Wagon Company,
James M. Ogden, Trustee in Bankruptcy of
James O. Winsted.

Cause No. 7118.

Notice of Appeal to Clerk

To the Clerk of the Hendricks Circuit Court:-

You are hereby notified that Raymond R. MacDaniel, Elmer B. Winsted and Sadie Winsted, interveners in the above entitledcause, will appeal to the Appellate Court of the State of Indiana from the judgment rendered against them in said cause in the Hendricks Circuit Court on the 7th day of June, 1902.

M. W. Hopkins

Atty. for Raymond R. MacDaniel, Elmer B. Winsted and Sadie Winsted, Interveners.

I acknowledge service of the within notice, and the receipt of a copy thereof, this 20th day of November, 1902, at my office in the town of Danville, Hendricks County, Indiana.

Jno E. Douglass,

Clerk of the Hendricks Circuit Court.

Hc 41

Item B02 affidavit for Execution

1854
1855
1856
1857
1859
1861
1862
1866
1872

Verling K. Morris
vs.
Nathan Phillips

Transcript in the Common Pleas Court of Hendricks County Indiana

The Said Verling K. Morris affirms that he obtained the Judgment in the above entitled case before Morris R. Ellis a Justice of the peace of Gilford Township in Said County, on the 23 Day of October 1871. that Said Judgement is wholly unpaid and that there is due thereon the principal Sum of Sixty one Dollars and ——— cents. with Intrest from the rendition thereof, and the further Sum of three Dollars and Sixty cents. the cost therein:

V K Morris.

Subscribed and affirmed to be fore me a Notary public in and for the County of Marion State of Indiana this Sixth Day of May 1872

R. W. Thompson
Notary public

F

A. M. Manning } Clame filed on
Wm. F. Johnson } a Note for $64 55/100
in the words and figers to wit
Stilesville Hendricks County
April 7th 1866

One day after date I promise to pay A M Manning or order sixty four Dollars and fifty five cents without Defaltation or valuation of appraisment Laws of Indiana signed Wm. F. Johnson a Sumons Issued August the 13th 1866 and Delivered to William Baldwin Special Constable and made returnable 23rd day of August 1866 at 2. Oclock in the afternoon of said day Received of A. M. Manning plaintiff for cost $2 ~~for cost~~

David Scott, J. P.

August 23rd 1866 the said William Baldwin Special Constable returd the Sumons thus served by Coppy August the 17th 1866

William Baldwin D. P.

the said Wm. F. Johnson and appeard not constable and it appearing that he was duely served with prosses it is therefore Judged by me that said A. M. Manning recover a judgment and Execution against the said Wm. F. Johnson for sixty four Dollars 55 cts with one Dollar and thirty six cts Intrest in all sixty five dollars 91 cts together with cost taxed at $130 and acruing cost without any relief from valuation or appraisment laws

August 23rd 1866 David Scott J. P. turnover

A. M. Manning } Transcript on file in office
vs. } of the Clerk of the Court of Common Pleas
Wm. F. Johnson } of Hendricks County from the docket of David Scott J. P.

Be it remembered that on this 25th day of September 1866. Personally appeared before me John Travis a Notary Public in and for the County of Ocean in the state of Indiana, A. M. Manning the plaintiff in the above entitled Cause, who being duly sworn upon his oath says that the Judgment in the above entitled cause, remains wholly unpaid — that the same amounts to the sum of $65.91

Interest due thereon to Sept 23/66 36

and that the cost due in said cause amounts to the sum of 2.00

Making in all the sum of $68 27

all of which remains wholly unpaid

A M Manning

Subscribed and sworn to before me this 25th day of September 1866

Witness my hand and official seal the date above

John Travis N. P.

John W. Hawkins vs Daniel Mahoney & James Mahoney } Transcript in the Court of Common Pleas of Hendricks County, Indiana.

The said John W. Hawkins Swears that he obtained the judgment in the above entitled case before Charles Fisher, a Justice of the Peace of Center Township, in Marion County, State aforesaid, on the 10th day of December 1860; that said judgment is wholly unpaid; and that there is due thereon the principal sum of Sixty one 26/100 Dollars, with interest from the rendition thereof, and the further sum of Three 90/100 Dollars. the costs therein.

John W. Hawkins

Sworn and Subscribed before me Levi Ritter Clerk of the Hendricks Court of Common Pleas this 4th day of January A.D. 1862,

Levi Ritter Clk,

State of Indiana
Hendricks County }

David Doty assignee of L.M. Campbell vs Valentine Blanton } Judgment rendered before C.B. Tomlinson J.P. and Transcript filed and Recorded in Court of Com. Pleas

Leander M. Campbell the assignor and attorney for said David Doty, swears that no part of the judgment in the above entitled cause has been paid — that there is now due thereon from said Defendant the sum of fifty Dollars and fifty Cents principal with interest on that amount since the 15th day of December 1860, all of which is true as he is informed and believes

L.M. Campbell

Subscribed and sworn to before me Febuary 14th 1861

Levi Ritter clerk

The State of Indiana
Hendricks County } ss

Daniel Person vs John Clifford } Transcript in the Hendricks county Court of Common Pleas

The said Daniel Person Swears that he obtained the judgment in the above entitled case before William Astley a justice of the peace in Center Township in said County on the 10th day of April 1858. that the said judgment is wholly unpaid that there is due thereon the principle sum of Sixty eight dollars with interest from the rendition thereof and the further sum of $1.30/100 the costs therein —

his
Daniel ✕ Person
mark

Sworn to & Subscribed to before me this 18th day of June 1858.

E. Singer J.P.

State of Indiana } In the Common Pleas Court
Hendricks County }

Personally appeared before John Irons the Clerk of the Common Pleas Court Joseph Sutliff the Atty of William C. Rise in the Case of said Rise vs William H.H. Lewis and upon his Oath says that there is due on the judgment which was rendered by Esqr Singer a justice of the peace of said County in favor of said Rise and against said Lewis the sum of Seventeen dollars and Seventy Cents principal and interest and the sum of two dollars and Seventy Cents Cost all of which sums of money remain wholy unpaid as affiant is informed and believes

J. Sutliff

Subscribed & Sworn to before me this 26th November 1859

John Irons Clerk.

State of Indiana Hendricks County ss

William C. Douglass
vs
Lueza Taylor

On the 29. day of July 1857. before John Irons Clerk of the Court of Common pleas of Hendricks County, personally appeared James M Gregg Agent for the above plaintiff, who being duly sworn upon his oath says, that upon a Judgment recovered by the plaintiff against said Lueza Taylor before Enion Singer Esqr a Justice of the Peace in and for the County aforesaid on the 14. day of July 1857, there remains unpaid the sum of two hundred dollars principal, ~~fifty interest~~ and ~~cost~~ ~~two~~ one dollar and sixty cents costs. accrued before the justice of the Peace. And further saith not.

J. M. Gregg Agent
for Plff

Subscribed & Sworn to before me this 29th day of July 1857.
John Irons Clerk.

State of Indiana
Hendricks County } Judgment rendered before Peter S Kennedy for $43,60

Jermiah Depew
vs
John Smithey } Affidavit for Exo

Personally appeared before me John Irons Clerk of the Court of Common pleas of Hendricks County the above named plaintiff who being duly sworn says that there is due on said Judgment forty three dollars & sixty cents principal and interest due on said judgment one dollar & seventy nine cents & two dollars and ~~seventy~~ sixty five cent cost which sums added to geather make the sum of forty eight dollars & four cent which sum of forty eight dollars & four cents is wholly unpaid and further saith not

J. Depew

Subscribed & sworn to before me this 29. 1856
John Irons Clerk

State of Indiana Hendricks County Sct.

Thomas P. Richardson
vs
Charles F. Junkin } Transcript of a Judgt from Justices docket & filed in the Court of Common Pleas of said County.

On this the 29. day of January 1856. before me John Irons Clerk of the Court above named personally appeared John N. Shirley one of the assignees of the above named plaintiff, who upon his Oath says, that the said plff. on the 4th day of January 1856. Recovered Judgment before Justice Thomas A. Blake of said County, ~~which plaintiff on the 5th day of January 1856, assigned to the Affiant and Asa T. Hoadley~~ against Charles F. Junkin for the sum of sixty two dollars & forty four cents, which Judgment plaintiff, on the 5th day of January 1856 assigned to Affiant and Asa T. Hoadley, [illegible] and unpaid of said Judgment, the sum of thirty nine dollars & seventy five cents, principal and interest and eighty cents costs to date.

John N. Shirley

Subscribed & Sworn to before me 29th January 1856
John Irons Clerk.

13

Asa T. Hoadley &
John N. Sherley
vs
Charles W. Black

No 3.
Transcript &c

Personally appeared before me John Irons Clerk of the Hendricks common Pleas court this 15th day of Novr 1855. John N. Sherley who being first duly sworn according to law upon his oath says that the above Judgt. is unpaid or any part thereof and that there is now due on said Judgt or transcript Forty-two dollars & sixteen cents of principle & Interest and all costs and he further saith not

John N. Shirley

subscribed & sworn to this 15th day of Novr 1855
John Irons Clerk H C P. Court

F

State of Indiana Hendricks County Sct

Thomas P. Richardson
vs
Charles F. Junken

Transcript of a Judgt. from Justices docket filed in the Clerks Office Court of Common Pleas.

On this the 29 day of January 1856 before me John Irons Clerk of the Court above named personally appeared John N Shirley, who upon his oath says that said Thomas P. Richardson, on the 4th day of January 1856, Recovered Judgment before Thomas A Blake a Justice of the Peace of said County against Charles F. Junkin for fifty dollars & twenty Cents, which Judgment said plff. on the 5th day of January 1856 assigned to Affiant and Asa T. Hoadley. and that there is now due and unpaid of said Judgment. the sum of fifty dollars and forty Cents principal and interest and three dollars & twenty five cents Costs to date.

John N. Shirley

Subscribed & Sworn to before me 29th January 1856.
John Irons Clerk.

State of Indiana
Hendricks County

In Common Pleas court of Hendricks County.

William C. Cline
v.
Aaron V. Keith

Judgment before justice of the peace.

Be it known that on this 24th day of August 1854. Personally appeared before the Clerk of said Court, Gustavus C. Waterous, who being duly sworn upon his oath says that he purchased the judgment in the above cause, from the plaintiff, William C. Cline, that said judgment now belongs to him said Waterous, and that there remains unpaid of said judgment the sum of eight dollars and fifty five cents, and of cost the sum of two dollars and fifteen cents, making together the sum of ten dollars and seventy cents as he verily believes.

G C Waterous

Subscribed & Sworn to before me the date above
John Irons Clerk.

HC 41

Item B03 appointment of appraisers
1866

A

APPOINTMENT OF APPRAISERS.
Sold by SHEETS & BRADEN, Indianapolis, Ind.

State of Indiana, } SS.
Hendricks COUNTY, }

I Levi Ritter, Clerk of the Court of Common Pleas of said County, certify that John H. Brill and Stephen K. Hardin of said County, have been appointed Appraisers of

Part of the North half of the South half of fractional Section eighteen, Township Fourteen North, Range One East belonging to Sd

of the Estate of

~~widow~~ heirs of Joseph Wills deceased, by the Court of Common Pleas of said County, and they are to report their appraisement at the ~~next~~ present Term thereof.

Witness, Levi Ritter, Clerk of said Court, and the Seal thereof hereunto affixed, at Danville, this 24th day of September, 1866.

Levi Ritter Clerk.

Item B04 appraisers
1857
Hc 41

Luse & Brother, Manufacturers of Blanks and Blank Books, Lafayette, Ind.

Parties:

John G Lashley
vs
Stephen Kitchen

Court:

of Com Pleas of Hendricks County

The following is a list of property ~~levied upon~~ set off by virtue of an execution & fee Bill in this case, by me, on this 26th day of January A. D. 1857, to-wit:

	DOLLARS.	CTS.
Lot No 9 in Block No 4 in the Town of Springtown	150	00
Bed Steads & Bedding	7	50
1 Bedwith ~~xxx~~ Stead, & Trundle Bed	12	00
1 Safe & Cupboard ware	6	00
1 Cook Stove & Ware, Table & three Small Jars	7	20
1 Clock Looking Glass & five pictures	7	50
1 Bureau	7	00
2 Stand Tables & 6 Chairs	5	50
5 Quilts & Carpeting	16	00
1 Chest $2.00 Tubs, Buckets, and Irons, Shovel &c. $1.90	3	90
Meat, flour, Pickles	6	00
1 Red Cow with white Back	11	50
22 Chickens $1.75 Planes A4 &c $1.50	3	25
	$245	35

We, the undersigned, selected to appraise the property mentioned on the schedule to which this is annexed, upon oath say that the several items, to the best of our judgment, are worth the respective sums specified therein, and that the same is the fair cash value at this time. (exclusive of liens and incumbrances, if any.)

William Holtselaw
Samuel M. Newman
mark
} Appraisers.

Subscribed and sworn to before me this 26 day of January A. D. 1857.

C. Oheim

Sheriff Hendricks County.

3 25
242.10

31

Item B05 Claims
1869
1870

CH41

STATE OF INDIANA,
Hendricks County, ss: } COURT OF COMMON PLEAS.

October Term, A. D., 1869.

Elijah M. Tender
vs James H. Neaville
~~Eliza M. Tender~~ Exrs

Claim demand $570.00 ds
Elijah M. Tender

the plaintiff complains of ~~Eliza M. Tender~~ James H. Neaville Executrix of the last will and testament of Joel Tender dec'd the defendant, and says that said Joel Tender deceased, was indebted to the plaintiff in the sum of Five hundred and Seventy Dollars ~~and~~ ~~Cents~~, for taking care of nursing boarding and lodging Joel Tender & his wife in the last sickness of Joel Tender and for a dress and Blouse furnished to his wife Eliza a bill of particulars of which is now filed and made a part hereof. That defendant as such Executrix of the last will of Joel Tender dec'd owes the same, which is unpaid. Wherefore he demands judgment for Five hundred & seventy Dollars.,

Elijah M. Tender Claimant
By C. C. Nowdson his attys

Joel Tender dec'd

In account with Elijah M. Tender Dr

1868 To taking care of nursing boarding and washing after Joel Tender, and for him and his wife Eliza Tender during the last sickness of Joel Tender for 28 days at twenty Dollars per day $560.00
To making one dress for Eliza Tender & a Blouse for Joel Tender = 10.00
Amount due is = $570.00

STATE OF INDIANA,
Hendricks County, ss: } Hendricks COURT OF COMMON PLEAS.

October Term, A. D., 1869.

Tazwell Culbertson

the plaintiff complains of Elias Grimes Admr of the estate of John King late of Hendricks County deceased ~~and~~ the defendant, and says that said John King now deceased, was indebted to the plaintiff in the sum of Five Hundred Dollars ~~and~~ ~~Cents~~, for work and labor done by said Plaintiff for the said John King deed and at his request a bill of particulars of which is now filed and made a part hereof. That defendant as Administrator of the Estate of John King deceased owes the same, which is unpaid. Wherefore he demands judgment for Five Hundred Dollars. and for general relief

Tazwell Culbertson
By C. C. Nave & son his attys
(Pl'ffs Bill of particulars)

John King

1860 } In account with Tazwell Culberson Dr
1861 } To work done gathering corn finding stock making and
1865 } putting up rails and attending to the business of John King generally and repairing fencing watering stock $500.00

State of Indiana, Hendricks County, ss:

Tazwell Culbertson first being sworn says ~~do solemnly swear~~ that the sum of Five Hundred Dollars ~~and~~ ~~Cents~~ is now justly due and wholly unpaid upon the annexed account and that there is no just matter of credit upon the same, which with the original claim in my favor, is herewith set out in full, so help me God.

Tazwell his x Culbertson
mark

Sworn to and subscribed before me, this 15th day of October A. D., 1869.

N. T. Hadley Clerk

~~Witness my hand and official seal, this day of A. D., 186~~

CA41

Item B09 Dedimus
1862

James Williams } In the Court of Common Pleas
vs } of Hendricks County, Indiana.
John Couch }

The defendant in the above entitled cause will take notice, that in the office of G Crombaugh Esq, ~~in the Town of Levy Empire Township~~ McLean County, Illinois, between the hours of Nine O'clock A.M., and [illegible] O'clock P.M. of the Second day of January 1863, the plaintiff [illegible] ~~the plaintiff will~~ proceed to take the a[illegible] ositions of divers witnesses, before th[illegible] said G. Crombaugh, Esq, a justic[illegible] of the Peace in and for the County an[illegible] State last aforesaid, to be read in evidence on the trial of the above entitled cause, and the examination will be adjourned from day to day thereafter till the taking thereof is completed.

James Williams
By Nave & Witherow his att[illegible]

December 8th 1862.

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DEDIMUS.---Sold by Sheets & Braden, Indianapolis, Ia.

The State of Indiana, Hendricks **County, Sct.**

THE STATE OF INDIANA TO G Crombrough Esqr a Justice of the peace in and for the County of McLean in the State of Illinois

Reposing full confidence in your prudence and fidelity, you are hereby empowered and authorized at the town of Levy Empire Township McLean County in the State of Illinois, in your office,

on the 2nd day of January 1863, between the hours of 9 o'clock, A. M., and 6 o'clock P. M., of said day, (and to continue from day to day, between the same hours, until fully completed,) to examine under oath or affirmation, to be by you first administered, Divers witnesses on the part of the plaintiff in a cause now pending in the Common Pleas Court, in the county of Hendricks and State of Indiana, wherein

James Williams is plaintiff and John Couch is defendant

~~[illegible]~~; as well on the part of the defendant as of the plaintiff; on all such questions and interrogatories as shall be legally asked of them: that you carefully write down such examination, or cause the same to be done by the deponents respectively, or some disinterested person in your presence and under your direction, and after the same shall have been carefully read to or by the deponents respectively, you cause the same to be subscribed by them; That you thereupon make out a certificate and annex the same to such depositions, stating therein, First, that the deponents were sworn (or affirmed,) according to Law; Second, by whom the depositions were written, (and if the same were written by the deponents or some disinterested person, that the same was done in your presence and under your direction); Third, whether or not the adverse party attended, and Fourth, the time and place of taking the depositions, and the hours between which the same were taken; That you sign and attest such certificate under your seals, and seal up such depositions in a proper and sufficient paper envelope, inclosing therewith this writ, and direct the same to the Clerk of said Common Pleas Court, endorsing on such envelope the names of the parties to such suit, and of the witnesses whose depositions are inclosed, and that you forward the same to such Clerk with all possible speed.

In witness of which, I, Levi Ritter, Clerk of said Court, hereunto affix the Seal thereof, and subscribe my name at Danville this 16th day of December, A. D., 1862.

Levi Ritter Clerk

HC 41

Item B01 Complaints

1852
1861

In the Hendricks Common pleas Court
July Term 1852

Jesse T. Mattock Adm'r
vs
Lindsey Jeffers

Jesse T. Mattock Administrator of the estate William T. Mattock, Complains of Lindsey Jeffers and Says that in the Lifetime of the said William T. Mattock, to wit, on the 20 day of July 1847, the said William recovered a Judgment against the said defendant by and before one Henry Miller a Justice of the peace in and for the County of Hendricks in the State of Indiana for the Sum of forty eight dollars & fifty eight Cents, besides Eighty Seven and a half Cents Costs. Which Judgment is Still in full force, and remains wholly unpaid. Wherefore the Plaintiff demands Judgment for the Sum of Eighty dollars

J. M. Gregg
Atty for Plff

I Lindsey Jeffers the defendant above named waive the issuing and Service of process in this Cause, and enter my appearance to the above Complaint, and acknowledge the matters and things in said Complaint to be true as therein stated and Consent that the Court may render Judgment against me for the Sum of Seventy

The State of Indiana
Hendricks County } ss

David C Lane, Joseph
P. Lewis & Lawson
D. Robinson
vs
William H. Richardson

To the Honorable
Judge of the Hendricks
Court of Common pleas,

David C. Lane, Joseph P. Lewis, & Lawson D. Robinson, respectfully represent to your honor that on the day of April in the year 1861 William H. Richardson was duly elected Constable in & for Union Township in said County of Hendricks, and afterwards, to wit on the day of April 1861 your petitioners David C Lane, Joseph P. Lewis & Lawson D. Robinson became Sureties on the offical bond (a copy of which is herewith filed) of the said William H. Richardson, for the faithful performance of his duties as Constable aforesaid

Your petitioners further represent that this Continuance as Sureties on the offical bond aforesaid will operate to their great injury & damage wherefore they pray that they

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HC41

Item B07 Correspondence
1890

BENJAMIN C. WRIGHT. JOHN W. TOMLINSON.

BENJAMIN C. WRIGHT & CO.,

UNITED STATES CLAIM ATTORNEYS,

ROOMS 2 AND 3 TALBOTT AND NEW BLOCK,

29½ NORTH PENNSYLVANIA STREET,

Indianapolis, Ind., June 10. 1890.

Enoch G. Hogate Esqr
County Clerk &c
Danville Ind

Dear Sir:

Please send us a certified Copy of decree of divice cased of Mary I Paxson vs Oscar W. Paxson. rendered in Common Pleas Court in May 69. & oblige $1.00 enclosed Cost of same as per your letter of Jany. 4. 90

Very truly
B C Wright & Co

26

item B 08 Decree and Execution
CH 41
1857
1867

The State of Indiana
Hendricks County

In the Hendricks Court of Common Pleas Sep. Term 1867

Carey Reagan
vs
Warner L. Vestal & Mordecai Mendenhall

Complaint No 49.

Be it remembered that on the twenty-fourth day of September 1867, the same being the second judicial day of the September Term 1867, of the said Common Pleas Court, upon the final hearing and disposition of the above entitled cause.

It is therefore considered and adjudged by the Court that said plaintiff recover of said Warner L. Vestal & Mordecai Mendenhall the said sum of Fourteen hundred and forty-six dollars and eighty-two cents ($1446.82) and likewise the costs and charges by them in and about this suit, laid out and expended, without relief from valuation or appraisement laws. And in default of the payment of the said sum, interest and costs as aforesaid, it is ordered and decreed by the Court that a Copy of this decree, and an execution thereon, shall be issued by the Clerk of this Court to the Sheriff of this County directed, Commanding him to advertise and sell the Real Estate in the said Complaint and Mortgage mentioned and described, or so much thereof as may be necessary to pay and satisfy the same according to law, and return the proceeds of said sale to the Clerk's Office aforesaid, to be applied, first, to the payment of the costs of this suit, and then to the

G W Ball & another
vs
Thos Codens

In the Hendricks Common Pleas
The debt of said Court will issue an Execution the above cause March 14th 1857
W Henderson
Pl Pratt

payment of the said judgement and interest, and the overplus, if any, to be paid over to the said Warner L. Vestal and Mordecai Mendenhall, or whoever may be entitled to receive the same. And after the said sale, the said defendants shall be forever debarred of all equity of redemption in the said mortgaged premises, or so much thereof as may be sold. And in case the said mortgaged premises should be insufficient to pay and satisfy the amount of the said judgement, interest and all costs in the cause, then the sum so remaining unpaid shall be levied of the other goods and chattels, lands and tenements of the said defendants subject to execution.
All of which is finally ordered, adjudged and decreed by the Court.

State of Indiana Hendricks County SS:

To the Sheriff of Hendricks County:

You are therefore hereby commanded to advertise and sell the mortgaged premises referred to in the foregoing decree and described as follows to-wit:

Part of Lot No. five (5) in Block No. two (2) in the Town of Plainfield. Commencing at the South West corner of said Lot No. five (5) and running thence North on the West line of said lot eighty-six (86) feet; thence East parallel with the South line of said lot twenty (20) feet; thence South parallel with the West line of said lot eighty-six (86) feet to the South line of said Lot; thence West on said South line of said

Sat twenty (20) feet, to the place of beginning.
And return the proceeds of said sale to the Clerks
office of this Court within one hundred and
eighty days from this date, to render unto the
said Carey Reagan the said debt, damages,
interest and costs; and have you then and there
this writ.

Witness Levi Ritter Clerk, and the
seal of said Court at Danville, this Second day
of October 1867.

Levi Ritter Clerk

Carey Reagan
Warner L. Vestal &
Mordecai Mendenhall

Copy of Decree & Execution
Judg Sept 24th 1867 for $1446.82
Interest
Costs F.B.C.P 118 $ 1495
J.D. 3 Page 90 Ex D 3 P 5
Without Relief. Replevisable &
Returnable in 180 days from Oct
2nd 1867

$47.10

F

Came to hand Oct 2nd 1867 at 3 Oclock P.M.
and on the 5th day of October 1867 I Levied on and adver
tised the Within described Real Estate to be sold at the
Court House Door in the Town of Danville Hendricks
County Ind On the 26th day of October 1867 by posting three
printed Notices of Said Sale in the Township where Said
Real Estate is Situate and by posting one at the Court
House Door in the Town of Danville Hendricks County
Ind and by advertising Said Sale for three Successive
Weeks in the Hendricks County union a weekly
Newspaper printed and published in the Town of
Danville and of General Circulation and on the Said
26th day October 1867 I first offered for Sale the Rents and
profits for a term of Seven of the Within described Real Estate
at the time and place above mentioned and getting no
bid I immediately offered for Sale the title in fee Simple
and Sold and Struck of the Same to Carey Reagan
for the price and Sum of Fifteen Hundred and
Sixteen Dollars that being the highest and best price
bid and Carey Reagan Paid to me the Costs hence
accrued and the Costs on Judgment

HC 41

Item B10 Dismissal

1858 (2)
1863
1867 (3)

Indiana & Illinois Central Rail
way company
vs
David Swank

sent in the Hendrick court of com
Pleas Feby Term 1858

This cause is fully settled and paid off by deft this day and said suit is dismissed, at the costs of the defendant this 8th day of February 1858,

Attest
John R Wilson

Indiana & Illinois Central Rail
way company
By Novo & Wetherow Appellate
David Swank
Deft.

Joseph S Miller
vs
Andrew Clifton

In the Common Pleas Court May Term 1858

It agreed between the parties that the above intitled Cause be dismissed at the Cost of the Defendant except the Cost of the delivery bond which the plaintiff is to pay Said Cause, having been settled between John Clifton the agent of Andrew Clifton. And John Bateman now executes his note to Said Miller for Two hundred and fifty dollars the amount agreed on by the parties, Said Bateman that the Sheriff has Marked is to have the Property

April 20th 1858

Joseph S Miller

Andrew Clifton
by John Clifton

Anor Crawford
v.
Francis R. Crawford
et al

In the Common Pleas Court, May term 1863.

The plaintiff hereby dismisses this suit, and directs the Clerk of Said Court to enter this dismissal of record on the order Book of Said Court.

May 7. 1863.

P S Kennedy
Atty for Plff.

John V Hadley
Administrator de bonis non of Mary Bell deceased
vs
Wm Arnold and Wm J Darnell

In Com Pleas Court

Dismissal

This suit is compromised and is to be dismissed upon payment of cost by said Darnell.

L M Campbell
Atty for Plaintiff

12

John V Hadley Adm de bonis non of Mary Bell Deceased
vs
William Arnold

In Common Pleas Court

The Plaintiff hereby dismisses this Cause

L M Campbell Atty

13

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State of Indiana
Hendricks County

In the Common Ct

John V Hadley Admr of the Estate John Moore
vs
Uriah G Ross

Comes now the Plaintiff and dismisses the above Cause

L M Campbell
Atty for Plff

CH 41

Item B12 change of Venue
1862

Christian C. Stone
vs
David J. Milam admr
of David Matlock decd

Con. Pls May 1862

The defendant being first duly sworn, upon his oath says that he cannot have a fair trial of this Cause in Hendrick County owing to an odium attaching to his Cause of defense on account of local prejudice. Wherefore he asks that a change of venue be granted him.

David J. Milam

Subscribed and sworn to before me this 21st. day of May, 1862.

Leri Pillow Clk

HC 41

Item B11 Bond

1859 (2)
1864
2 - no date

State of Indiana, Hendricks County.

We, Merril Brady and Simon Hornaday owe the State of Indiana Fifty Dollars, to be Levied of our property. The condition of the above is, that the said Merril Brady shall personally be before the Judge of the Court of Common Pleas on the first day of the next term thereof, to answer An information and abide the order of the Court, and not depart thence without leave; then this recognizance shall be void, else to remain in full force. Given under seal this 24th day of March 1859.

Merill Brady [L.S.]
Simon Hornaday [L.S.]

Taken and approved by me, this 24th day of March A. D. 1859.
R.S. Ward Sh'ff A.C.
By Peter Fry Deputy

38

State of Indiana, Hendricks County.

We, John N. Bates and Edward Orme owe the State of Indiana Twenty Five Dollars, to be Levied of our property. The condition of the above is, that the said John N. Bates shall personally be before the Judge of the Court of Common Pleas Hendricks county on the first day of the next term thereof, to answer An Information for Gaming & abide the order of the Court, and not depart thence without leave; then this recognizance shall be void, else to remain in full force. Given under seal this 2nd day of April 1859.

John N. Bates [L.S.]
Edward Orme [L.S.]

Taken and approved by me, this 2nd day of April A. D. 1859.
By Peter Fry Deputy Sh'ff

Martha Parker
V.
William H. Calvert
William G. Parker &
John Wells

We undertake that the plaintiff Martha Parker shall prosecute this action with effect and without delay, and return the property in controversy to the defendants, if return be adjudged by the Court, and pay to them all such sums of money as they may recover against the plaintiff in this action for any cause whatever.

Martha Parker

W. D. Sears

Mary E. Lewis
V.
William H Calvert
William G Parker &
John Wells

We undertake that the plaintiff Mary E Lewis shall prosecute this action with effect and without delay and return the property in controversy to the defendants if return be adjudged by the Court, and pay to them all such sums of money as they may recover against the plaintiffs in this action for any cause whatever

Mary E Lewis
W. D. Lewis

State of Indiana } In Hendricks Com Pleas C
County of Hendricks } Jan Term 1864

State of Indiana Ex. Rel.
of Owen A. Owen Et. al.
vs
Jonathan Owen Et. al.
} Suit on Bond as Commissioner to sell land.

Comes now the defendants David Mills, Shilds Moore, Cornelius Loy, John Owen, and Abner Mills Administrator of the Estate of John Wilson deceased by Peter S. Kennedy and Sol. Blair their attorneys and represents to the court that the relators named in the above entitled cause as plaintiffs, reside in different States and Territories of the United States, widely separated from each other, and as some of them believed to be are in the States now in Rebellion against the general Government it is almost impossible that the said relators could have communicated with or employed an attorney to prosecute the said suit in their behalf— and further that several of said pretended his relators are dead having departed this life at different periods ranging from two to ten

years last past, that others have been paid their full distributive share of the proceeds of said land sale; that others are minors who know nothing of the institution or pendency of said suit, the said defendants therefore move the Court to order and require the attorney for the plaintiff in the above entitled cause to produce and prove the authority under which he appears, and that all further proceedings ~~under~~ on behalf of those for whom he assumes to act be stayed until said authority is produced.

Kennedy & Blair.
attys for defts.

Cornelius Loy being duly sworn upon his oath says he believes the matters and things alledged in the foregoing are true

C Loy

Subscribed & sworn to before me this Jan. 21st, 1864.

Levi Ritter clk

CH 41

Item B13 Execution
1858
1867

Indianapolis Jany 14th 1858

John Irons
Clerk Hendricks Common Pleas

Dear Sir.

Please issue execution in case of Fry, Maxwell & Walker vs Faught if the judgment has not been replevied —

Yours Respectfully
Newcomb, Harvey & Harrington

13

EXECUTION.—Common Pleas Court
Sold by Wm. Sheets, Indianapolis, Ind.

THE STATE OF INDIANA, } SS:
Hendricks COUNTY, }

THE STATE OF INDIANA, TO THE SHERIFF OF Morgan COUNTY,—GREETING:

Whereas, Stoughton A. Fletcher Jr. and Francis M. Churchman.

recovered judgment against Perry Hamilton, William Hamilton, Edward S. Ferguson, Aquilla Jones, Hilary Isley, Elisha P. Jones and Julia M. Jones.

on the Twenty-fifth day of September, 1867 in the Court of Common Pleas of Hendricks county, for Four hundred and twenty-eight dollars and Eighty-eight cents, (and became replevin bail thereof on the ____ day of ____, 186__,) upon which there is due ____ dollars and ____ cents, principal and interest, and Forty-nine dollars and Eighty-three hundredths cents, costs accrued to this time, all without any relief whatever from valuation or appraisement laws;

You are therefore commanded to levy the said sums of money of the property of the Defendant..., (and replevin bail,) in your county, subject to execution, and have the money at the Clerk's Office, to satisfy said judgment, interest and costs, and return this writ within one hundred and eighty days from the date of the same, with your doings thereon.

In Witness of Which, I, Levi Ritter, Clerk of said Court, hereunto affix the Seal thereof, and subscribe my name, at Danville, this Fourth day of October, A. D. 1867

Levi Ritter Clerk.

CH41

Item B15 Garnish
1870

Aprile 15th 1870

A list of the Notes and accounts of David Ambrose now onhands for collection

Notes		Accounts	
Luvisa Davidson	$ 14.65	Thomas Wilson	$ 3.85
James W. Stites	$ 3.00	Joseph Deatley	3.80
Jackson Holman	$ 11.19/100	Marten Dodson	23.88
Mary Reid	$ 8.46	Leir Smith	40 cts
James Greggs	$ 11.10	R. M. Morgan	$ 5.00
	$ 48.40	H. C. McDaniel	90 cts
		William Gipson	35 cts
Amount Notes, accounts	$ 113.97	Jepsey West	50 cts
~~Costs not collected~~		Willias Bramel	25 cts
David Ambros vs George W. McClintic } Complaint $ 2.73		Samuel Davidson	85 cts
		Thomas Raney	$ 1.80
		D. C. Lane	$ 10.73
Sett off George W. McClintic at D. L. Ambros $ 3.40		Hiram Toney	$ 4.46
		Edward Curry	$ 6.35
Judement for the defendant		Caleb Radams	$ 2.05
60/100 and costs $ 5.60 amount $ 8.95			$ 65.57
		Notes	48.40
D. L. Ambros vs B. F. Hedges } Complaint $ 1.69 Costs in advance		Amount	$ 113.97
		Paid out & not collet.	— 23.70
Debt not collected	$ 2.00	Amount	$ 137.67
	$ 3.69		
D. L. Ambros vs John Brown } Complaint $ 2.73 Costs in advance		Received	$ 176.00
			137.67
		Bal. cash on hand	38.33
Debt not Paid	$ 2.00		
	$ 4.73		
D. L. Ambros vs R. B. Sherrard } Complaint $ 4.33 Costs in advance		Isaac Burnett J. P.	
Not Collected	$ 2.00		
	$ 6.33		
Costs not collected	$ 23.70		

State of Indiana Hendricks County ss.

I Isaac Burnett swear that the within contains a full true and correct list of notes and accounts in my hands belonging to David Ambrose at the time of the Service of garnishee in the Case of Dessar and others against the said David Ambrose in the Court of Common Pleas of said County at the January Term 1869. (1869) And that the money now paid into Court, to wit $38.33, and the notes and accounts now filed into said Clerks are the only ones in my hands belonging to said Ambrose.

Isaac Burnett

Subscribed and sworn to before me April 18. 1870.

N. T. Hadley Clerk

In Common Pleas Clerks

Dessar and others

vs

David Ambrose

Filed April 18 1870

N. T. Hadley

Clerk

F

30

CH 41

Item B16 Jury Findings
1870

We the Jury find the defendant Guilty and asbess the fine at one cent

John O Wishard Foreman

24

CH41

Item B 16 Misc. Court Records - some hard to read

1849
1853
1854
1862
1864
1867
1868
1869
1870
1920
1 - no date

State of Indiana } In the Court of Common Pleas in
Hendricks County } and for Said County. Aug Term 1849

The Grand Jurors of the State of Indiana, impannelled, Charged and Sworn to enquire in and for the body of the County of Hendricks aforesaid, upon their oath present, that James Stutsman Sheriff of Said County, On the Sixteenth day of August in the year Eighteen hundred and forty nine, at the County of Hendricks aforesaid, Not having the fear and respect of our Ancient and well established rules and Customs before his eyes, but being moved and Seduced by the instigations of the Great Enemy of our wellfare and happiness, and Contriving, and wickedly and maliciously intending to bring into infamy and disrepute, One of our Noble and popular places of resort, Situate and being within the Town of Danville, County and State aforesaid, and well known by the name of the "Stone Corner" then and there of his malice aforesaid did appreciate and equalize himself with a dirty, greasy, ragged, Free fellow, whose name to the Jurors aforesaid is unknown, and then and there treated and drunk with such infamous person to Jurors unknown as aforesaid to the great terror and alarm of the good Citizens of the County aforesaid and against the peace and dignity our own

Order &c

Peter Snooks
Prosecutor

Joel Jessup
vs
Thomas Plummer } suit in common Pleas court. Octr Term 1854

The Clerk will issue a subpoena in this suit in favor of the deft directed to the Shff of this county for the following witnesses viz ~~Nathan~~ Barrel Frame & Nathan Frame all as the law directs

Octr 5th 1854 — C. C. Nave
Atty for Deft

The State of Indiana Ex. Rel.
Leonard T. Maccown
vs
Robert C. S. Maccown, &
James Maccown } Suit on Admr. Bond in the Hendricks Court of Common Pleas Jany Term A.D. 1854.

The above named defendants, Robert C. S. Maccown and James Maccown, You are hereby severally notified, that you will on the trial of the above entitled suit, now pending in the Hendricks Court of Common Pleas Produce the several books now in your possession Containing the partnership business and accounts of the firm of James Maccown, Robert C. S. Maccown & John S. Maccown, and the notes accounts & Judgments belonging to said firm, and on your failure to produce the same, I will then & there give in evidence the contents thereof, orally on said trial,

Danville Jany. 3rd A.D. 1854.

To Robert C. S. Maccown, &
James Maccown. } Leonard T. Maccown Pltff or Relator.

The State of Indiana
vs
James B. McClain } Hendricks Court Common Pleas Octr. Term A.D. 1854 Prosecution for interrupting a Religious Meeting

The Clerk of said court will issue a subpoena in the above cause, in favor of the deft, directed to the Shff of Hendricks County, for the following witnesses viz Seth Heron to bring with him an Execution in favor of Daniel Cox Admr of the Estate of Abijah Cox decd. against Joseph Jordan and for Charles Johnson & Gideon Morris all as the law directs Octr 16th 1854

C. C. Nave Atty for Deft

25

State of Indiana } Hendricks Com. Pleas Court
Hendricks County } Sept. Term 1862

State of Indiana, Ex. Rel.
~~[illegible]~~ Owen H. Owen Et. al.
vs.
Jonathan Owen Et. al.

Comes now the defendants

1 in the above entitled cause and answer the ~~[illegible]~~ complaint of the plaintiffs and denies each and every affirmative allegation therein contained.

Sol. Blair Atty for Deft.

And the defendants for a second and further

2 answer to said ~~[illegible]~~ complaint say that the said Jonathan Owen

Rep Administrator as in the said complaint mentioned, has from time to time rendered to this court a full and true account of his proceedings and acts as such administrator the last of which reports was made and rendered at the term of this court and which reports were all approved by said Court and that he has not neglected or refused to render an account of

28

Le Roy McLean County Office presence this

Question: Did you not at the same time and place ask Defendant Couch to tell you just how much his noted amounted to and did you not say to him that if your Father got ten or twelve dollars the most he would be sure to keep it? or was not that the substance of what you said

answer I never heard such a thing named

All further questions being waived by defendants counsel, the foregoing was carefully read to the deposing Witness and by him subscribed in my presence this 2nd day of January 1863

John W Williams

G. D. Crumbaugh Jr
State of Illinois } ss
McLean County } I
in a

that James William
was by me first swor
nothing but the truth
common pleas of Hendri

Bill of Costs attending the depositions

Taking the Depositions	3,56
County seal	35
Stamp	1.0
Postage on letter	12
	$4,134

STATE OF ILLINOIS, } ss.
M'LEAN COUNTY.

I, Reuben L. Davis, Clerk of the County Court in and for said County, in the State aforesaid, do hereby certify, that Gideon D. Crumbaugh Esq., whose signature appears to the Certificate hereto attached, was, at the time of signing the same, an acting Justice of the Peace in and for said County, duly elected, commissioned and qualified, as appears to me of record, and that full faith and credit are due to his official acts. I further certify that I am well acquainted with the hand writing of the said G D Crumbaugh Esq and verily believe his signature to the said Certificate is genuine.

In Witness Whereof, I have hereunto subscribed my name, and affixed the seal of said Court, this 6th day of January A. D. 1863

R L Davis Clerk.

State Exchl
Owen A. Owen
et al
vs
Jonathan Owen et al

In the Hendricks
court of common
Pleas Sept Term 1866
Wm Plaintiff

Replies to the 2nd paragraph of defts
joint answer here and denies
each affirmative allegation
therein contained

C. C. Nowcatty
Jac Reff

25

State of Indiana } In the Court of Com.
Hendricks County } Pleas.
January Term 1867

State of Indiana } Information for
vs } Assault & Battery
Henry C Wilson &
John P Wilson

William W Woolen jr
District Attorney for the Court of Common Pleas of said County and State informs the Court that the Defendants Henry C Wilson and John P Wilson at and in said County and State on the 2nd day of December 1866 did then and there in a rude insolent and angry manner unlawfully assault touch strike beat bruise and wound one Thomas A Gossett contrary to the Statute in such case made and provided as shown by the affidavit of said Gossett filed herewith

William W Woolen jr
District Attorney

State of Indiana
County of Hendricks ss

Court of Common Pleas.
January Term 1868.

Harrison White, by his next friend
Evastus F Hunt
vs
John L. Brown

John L Brown being duly Sworn on his oath says, that he is defendant in the above entitled cause, that he cannot safely go into the trial of said Cause at the present term of this Court ~~on account of~~ on account of the absence of Phebe Sofield who is a material and competent witness for him in the trial of said Cause. that he believes ~~said witness will prove~~ expects to prove by said witness, that Margaret White, the mother of the plaintiff, was in the constant daily habit of inhumanly treating and abusing the plaintiff and that her treatment of the plaintiff was the cause of the bruises appearing on the plaintiff and that they were not caused by the ~~plaintiff~~ Defendant as set forth in the Complaint. that he believes the facts so expected to be proved by said witness to be true, and he knows of no other witness by whom he can establish said facts ~~so fully~~. that he caused a Subpoena to be issued and served on said witness, that she resides in Hendricks County Indiana, and he believes he will be able to procure her testimony within a reasonable time if this cause be continued. that her absence has not been procured by the connivance of affiant nor by others at his request nor with

James J. Bell
vs
Julia S. Wills
Eldridge Wills
& Allen Bell

Hendricks Court Com. Pleas. May Term 1868

Motion

Comes now Thomas Keney as Assignee of Howard Cunningham the purchaser of certain Real Estate sold by J. S. Miller as Commissioner in the above entitled cause, by Ogden & Irvin his attys, and moves the Court for an Order herein causing said Commissioner or some other proper person, to make execute and deliver to him said Keney a deed for said Real Estate, for the reason that said Commissioner has been paid the full amount of the purchase money for which the same was sold by him as such Commissioner

Thomas Keney
By Ogden & Irvin Attys

25

No 31

Malon E Thompson
vs
William G Parker
et al

Appeal fr the Hendricks Court of Common Pleas Jany Term 1869

The Clerk will issue a subpoena in this cause for the Plaintiff directed to the Sheriff of this county for the following witnesses viz " " Joseph Moore M McVey William M Daniel Esq Luther Evans Grange Burgess, all as the law directs Jany 11th 1869

E C Atkinson atty for Pff

The State of Indiana
Hendricks County

In Hendricks Court of Common Pleas May Term AD. 1868

James J Bell
vs
Julia S Wills et al

Partition

Simon S Hadley Commissioner appointed by the Court to convey to Thomas Keney by Deed the premises described in the Petition herein filed Reports that he has executed such Deed and now brings the same into Court for the approval of the Judge

S. S. Hadley
Commissioner

38 cp

Sworn Mon. Sept. 20, 1920.

June 22, 1918.

Grand Jury Empaneled. —

Come now into Open Court, Alfred Cosner, Perry Porter, W. W. Farmer, Dutt Shute, Albert Treesor and Clarence Vaughn the regularly drawn Grand Jurors for the present term of this Court, who being duly and legally selected for service at the present term of this Court are sworn in Open Court and take the oath prescribed by law. Which is as follows, to-wit:

"You, and each of you, do solemnly swear, that you will diligently inquire, and true presentment make, of all

25 ~~30~~ F

State of Indiana } In the Hendricks Circuit
vs } Court of Common Pleas —
Andrew M. Robbards } June Term 1870

William Irvin District-Attorney within and for the 12th Judicial District in the State of Indiana, Composed of the Counties of Marion and Hendricks, informs the Hendricks Circuit Court of Common Pleas that one Andrew M. Robbards, on or about the 20th day of August 1869, at and in said County of Hendricks and State of Indiana, he the said Robbards not being then and there licensed according to law to sell intoxicating liquors at retail, unlawfully sold to one Wilson McKenzie intoxicating liquor in a less quantity than a quart at a time, to-wit: the quantity of one gill, at and for the price of ten cents Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Indiana — As shown by the affidavit of Wilson McKenzie filed herewith

William Irvin
Dist. Atty 12th Jud. Dist. Ind.

Court Common Pleas. F B 1. 4

17	R.	X	Major et al	vs	McSheetes C. S.			~~$1~~
34	R	X	State	vs	John Murphy	"	"	~~$1~~
35	R.	X	"	"	"	"	"	~~$1~~ 50
36	R	X	"	"	"	"	"	~~$1~~
69	R	X	Berriman et al	vs	McDonald et al	"	"	~~$1~~
115	R	X	Mattock	vs	Isaac Stephens	"	"	~~$2~~
117	R	X	Clark admr. Turner Est.	vs	Jas Sharp	"	"	~~$2~~
118	R.	X	H Brittain	vs	G A Carter	"	"	~~$2~~
121	R	X	Swindler	vs	Blalock	"	"	~~$2~~
123	R	X	Mason	vs	"	"	"	~~$1~~
126	R	X	Hoskins	"	McAninch	"	"	~~$1~~
"	R	X	"	"	"	Jury	"	~~$1~~
130	R.	X	Hoskins	"	Goolman & Other	"	"	~~$1~~
138	R	X	Nave	"	Swope	"	"	~~$1~~
142	R.	X	Burton et al	v	Mendenhall	"	"	~~$1~~
150	R	X	Owen et al	vs	Truckses et al	"	"	~~$1~~
151	R.	X	Nicoli	vs	Leo Wood	"	"	~~$1~~
169	R	X	Hadley	vs	Bland & wife	"	"	~~$2~~
170	R	X	Sobo	"	Scarce	"	"	~~$2~~
172	R	X	Cannick	vs	McSheetes	"	"	~~$2~~
174	R	X	Kellogg	vs	Nichols & Wolverton	"	"	~~$2~~
176	R	X	Newcomb admr.	v.	McCormack	"	"	~~$2~~
181	R	X	Foote L & O	vs	Hardin Osborn	"	"	~~$2~~
188.	R	X	Jesse Hockett	v	Wellington Crist	Court Fee		~~$2~~
193	R.	X	Ind. Ins Unanimity	v	Mich McClain	"	"	~~$2~~
194	R.	X	Center Township	vs	Benj Snodgrass	"	"	~~$2~~
196	R	X	H S Kellogg	vs	Rosebery & Scarce	"	"	~~$2~~
199	R	X	Benj Armstrong	vs	Johnson Athey et al	"	"	~~$2~~

$57.50

25

CH 41

Item 17 Levy against Property

1858
1859 (6)

1 no date

STATE OF INDIANA, Hendricks County.

We, Wm Armstrong and Isaac Stephens owe the State of Indiana Twenty five Dollars, to be Levied of our property. The condition of the above is, that the said Armstrong shall personally be before the Judge of the Hendricks County Court of Common Pleas the first day of the next term thereof, to answer an information for assault and Battery abide the order of the Court, and not depart thence without leave; then this recognizance shall be void, else to remain in full force. Given under seal this 31st day of Janly 1859.

Wm Armstrong (SEAL)

Isaac W Stephens (SEAL)

Taken and approved by me this ..... day of ..... A. D. 185

State of Indiana, Hendricks County.

We, Benjamin M Logan and Jacob Wall each owe the State of Indiana Twenty five Dollars, to be Levied of our property. The condition of the above is, that the said Benjamin M Logan shall personally be before the Judge of the Court of Common Pleas on the first day of the next term thereof, to answer an Information for Assault and Battery abide the order of the Court, and not depart thence without leave; then this recognizance shall be void, else to remain in full force. Given under seal this 21st day of March 1859.

B M Logan L. S.

Jacob Wall L. S.

Taken and approved by me, this 21st day of March A. D. 1859.

R S Ward Skff H. C.

State of Indiana, Hendricks County.

We, John Christie and William Christie each owe the State of Indiana Twenty five Dollars, to be Levied of our property. The condition of the above is, that the said John Christie shall personally be before the Judge of the Common Pleas court on the first day of the next term thereof, to answer an Information for Usury abide the order of the Court, and not depart thence without leave; then this recognizance shall be void, else to remain in full force. Given under seal this twenty fifth day of February 1859.

John Christie L. S.

Wm Christie Sr L. S.

Taken and approved by me, this 25th day of February A. D. 1859.

R Ward Skff H. C.

State of Indiana, Hendricks County.

We, Jacob Wall and Benjamin M Logan each owe the State of Indiana Twenty five Dollars, to be Levied of our property. The condition of the above is, that the said Jacob Wall shall personally be before the Judge of the Common Pleas Court on the first day of the next term thereof, to answer an information for assault and Battery abide the order of the Court, and not depart thence without leave; then this recognizance shall be void, else to remain in full force. Given under seal this 21st day of March 1859.

Jacob Wall L. S.

B M Logan L. S.

Taken and approved by me, this 21 day of March A. D. 1859.

R S Ward Skff H. C.

15

State of Indiana, Hendricks County.

We, John Flatheas and Robt Lope each owe the State of Indiana Twenty five Dollars, to be Levied of our property. The condition of the above is, that the said John Flatheas shall personally be before the Judge of the Hendricks Court of Common Pleas on the first day of the next term thereof, to answer an Information for Usury abide the order of the Court, and not depart thence without leave; then this recognizance shall be void, else to remain in full force. Given under seal this 26th day of March 1859.

John Flatheas L. S.

Robert Lope L. S.

Taken and approved by me, this 26th day of March A. D. 1859.

R S Ward Skff H. C.

State of Indiana Hendricks County

Be John Doane & Washington Doane Due the State of Indiana Twenty five Dollars each to be Levied of Our property

The Condition of the Above is that the said John Doan shall personally be before the Judge of the Hendricks County Court of Common Pleas on the first day of the next term, ~~the 4th to answer~~ on an Information for Assault & Battery Abide the Order of the Court and not depart thence without leave then this Recognizance shall be Void else to remain in full force Given under Seal this 13th day of April 1859

John H Doan (Seal)

Washington Doan (Seal)

Taken and approved by me April 13th 1859 By Letter By Depty

88 15

10.50. 125 10.30 *5.2

THE STATE OF INDIANA, 1859 140.

TO THE SHERIFF OF HENDRICKS COUNTY, GREETING:

Whereas, Peter T. Wright, Charles W. Wright, James Palmer & Hugh Douglass recovered judgment against John W. de Mattock

on the 20 day of July A. D. 185[illegible] in the Court of Common Pleas of Hendricks County; for Three Hundred and thirty five Dollars and Cents, and Without any relief whatever from the valuation or appraisement laws upon which there is due Three hundred & nine Dollars and forty five Cents principal and interest, and Seven Dollars and forty Cents, costs accrued to this time. You are therefore commanded to levy said sums of money of the property of the defendant John W. de Mattock

in your County subject to execution, and have the money at the Clerk's Office, to satisfy said judgment, interest and costs, and return this within one hundred and eighty days with your doings hereon.

Witness my name and the Seal of said Court at Danville, this the 20 day of July A. D. 185[illegible]

John Drony Clerk.

State of Indiana, Hendricks County, To-wit:

We, Hendon Gilliland and Isaac Johns, acknowledge ourselves to owe and to be indebted to the State of Indiana, in the sum of fifty Dollars, to be levied of our respective property; but to be void upon condition that the said Hendon Gilliland shall make his personal appearance before the Judge of the Court of Common Pleas Court, on the first day of the next Term thereof, and answer the State of Indiana upon an for Malicious Injury, and not depart without leave of said Court.

Thos R. Gilliland (SEAL)

John C Gilliland (SEAL)

(SEAL)

Taken and approved by me this ..... day of ..... 186..

Sheriff H. C.

CH 41

Item 819 motion for new Trial
1870

"

State of Indiana } In the court of Common
Ken Dicks county } Pleas Oct. Term 1870—

The State of Indiana
vs.
James Ayers } Malicious trespass.

The defendant moves the court for a new trial for the following reasons to wit;—

1st Because the verdict of the jury is not sustained by sufficient evidence and is contrary to law.

2d Because of error of law occuring at the trial and excepted to by the defendant in this;— The court improperly limited the defendants argument to ten minutes.

3d Because of irregularity in the proceedings of the court by which the defendant was prevented from having a fair trial in this court;— The court improperly limited the defendants argument to ten minutes.

Charles Foley
Atty for Defft

CH 41

Item B20 notice to take Deposition
1856
1868

State of Indiana Hendricks County
Common Pleas Court
May Term 1856.

Jesse Martin &
John R. Thomson Plffs.
vs
The Terre Haute & Richmond
Railroad Company, defts.

Civil action

The the defendants will take Notice, that on the 9th day of May 1856 at the Mayor's office in the City of Cincinnati in the State of Ohio, between the hours of Eight in the morning and Six Oclock in the evening, the plaintiffs above named will Commence taking the depositions of L. W. Hughes and others before the Mayor of said City, and will Continue from day to day the taking thereof until Completed, and which depositions when so taken will be read on behalf of the plaintiffs upon the trial of the above entitled Cause, now pending in the said Hendricks Common Pleas Court, at Danville in the County of Hendricks and State of Indiana When & where the defts may attend and put interrogatories if they think proper so to do.

J. M. Gregg Atty
for Plff

STATE OF INDIANA, } SS:
Hendricks COUNTY,

Joel Rennard, plff
vs
Robert G. Little, deft.

In the Common Pleas Court of said County,
to September Term, 1868.

To said Robert G. Little defendant. You are hereby notified, that on Thursday the 11th day of June 1868 at the office of the Recorder of Marion in County of and State of Indiana (being in the city of Indianapolis) between the hours of 8 oclock A. M., and 6 oclock P. M., of said day, before some officer authorized to take Depositions I shall proceed to take the Deposition of divers witnesses to be used as evidence in the trial of the above entitled cause and if necessary, will continue the taking from day to day, between the hours and at the place aforesaid, until the taking is completed.

Dated this 9th day of June 1868

Joel Rennard plff By Charles Foley
& D. F. Hadley his attorneys

Due service of the above notice is hereby acknowledged this day of 186

29

CH41

Hend 21 order to Stay
1859 (2)
1871

of Indiana, } Appeal from the Court of Com Pleas
SUPREME COURT. } of Hendricks, County.

John W & L Matlock
vs
Arthur W Little et al

By a Judge of the Supreme Court,
Ordered that, execution on and all proceedings on the judgment below be stayed for three years, unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

J M Hanna,
a Jud of the Supreme Court

State of Indiana, S. S.

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge to stay proceedings in the above entitled cause.

Witness, WILLIAM B. BEACH, Clerk of said Court and the seal thereof, at Indianapolis, this 11th day of June A. D. 1859.

Wm B Beach C. S. C.

State of Indiana, } Appeal from the Com. Pleas
SUPREME COURT. } of Hendricks County.

John W & L Matlock et al.
vs
Robt. Montgomery et al.

By a Judge of the Supreme Court,
Ordered that, execution on and all proceedings on the ~~Judgment~~ below be stayed for three years, unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

A E Perkins
Judge Supreme Court

State of Indiana, S. S.

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge to stay proceedings in the above entitled cause.

Witness, WILLIAM B. BEACH, Clerk of said Court and the seal thereof, at Indianapolis, this 22d day of August A. D. 1859.

Wm B Beach C. S. C.

The State of Indiana, to-wit:

IN THE SUPREME COURT.

Warren Hardwick et al
vs
William L. Wilson et al.

Appeal from the Hendricks Com. Pleas Court.

On application of the appellant, It is Ordered by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below, be stayed, as the law directs, whenever the appellant shall have given bond according to law. July 21st 1871

A. C. Downey
Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 21st day of July 1871.

Theodore W. McCoy
Clerk S. C. of Indiana.

CH 41

Stent B 22 Replevin
1858
1872 (2)
2 no date

State of Indiana
Hendricks Co. ss.

Com. Pleas Ct.

Mary Parker
V.
Wm H Colvert
Wm G Parker and
John Wells

The plaintiff states she is the owner and lawfully entitled to the possession of the following property Viz:

One Red Roan Cow seven years old of the value of Forty dollars $40.00
One Spotted Calf 2 months old of the value of Five dollars $5.00
One feather bed of the value of twenty dollars $20.00
A Lot of bed clothing of the value of Ninety dollars $30.00
One Table of the value of three dollars $3.00
One Bureau of the value of five dollars $5.00
One Stand Table of the value of two dollars $2.00
One Bedstead of the value of five dollars $3.00
Three chairs of the value of three dollars $3.00

State of Indiana
Hendricks County ss.

Common Pleas Ct.

Mary E Lewis
V.
William H Colvert
William G Parker
and
John Wells

The plaintiff in the above entitled cause says that she is the owner and lawfully entitled to the possession of the following described property to wit:

One Red Cow nine years old of the value of Forty dollars $40.00
and One Red Calf of the value of five dollars $3.00

That the same has not been taken for any tax, assessment or fine pursuant to any Statute nor seized under an execution or attachment against the property of the plaintiff but is unlawfully detained in the County of Hendricks and State of Indiana from the plaintiff by the defendants

Mary E Lewis

State of Indiana Hendricks County

To the Sheriff of said County

You are commanded to Execute the following Order

Marshall Collins
v
Cornelius Shaver
Edmund H. Stoughton
} Replevin

Come the parties by their attorneys and by agreement this cause is submitted to the Court for trial, without the intervention of a Jury, and the Court having heard the proofs and allegations of the parties and the argument of counsel, upon due deliberation, find the Bay Mare and colt in Complaint mentioned, was subject to levy and sale on Execution of Jacob Konklitho and Morris Konklitho against Thomas Collins, and the Mare and colt are of the value of One hundred and fifty dollars And that said defendants are entitled to the return of said mare and colt. And it is ordered and adjudged by the Court that the plaintiff forthwith deliver up to said defendants the said Bay Mare and colt. It is therefore considered by the Court that said defendants recover of the said plaintiff and cent the damages so found by the Court as aforesaid and also dollars and cents for their costs and charges herein laid out and expended

I John Irons Clerk of Court of Common Pleas in and for said County certify that the foregoing is a true copy of the order in the above entitled cause Witness my name & the seal of said Court at Danville this 19 Aug 1858

John Irons Clerk

State of Indiana
Hendricks
Marion County } ss

Common Pleas Ct.

Mary E Lewis
v
Wm H Calvert
Wm G Parker Ed
John Wells

The plaintiff in the above entitled says that she is the owner and lawfully entitled to the possession of the following described property to wit:

One Red Cow and calf of the Value of Forty five Dollars $45.00

That the same has not been taken for any tax assessment or fine pursuant to any statute nor seized under an execution or attachment against the property of the plaintiff, but is unlawfully detained in the County of Hendricks and State of Indiana from the plaintiff by the defendants

Robt P Parker
Atty for Plff.

Mortgage for $50.00 dated Aug 20th 1858 Due 1 day after date

State of Indiana
Hendricks County } ss.

Common Pleas Ct

Martha Parker
v
William H Calvert
Wm G Parker and
John Wells

The plaintiff in the above entitled action says that she is the owner and lawfully entitled to the possession of the following described property Viz:

One Red Roan Cow seven years old of the value of Forty dollars $40.00

One Spotted Colt 2 months old of the value of five dollars $5.00

One feather bed of the value of twenty dollars $20.00

One lot of Bed clothing of the value of thirty dollars $30.00

One Table of the value of three dollars $3.00

One Bureau of the value of five dollars $5.00

One Stand Table of the value of two " $2.00

One Bed Stead of the value of five dollars $5.00

Three Chairs " " " " three " $3.00

All of the value in the aggregate of One Hundred and fifteen dollars

Which the defendants Wm H Calvert

C #41

Item B 23 Replivin Bail
1873

The first National Bank of Danville Indiana
vs
David Pennington,
Menaton Pennington
George R Davenport &
Preston Pennington

Judgment in the Court of Common Pleas, January 21st 1873 for $894.10

Replevied by Susanna Chapman March 6. 1873.

Susannah Chapman being duly Sworn, on oath says that she became replevin bail for the payment of the above entitled judgment on the 6th day of March 1873, and that she verily believes she will be liable for the judgment interest and costs thereon unless execution issues on said judgment immediately.

her
Susanna X Chapman
mark

Sworn to and subscribed before me this 30th day of May 1873 L.O. Jenkins, Clerk.

CH 41

Item B 24 Reply to answer
1865

Stephen N. Hardin Admr of Daniel B. South vs Lawrence S. Shuler / In Hendricks Court of Common Pleas May Term 1865.

1st The plaintiff for reply to defendts answer, denies each and every allegation therein.

2d And for a 2d & further answer plaintiff says that before the Commencement of this suit he filed his petition in the Circuit Court of Hendricks County for the appointment of a Commissioner to convey to said Lawrence S. Shuler the right, title and interest of said deceased to the lot in defendants answer mentioned; that said Court appointed Peter S. Kennedy a Commissioner and ordered him to convey by deed all the right, title and interest of said South in and to said lot to the defendant, Lawrence S. Shuler, which deed was duly made by said Commissioner, acknowledged and tendered to the said defdt before the Commencement of this suit

3. 4 And plaintiff says that at the time of the sale of said lot by decedent to defendant the latter took possession of the lot in question and from that time hitherto has remained in the quiet enjoyment and possession of the same and is now in full and undisputed possession of the said lot; and further, that said decedent, in the first place purchased said lot from the said defendant, Shuler and that the deed for which said decedent executed his title-bond was simply to reconvey said lot to the defendant and rescind the original Contract between said decedent and defendant, all of which plaintiff is ready to verify, wherefore he demands judgment.

P. F. Kennedy.

Atty for Pltff

CH41

Item B 14 Fees and other costs

1854
1855
1858
1861
1870
1871
1877

1 — no date

Stolen Fletchers } June Term 1861
vs
D Fawcett et al } Mearion Common Pleas

Fees due Thos Nichols Stff

on Summons $1.93

State of Indiana - Hendricks County ss. H B Crawford

On the 30th day of October AD 1854 personally appeared before the Clerk of the Court of Common Pleas of said County, who being by said Clerk duly sworn upon his Oath says that Henry B Crawford, on the 18th of October 1854. at the residence of his father in Danville County and State aforesaid, departed this life intestate, leaving ~~no issue~~ personal property, probably to the amount of fifteen hundred dollars, and that his widow Eliza J. Crawford relinquishes her right to letters of administration and desire that the same may be issued to the said deponent.

Benjamin Pottage } Judgt in Court of Common Pleas.
vs
John R. Wilson } J B & Pa 67.

Costs all made by plff $16.210

Benjamin Pottage } In Court of Common Pleas
vs
Elliott & Pitts } J B & Pa 67.

Costs all made by plff $10.31

Pottage } In Common Pleas Court
vs
Wilkins } J.B.H Pa 67 — Tots Cost $34.85.

Cost retained out of Judt 25.111 9.85.

$36.36

State of Indiana Hendricks County Set.

Cason Buckhalter } In the Court of Common
vs Pleas. January Term 1855.
Isaac Lawrence }

I John Irons Clerk of said Court Certify that the following are the Costs to be paid by and charged to the Plff. Cason Buckhalter, in his prosecution of the above entitled Cause.

Fees due John Irons Clerk

To filing Complaint 6. Iss. Writ 50 / filing do 6. 62
" 3 precips 18. three Subpoenas & filing do 168 186
" 2 precips. 12. Two Subpoenas & filing do 1.24
" Entering Cause on two dockets 30
" " Action twice 12. Motion 10. Rule 12 34½
" deft appearance 6. affidavit 25. 31
" filing affidavit 6. Rule 12½ 18½
" Judgt. for Cost 20. docketing Judgt 15. 35
" Entering Satisfaction 15 Taxing fees 25 40
" Postage paid for Plff 15
" Fee Bill 50
6.26

Fees due C. Chaver Sheriff H.C.
To Cost on Writ 168
Fees due A.M. Larimore Sheriff B.C.
To Costs on Plff Subpoena 148.

Fees due Witnesses for Deft 6.95
Bal of Fees due Witness for Plff. 2.40

27

John Conover } In the Hendricks
vs Court of Common
C. Hillen } Pleas

The following is a List of property Set off by me for the use of Christian C Hillen in the above named case this 21st day of June 1858

C Chaver Shff
By E H Haughan Dpty

One bay mare appraised at		$40.00
One Set Smith Tools	"	20.00
One pr		3.00
One Buggy		25.00
One Clock & Stand Table		3.50
Three beds bed Steads & bedding		50.00
One Sofa		2.50
one Dining Table		4.00
one Bureau		3.00
one set of Chairs		2.00
one Lot Carpeting		2.25
One Cooke Stove		1.00
Eight Pictures		.50
One Small Table		.25
One Clay Bank Mare		70.00
2 one Colt in Scott Jorden prodeport		5.00
2 one Colt in Scott Salem		5.00
One Lot in North Salem		$25.50
32 ff off of the North Side of Lot H.W. Hadley		6.00
		$36.50

We the undersigned Selected to appraise the propert mentioned in the Schedule to which this is annexed upon Oath Say that the several items are Worth the respective Sums herein Specified and that the Same is there true Cash Value at this Time Exclusive of Liens and incumbrances

H.W. Hadley } Appraisers
John Sater

Subscribed and Sworn to before me this 21st day of June 1858

C Chaver Shff H.C.
By E H Haughan Dpty

27 38

CH41

Item B 25 Statement
1854

State of Indiana } Court of Common Pleas of said County.
Hendricks County } October Term A.D. 1854.

To the Honorable John Cowgill, Judge of said Court.

The Undersigned in making a Statement of the whole Estate belonging to Nancy Ann Christie, infant heir of Charles D Christie late of said County deceased would respectfully represent that she is the owner of forty two dollars and twenty four cent, in money now in Court ^ $42.24 ©

and has an undivided interest in lot No 39, in the town of Clayton, in said County worth, probably, forty dollars. } 40.00.

Making in all the sum of $82.24 ©

Given under my hand this 1st day of November A.D. 1854.

Personally Came, the above named Sandy Scott in Open Court and, on being duly Sworn, made oath & subscribed that the foregoing Statement, by him made ^ is true in matter and fact.— this the day and date above.

John Irons Clerk.

CH 41

Salem B 26 Subpoena

1859
1863
1870
1873

Subpoena Term Time

~~SUBPOENA~~ ---Court of Common Pleas. Sold by Sheets & Braden, Indianapolis.

The State of Indiana, Hendricks **County, Sct:**

THE STATE OF INDIANA, TO THE SHERIFF OF Hendricks COUNTY, GREETING:

You are hereby commanded to summon Drummond B. Williams & William N Johnson

to be and appear in the Court of Common Pleas, before the Judge thereof, on the ~~first~~ Second day of the next term of said Court, to be holden at Danville, in and for said county, on the 3 Monday of April, 1859, to answer the complaint of Benjamin Bottage in a civil action; amount demanded dollars. And of this writ make due return.

Witness, John Irons, Clerk of said Court, and the Seal thereof hereunto affixed, at Danville, this 18 day of March, 1859.

John Irons Clerk.

James Williams
vs
John Couch
John Long

Civil action, In the Hendricks court of common Pleas May Term 1863

The Clerk will issue a subpoena in the above entitled cause in favor of the Plaintiff directed to the Sheriff of Boone county Ia for the following witnesses viz L. N. Andrews James Houston & John Gibson, all as the Law directs.

Hord & Witherow
Attys for Pltff

THE STATE OF INDIANA, } SS:
HENDRICKS COUNTY,

Subpœna—Vacation, C. P. Court. Sold by Wm. Sheets, Indianapolis, Ind.

THE STATE OF INDIANA, TO THE SHERIFF OF Marion COUNTY, GREETING:

You are hereby commanded to summon Anna E Hulpes Frank Hanrahan, John D Wordly Abigail Wordly David Kay & Joseph C Brittain. Isaac Wells John D Smith

to appear before the Judge of the Court of Common Pleas of Hendricks County, on the third day of the next Term of said Court, to be held at the Court House in Danville, on the 24th day of September, 1866, then and there to testify in an action wherein

The State of Indiana is Plaintiff, and Isaac Wordle is Defendant, on behalf of the Defendant; and return this summons.

Witness, The Clerk of said Court, this 7th day of September, 1866

Levi Ritter Clerk.

19

THE STATE OF INDIANA, } SS:
HENDRICKS COUNTY,

Subpœna—Term Time, Com. P. Court. Sold by Wm. Sheets—Indianapolis.

THE STATE OF INDIANA, TO THE SHERIFF OF Hendricks COUNTY, GREETING:

You are hereby commanded to summon John Druen

to appear before the Judge of the Court of Common Pleas of Hendricks County, on the 8th day of the present Term of said Court, now in sesion at the Court House in Danville, on the 25th day of January 1870, then and there to testify in an action wherein John T. Warner is Plaintiff, and James Marsh adm of Wm Arnold's Estate is Defendant, on behalf of the Plaintiff; and return this summons.

Witness, The Clerk of said Court, this 22nd day of January, 1870

N. T. Hadley Clerk.

Miller
vs
Evans

In the Hendricks court of Common Pleas Jany Term 1873.

The Clerk of said court will issue a subpoena in said cause in favor of the Plaintiff (Miller) directed to the Sheriff of this County for the following witnesses viz "Ebenezer Tomlinson" "John M Matthews" "Johnson Phelps" "Nathan Hilley" "Wm H. Stone" all as the law directs. Jany 10th 1873.

C. & C. Snow atty for Pltff

19 25

No 660

M. Bateman & Sarah Bateman
vs
J. G. Byers.

Appeal, In the Hendricks Court Common Pleas Jany Term 1873

The Clerk of said court will issue a subpoena in the above cause in favor of the Plaintiffs directed to the Sheriff of this county for the following witnesses viz "Samuel Davidson" Susanah Bateman George Hackley, Hiram Toney & E. Hadley, & Joseph Devitt, all as the Law directs. Jany 14th 1873.

C. & C. Snow atty for Pltff

19

Item B27 Summons and/or cite

1863 (2)
1857
1858
1859
1870

[Summons.]

THE STATE OF INDIANA.

TO THE ~~SHERIFF~~ Coroner OF HENDRICKS COUNTY:

You are Hereby Commanded to Summon Cornelius Chaver, William C Douglass, & Lucyza Taylor

to appear in the Court of Common Pleas of ... of Hendricks County, on the Second day of the next term thereof, to be held at the Court House in the TOWN OF DANVILLE, commencing on the Second Monday in November 1857, to answer the complaint of Thomas Markham, Benjamin M Logan

and of this summons make due return.

Witness my name and the Seal of said Court, this the 2 day of September A. D. 1857

John Irons, Clerk.

THE STATE OF INDIANA.

TO THE SHERIFF OF HENDRICKS COUNTY:

You are hereby commanded to summon Thomas Nichols & Nathan Swain

to appear before the Judge of the Court of Common Pleas on the 11th day of August 1858, at the Court House in Danville, then and there to testify in behalf of the Defendant in an action wherein the Danville and White Lick Plank Road Company is plaintiff and William Little & Robert Little are defendants and this they shall not omit

Witness John Irons the Clerk of said Court this 11th day of Aug. A. D. 1858. Jno. Irons, Clerk.

The State of Indiana Hendricks County. Ss

The State Of Indiana To the Sheriff of Said County.

You are commanded to Summon Cyrus Rogers, Young Short and John Miles and have them upon their Corporeal Oaths to make partition of the lands whereof Thomas Hussey died Seized, in accordance with the provisions contained in the accompanying Order, and report the Same at the next term of the Court of Common Pleas of Said County Commencing on the 3rd. Monday in April next

Witness my name and the Seal of said Court at Danville this 12th day of March A.D. 1859

John Irons clerk

STATE OF INDIANA,

To the Sheriff of ~~Hendricks~~ Marion County;

You are hereby commanded to summon H. M. Vaile

to appear before the Judge of the Court of Common Pleas on the 19 day of February 1858, at the Court House in Danville, then and there to testify in behalf of the Deft in an action wherein Charles Jones

plaintiff and Charles M. Detrick defendant, and this he shall not omit

Witness, John Irons the clerk of said Court this 29 day of Jany A. D. 1858

John Irons Clerk.

The State of Indiana, Hendricks County, sct.

THE STATE OF INDIANA, TO THE SHERIFF OF HENDRICKS COUNTY, GREETING:

You are hereby commanded to summon Henry S. Westlake & Fanny Westlake

To appear in the ~~Circuit~~ Court Common Pleas of Hendricks County, on the Second day of the next Term thereof, to be holden at the Court House in Danville, on the 2 Monday of November, 1858, to answer to the complaint of Aaron Homan

And of this writ make due return.

Witness my name and the Seal of said Court, at Danville, this 14 day of September, A. D., 1858.

John Irons, Clerk.

SUMMONS.---Court of Common Pleas. Sold by Sheets & Braden, Indianapolis.

The State of Indiana, Hendricks County, Sct:

THE STATE OF INDIANA, TO THE SHERIFF OF Hendricks COUNTY, GREETING:

You are hereby commanded to summon Anthony H. Proctor & James B. Proctor

to be and appear in the Court of Common Pleas, before the Judge thereof, on the ~~first~~ Second day of the next term of said Court, to be holden at Danville in and for said county, on the 3rd Monday of April, 1859, to answer the complaint of John Bateman

in a civil action; amount demanded $200 dollars. And of this writ make due return.

Witness, John Irons, Clerk of said Court, and the Seal thereof hereunto affixed, at Danville, this 15th day of March, 1859.

John Irons Clerk.

[Summons.]

THE STATE OF INDIANA.

TO THE SHERIFF OF ~~HENDRICKS~~ Morgan COUNTY:

You are Hereby Commanded to Summon Allen Wheeler impleaded with others

to appear in the Court of Common Pleas of Hendricks County, on the Second day of the next term thereof, to be held at the Court House in the TOWN OF DANVILLE, commencing on the 2nd Monday in August 1858, to answer the complaint of Edmund Clark Administrator of David Wadig estate

and of this summons make due return.

Witness my name and the Seal of said Court this the 24 day of June A. D. 1858

John Irons Clerk.

Allen Wheeler lives South of Stilesville

State of Indiana Hendricks County Ss.

To the Sheriff Of Hendricks County, You are Commanded to Summon Cyrus Rodgers, Stephen N Hardin and Joseph Wilson, and have the make partition of the Lands whereof Arnold Call died Seized according to the accompanying Order of partition and report their doings in the premises at the Next Term of the Court Of Common Pleas of Said County

Witness my name and the Seal of said Court at Danville this 28th day of February 1859.

John Irons clerk.

SUMMONS.---Court of Common Pleas. Sold by Sheets & Braden, Indianapolis.

The State of Indiana, Hendricks County, Sct:

THE STATE OF INDIANA, TO THE SHERIFF OF Said COUNTY, GREETING:

You are hereby commanded to summon Joseph F Zimmerman

to be and appear in the Court of Common Pleas, before the Judge thereof, on the ~~first~~ Second day of the next term of said Court, to be holden at Danville in and for said county, on the 3 Monday of April, 1859, to answer the complaint of Charles S. Feather.

in a civil action; amount demanded Four hundred & fifty dollars. And of this writ make due return.

Witness, John Irons, Clerk of said Court, and the Seal thereof hereunto affixed, at Danville, this 14 day of March, 1859.

John Irons Clerk.

SUMMONS.---Court of Common Pleas. Sold by Sheets & Braden, Indianapolis.

The State of Indiana, Hendricks **County, Sct:**

THE STATE OF INDIANA, TO THE SHERIFF OF Hendricks COUNTY, GREETING:

You are hereby commanded to summon Anthony H. Proctor & James B. Proctor.

to be and appear in the Court of Common Pleas, before the Judge thereof, on the ~~first~~ Second day of the next term of said Court, to be holden at Danville, in and for said county, on the 3 Monday of April, 1859, to answer the complaint of William D. Hilt

in a civil action; amount demanded is two hundred dollars. And of this writ make due return.

Witness, John Irons, Clerk of said Court, and the Seal thereof hereunto affixed, at Danville, this 15 day of March, 1859.

John Irons. Clerk.

7

The State of Indiana, Hendricks County, sct.

THE STATE OF INDIANA, TO THE SHERIFF OF HENDRICKS COUNTY, GREETING:

You are hereby commanded to summon John S. Spickelmire

To appear in the Court of Common Pleas of Hendricks County, on the Second day of the next Term thereof, to be holden at the Court House in Danville, on the 3 Monday of April, 1859, to answer to the complaint of James G. Jones

And of this writ make due return.

Witness my name and the Seal of said Court, at Danville, this 8th day of March, A. D., 1859.

John Irons, Clerk.

The State of Indiana, Hendricks County, sct.

THE STATE OF INDIANA, TO THE SHERIFF OF HENDRICKS COUNTY, GREETING:

You are hereby commanded to summon John Hadley

To appear in the Court of Common Pleas of Hendricks County, on the Second day of the next Term thereof, to be holden at the Court House in Danville, on the 3 Monday of April, 1859, to answer to the complaint of Indiana & Illinois Central Railway Company

And of this writ make due return.

Witness my name and the Seal of said Court, at Danville, this 7 day of April, A. D., 1859.

John Irons, Clerk.

7

State of Indiana }
Hendricks County }

To the Sheriff of said County, Greeting

You are hereby Commanded to Cite

Jane W. Hacker guardian of Sarah Hacker et al.

to be and appear in the Court of Common Pleas of said County, on Friday the fifth day of the next term to be begun and held at the Court house in the town of Danville, on the 19th day of January 1863. then and there to shew cause if any he has why he shall not be compelled to make a full report of his proceedings as such guardian.

By order of the Court,

Witness my hand and the seal of said Court at Danville, this 5th day of January A.D. 1863

Levi Ritter Clerk.

The State of Indiana, Hendricks County, sct.

THE STATE OF INDIANA, TO THE SHERIFF OF HENDRICKS COUNTY, GREETING:

You are hereby commanded to summon Lawrence Moore

To appear in the Court of Common Pleas of Hendricks county, on the Second day of the next Term thereof, to be holden at the Court House in Danville, on the 3 Monday of April, 1859, to answer to the complaint of Simon T. Hadley et al

And of this writ make due return.

Witness my name and the Seal of said Court, at Danville, this 7 day of April, A. D., 1859.

John Irons Clerk.

7

State of Indiana }
Hendricks County }

To the Sheriff of said County, Greeting

You are hereby Commanded to Cite

Alexander Mastey guardian of the heirs to the estate of James Mastey deceased, to be and appear in the Court of Common Pleas of Hendricks, on Friday the fifth day of the next term to be begun and held at the Court house in the town of Danville, on the third Monday in January 1863. then and there to shew cause if any he has why he shall not be compelled to make a full and final report of his said guardianship. By Order of the Court.

Witness my name and the seal of said Court at Danville this 5th day of January 1863.

Levi Ritter Clerk

THE STATE OF INDIANA, } SS:
HENDRICKS COUNTY,

Vacation Subpœna—Com. P. Court. Sold by Wm. Sheets—Indianapolis.

THE STATE OF INDIANA, TO THE SHERIFF OF Hendricks COUNTY, GREETING:

You are hereby commanded to summon David Haggard, Adam H. Hann, Julia Ann Towles, Nancy Matlock, Elizabeth Neaville, Moses Cavett, and Capt. James T. Matlock.

to appear before the Judge of the Court of Common Pleas of Hendricks County, on the ~~3rd~~ 17th day of the next Term of said Court, to be held at the Court House in Danville, on the ~~17th~~ 17th day of October 1870, then and there to testify in an action wherein Elijah M. Tinder is Plaintiff, and Eliza M. Davis et al are ~~is~~ Defendants, on behalf of the Plaintiff; and return this summons.

Witness The Clerk of said Court, this 4th day of October, 1870.

N. T. Hadley Clerk.

7

CH 41

Item B28 Transcripts

1855
1857 (2)
1859
1870

William L. Bradshaw } pleas of Hendricks County

The said Joseph W. Jordan swears that he obtained the judgement in the above entitled case before Henderson Ferrie a justice of the peace of Washington Township in said County on the 29th day of May 1858 that said judgement is wholly unpaid and that there is due thereon the principal sum of forty nine dollars and forty seven cents with interest from the rendition thereof and the further sum of one dollar and fifteen cents the costs therein

Joseph W Jordon

Sworn & and subscribed before me a justice of the peace of said County this 12th day of January 1859

Henderson Ferrie Justice Peace

Jonathan H. Ransom. Daniel Ransom
Clarissa A Ransom and Ann P. Ransom } Ca Day Jan 27.

Stephen S. Butler & Clinton Wood ts

This day came the plaintiff by their attorneys and it appearing to the satisfaction of the Court by the Sheriffs return to the process issued herein, that said defendants have been each duly served with such process more than ten days before the first day of the present term of this Court and failing to answer as ruled, on motion of the plaintiff said defendants are now three times kindly called and come not but herein wholly make default.

Therefore it is considered that said plaintiff recover of said defendants the sum of Seven Hundred and forty seven dollars and sixty six cents their damages as ascertained by the Court. and also their costs and charges about the recovery thereof in this behalf expended taxed at dollars. all without any relief whatever from valuation or appraisement laws.

State of Indiana Marion County ss

I William Stewart Clerk of the Court of Common Pleas in and for the said County and State, do hereby certify that the foregoing is a true and correct copy of

192 Carney Swift and Co Assignee of B. McLogan } Complaint By Note $88.08

vs. Lucyar Taylor

Sept 10 } On the 2d day of June 1857 the plaintiff
Sum 25 } filed the following as a cause of action
Judgt 25 } November 20th 1856
Execut 25 } Six months after date I promise to pay
Entry Docket 25 } to the order of B. McLogan Seventy one
Trans 25 } dollars and Ninety Cents with interest
$1.55 } Value received without any relief whatever
from valuation or appraisement laws

(Signed) Lucyar Taylor

And further said plaintiff filed the following — Brownsburg Dec. 20th 1856

One day after date we promise to pay to the order of B. McLogan twelve dollars and 10 Value received without any relief whatever from valuation or appraisement laws (Signed) Lucyar Taylor
John Smith

Endorsed thereon as follows

Copy fees
Service 25
Cop 25
Indg 220 10
Sept 10
on Do
Service 25
Indg 220
Sept 10
$1.55

January 20th 1857 Credit by Cash $1.00
" " one Load wood 75

June 2d 1857 A Summons issued and delivered to E. M. King Constable Made return-able on the 6th day of June 1857 at 11 o'clock A.M. June 6th 1857 This being the day and hour set for trial and the Summons being returned and served at least three days before the day set for trial and now the parties being called by the defendant answers not it is therefore adjudged by Court that plaintiff recover of the defendant the sum of Eighty Eight dollars and Eight Cents together with costs

38

John Watkins } In 1600.

John R. Thurson

This day came the plaintiff by his attorney and it appearing to the satisfaction of the Court by the Sheriffs return to the process issued herein, that said defendant has been duly served with such process, more than ten days before the first day of the present term of this Court, and failing to answer as ruled, on motion of the plaintiff said defendant is now three times kindly called, and come not but herein wholly makes default.

Therefore it is considered that said plaintiff recover of said defendant the sum of ($334.00) Three Hundred and thirty four dollars his damages as computed by the Court and also his costs and charges about the recovery thereof in this behalf laid out, and expended, taxed at dollars. Debtment any relief whatever from valuation

State of Indiana } ss
Marion County }

I John Stewart Clerk of the Court of Common Pleas of said County and State, do hereby certify that the above is a true and correct copy of the judgment rendered by said Court in the above entitled cause on this 17th day of October 1857.

In Witness Whereof I hereunto affix the Seal of said Court and subscribe my name at Indianapolis this October 22nd A.D. 1857

John Stewart Clerk

William C. Kise } Garnishee.
vs. No. 4.
Rucker K. Carter.

Come now the parties by their attorneys, and the trial of this cause is resumed by the Court, and the remainder of the evidence of witnesses being heard and considered, and the Court being sufficiently advised in the premises, find the matters and things alleged in the complaint and affidavit in this cause to be true — and that this plaintiff recovered judgment against Cave J. Carter in the original action in attachment herein, in this Court, on the 26th day of April, 1859, for the sum of four hundred and thirty-eight dollars and seventy cents, ($438.70,) without any relief whatever from valuation or appraisement laws, and also for eight dollars and seventy cents ($8.70) costs, which, together with the interest thereon remains wholly unpaid. And the Court further find that the said garnishee Rucker K. Carter has in his possession property, monies and effects belonging to and being the property of the said attachment defendant Cave J. Carter, which is now due and owing the said Cave, and could not be attached by the Sheriff, and which ought to be applied to the payment of the said plaintiffs

claim and judgment against the said Cave J. Carter. And the Court also find that the said property, monies and effects amount to a sum more than sufficient to satisfy and pay the said plaintiffs judgment, interest and costs against the said Cave J. Carter, and order and direct that this defendant pay over and apply the same accordingly. And comes now the said defendant Rucker K. Carter by his attorneys, and files his written motion for a new trial herein, which motion is overruled by the Court, to which ruling the said defendant now here excepts, and asks time to file his bill of exceptions.

It is therefore considered and adjudged by the Court that the said plaintiff have judgment and recover of and from the said garnishee and defendant herein, Rucker K. Carter, the said sum of Four Hundred and thirty-eight dollars and Seventy cents. ($438.70,) — and also the said $8.70, costs recovered against the said Cave J. Carter — together with the interest thereon from the 26th day of April, 1859, the same being the amount of the said plaintiffs claim and judgment against the said Cave J. Carter; and also that he (the said plaintiff) recover of and from the said garnishee Rucker K. Carter his costs and charges in this behalf paid out

and expended, taxed at dollars and cents. And the Court order that the said sums of money, when paid by said Rucker K. Carter to the said plaintiff, shall be a credit to him, the said garnishee, from the said Cave J. Carter, for the amount thereof.

State of Indiana } ss.
Boone County,

I, Henry Shannon, Clerk of the Court of Common Pleas within and for said county and State, do hereby certify that the above and foregoing is a full, true and complete copy and transcript of the order, judgment and decree of said Court made in the foregoing entitled cause at the January Term thereof, 1860, on the 27th day of said month and the 5th judicial day of said term of said Court, as taken and transcribed by me from the Order Book thereof.

In witness whereof I hereunto set my hand and affix the seal of said Court, at Lebanon, this 2d day of February, 1860. Henry Shannon Clk.
By Kelsie D.C.

CH 41

Item B30 Vacation Subpoena
1865 (2)
1870 (2)

Vacation Subpœna—Com. P. Court
Sold by Wm. Sheets,—Indianapolis, Ind.

THE STATE OF INDIANA, } SS:
HENDRICKS COUNTY,

THE STATE OF INDIANA, TO THE SHERIFF OF Hendricks COUNTY, GREETING:

You are hereby commanded to summon

Alonzo A. Hunt

to appear before the Judge of the Court of Common Pleas of Hendricks County, ~~on the day of the next Term of said Court, to be holden~~ at the Court House in Danville, on the 25th day of September, 1865, then and there to testify in an action wherein

The State of Indiana

is Plaintiff, and Theodore Gilleland

is Defendant, on behalf of the Defendant; and return this summons.

Witness, The Clerk of said Court, this 19th day of September 1865

Levi Ritter Clerk.

Vacation Subpœna.—Com. P. Court
Sold by Wm. Sheets.—Indianapolis.

THE STATE OF INDIANA, } SS:
HENDRICKS COUNTY,

THE STATE OF INDIANA, TO THE SHERIFF OF Hamilton COUNTY, GREETING:

You are hereby commanded to summon James G McMahan

to appear before the Judge of the Court of Common Pleas of Hendricks County, on the 9th day of the next Term of said Court, at the Court House in Danville, on the 26th day of January, 1870, then and there to testify in an action wherein

Mordecai Parry

is Plaintiff, and Eli Johnson is Defendant, on behalf of the Defendant; and return this summons.

Witness, The Clerk of said Court, this 12th day of January, 1870

N. T. Madley Clerk.

Vacation Subpœna.—Com. P. Court
Sold by Wm. Sheets.—Indianapolis.

THE STATE OF INDIANA, } SS:
HENDRICKS COUNTY,

THE STATE OF INDIANA, TO THE SHERIFF OF Hendricks COUNTY, GREETING:

You are hereby commanded to summon William King, Henry Wise, Gustavus Johnson, and William Figgs

to appear before the Judge of the Court of Common Pleas of Hendricks County, on the 4th day of the next Term of said Court, at the Court House in Danville, on the 9th day of June, 1870, then and there to testify in an action wherein

Tazwell Culbertson

is Plaintiff, and Elias Grimes admr of the estate of John King is Defendant, on behalf of the Plaintiff; and return this summons.

Witness, The Clerk of said Court, this 2nd day of June, 1870

N. T. Madley Clerk.

CH-41

Item B 31 Venire for Jurors

1863 (4)
1864
1866 (3)
1867
1868 (2)
1869 (4)
1870 (2)
1872 (2)

VENIRE FOR JURORS.

Printed and Sold by Wm. Braden, Indianapolis.

The State of Indiana, } SS.
Hendricks COUNTY.

The State of Indiana,

TO THE SHERIFF OF Hendricks COUNTY, GREETING:

You are hereby commanded to summon Harris Almond, Elisha Hobbs, Smith Russell, Joel Ballard, James M. Watson, James W. Morgan, John Fox, Jacob K. Moore, John Edwards, Elijah Huff, William Hylton and William F. Hanwicks

if they may be found in your bailiwick, to appear before the Judge of the Common Pleas Court, on the 1st day of the next term thereof, to be held at the Court House in Danville on the 4th Monday in September next then and there to serve as Petit Jurors for the September term of said Common Pleas Court; and herein then may not fail, at their peril; and have you then there this writ.

In Witness of Which, I Levi Ritter Clerk of said Court, hereunto affix the seal thereof, and subscribe my name at Danville this 31st day of August

A.D. 1863

Levi Ritter Clerk.

State of Indiana Hendricks County SS

We the undersigned Treasurer Auditor and Recorder of said County, hereby certify that on this day, being the 4th Monday before the commencement of the January term of the Court of Common Pleas of said County for the Year 1870, we wrote on seperate pieces of paper the names of One Hundred reputable male house-holders, competent to serve as Jurors, distributed as nearly as could be among the Civil Townships of said County in proportion to their population, and deposited said pieces of paper in a box provided for the purpose, when the Clerk of said Court drew from said box, twelve of said pieces of paper, the persons whose names appearing thereon, to serve as Jurors for said Court at the term above mentioned - the following are the names —

Enoch M Woodey	Hardin Tincher
Julius H. Jeger	N. W. Gossett
Jonathan D Parks	Shiles Moore
R. T. S. Cloud	David M Vannice
Vincent Hamblen	Orrin Bonney
Eliphalet D. Sellers	John M Carter

Jno. H. Lewis Tres. H.Co.
Wm. M. Hess A.H.C.
J. L. Brown R.H.C.

The following are the names of persons drawn to serve as Jurors at the October Term of Common Pleas Court, 187

1	John M. Carter	Guilford
2	Jordan Denny	Marion
3	Lorenzo Woods	Franklin
4	Joseph Brown	Center
5	Peter Curtis	Center
6	Henry Weddle	Eel River
7	James G Dickerson	Brown
8	Nathan Mendenhall	Guilford
9	William Cox	Middle
10	Sebastian Hiss	Guilford
11	Charles R. Rose	Center
12	Wm. H. Fleece	Eel River

State of Indiana, } SS:
Hendricks County.

We, the undersigned, Auditor, Recorder, and Treasurer of said County, hereby certify that the above and foregoing Jurors were drawn on the 23rd day of Sept 1872, according to law.

Witness our names this 23rd day of Sept. 1872

Wm. M. Hess A.H.C.
John H. Lewis
Wm. Patterson R.H.C.

The following are the names of persons drawn to serve as Jurors at the October Term of Common Pleas Court, 1870

1	Samuel Starbuck	Guilford Tp
2	A. S. Dooley	Marion "
3	Dan Tucker	Eel River "
4	James Bowen	Center "
5	Walter Davis	Eel River "
6	William Morris	Wash "
7	George Fleece	Eel River "
8	Allen McDaniel	Brown "
9	Wm. J. Morgan	Liberty "
10	Theoph H. Barlow	Lincoln "
11	John O. Wishard	Center "
12	A. D. Hornaday	Washington "

State of Indiana, } SS:
Hendricks County.

We, the undersigned, Auditor, Recorder, and Treasurer of said County, hereby certify that the above and foregoing Jurors were drawn on the 12th day of September 1870, according to law.

Witness our names this 12th day of September 1870

Wm. M. Hess A.H.C.
John H. Lewis

The following are the names of persons drawn to serve as Jurors at the January Term of Common Pleas Court, 1872.

1	George R. Davenport	
2	Jacob Fleece	
3	Nathaniel W. Gossett	
4	Walter Davis	
5	John Robbins	
6	Thomas Branson	~~Reading~~ Copy 26
7	George McCray	
8	Alfred Hadley	R 27
9	Nathan Williams	R 27
10	Jabin Vestal	B 27
11	J. E. Branson	C 27
12	Henry F. Kurtz	

State of Indiana, } SS:
Hendricks County.

We, the undersigned, Auditor, Recorder, and Treasurer of said County, hereby certify that the above and foregoing Jurors were drawn on the 23" day of December 1872, according to law.

Witness our names this 23" day of December 1872

Wm. M. Hess
Wm. Patterson R.H.C.
Jno. H. Lewis

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State of Indiana Hendricks County, SS

We the undersigned Treasurer Recorder & Auditor of Said County do hereby certify that on this day (being the fourth monday before the commencement of the January term of Common Pleas Court of said County for the year 1864) we wrote on separate pieces of paper the names of One hundred reputable male householders competent to serve as jurors; distributed as nearly as could be among the different Townships of said County in proportion to their population deposited said slips in a box provided for that purpose when the Clerk drew from said box twelve of said names as Jurors for said court at said term as follows to wit. John N. Clements William Henson Joseph Morris William V. Bishop John H. Lowry John Parsons Amos Alderson Amos Hoak William Pike E. H. Warrick Bloomfield White & Jacob Jessup In testimony whereof we have hereunto set our names this 21 day of Dec 1865

C. W. Hill, Treas. H Co
J. S. Ogden R.H.C
Lawrence S. Shuler A.H.C.

State of Indiana, Hendricks County.

I Jesse S. Ogden, Recorder in and for said County, do hereby Certify that I, this day (being the fourth Monday before the Commencement of the May Term, 1863, of the Court of Common Pleas of said County) Wrote on Separate pieces of paper the names of One hundred reputable Male householders, Competent to Serve as jurors, distributed as nearly as Could be among the Several Townships of said County in proportion to population, and having placed said Slips in a box provided for that purpose the Clerk of said Court drew therefrom the names of the following persons to Serve as Jurors at the Term of said Court aforesaid, towit: Charles R. Rose, Jacob Kennedy, Jr. Peter Medsker, Annuel Edwards, Thomas Howell, Job Hadley, Charles W. Stewart, Enos Hadley, James Davis, David Ballard, Preston Brown and Jacob Jessup. I also Certify that the Auditor and Treasurer did not participate in the Selection of said jury because they are interested in Suits pending in said Court.

In Witness whereof I hereto Subscribe my name as Such Recorder this 20th day of April 1863.

F. R. Crawford

Jesse S. Ogden
R. H. C

The State of Indiana, Hendricks County, SS.

We the undersigned, the Treasurer, Auditor and Recorder in and for said County, do hereby Certify that on this 31st day of August 1863 (the same being the fourth Monday before the Commencement of the September Term of the Court of Common Pleas in and for said County, in the year 1863, We Wrote on Separate pieces of paper the names of One hundred reputable Male householders, Competent to serve as Jurors, distributed as nearly as Could be among the Several Townships of said County in proportion to their population and deposited said Slips in a box provided for the purpose When the Clerk of said Court drew from said box the names of twelve persons to serve as Jurors at and during the aforesaid Term of said Court, towit: Harris Almond, Elisha Hobbs, Smith Russell, Joel Ballard, James M. Watson, James W. Morgan, John Fox, Jacob K. Moore, John Edwards, Elijah Huff, William Hylton and William F. Hamrick.

Witness our names this 31. day of August 1863.

F. R. Crawford, Auditor H.C.
J. S. Ogden Recorder H.C.
S. N. Hardin Sr

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State of Indiana Hendricks County
We the undersigned
Treasurer Recorder and Auditor of said
County do hereby certify that on this day
we Wrote on separate slips of paper the names
of one hundred reputable householders competent
to serve as jurors; distributed as nearly as could be
among the different Townships of said County
in proportion to their population deposited
said slips in a box for that purpose when the
Clerk drew from said box twelve of said names
as Jurors for the May term 1864 of the Court of
Common Pleas of said County the said names
drawn were as follows, to wit William D. Rawlings
William C Mills William Coffman James Trotter
Smith Russell Cyrus F. Haynes Jos H. Davis
James Sharpe Robert R. Leonard Joseph H. Dennis
H. B. Darnall and Laurence Tannice.
In testimony whereof we have hereunto set our
names this 4th day of May 1864

L. S. Shuler A. H. C.
J. S. Ogden R. H. C.

The State of Indiana Hendricks County, ss:

We Lawrence S. Shuler, Auditor and Jesse S. Ogden, Recorder, of said County, do hereby certify that on the Monday the 29th day of August 1864, being the fourth Monday before the first day of the September Term 1864 of the Court of Common Pleas, we in the presence of each other placed in a Box prepared for the purpose one hundred names of householders, residents of said County, and competent to act as Jurors, written on separate slips of paper distributed proportionally between the several Townships of said County, when the Clerk of the Circuit Court of said County drew therefrom, separately the following twelve names to serve as petit Jurors for said September Term 1864, of the Court of Common pleas. Eli Hendricks, Benjamin F. Bolen, Ebenezer Tomlinson, Smith Russell, George W Wills, Joseph Wills, Abraham Snoddy, Henry W Hackley, John Marston Carter, Ezekiel Kornaday, John I. McPheetridge and George Blackwell

Witness our hands this 29th day of August 1864

L. S. Shuler A.H.C.
Jesse S. Ogden R.H.C.

State of Indiana } ss
Hendricks County }

We Erastus F Hunt Treasurer, Jesse S. Ogden Recorder and Lawrence S Shuler Auditor in and for said County, do hereby Certify that we this day being the Fourth Monday before the Commencement of the January Term 1866 of the Common Pleas Court of said County) wrote on Separate Slips of paper the Names of one Hundred Reputable Male Householders Competent to Serve as Jurors, distributed as Nearly as Could be among the Several Townships of said County, in proportion to the population. We having placed said Slips in a box provided for that purpose. The Clerk of said Court drew therefrom the names of the following persons to serve as Jurors at the Term of said Court aforesaid, to wit:

Daniel Kiger, Philip P Smith, B. A. Hunon
Silas Russell Charles R Rose Samuel Robins
Thomas Howell Abram Carter R. C. Russell
D. L. Canary Wm Crawford Robert N Kearney

In Witness Whereof we hereunto Subscribe our names as such Officers

E. F. Hunt Tr
J. S. Ogden Recorder
L. S. Shuler Auditor

State of Indiana }
Hendricks County } ss

We Erastus F. Hunt Treasurer Jesse S Ogden Recorder and Lawrence S Shuler Auditor in and for said County do hereby Certify that we this day being the Fourth Monday before the Commencement of the May term 1866 of the Common Pleas Court of said County, wrote on seperate slips of paper the names of One Hundred Reputable Male Householders Competent to serve as jurors, distributed as nearly as Could be among the Several Townships of said County in proportion to the population and having placed said slips in a box provided for that purpose the Clerk of said Court drew therefrom the names of the following persons to serve as jurors at the term of said Court aforesaid To wit;— John W Hawkins, Milton Russell, Trainum Toney Joseph Jorden Harlan Hadley, William A. Bishop William M. D Huchings, Lewis Rose, Benj Albertson, Greenup Eaton, John Turner, Jathan L. Holmes,

In Witness Whereof we hereunto Subscribe our Names as Such Officers

E. F. Hunt, Treasurer
J. S. Ogden Recorder
Lawrence S. Shuler Auditor

State of Indiana }
Hendricks County } ss

We Erastus F Hunt, treasurer Jesse S. Ogden, Recorder and Lawrence S Shuler, Auditor in and for said County do hereby Certify that we this day being the fourth Monday before the Commencement of the September term 1866 of the Common Pleas Court of said County wrote on seperate slips of paper the names of One hundred Reputable Male Householders Competent to serve as jurors distributed as nearly as Could be among the several Townships of said County in proportion to the population and having placed said slips in a box provided for that purpose the Clerk of said Court drew therefrom the names of the following persons to serve as jurors at the term of said Court aforesaid; To wit; Morton Green. Samuel Hill, Allen Furnas W. L. Vestal. Joseph Lawhead Isaac N Shidler R. T. S Cloud, J. F. N Davidson Elisha Hobbs Samuel H Watson. R. N. Buchanan Burkott

In Witness whereof we hereunto subscribe our names as such Officers

E. F. Hunt Treasurer
Jesse S. Ogden Recorder
Lawrence S Shuler Auditor

State of Indiana }
Hendricks County }

We, Erastus F. Hunt Treasurer John L Brown, Recorder and William M. Hess Auditor in and for said County, do hereby certify that we this day, (being the fourth Monday before the commencement of the January Term A. D. 1868 of the Court of Common Pleas of said County) wrote on seperate slips of paper the names of One Hundred reputable male Householders, competent to serve as Jurors; distributed as nearly as could be among the several Townships of said County, in proportion to the population of the same, and having placed said slips in a box provided for that purpose: the Clerk of said Court drew therefrom the names of the following persons to serve as Jurors, at the Term of said Court above mentioned: to wit:

Harlen Hadley	John Robbins
John N Clements	Daniel Cox
John Fluce	John T Hamrick
Joshua M Davis	Smith Russell
William Davis Sen	Cyrus Hunt
Henry W. Caywood	Elias Grimes

In witness whereof we hereunto subscribe our names as such Officers

E. F. Hunt Treasurer
John L. Brown Recorder
William M. Hess, Auditor

State of Indiana
Hendricks County } S.S.

We the undersigned, Treasurer Auditor and Recorder of said County, do hereby certify that on this day (being the 4th Monday before the commencement of the May Term of the Court of Common Pleas of said County for the Year A.D. 1868, we wrote on seperate pieces of paper the names of One hundred reputable male house-holders, competent to serve as Jurors, distributed as nearly as could be among the civil Townships of said County in proportion to their population, and deposited said pieces of paper in a box provided for the purpose, when the Clerk of said Court, drew from said box, twelve of said slips of paper, (the persons whose names were written thereon) to serve as Jurors for said Court, at the Term above named—

The following are the names drawn—

Milton Watson	Elisha Hobbs
Daniel Burden	Wm E. Howland
Abel Stricklan	Warren Turpin
Aaron Overstreet	Caspar Robards
Nathan Meredith	Michael Higgins Sen
Erasmus Nichols	Austin Pearson

E. F. Hunt Treas.
Wm M. Hess, Audtr.
John L. Brown Recorder.

State of Indiana
County of Hendricks } S.S.

We the undersigned, Treasurer, Auditor and Recorder of said County, do hereby certify that on this day, (being the fourth 4th Monday before the commencement of the September Term of the Court of Common Pleas of said County for the Year 1868, we wrote on seperate pieces of paper, the names of One hundred reputable male house-holders, competent to serve as Jurors, distributed as nearly as could be among the Townships of said County, in proportion to their population, deposited said slips in a box, provided for the purpose, when the Clerk of said Court drew from said box twelve of said names as Jurors for said Court at said Term, as follows:

James W. Morgan	Miller Woodey
E. M. Finder	Frannen Toney
Harrison Swindler	Samuel L. Adams
Enos Hurin	John Harrison
William Lowry	Hugh Jessup
Willis Speers	William Bales

Wm M. Hess. A.H.Co
J. L. Brown R.H.Co.

State of Indiana
Hendricks County } S.S.

We the undersigned, Treasurer Recorder and Auditor of said County, do hereby certify that on this day (being the 4th Monday before the commencement of the January Term of the Court of Common Pleas of said County for the Year A.D. 1869— we wrote on seperate pieces of paper the names of One Hundred reputable male householders, competent to serve as Jurors, distributed as nearly as could be among the Townships of said County in proportion to their population, deposited said slips in a box provided for the purpose, when the Clerk of said Court drew from said box twelve of said names as Jurors, for said Court at said Term, as follows:

Milton Henton	Center Township
Ezra W. Scearce	do do
Richard Martin	do do
George Gibbs	Washington do
Lafayette Oursler	Guilford do
Henry Y. Pearson	Liberty do
Cyrus Hunt	do do
Abel Benbow	Franklin do
James Faught	Marion do
Jacob Kennedy	Union do
John M. Arbuckle	Brown do
Wales Marsh	Lincoln do

Tr. H. Co
John L. Brown R.H.Co
Wm M. Hess A.H.Co

State of Indiana
Hendricks County } ss:

We the undersigned, Treasurer Auditor and Recorder of said County do hereby certify that on this day, being the fourth Monday before the commencement of the May Term AD 1869, of the Court of Common Pleas of said County, we wrote on seperate pieces of paper the names of one hundred reputable male house-holders, competent to serve as Jurors, distributed as nearly as could be among the Townships of said County in proportion to their population: deposited said slips in a box provided for the purpose, when the Clerk of said Court drew from said box twelve of said names as Jurors for said Court at said Term, as follows:

Warren Turpin	Nathan Meredith
Benjamin H Tolle	A. T. Dooley
Jesse Vieley	M B Applegate
Perry Pearcy	Anthony Cosner
H. T. Swindler	Lee Tucker
Ithamer Hunt	Daniel D. Frazee

Witness our hands this the 19th day of April AD 1869

E. F. Hunt
Wm M. Hess

Tr. H. Co
Audtr. H. Co
R. H. Co

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State of Indiana
Hendricks County } ss:

We the undersigned Treasurer, Recorder and Auditor of said County, do hereby certify that on this day, being the 4th Monday before the commencement of the October Term AD 1869 of the Court of Common Pleas of said County, we wrote on seperate pieces of paper the names of One hundred reputable male house-holders, competent to serve as Jurors, distributed as nearly as could be among the civil Townships of said County in proportion to their population: deposited said slips of paper in a box provided for the purpose, when the Clerk of said Court drew from said box the names of twelve persons to serve as Jurors for said Court, at said Term - as follows:

Joel Ballard	George W Leak
Nicholas Lawler	Wm P. Robards
David C Lane	James W. Morgan
Samuel McPheeters	John W Maccoun
James W. Thompson	Caleb Hunt
Cornelius Loy	Joseph W Jordan

J. H. Lewis Treasr.
J. L. Brown R. H. C
Wm M. Hess A. H. C

State of Indiana
Hendricks County }

To the Sheriff of Hendricks County
You are hereby Commanded to summon

Lafayette Ousler	of	Guilford	township
Milton Henton	"	Center	"
Ezra W. Scearce	"	"	"
Richard Martin	"	"	"
Jacob Kennedy	"	Union	"
Abel Benbow	"	Franklin	"
Henry S. Pearson	"	Liberty	"
Cyrus Hunt	"	"	"
Wales Marsh	"	Lincoln	"
~~James Vaught~~ Thomas Bradson	"	~~Marion~~ Clay	"
John M. Arbuckle	"	Brown	"
George Gibbs	"	Washington	

to personally be and appear before the judge of the Court of Common Pleas of said County on the first day of the next term to be begun and held at the Court house in the town of Danville on Monday the 18th day of January AD. 1869, then and there to serve as Petit Jurors for and during the January term of said Court. A.D. 1869

Witness my hand and the seal of said Court at Danville this 2nd day of January AD. 1869

N. T. Hadley Clerk

CH 41

Item B 32 Warrants

1859 (2)

1870

WARRANTS. Printed by W. C. Green, Danville, Ind.

THE STATE OF INDIANA,

To the Sheriff of Hendricks County:

You are hereby commanded to arrest

John Christy

forthwith, and hold him to bail in the sum of Twenty five dollars, to answer on the first day of the next term of the Court of Common Pleas on an Information for Issuing and for want of bail commit to the jail of the County, until legally discharged.

Witness my name und the seal of said Court at Danville, this the 25 day of Feb. A. D. 1859.

John Irving Clerk.

b

WARRANT.] [SOLD BY SHEETS & BRADEN, INDIANAPOLIS.

The State of Indiana,

TO THE SHERIFF OF Hendricks COUNTY:

You are commanded to arrest John N. Bates

forthwith, and hold him to bail in the sum of Twenty five dollars, to answer on the first day of the next term of the Common Pleas ~~Circuit~~ Court on an ~~indictment~~ Information for Gaming and for want of bail commit him to the jail of the County, until legally discharged.

Witness, The Seal and Clerk of the Court, this 22d day of March 1859.

John Irving Clerk.

06

State of Indiana }
Hendricks County }

To the Sheriff of said County Greeting.

You are hereby commanded without delay to deposit in the Clerks office of the Court of Common Pleas of Putnam County the original papers and transcripts in thirteen cases of the State of Indiana against David Kelley, on informations for "Selling Liquor without License", numbered from 21 to 33 inclusive, on change of venue from the Court of Common Pleas of Hendricks County to the Court of Common Pleas of Putnam County, Indiana, and make your return accordingly.

In witness whereof I hereto subscribe my name and affix the seal of said Court at Danville this 18th day of October A. D. 1860.

N. T. Hadley Clerk

The State of Indiana Hendricks County.

The State of Indiana, to the sheriff of Hendricks County. Greeting.

You are hereby commanded to summon Mary Crawford, Emma Coble, Elihu Coble, John Richardson, Mrs. Richardson, David Scott, Isaac Wilcox Dr. H. Gibbens, Moses Crawford, Christopher Wilson and William Wilson to appear before the judge of the Court of Common Pleas of Hendricks County on the 27th day of September A.D. 1865 then and there to testify in an action wherein the State of Indiana is plaintiff and Davis Boswell is defendant on behalf of the plaintiff; and return this summons.

Witness the Clerk of this Court. August 19th 1865. Levi Ritter Clerk

Served as Within Commanded By Reading to May Crawford

E H Straughen

Sum 50
Mil 240
Ret 10
500

CH 41

Item B33 Witness
1865 (2)
1869

William G. Parker
vs
Mahlon C. Thompson
et al

In the Hendricks Court of Common Pleas Jany Term 1869

The Clerk will issue a subpoena in this suit in favor of the deft Thompsons directed to the Shff of this County for the following witnesses viz William Tout, Jerome B Bennett George Burglen, Luther Gaine Isaac Denny Joseph M McVey, John Lingerman Jr James McCoslen, William J. Lowery William H. Clark & Dennis Clark all as the law is directed.

Danville Jany 11th 1869

C. C. Noble atty for Deft

State of Indiana Hendricks County

The State of Indiana Morgan County.

You are hereby commanded to summon Isaac Wilcox, Harvey Wilcox, Thomas Broadstreet, George W. Snoddy, James Snoddy, Joel Shiels, Brooks Johnson, and Sarah Wilcox to appear before the judge of the Court of Common Pleas of Hendricks County, on the 25th day of September 1865. then and there to testify as witnesses in the cause wherein, the State of Indiana is plaintiff and Davis Boswell is defendant, on behalf of the defendant, and return this summons,

Witness the Clerk of said Court this 4th day of Sept. 1865

Levi Ritter Clerk

CH 41

Item 101 adjudication of bar

1877 (8)
1878

In Re } No 2213
Morton D Green } In Bankruptcy

Received Oct 5 1877. of Jesse R Cope Assignee herein all the assets in his hands belonging to my Estate.

Morton D Green

In the matter of } No 2213
Morton D Green } In Bankruptcy

Jesse R Cope on oath says that he has collected $6.00 belonging to said Estate and applied the same to payment of Costs

That he will settle with said Green for services as Assignee and therefore makes no account now.

That he has seen to the payment of all ~~[illegible]~~ Costs, and has turned the property in his hands belonging to said Estate over to said Bankrupt whose receipt he files herewith and that there is nothing further to be done by him

Jesse R Cope Assignee of
M D Green

Subscribed and sworn to before me this 5th day of October 1877.

Jno W Ray
Register

In Re } No 2213
Morton D Green } In Bankruptcy

October 5 1877.

Comes now John D Howland Esq Clerk U S District Court and files the Order of said Court approving the Composition herein

And also comes Jesse R Cope Assignee herein and files his report and vouchers and the receipt of said Bankrupt for the assets in his hands belonging to said Estate

And thereupon it is ordered that the papers herein be transmitted to Court

Costs paid

Jno W Ray
Register

Whereas George J. Evans on the 14th day of April 1873 Executed his note with others to Morton D Green for the sum of $835.00 due Dec 25. 1877. with 6% interest from date & secured said note with others by mortgage on 80 acres of land in Lincoln Township Hendricks County Indiana, which mortgage was foreclosed in the Hendricks Circuit Court, and the land sold thereon And whereas said note was by said Green prior to the filing of his petition in Bankruptcy sold to Joseph A Eastman & by said Green endorsed & whereas said Joseph A. Eastman sold & endorsed said note to William N Burt, Now Comes said Joseph A Eastman, and on oath states that the land so mortgaged to secure said note is not worth anything over and above the amount for which it was sold, on said foreclosure, and that said security so far as said note is concerned has been Exhausted

Joseph A. Eastman

Subscribed & Sworn to this 31st day of August 1877.

John H Ray
Register

Morton D. Green Composition

1 Unknown

Unsecured Debts	18	$ 14069.70
None under $50.00		
Needed to Confirm	12	$ 7034.85

In the District Court of the United States
for the District of Indiana

In the matter of } No 2213
Morton D. Green } In Bankruptcy
Bankrupt

At Indianapolis, in said District, on the 21. day of June A.D. 1877
On Petition, that by an order entered herein, there will be a meeting of the Creditors of said Bankrupt held at the office of John H Ray, Register in Bankruptcy, at Indianapolis in said District, on July 14 1877, at 10 O'clock A.M. of said day, for the purpose of considering a proposition of said Bankrupt for Composition with his Creditors, pursuant to the 43rd section of the Bankrupt Act as amended.

John H. Ray, Register

DISTRICT OF INDIANA.

I, William P. Fishback, Clerk of the District Court of the United States, for the District of Indiana, do hereby certify that the above and foregoing is a full and true copy of Order of Court ~~appointing a day for hearing~~ confirming resolutions of Composition proposed by Morton D. Green Bankrupt to his Creditors. Oct 5. 1877.
Clerk's Certificate of notices mailed Sept 24th 1877.
Copy of Resolution Oct 2nd 1877
Compliance of terms by Bankrupt Oct 5 1877
Receipt of Bkpt for transfer of assets by Assignee Oct 5 1877.
Statement by Assignee transferring property Oct 5 1877.
Final Order of Register October 9th 1877
as fully as the same appears of record in my office of the respective dates above named

Witness my hand and the Seal of said Court, this 15th day of March A. D. 1878

W. P. Fishback Clerk.

DISTRICT OF INDIANA,

I, WALTER Q. GRESHAM, Judge of the District Court of the United States, for said District, do certify that at the date of the foregoing Certificate ~~John D. Howland~~ William P. Fishback was, and now is, the Clerk of the District Court of the United States, for said District, and that his attestation aforesaid is in due form of law.

Witness my hand this 15 day of March 1878

W. Q. Gresham

In the District Court of the United States
For the District of Indiana

2213 In the matter of
Morton D Green } In Bankruptcy
Bankrupt

I John D Howland
Clerk of said Court for said District
do hereby certify that on the 24th day of
September A.D. 1877. I gave notice to all known
Creditors of said Bankrupt of the pendency of
proceedings pursuant to the order of Court of
said day to the names and addresses according
to a list furnished by said Bankrupt

Witness my hand and the seal of
said Court at Indianapolis in
said District this 24th day of
September A.D. 1877

J D Howland Clerk

B

IN THE DISTRICT COURT OF THE UNITED STATES,

District of Indiana.

IN THE MATTER OF

Morton D Green } No. 2213

Bankrupt.

At Indianapolis, in said District, before the Honorable Walter D. Gresham, Judge of said Court, sitting as a Court of Bankruptcy, the proceeding following was had this 2nd *day of*
October *A. D. 1877.*

Comes now said Bankrupt and it being shown by the Certificate of the Clerk that full five days notice was given by mail to all known Creditors of the passage of Composition Resolutions - in accordance with Section 43 of the Bankrupt Law

And the proper statement of debts and assets having been filed, the Court in the absence of opposition and on reading said proceedings and Resolutions of Composition do find that the same were duly passed in accordance with law and are for the benefit of all concerned

Whereupon it is ordered subject to the other Provisions of said Section that said Papers be filed and the said Resolutions recorded and the same are in the words following
(Here Enter Resolutions)

A true Copy
Attest J D Howland
Clerk.

42.

In the District Court of the United States,

DISTRICT OF INDIANA.

Indianapolis, Sept 24 1877

IN THE MATTER OF

Morton D. Green, Bankrupt. } IN BANKRUPTCY.

No. 2213

The Register having duly certified the proceedings and resolutions adopted, under a former order of this Court, and the Bankrupt having filed his sworn statement of the amount of his debts and assets. As a creditor of said debtor, you are therefore hereby notified, that in the absence of allegations to be made in this Court, on or before the 2 day of October 1877, said proceeding and resolutions for composition (if it appears that the same are for the best interests of the estate) will be approved by said Court, and entered upon the records thereof.

By order of the Court. J. D. Haviland

~~W. P. FISHBACK~~

CLERK.

CENTRAL PRINTING COMPANY,
No. 17 Bates Block, Indianapolis.

2213.

In the District Court of the United States,

For the District of Indiana.

In the matter of MORTON D. GREEN, Bankrupt—*IN BANKRUPTCY.*

TO YOU, one of the Creditors of MORTON D. GREEN, of Brownsburg, Ind., Bankrupt.

SIR: You are hereby notified that a Warrant in Bankruptcy has been issued out of the District Court of the United States, for the District of Indiana, against the estate of

MORTON D. GREEN,

adjudged a Bankrupt on his own petition: That the payment of any debts and the delivery of any property belonging to said Bankrupt, to him or for his use, and the transfer of any property by him are *Forbidden by Law.* That a meeting of the following named Creditors of said Bankrupt:

David Hufford,	Plainfield, Ind.,	$400 00	John T. Burns,	Brownburg, Ind.,	450 00
Mary J. Brumfield,	Pittsboro, "	1400 00	Wm. P. Shirley,	" "	1000 00
M. H. Groves,	Indianapolis, "	1700 00	Joshua Harris' Estate,	Danville, "	5100 00
Case & Parker,	" "		Biggs & Wells,	LaFayette, "	230 00
Wm. N. Burt,	" "	1000 00	Henry Stitzel,	Zionsville, "	200 00
Priscilla Green,	Brownsburg, "	250 00	Brown, Hinman & Co.	Columbus, Ohio,	185 00
Wm. Ayres,	" "	22 00	Bucher, Gibbs & Co.,	Canton, "	1200 00
Christopher Trucks,	" "	42 00	Geo. W. Brown,	Galesburg, Ills.,	560 00
Reuben Prebster,	" "	200 00	Moline Plow Co.,	Moline, "	2000 00
Wm. P. Shirley,	" "	200 00	Vandiver Planter Co.,	Quincy, "	Unknown
Lorinda Adams,	" "	100 00	Chadburn & Caldwell,	Newburg, N. Y.,	300 00

5914 00
1086 00

To prove their debts and choose one or more Assignees of the Estate will be held at a Court of Bankruptcy, to be holden on the 21st day of March, A. D. 18[illegible], at 10 o'clock A. M., at 66 E. Market St., Indianapolis, Ind., before J. W. RAY, Register.

BEN. J. SPOONER,
U. S. Marshal, District of Indiana, *Messenger.*

Ritter, Walker & Ritter, Attornsys.

5914 00
1086 00
1617 00

Form 194. Indianapolis Journal Company, Printers.

Adjudication of Bankruptcy upon Debtor's Petition.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF INDIANA.

IN THE MATTER OF
John R. Green, Henry T. Green and James B. Whitehill } 2200 IN BANKRUPTCY.

By whom a Petition for Adjudication in Bankruptcy was filed on the 12th *day of* February, *A. D. 18*78, *in said Court.*

At Indianapolis *in said District, on the* 12 *day of* February, *A. D. 18*77, *before* John W Ray, *one of the Registers of said Court in Bankruptcy.*

I, the undersigned, a Register of said Court in Bankruptcy, upon good proof before me taken, do find, that the said John R. Green, Henry T. Green + James B. Whitehill *has become a Bankrupt within the true intent and meaning of the Act of Congress entitled "An Act to Establish a Uniform System in Bankruptcy throughout the United States," approved March 2, 1867; and I do hereby declare and adjudge him a Bankrupt accordingly.*

John W Ray
Register in Bankruptcy.

Witness my hand and the Seal of said Court, this 16 *day of* March *A. D. 18*78

W. P. Fishback *Clerk.*

DISTRICT OF INDIANA,

I, WALTER Q. GRESHAM, *Judge of the District Court of the United States, for said District, do certify that at the date of the foregoing Certificate* ~~John D. Haviland~~ William P. Fishback *was, and now is, the Clerk of the* District *Court of the United States, for said District, and that his attestation aforesaid is in due form of law.*

Witness my hand this 16th *day of* March 1878

W. Q. Gresham

In the District Court of the United States,

For the ____ District of Indiana

In the Matter of

Clayton L. Grant

In Bankruptcy.

To the Hon. Walter Q. Gresham Judge of said Court.

I, ____

one of the Registers in Bankruptcy, in and for said District, do respectfully certify and report:

That pursuant to an order of this Court directing the same, a meeting of the creditors of the above named debtor was held before me, on the 14th day of July A. D. 187 7, at 10 o'clock in the ~~fore~~ noon, at my office, in the City of Indianapolis in said District, to act upon a composition proposed by said debtor.

That more than ten days prior thereto, I caused to be mailed to each known creditor of said debtor, a notice of the time, place and purpose of such meeting, a copy of which said notice is hereto annexed, marked "A," and made a part of this report.

That at the time and place appointed for said meeting, the debtor duly and personally attended, ~~produced~~ ready to his books of accounts, and he duly sworn and examined in relation to his affairs, and presented to the said meeting his proposed composition in writing, duly signed by him which said proposition for composition is hereto annexed, marked "B," and made a part of this report.

That the said debtor also presented to said meeting a sworn statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due, which said statement is hereto annexed, marked "C," and made a part hereof.

That thereupon a resolution was introduced accepting such proposed composition, and the same was then and there passed, and the said composition was then and there accepted by a majority in number, and three fourths in value, of the creditors of the debtor assembled at such meeting, either in person or by proxy—said resolution is hereto annexed, marked "D," and made a part hereof.

That the schedule hereto annexed, marked "E," is a true statement of the names and addresses of all the creditors assembled at said meeting, either in person or by proxy, and shows the residences of said creditors, the amounts of their respective claims, and the manner in which each of said creditors voted upon said resolution.

That thereupon the said resolution was duly confirmed by the signatures thereto of the said debtor, and two thirds in number, and one half in value of all the creditors of said debtor, reckoning in the majority in value, but not in the majority in number, creditors whose debts amount to sums not exceeding fifty dollars—which said confirmation is hereto annexed, marked "F," and made a part hereof.

And I do further Certify and report that all of the proceedings had before me were regular in all respects. All of which is respectfully submitted.

Dated Sept 18. 1877

Ino N Ray

Register.

CH 41

Item D01 Certificate of Grand Juror

1863
1864
1866
1868 (2)
1869 (2)

State of Indiana, Hendricks County, ss.

I, Francis R. Crawford, Auditor of said County, do hereby Certify that the following is a true Copy of the Record of the proceedings of the Board of Commissioners of said County, at the March Term, 1863, in relation to the Selection of Grand Jurors, towit:

"The Board now Select from the Tax duplicate of the County of Hendricks, for the year 1862, the names of Sixty reputable freeholders and householders of said County and taxable therein, and having divided the number equally, as near as possible, amongst the Several Civil Townships of the County, written the names of said persons on Separate Slips of paper and placed them in a box provided for the purpose, the Clerk of the Hendricks Circuit Court, in the presence of said Commissioners, drew by lot from said box the names of the following twelve persons to Serve as Grand Jurors at the August Term of said Circuit Court in the year 1863, towit: Harrison G. Turpin; James Glover, Robert T. S. Cloud, Eli Vestal, Ira J. McDaniel, Franklin Haynes, Abner Greenlee, Nelson Faught, George Harlan, Josiah Garrison, Abram Eastes and Othniel H. Payne: And said Board in like Manner selected the names of Sixty freeholders and house-holders, placed them in said box, and said Clerk in like manner drew therefrom the names of the following persons to Serve as Grand Jurors at the February Term of said Circuit Court in the year 1864, towit: Harvey R. Barlow, Joseph Iliff, John Edwards, Samuel Little, John Adams, Madison G. Hadley, William G. Parker, William Job, James D. Smith, Goodlow Walker, Henry Rogers and Nathaniel W. Gopett."

In Witness Whereof I hereto Subscribe my name and affix the Seal of said Board this 12th day of March 1863.

F. R. Crawford, A.H.C.

The State of Indiana, Hendricks County

I, Lawrence S. Shuler Auditor of said County do hereby certify that the following is a true copy of the Record of the proceedings of the Board of Commissioners for said County of Hendricks had at their March Term A.D. 1864, upon the matters therein named.

The Board now select from the Tax Duplicate of 1863, the names of sixty reputable freeholders and householders, in the County of Hendricks, and having divided them equally between the Townships, with the names written on separate ballots and placed the names in a box provided for the purpose, the Clerk of the Hendricks Circuit Court, in the presence of the Commissioners, drew by lot from the box the names of the following twelve persons, to serve as Grand Jurors for the August Term, 1864, of the Hendricks Circuit Court, to wit: John W. Bryant, Enos Hadley, Young Short, Charles Lowder, Benjamin F. Scherer, Greenup Eaton, Pa[illegible] Menafee, James Sharpe, Johnson Vanorsdol, [illegible] Haynes, Thomas Patson and John W. Lowry, [illegible] in like manner proceeded to draw for the [illegible] 1865, as follows, to wit: Joel Ballard, [illegible]pe, William McCloud sr. Abel Benbow, William J. Lowry, Willis Spears, Samuel Fitch, William Hannick, Cornelius Loy, Job Hadley and Thomas W. Davis and James Maccoun,

State of Indiana } ss
Hendricks County }

I Lawrence S Shuler Auditor of said County do hereby Certify that the Board of Commissioners of said County, did on the 10th day March 1866, select from the Tax Duplicate of Hendricks County for the year 1865, the names of Sixty reputable freeholders and householders of said County, and taxable therein, and having divided the number Equally as near as possible among the Several Civil Townships of said County, and written the names of said persons on Seperate Slips of paper and placed them in a box provided for the purpose, the Clerk of the Hendricks Circuit Court in the presence of the Board of Commissioners drew by lot from the said box the names of the following named twelve persons to serve as Grand Jurors at the August Term of said Circuit Court for the year 1866, to wit — John Brown, Joseph Harris, Josiah Townsend, Milo H. Moon, John Hadley, James Kersey, Jr [illegible]les, Preston Pennington, J. A. Jogar, [illegible], Nicholas Sawler, and William P. Shirley, [illegible] Board in like manner selected the [illegible]ty reputable free holders and house holders and placed them in sad box and said Clerk in in like manner drew therefrom the names of the following persons to serve as Grand Jurors at the February Term of said Circuit Court for the year 1867; to wit: Aaron Leininger, John W. Smith,

State of Indiana
County of Hendricks } SS:

I, William M Hess, Auditor of the County aforesaid hereby certify that the following proceedings were had by the Board of Commissioners of said County at their March Term A D 1868, (and on Monday the first day of said Term and 2nd day of said month) to wit:

The Board now select from the Tax Duplicate of Hendricks County Indiana for the Year 1867, the names of sixty reputable Freeholders and house-holders of said County, and taxable therein, and having divided the number equally as near as possible among the several civil Townships of said County, and written the names of said persons on seperate slips of paper, and placed them in a box provided for the purpose, the Clerk of the Hendricks Circuit Court in the presence of the Board of Commissioners of said County, drew by lot from said box, the names of the following named Twelve persons to serve as Grand Jurors at the April Term A D 1868 of said Circuit Court, to wit:

Samuel R. Craddick, Centre Tp — "Dan" Hoadley Washington Tp —, Samuel Little Guilford Tp — Jonathan Cope Liberty Tp George Crea Franklin Tp — Harvey Stanley Clay Tp Lawrence Vannice Marion Tp — T. J. Wright Eel River Tp James Shockley Union Tp — Oliver Wells Middle Tp David Beck Brown Tp and George Nash, Lincoln Township.

The Board in like manner now select the names of sixty reputable Freeholders and house-holders, when the Clerk of the Circuit Court of Hendricks County, in the presence of said Board of

The State of Indiana Hendricks County

I Lawrence S. Shuler Auditor of said County do hereby certify that the following is a true of the Record of the proceedings [illegible] of Commissioners for said Count[illegible]dricks had at their March Term 186[illegible] there in named

The Board now select from the Tax Duplicate of 1864 the names of sixty reputable freeholders and householders in the County of and Having divided them equally between the Township with the names written on separate ballots and placed the names in a box provided for the purpose the Clerk of the Hendricks Circuit Court in the presence of the commissioners drew by lot from the box the names of the following Twelve persons to serve as Grandjurors for the August Term 1865 of the Hendricks Circuit Court to wit Amiel Hunt Willis Talbott Alexander L. Masters David F. Cox Joseph Wilson Ebenezer Tomlinson Henry H. Buntain John N. Shirley Daniel Ramsey Johnson Vanarsdall Milton Lindley and Jesse Hendricks and the Board in like manner proceeded to draw for the february Term 1866 as follows to wit Jacob Vandergrift Lawrence Vanice Simpson B. Darnall S. A. Verbike Jesse Hockett Smith Russell Amos Hoah Jacob Kennedy James Ruggles Nathan Harvey Onos Hadley and Reuben Maston

State of Indiana
Hendricks County } SS:

I, William M Hess Auditor of the County aforesaid, hereby certify that at the March Term A D 1869, of the Board of County Commissioners of said County, the following named twelve persons reputable Freeholders of said County and taxable therein, were by the Clerk of said County, in the presence of said Board, drawn by lot to serve as Grand Jurors at the April Term A D 1869 of the Circuit Court of said County: to wit:

R C S. McCoun	James Sharpe
Gilbert D McClean	Edmund R Hadley
Charles Reeve	James L Leak
Amos S Wills	Drury Clark
Wm Tincher	William Hopkins
Wm D Trester	John Lingerman

In witness whereof, I have hereunto set my hand and affixed the Seal of said Board at Danville, this the 9th day of March A D 1869.

William M Hess
A. H. C.

State of Indiana
Hendricks County } ss.

I, William M Hess Auditor of the County aforesaid, hereby certify that at the March Term AD 1869 of the Board of County Commissioners of Said County, the following named Twelve persons reputable freeholders of Said County and taxable therein, were by the Clerk of Said County, in the presence of Said Board, drawn by lot, to serve as Grand Jurors at the October term 1869, of the Circuit Court of Said County, to wit:

Thomas H Bonnifield	William Hamrick
Enos Hadley	Silas Russell
Jesse N Townsend	Johnson Vanarsdall
Henry Rogers	Amos Hoak
William Kay	E T Doyal
Nathan Hadley	Henry V. Caywood

In witness whereof I have hereunto set my hand and affixed the Seal of Said Board at Danville this the 9th day of March AD 1869.

William M Hess
A.H.C

The following are the names of persons drawn to serve as Grand Jurors at the March and June Terms of Hendricks Circuit Court, 1878

1 Scipio West
2 H W Keller
3 T. N. Estep
4 Albert Johnson
5 Joseph Bailey
6 Wm J. W. Coffman
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STATE OF INDIANA,
Hendricks County, ss.

We, the undersigned, ~~Coroner~~ Auditor, ~~Recorder, and Treasurer~~ of said County, hereby certify that the above and foregoing Jurors were drawn on the 4" day of March, 1878, according to law.

Witness our names, this 4" day of March 1878

E H Hall A.H.C.

ORDER OF THE BOARD NO.

The State of Indiana, } SS: Board of Commissioners,
HENDRICKS COUNTY, } March Term, 1876

Be it remembered that the Board of Commissioners of said County of Hendricks, did, at their March Term, 1876, ~~make~~ select the following ~~order, to wit~~:

Named persons to serve as Grand Jurors at the September Term 1876, and the January Term 1877. and until another Grand Jury shall be selected to wit

Henry Bradford
Jesse F Elrod
Davis Boswell
William Dinwiddie
Young Short
John G Adams

I do hereby certify that the above is a true list of names of said Grand Jurymen ~~copy of said order~~.

Witness my name, and the Seal of the Board, at Danville, this Fourteenth day of August, 1876.

E H Hall Auditor.

I William M Hess Auditor in and for the County of Hendricks State of Indiana, Hereby certify that the following named persons were duly and lawfully selected to serve as Grand Jurors at the November Term 1873 of the Hendricks Circuit Court. viz:

Adam Dowzard	Center Township
Scott Miller	Washington Do
Calvin Townsend	Guilford Do
Thomas Davis	Liberty Do
William Pitcher	Franklin Do
Nathan Hadley	Clay Do
T. P. Bultaire	Marion Do
Quincy Davis	Eel River Do
Jacob Kennaday	Union Do
Lewis S. Watts	Middle Do
Stephen Ellis	Brown Do
Robert V. Franklin	Lincoln Do.

Witness my hand and the Seal of the Board of Commissioners of said County this 8th day of October 1873.

William M. Hess
A.H.C

~~ORDER OF THE BOARD NO.~~

The State of Indiana, HENDRICKS COUNTY, } SS: Board of Commissioners, March Term, 1872

Be it remembered that the Board of Commissioners of said County of Hendricks, did, at their March Term, 1872, ~~make the following order to wit~~ entry the following proceedings of record towit:

The Board now Select from the Tax Duplicate of said County of Hendricks for the year 1871, the names of sixty reputable Freeholders and Householders of said County, and taxable therein, and having divided the number equally among the Civil Townships of said County, and having written the names of said persons on separate slips or pieces of paper and placed them in a box provided for the purpose, the Clerk of the Hendricks Circuit Court in the presence of the Board of Commissioners of said County, drew by lot from said box the names of the following named ~~persons~~ twelve persons to serve as Grand jurors at the November Term 1872 of said circuit court to wit:

R.C. Russell	Center Tp	John Christie	Marion Tp.
Wm Hylton	Washt. "	Henry Weddle	Eel River "
Dillon Haworth	Guilford "	Laurence Seaks	Union "
John Worrell	Liberty "	Wm Wells	Middle "
Casper Robards	Franklin "	William Hopkins	Brown "
Caleb Hunt	Clay "	H.W. Surpris	Lincoln "

I do hereby certify that the above is a true copy of said ~~order~~ proceedings

Witness my name, and the Seal of the Board, at Danville, this 12th day of March, 1872.

Wm M. Hess, Auditor.

ORDER OF THE BOARD NO.

The State of Indiana, HENDRICKS COUNTY, } SS: Board of Commissioners, March Term, 1871.

Be it remembered that the Board of Commissioners of said County of Hendricks, did, at their March Term, 1871, make the following ~~order, to wit~~ entry of record towit:

The Board now select from the tax duplicate of said County of Hendricks for the year 1870 the names of sixty reputable Freeholders and householders of said County and taxable therein, and having divided the number equally among the civil townships of said County, and having written the names of said persons on Separate slips or pieces of paper and placed them in a box provided for the purpose, the Clerk of the Hendricks Circuit Court in the presence of the Board of Commissioners of said County, drew by lot from said box the names of the following named twelve persons to serve as Grand jurors at the April Term 1871 of said Circuit Court, towit:

Samuel Hill,	Middle Township,		
David Ritzel	Franklin "	James M Watson,	Brown Tp.
Ambrose Jessup	Guilford "		
Edward F. Burcott	Lincoln "		
John Bowsman	Marion "		
Julius A Jager	Union "		
James H. Clay	Eel River "		
Addison Hadley	Liberty "		
James Kersey Jr.	Clay "		
David Ricord	Washington "		
Jesse T. Mattock	Center "		

I do hereby certify that the above is a true copy of said ~~order~~. Entry

Witness my name, and the Seal of the Board, at Danville, this 10th day of March, 1871.

Wm M Hess, Auditor.

per J.G. Miles Dep.

ORDER OF THE BOARD NO. .....

The State of Indiana, } SS: Board of Commissioners,

HENDRICKS COUNTY, } March Term, 1870.

Be it remembered that the Board of Commissioners of said County of Hendricks, did, at their March Term, 1870, make the following ~~order, to wit:~~ *Entry on their records, to wit:*

The Board, now select from the tax Duplicate of Hendricks County for the year 1869, the names of Sixty reputable freeholders and householders of said County, and taxable therein, and having divided the number equally among the civil Townships of said County, and having written the names of said persons on separate slips or pieces of paper and placed them in a box provided for the purpose, the Clerk of the Hendricks Circuit Court in the presence of the Board of Commissioners of said County, drew by lot, the names of the following named twelve persons, to serve as Grand Jurors at the November Term A.D. 1870 of said circuit Court, to-wit:

Jeremiah Gentry, Franklin Township.
Johnson Vanarsdall, Union Township.
Elias Hadley, Guilford Township.
Henry W. Surpin, Lincoln Township.
Quincy Davis, Eel River Township.
Nathan Meredith, Clay Township.
William Proctor, Middle Township.
Jos. H. Sellers, Marion Township.
John Brown, Center Township.
Henry Bradford, Washington Township.
John M. Arbuckle, Brown Township.
Young Short, Liberty Township.

I do hereby certify that the above is a true copy of said order.

Witness *my name, and the Seal of the Board, at Danville, this 12th day of March, 1870.*

Wm W Hess, Auditor.

per J. G. Sibbs

ORDER OF THE BOARD NO. .....

The State of Indiana, } SS: Board of Commissioners,

HENDRICKS COUNTY, } March Term, 1871.

Be it remembered that the Board of Commissioners of said County of Hendricks, did, at their March Term, 1871, make the following ~~order, to wit~~: *entry of record, to wit:*

The Board in like manner, now select the names of Sixty reputable freeholders and householders, when the Clerk of the Hendricks Circuit Court in the presence of said Board of Commissioners drew by lot the names of the following named twelve persons to serve as Grand Jurors at the November Term of the Hendricks Circuit Court for the year 1871, to wit:

William H. Fort,	Brown	Township.
James A. Bowen	Center	"
Nathan Hadley	Clay	"
Alfred B. Fox	Washington	"
James Y. Crawford	Liberty	"
Joel Ballard	Guilford	"
Marshal Hollowbaw	Middle	"
Joseph H. Sellers	Marion	"
Moses Pike	Franklin	"
Benjamin F. Davis	Eel River	"
Harrison G. Surpin	Lincoln	"
Stephen Fowler	Union	"

I do hereby certify that the above is a true copy of said ~~order~~. *Entry*

Witness *my name, and the Seal of the Board, at Danville, this 5 day of October, 1871.*

Wm W Hess, Auditor.

per J. G. Sibbs

State of Indiana
Hendricks County } ss.

Be it remembered that the Board of Commissioners of said County, to wit:

William Hylton
Aaron T. Dooley and
John W. Tinder

did on the first day of their March Term, 1881, have the following proceedings;

"The Board now select from the Tax Duplicate of the year, 1880, the names of thirty (30) persons possessing the requisite qualifications for Grand Jurors, ten of whom reside in each Commissioners District, which names are written on thirty slips of paper of uniform size, shape and color and placed in a box kept for that purpose, when William F. Haynes, Clerk of the Hendricks Circuit Court, did in the premises of the Board of Commissioners, draw by lot from said box the names of the following six persons to serve as Grand Jurors for the next ensuing two terms of the Hendricks Circuit Court, viz:

John Moore	Dandridge Tucker
Harrison G. Turpin	Daniel Cox
Jeremiah Gentry	Millard Jones

At the same time and in like manner the

The following are the names of persons drawn to serve as Grand Jurors at the June Term of Circuit Court, 1883

1 Lewis C. Case Eel
2 John W Hughs Middle
3 Alfred Bray Brown
4 Dan F. Holtsclaw Middle
5 David Stafford Liberty
6 Asa M Black Center
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STATE OF INDIANA,
Hendricks County, ss.

We, the undersigned, ~~Auditor, Recorder, and Treasurer~~ Jury Commissioners of said County, hereby certify that the above and foregoing Jurors were drawn on the 28th day of May, 1883, according to law.

Witness our names, this 28th day of May 1883

O. W. Hill
B. G. Edmondson

Attest
Wm. F. Haynes
Clerk

The following are the names of persons drawn to serve as Grand Jurors at the September Term of Circuit Court, 1883

1 Gamaliel Cooper Frank
2 Robert Christie Clay
3 James Hayes Marion
4 S. M. Pierson Guil
5 George Woods Frank
6 Jos L. Rhoades Liberty
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STATE OF INDIANA,
Hendricks County, ss.

We, the undersigned, ~~Auditor, Recorder, and Treasurer~~ Jury Commissioners of said County, hereby certify that the above and foregoing Jurors were drawn on the 17th day of Sep, 1883, according to law.

Witness our names, this 17 day of Sep 1883

O. W. Hill
B. G. Edmondson

following named persons were drawn to serve as Grand Jurors for the ensuing two terms from the expiration of the above six months provided for, and until another Grand Jury shall be selected

George Fleece — Amos Hoak
John N. Smith — Jacob Kendall
Joseph S Carter — Silas M. Pearson"

State of Indiana }
Hendricks County } ss

I, William A. Nichols, Auditor of said County, hereby certify that the foregoing is a true transcript of the proceedings of the Board of Commissioners of said County in the matter of drawing Grand Jurors for the Circuit Court of said County. as the same appears of Record in my Office

Witness my hand and the seal of the Board of Commissioners of said County this 7th day of March, 1881.

William A. Nichols
Auditor Hendricks Co.

CH41

Box 002 Grand Jury Expanded

1856
1857
1859
1921

1 no date

CH 41

9ten 002 Grand Jury Expaneled
1856
1857
1859
1921

1 no date

At a Term of the Board of County Commissioners of the County of Hendricks, begun and held at the Court House in the town of Danville, in said County, on Monday the third day of March in the year Eighteen hundred and fifty six.

Present Harlen Carter, (President of the Board) Martin Gregg, and Charles R. Ross, County Commissioners in and for the County of Hendricks.

Monday, March the 3rd 1856.

The Board now proceed to Select from the Tax Duplicate of the County of Hendricks for the year 1856 the names of Sixty reputable freeholders and householders of said County and taxable therein, and having divided the same equally, as near as possible, among the Several Civil townships of said County, Written them on Separate ballots, and placed them in a box prepared for that purpose, the Clerk of the Hendricks Circuit Court, in the presence of the Board, drew by lot from said box the names of Moses Crawford, Daniel D. Hamilton, John Edwards, Caleb Carteting, William Hopkins, George W. Buchanon, George Samson, James McKay, David H. Cox, John C. Parker, Thomas Dodge and William Merritt, as grand jurors to Serve at and during the Spring Term of the Hendricks Circuit Court, in the year 1856; And in like Manner Said Clerk drew from said box the names of Asa Ballard, Davis Boswell, Daniel D. South, James W. Stuart, Edmund N. Hadley, Smith Russell, Richard Martin, Nilson M. Darnall, Enos Blair, Lewis Peacy, Robert T. Kloud, and Harvey R. Barlow as Grand jurors to Serve at and during the fall term of the said Hendricks Circuit Court in the year 1856."

I, Allen Hess, Auditor of said County, do hereby Cetify that the following is a true Copy of the Record of the Drawing of Grand jurors for the Hendricks Cicuit Court by the Board of Commipioners of said County, at their March Term, 1859;

The Board now Select from the Tax Duplicate of the County of Hendricks, for the year 1858, the names of Sixty reputable freeholders or householders of said County, and taxable therein, and having divided the same equally as near as possible among the Several Civil townships of said County, Written them on Separate pieces of paper, and placed them in a box prepared for that purpose, the Clerk of the Circuit Court of said County, in the Presence of the Board, drew by lot from said box the names of the following persons to Serve as Grand jurors at the August Term of said Cicuit Court in the year 1859, towit: Parvr P. Dennis, Joseph Wells, Adam Dennard, Addison Coffin, William Merritt, Jonathan D. Parks, John P. McCormack, George Fleece, Daniel McKinsey, Nicholas Sawler, Reuben A. Loorerdale, and William J. Scearce.

And said Board having in like manner Selected the names of Sixty freeholders or householders and placed them in said Box, Said Clerk in like manner drew therefrom the names of the following persons to Serve as grand jurors for said County at the February Term of Said Cicuit Court in the year 1860, towit: Francis M. Johnson, Isaac Davis, Isaac Markham, John Black, Samuel A. Verbrike, John A. Grimes, Eli Morgagon, Charles B. Watt, Alfred Isaacs, David Master, Thomas Flatthers and William Crabb.

In Witness Whereof I Hereto Subscribe my name and affix my official Seal, this 18th day of

BOARD OF COMMISSIONERS

GRAND JURY EMPANELLED:-

Come now into open court Byron Cox, Horatio Brown, William A. McDaniel, Chas. E. Mc.Lane, Horace Zimmerman and Roscoe Edwards the regularly drawn Grand Jurors for the present term of this court, who ~~being duly and legally selected for service at the present term of this court are sworn in open court and take the oath prescribed by law, which is as follows, to-wit:~~ "You and each of you, do solemnly swear, that you will diligently inquire, and true presentment make, of all felonies and misdemeanors, committed or triable, within this county, of which you shall have or can obtain legal evidence; that you will present no person through malice, hatred or ill-will, nor leave any unpresented through fear, favor or affection, or for any reward, or the promise or hope thereof, but in all your indictments you will present the truth, the whole truth and nothing but the truth, and that you will not disclose any evidence given or proceeding had before the Grand Jury; so help you God."

~~And the Court appoints Horace Zimmerman foreman of the Grand Jury. and the Court thereupon instructs the said Grand Jury as to its duties and they retire to their room for deliberation.~~

And James Fleece is now appointed and sworn as bailiff to said Grand Jury.

Grand Jury Empaneled:-

Come now into open Court A. W. Kellums, A. M. Baugh, Columbus Johnson, Fountain Hardwick, Fred Franklin and E. A. Landreth the regularly drawn Grand Jurors for the present term of this Court, who being duly and legally selected for service at the present term of this Court are sworn in open Court and take the oath prescribed by law, which is as follows, to-wit:

"You, and each of you, do solemnly swear, that you will diligently inquire, and true presentment make, of all felonies and misdemeanors, committed or triable, within this County, of which you shall have or can obtain legal evidence; that you will present no person through malice, hatred or ill-will, nor leave any unpresented through fear, favor or affection, or for any reward, or the promise or hope thereof, but in all your indictments you will present the truth, the whole truth and nothing but the truth; and that you will not disclose any evidence given or proceeding had before the Grand Jury; so help you God."

And the Court appoints Fountain Hardwick foreman of the Grand Jury.

And the Court thereupon instructs said Grand Jurynas to its duties, and they retire to their room for deliberation.

And John E. Redmond is now appointed and sworn as balliff to said Grand Jury.

The State of Indiana, Hendricks County: I, Allen Hess, Auditor of said County, do hereby Cetify that the following is a true Copy of the Record of the Proceedings had by, and before the Board of Commipioners of the County of Hendricks on Wednesday the third day of the March Term of said Board, in the year 1857, in reference to the Selection of Grand Jurors for the Spring and Fall Terms of the Hendricks Cicuit Court for the year 1857, towit: "The Board now proceed to Select from the Tax Duplicate of the County of Hendricks for the year 1856 the names of Sixty reputable freeholders or householders of said County, and taxable therein, and having divided the same equally, as near as possible, among the Several Civil Townships of said County, Written them on Separate pieces of paper, and placed them in a box prepared for that purpose, the Clerk of the Hendricks Cicuit Court, in the presence of the Board, drew by lot from said box the names of the following named person to Serve as Grand Jurors at the Spring Term of the Hendricks Cicuit Court for the year 1857, towit: Scott Miller, Samuel A. Verbrike, Fabin Vestal, John W. Bryant, Johnson Kent, Cornelius Pants, Robert Frazier, Samuel Hill, David Martin, Sr., James Stewart, Harvey R. Barlow and Lewis B. Peacy. And in like Manner Said Clerk drew from said box the names of the following persons to Serve as Grand Jurors at the Fall Term of said Hendricks Cicuit Court in the year 1857, towit: George W. Sipe, Ebenezer S. Watson, Samuel Little, Alexander Chambers, Jonathan Mendenhall, Archibald Alexander, Henry Clark, Enos Hadley, David Dinoff, Charles Fuller, Lewis A. Rose and William J. Haglett.

Witness My name and the Seal of said Board at Danville, this fifth day of March 1857.

Allen Hess. A.H.C.

C441

Item D03 Grand Jury Petition

1897

Danville, Indiana, Sept.22, '97

To the Honorable John V. Hadley,

Judge of the Hendricks Circuit Court.

:-:-:-

CH 41

Item B 29 Unpaid Judgments

1855-
1864 (2)
1871
1882

1 - no date

State of Indiana
Hendricks County

Christian C Snow
v.
Benjamin H Richman

On this 9th day of Febmary A D 1855 Personally appeared before me John Irons Clerk C Snow, the plaintiff in the above entitled Cause, who being duly sworn upon his oath says that there remains unpaid of principal & interest of said judgment, the sum of Seventy five dollars and thirty Cents, and that there remains of Costs unpaid the sum of Two dollars and Seventy five Cents, as he verily believes-

C. C. Snow

Subscribed and Sworn to before me.
February 19. 1855.
John Irons Clerk.

STATE OF INDIANA, Hendricks County, ss: } COURT OF COMMON PLEAS.

May Term, A. D., 1864.

Daniel Ferguson

the plaintiff complains of Amos L Wells administrator Charles Ferguson deceased the defendant, and says that said Charles Ferguson deceased, was indebted to the plaintiff in the sum of Two hundred & Seventy five Dollars and Cents, for

a bill of particulars of which is now filed and made a part here defendant as such administrator of said Charles Ferguson owes the same, which is unpaid. Wherefore he demands judgment for Two hundred Dollars.

Bill of Particulars

Charles Ferguson To Daniel Ferguson Dr

To one fied of Corn		$125.00
" " Lot of farming implements		25,00
" " Cash loned		50,00
" " Lumber and bilding house		70,00
		$270,00

State of Indiana, Hendricks County, ss:

I Daniel Ferguson do solemnly swear that the sum of Two hundred and Seventy Dollars and Cents is now justly due and wholly unpaid upon the annexed account

and that there is no matter of offsets upon the same, which with the original claim in my favor, is herewith set out in full, so help me God.

Daniel Ferguson

Sworn to and subscribed before me, this 14th day May A. D., 1864.

Witness my hand and official seal, this 14th day of May A. D., 1864.

Levi Butler Clerk

STATE OF INDIANA, Hendricks County, ss: } COURT OF COMMON PLEAS.

May term Term, A. D., 1864.

Hall Carroll & Co. v. Milton J. Tovey

Estate

William J. Tovey Admr

The plaintiff complain of J. P. Alexander deceased late of the State of Indiana the defendant, and says that said ~~he~~ deceased, on the 26th day of Sept. A. D. 1864 by his note in writing promised to pay the plaintiff 65 Dollars and ~~no~~ Cents, a copy of which is now filed and made a part hereof. That defendant as Admr of said estate owes the same, which is unpaid. Wherefore he demands judgment for 65 Dollars.

P. P. Kennedy Atty for pltff

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5 90 on pa
59 10
2 95
56 15
20 00
36 15
4 50
31 65
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29 65
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8 30
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81



$65 00/100 Cincinnati, Sept 26th, 1863.

Six Months after date We promise to pay to the Order of Hall, Carroll & Co.

Sixty five Dollars,

Payable at the Office of Homans, Co in Cincinnati.

Value received, without any relief whatever from Valuation or Appraisement Laws.

No. Due Mch. 29 James P. Alexander & Co

and that there is no matter of offset to the claim upon the same, which with the original claim in ~~my~~ favor, is herewith set out in full, so help me God. As I verily believe. P. P. Kennedy

Sworn to and subscribed before me, this 20 day of May A. D., 1864.

Witness my hand and official seal, this 20 day of May A. D., 1864.

Levi Ritter Clerk.

State of Indiana
Hendricks County } ss.

Willis H. Wilhite
vs.
William A. Amick } Judgt. before Esq. Gossett.
Transcript filed in Com. Pleas Court.

I Willis H Wilhite affirm that the above judgment has not been paid, that there is due on said judgment the sum of $110.85
Interest 1.20
Costs 4.40
$116.45

Willis H. Wilhite

Subscribed and affirm to before me April 14 1871
N. S. Hadley Clk.

4

State of Indiana
Hendricks County } ss

Aug 19th 1861

Mary A. Smith in account
With J. J. Burhops & Co Dr
To Old Coffin & Box $30 00/100

J. J. Burhops & Co

State of Indiana
County of Brown } ss

Before me William J Dunell a Notary Public in and for said this 18th day of April 1862 came John W. Brantman a Member of the firm of J. J. Burhops & Co who being by me first duly Sworn upon his oath says that the above and foregoing account is just and owing and that the same is due and remains wholly unpaid

John W. Brantman

Subscribed and Sworn to Before me this 18th day of April 1862

William J Dunell
Notary Public

Owen Davis
vs
Garrison Kelsoe

Personally appeared before John Sims Clerk of the Hendricks Court of Com Pleas - Owen Davis the Plaintiff in the above Entitled cause who being duly sworn says on oath that said Defendant has not paid the amount of the judgment rendered by John S. Woodard in said cause or any part thereof and that the amount of the same is now due & unpaid

Owen Davis

CH 41

Item 004 Indictments

1918

June 26, 1918.

Report of Grand Jury.

Come now into open court the jurors of the Grand Jury for the present term of this Court, and present and return in Open Court Indictments Numbered 5157, 5158, 5159, 5160 and 5161, each of said Indictments being endorsed. "A True Bill," and signed "B. A. White" Foreman". Said Indictments are as follows, to-wit: (H.D.). And the court having ex. said indictments, and finding the same duly executed according to law Orders said inflictments filed, recorded and docketed in the proper records of this court. And thereupon the clerk of this Court files, records and dockets said Indictments, as ordered by the court.

And said Grand Jury also as required by law presents to the Court, and files herein their report of the Condition of the County Jail and Co Home said report being in the words and figures following, to-wit: (H.D.) And there being no further business for the Consideration of said Grand Jury, they are now discharged from further service.

CH 41

Item 006 Report-condition of county Prison
1869
1881

State of Indiana
County of Hendricks } ss.

The Grand Jurors of the County of Hendricks in the state of Indiana, respectively report to the Hendricks Circuit Court, that they have visited and made personal inspection of the condition of Cunty prison, as to its suffiency for the safe keeping of prisoners, their convenient accommodation and health, and inquired into the manner it has been kept, since the last term of this court, they further report that they find said prison in good condition and consider it amply sufficient for the safe keeping of prisoners and their convenient and comfortable accommodation— that the arrangement for the health of prisoners is good, and that it has been well kept since the last term of said court,

They recommend that the pumps in the jail be removed and a good one procured and placed there that will be reliable,

They further recommend that the holes left in the wall for the heat registers should be filled in some way so as to render it secure in case prisoners should get outinto the outer prison hall,

All of which is respectively submitted,

Amos S. Wills
Foreman Grand Jury

State of Indiana
County of Hendricks } ss.

In the Hendricks Circuit Court March Term 1881.

To Hon. Joshua L Adams Judge of said Hendricks Circuit Court:

We the grand jurors duly empanneled and sworn to act as such for the present term of said Court, would report that we have made a personal inspection of the prison of said Hendricks County and that we find the same to be in good condition and that it has been kept in good condition since the last term, and that the same is sufficient for the safe keeping of prisoners and that the prisoners therein are properly treated and cared for.

Daniel Cox
(Foreman)

12

CH 41

Item, DOT Report - condition of county ~~poor Farm~~ jail
1902

Dec. 2" 1902

To. Judge T. J. Cofer, Judge -

Sir, we the Grand Jury of Hendricks County State of Indiana beg leave to report that upon careful search we report that the County Jail is unsafe and would recommend that a more substantial door be placed at the entrance door or inner door at entrance and that the window shutters from inside of outer wall. Should be at once made more secure & safe. The windows Only being fastened by small bolts which would be easely cut away with some small tool. We further finde that the boultes securing the bars on the registrar on east of inside of east wall of jale room are set to far out leaving room for a saw to be inserted ~~liable to be cut~~. We recomend that a steel plate be put in afore said plate

Report of Grand Jury.

We farther recomend that more light & ventalation be admitted in jale room

James M. Barlow
Foreman of Jury -

To ya

Sir,

Hendricks

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Box 41

Item 008 - Subpoena
1905 (2)

GRAND JURY SUBPŒNA. Form 1068. 3M-8-'87. Wm. B. Burford, Printer, Indianapolis.

STATE OF INDIANA, Hendricks COUNTY, SS:

The State of Indiana, to the Sheriff of Putnam County, Greeting:

You are hereby commanded to summon James Lane by Reading

to personally be and appear ~~forthwith~~ Sept 12, 1905 at 10 o'clock A.M. before the Grand Jury of the County of Hendricks now holding its session at the Court House in Danville then and there to testify and answer such questions as may be put to ~~them~~ him by said Grand Jury

and herein he may not fail at his peril, and have you then and there this writ.

WITNESS, John C. Taylor Clerk of said Court,

this 9th day of Sept 1905, ~~188~~

John C. Taylor Clerk.

GRAND JURY SUBPŒNA. Form 1068. 3M-8-'87. Wm. B. Burford, Printer, Indianapolis.

STATE OF INDIANA, Hendricks COUNTY, SS:

The State of Indiana, to the Sheriff of Putnam County, Greeting:

You are hereby commanded to summon Roy Walton by Reading

to personally be and appear ~~forthwith~~ Tues Sept 12, 1905 at 10 o'clock A.M. before the Grand Jury of the County of Hendricks now holding its session at the Court House in Danville then and there to testify and answer such questions as may be put to ~~them~~ him by said Grand Jury

and herein he may not fail at his peril, and have you then and there this writ.

WITNESS, John C. Taylor Clerk of said Court,

this 9th day of Sept 1905, ~~188~~

John C. Taylor Clerk.

CN41

Item E01 affiant - Transcript

1896

STATE OF INDIANA, HENDRICKS COUNTY, SS:

Samuel Heath

vs.

The Citizens Street Railway

Company.

Zim E. Dugan, being first duly sworn on his oath says: That he is now and has been continuously since July 27th. 1896 Deputy Clerk of the Hendricks Circuit Court. That in the preparation of the transcript in the case of Samuel Heath vs. The Citizens Street Railway Company he made so much thereof, at least, as embraces the complaint filed in the said Circuit Court, and on which complaint the parties went to trial. That as he verily believes he transcribed said complaint carefully into and made the same a part of the transcript. That after said complaint was transcribed he carefully compared the same word for word in the following manner:- That Wilbur U. Masten, also a Deputy in said Clerk's Office took the original complaint and read the same aloud to and in the hearing of affiant, and at the same time the affiant held the transcript in his hands and followed the reading of the said Wilbur U. Masten; that the complaint as read by the said Masten agreed exactly with the transcript as prepared by affiant, and there was no word read by the said Masten from said original complaint that was not in said transcript, and there was no word in the transcript of said complaint that was not read by the said Masten from said original complaint, and there were no less words in the transcript than was read from said original complaint by the said Masten; that the transcript was a full, accurate and true copy of the original complaint as read by the said Masten, no more and no less.

And affiant further says that about six weeks ago, more or

State of Indiana, Hendricks County, ss:

Samuel Heath

vs.

The Citizens Street

Railway Company.

Wilbur U. Master being first duly sworn on his eath says:- That he is now and has been continuously since the 27th. day of July, 1896 a Deputy Clerk of the Hendricks Circuit Court, and that Zim E. Dugan has also been a deputy Clerk in said office for the same period of time, He says he remembers the fact of the preparation by the said Dugan of a transcript on appeal to the Supreme court of the case of Samuel Heath vs. The Citizens Street Railway Company, and that so much, at least, of said transcript as includes the complaint was prepared by as he verily believes the said Dugan. That after said Dugan had copied the complaint into the transcript the affiant and the said Dugan compared the complaint a and the transcript thereof word for word in the following manner:- The affiant took the original complaint and read therefrom aloud to and in the presence of the said Dugan, and at the same time the said Dugan had before him the copy of said complaint as it wwas copied into the transcript. That said original complaint was writen on a typewriter, and in some places interlineations were made with pen and ink.. He says he read all of said original complaint to the said Dugan, both that written on a typewriter, and that interlined and written with a pen and ink, and that when he finished reading said original complaint to the said Dugan, the said Dugan said it was as he had written it in the said transcript; that he read to said Dugan all of said complaint, no more and no less, as the same appeared at the time said transcript was prepared, and as the same was at the close of the trial of said cause in the Hendricks Circuit Court.

He also says that about six weeks ago one Solon Enloe, of the law firm of Adams & Enloe of DanvilleIndiana, called at the office of the Clerk of the Hendricks Circuit Court and said he wanted the original files of papers in said cause, saying at the time he desired to send them to W. J. Beckett of Indianapolis, counsel for the plaintiff in the above entitled cause. That said Enloe took the original papers in said cause, and this affiant has no knowledge of said papers since that time, until he has seen them this day.

And further affiant says not.

Wilbur M Masten

Subscribed and sworn to before me this day, October 20th. 1899, as witness my hand and the seal of the Hendricks Circuit court.

Neal L. Masten

Clerk Hendricks Circuit Court

HENDRICKS COUNTY CIRCUIT COURT INDIANA

CH 41

Item EO 2 affidavits

1899 (9)

IN THE SUPREME COURT OF INDIANA.

CITIZENS STREET
RAILROAD COMPANY

VS.

SAMUEL HEATH.

Emma Kaminsky, being duly sworn on oath says that she is the clerk in the office of Wymond J.Beckett, and has been clerk in said office more than two years last past; that she was present whe Solon A.Enloe of Danville Indiana brought the original file papers in the above entitled cause into the office of the said Wymond J. Beckett, and that it was about 11 o'clock A.M. on the 7th day of September 1899. That in her presence Wymond J.Beckett took the sa file papers from the packet in which they were contained, and that Samuel Heath commenced an examination of the same; and that the sa Samuel Heath read the complaint and the said Wymond J.Beckett hel the transcript and compared as Samuel Heath read the complaint, the copy of the same as set out in the transcript of said cause in this court. That as the said Samuel Heath read said complaint through it was discovered then and there that the copy of said complaint in the transcript was not a true copy of the original complaint as read by said Samuel Heath; that certain words and phrases were omitted in the trsnacript that were contained in the original complaint; that the certain words, phrases and clauses xxx omitte d in the trsnacript, were the certain words, phrases and clauses set out in the motion for certiorari in this cause sworn to by said Samuel Heath. That there was a great deal of said complaint interlined; and that all of the words, phrases and clauses interlined in said complaint werex contained in said complaint at the time the same was read in her presence by the said Samuel Heath; as the said Samuel Heath and the said Wymond J.Beckett compared the same with the tranacript in her presence. And that the complaint was in the same condition as to interlineations, words, phrases and clauses written in ink, at the firstxx time she heard the same read by the said Samuel Heath as aforesaid, as it was when she copied the

same a few hours later in the motion for certiorari filed herein. That she was present all the time in the same room with the said from the time the papers were left in the office of W.J Beckett Samuel Heath and Wymond J.Beckett, as hereinbefore stated, by the said Enloe, until after said complaint was read and compared with the copy of the same as set out in the transcript in this cause; and she knows that there were no words, phrases or clauses written in said original complaint by the said Wymond J.Beckett or any one else after it was brought into the office of the said Wymond J.Beckett by the said Enloe; and that it was at the time she copied the same in the motion for certiorari in exactly the same condition as to interlineations that it was when it was removed from the packet by the said Wymond J.Beckett as before stated. That she has charge of the court papers in the office of Wymond J.Beckett, and she knows that said original file papers, including the complaint, were at no time in and about the office of the said Wymond J. Beckett from the time of the trial of this cause at Danville until they were brought by the said Enloe on the 7th day of September, 1899.

Emma Kaminsky.

NOTARY SEAL PUBLIC INDIANA

Subscribed and sworn to before me this 28th day of October, 1899.

Samuel Ashby Notary Public

Commission expires 17th day of Dec 1902

SUPREME COURT OF INDIANA.

NO. 19802.

CITIZENS STREET
RAILROAD COMPANY APPELLANT

VS.

SAMUEL HEATH APPELLEE.

AFFIDAVIT OF JOHN.F.GEIS.

John F.Geis, being duly sworn on oath says that he graduated in the Medical College of Indiana in 1891; that after graduation he pursued the study and practice of analytical chemistry in the College of New York City; that he has been identified with the department of Chemistry in the Medical College of Indiana for the past six years, and is now Professor of Analytical Chemistry in said College, and that he has been chemist for the city of Indianapolis since January, 1899. That he has made a careful study of the chemistry of the various ofx kinds of inks used in writing, and knows the chemical effect of certain re-agents when applied to writing inks, and feels qualified to give an opinion on the subject of the relative ages of writing, as shown by chemical examination.

And affiant further says that he has examined the various interlineations in the complaint entitled, Samuel Heath vs The Citizens Street R.R.Co. of Indianapolis, Indiana, filed in the Superior Court of Marion county, Indiana September 23rd, 1897, and numbered 55472; that said complaint also bears the number 6501,- with the following chemical re-agents separately: oxalic acid, solution of chlorinated lime, hydrochloric acid and amonia, with the following results:

The above solutions applied to the interlineations in each line on page 2 of said complaint caused the same to fade with varied degrees of rapidity. The same tests applied to other writings on the same kind of paper with inks of the same character and apparently in the same handwriting dated 1896, 1897, 1898, and as late as

October 12, 1899 faded with equal rapidity,- that is to say,- that there was very little difference in the time it took these various solutions to fade out writings of the various dates mentioned; that the difference in time was not sufficient to show whether one was older or more recent than the other.

I therefore conclude that the tests employed would determine nothing definite as to the relative age of the interlineations on Page 2 of said original complaint.

John F. Geis.

Subscribed and sworn to before me this 28th day of November, 1899.

Emma Kaminsky
Notary Public.

Commission expires
Sept. 29, 1901.

IN THE SUPREME COURT OF INDIANA.

CITIZENS STREET RAILROAD COMPANY

VS.

SAMUEL HEATH.

SOLON A.ENLOE of lawful age, being duly sworn on his oath says that on the 26th day of October, 1899, he was present with Wymond J.Beckett in the office of the clerk of the Circuit Court of Hendricks county, Indiana, and heard a conversation which then and there took place between Wymond J.Beckett and Zim E.Dugan, deputy clerk of the Hendricks circuit court,- the person who has heretofore made an affdidavit in this cause on behalf of appellant. That during said conversation said Zim E.Dugan stated to said Wymond J.Beckett that when he came to make up the transcript in the case of Samuel Heath vs The Citizens Street Railroad Company, he found no demurrer on file to plaintiff's amended second paragraph of reply to defendant's amended second paragraph of answer; and that James L.Clark of the firm of Hogate & Clark of counsel for appellant The Citizens Street Railroad Company, supplied said demurrer by writing the same out at the time; and that the said Zim E.Dugan copied the demurrer so supplied by said James L.Clark into the transcript of this cause. Said Dugan in said conversation further said that while he remembered the facts before stated distinctly, that he did not feel like making an affidavit of said facts until he had again examined the files in said cause; and it was then and there agreed between the said Zim E.Dugan, Wymond J.Beckett and Solon A.Enloe that on the next morning , the morning of October 27th 1899, said Solon A.Enloe should come to Indianapolis and procure the original files in said cause, which were then and there supposed to be in the care and custody of one Will H.Latta, attorney for appellant, The Citizens Street Railroad Company of Indianapolis Indiana; affiant further says that on the morning of October 27th, 1899, pursuant to said agreement, he went to the city of Indianapolis to procure said original files for the purpose of returning

the same to the office of the Circuit Clerk of Hendricks county, Indiana, that the same might be inspected by the said Zim E.Dugan for the purpose of procuring his affidavit as aforesaid, but was informed by said Wymond J.Beckett that said Will H Latta refused to surrender the custody of said papers, and affiant was unable to procure them. Affiant further says that prior to the time of filing the transcript in this cause in the Supreme court of this state, he had no opportunity to inspect or examine said transcript; that he never saw said transcript until after the same had been filed in the office of the clerk of the Supreme court of this state; and had no knowledge of its contents.

Affiant further says that on the morning of September 5th 1899 he received from the said Wymond J.Beckett, a letter addressed to Adams & Enloe, Danville Indiana, in which, among other things, was the request to addressees to get the original files in this cause, and inspect the same,- a copy of which letter is in the words and figures following to wit:

Indianapolis, Ind.Sept.4th, 1899.

Adams & Enloe,
Danville, Ind.

Gentlemen:-

I find on examining the Heath transcript an entry which purports to be a copy of Dr.Anthony's bill which was plaintiff's exhibit A. It is not a copy of his bill nor anything like it; it is not printed in the transcript but written with pen and ink, and is not in the handwriting of either Judge Cofer or Mrs.Edwards. I have written Mrs.Edwards in reference to the matter requesting an explanation. You might see her and get the facts. I feel certain that the entry has been made by some one connected with the stred railroad. I wish you would also see if the second paragraph of the amended reply to the second paragraph of the amended answer is among the file papers. I feel sure that no written demurrer was ever filed to plaintiff's amended second paragraph of reply. Have the clerk go over the file papers in your presence so that he cannot accuse you folks of abstracting it. This record seems to be very unusual and I want to findout the bottom facts. I feel absolutely confident that while the defendant had the court note the filing of demurrer no demurrer was ever filed in writing. Kindly look into this matter andlet me hear frm you by return mail as I am preparing a brief in the case, and if the record is to be corrected I will file my certiorari at once.

Yours truly,

Wymond J.Beckett.

P.S. Please examine John Green's letter to A.L.Mason which is one of defendant's exhibits, and send me an exact copy of his letter. I think it is wrong as copied in the transcript.

W.J.B.

That in pursuance of the matter requested in saidletter,

this affiant went to the office of the clerk of the Hendricks Circuit Court and procured said files; that he had not at that time seen the transcript of the record in this cause; that after inspecting said files in the presence of the deputy clerk Zim E. Dugan, he took the files in said cause to his office; that he there read in a careful manner all the pleadings in this cause, including the plaintiff's complaint herein; and as affiant verily believes, plaintiff's complaint was at that time as to interlineations, the same as it was at the date of the filing of the motion for writ of certiorari in this cause. Affiant further says that to his personal knowledge the original files in this cause were not in the possession, care or custody of Wymond J.Beckett from the date of the trial of this cause in the Circuit court until September 7th 1899; that on the 15th day of September 1899, the said Wymond J. Beckett returned to Danville with the transcript in this cause and the files therein; that affiant and the said Wymond J.Beckett then and there compared the said original complaint with the complaint as copied in the transcript; that affiant made a critical examination at that time of the interlineations in said complaint; that he noticed a difference in color of the ink with which said interlineations were made; that he also noticed that part of phrases and clauses of said complaint so interlined and copied into the transcript in this cause varied in the shade of the ink,- part of the phrases and clauses so copied being in ink of lighter or of a yellowish hue, and the other of black. Affiant further says that a comparison and examination of said complaint with the supposed copy thereof as recorded in said transcript, showed that part of the omitted words and phrases were in black ink and part in ink which had set in a yellowish tint. And affiant further says that he verily believes that plaintiff's original complaint was in the same condition on September 15th 1899 when the same was compared with the transcript in this cause as aforesaid, as it was on September 5th 1899 when affiant procured the same from the

office of the clerk of the circuit court, and examined said papers as hereinbefore stated.

Solon A.Enloe.

Subscribed and sworn to before me this 27 day of October, 1899.

Emma Kennedy
Notary Public.

(Commision expires 29 day of September 1901.)

SUPREME COURT OF INDIANA.

CITIZENS STREET
RAILROAD COMPANY

VS.

SAMUEL HEATH.

Samuel Heath, appellee in the above entitled cause, being duly sworn on oath says that he was present in the office of Wymond J.Beckett his attorney in the city of Indianapolis when Solon A. Enloe left in the office of the said Wymond J.Beckett the original file papers in the above entitled cause on the 7th day of September 1899 at about 11 o'clock A.M. That the said Wymond J.Beckett took the files from the case in which they were brought by the said Enloe to the office of the said Wymond J.Beckett; and at the instance and request of the said Wymond J.Beckett read the original complaint as taken by the said Wymond J.Beckett out of the packet in which they were left by the said Enloe; that this affiant read at the time the original complaint in said cause to the said Wymond J.Beckett, and the said Wymond J.Beckett at the time compared said complaint with the copy of said complaint in the transcript in this cause. That at that time the original complaint contained the words, phrases and clauses which were omitted in the transcript as set out in the affidavit of this affiant in his motion for certiorari. That at the time he noted the omissions in said transcript and compared the said transcript with the original complaint word for word, and knows that al of the interlineations and words written in ink with the pen were ~~xxxx~~ at that time in said original complaint and that saidoriginal complaint was in exactly the same condition and contained the same interlined words, phrases and clauses that it contained at the time that this affiant made his affidavit heretofore in this cause. That the said Wymond J.Beckett did not in his presence at any time make any interlineations or write in said complaint any words, phrases or clauses, nor did any one else do so in my presence and that he did not procure nor permit any one else to do so in his presence or hearing and ~~that~~ this affiant was present in the office and in the same room with the said Wymond J.Beckett continuously and all the time, from the time said packet containing the said original files in this cause was left in said office by said Enloe, until after the same had been examined by him as herein detailed. That Emma Kaminsky was present in said office all the time during the examination of said complaint.

Samuel Heath.

Subscribed and sworn to before me this 28 day of October 1899.

Emma Kaminsky.
Notary Public.

(Commission expires Sept 29, 1901.)

IN THE SUPREME COURT OF INDIANA.

NO. 19002.

CITIZENS STREET
RAILROAD COMPANY APPELLANT

VS.

SAMUEL HEATH APPELLEE.

Affidavit of Theodore W. Smith.

Theodore W. Smith being duly sworn on oath says that he is by profession an Analyist, which includes both chemical and microscopic investigations; that he graduated from Wabash college in 1886, and had charge of the advanced classes in chemistry the next year after graduation; and the following year he spent in Germany studying chemistry under Victor VonMyer in the city of Goettingen, Germany; after which he returned to Indianapolis and taught physics and chemistry in the Indianapolis High Schools until 1896,- since which time he has been engaged in public analytical work at 23 West Ohio Street; and has also been teaching chemistry in the Central College of Dentistry, and chemistry and bacteriology in the Physio-medical College of Indiana. That he has made a careful and extensive study of the chemical composition of the various kinds of inks used for writing, and has experimented with the same to determine their composition and chemical reaction when subjected to certain chemical re-agents; and that he has also experimented extensively to determine the effect of certain chemical reagents on the various kinds of writings, to determine as far as possible, the relative ages of writings; that he has also examined these various kinds of inks under the microscope and the various writings to determine also the relative ages of writings; and feels that he is able to give an opinion, on the subject of the relative age of different writings by means of both chemical and microscopical examination.

And affiant further says that he has examined the various interlineations in the complaint entitled Samuel Heath vs The Citi-

zens Street R.R. Company of Indianapolis, Indiana, bearing file mark September 23rd 1897, and numbered 55472; also bearing number 6501. That he examined first microscopically the interlined words in line 2, 11 and 13 and compared them with the various other interlined words on Page 2 of said complaint; that he used a microscope which magnified 50 and 100 diameters, and examined the various interlineations in said complaint under a microscope of these different powers; and that the microscope revealed no material difference so far as the appearance was concerned between the words interlined in line 2, 11 and 13 of said page 2 of said complaint and other interlined words on said Page 2.

And affiant further says that he then examined chemically certain letters in the interlined words in lines 2, 11 and 13 on said page 2 of said complaint, using a solution of chlorid of lime and hydrochloric acid; also applied the same test to other interlined parts of said complaint, with the following results, at the same time watching the effect under the microscope.

I first selected the downward stroke in the upper loop of the f in the word "afore" in line 2, and applied the above named re-agents, and noted carefully the time required to fade out the ink, which in that instant, was 40 seconds. I next applied the same test to the downward stroke in the lower loop of the letter f in the word "of" in line 7, and noted also the time required to fade out completely and obliterate the point treated by the re-agents, which was 40 seconds. I next selected the downward stroke of the o in the word "on" in line 11 and applied the same re-agents, in this instant 70 seconds was required to completely fade out the line. Also the downward stroke in the lower loop of the letter f in the word "of" in line 11, which required 35 seconds to accomplish the same result. I next selected the downward stroke of i in the word "received" in line 13; in this instant it took 30 seconds to fade out the ink; also the downward stroke of v in the same word, and it required 60 seconds in this instant to fade out said line.

I next applied the same re-agents to the downward stroke in the g in the word "long" in line 29, and it required 60 seconds to fade out the line. I next examined the downward stroke of the lower loop in the letter f in the word "wife" in line 29, and 60 seconds was required to fade out said line. I next applied my test to the downward stroke of the first line of the letter a in the word "and" in line 26 and it required 50 seconds to fade out said line; also the upward stroke of o in the word "so" in line 26, which required 50 seconds to fade it out.

I then examined different parts of the interlineations upon the second page of said complaint selected at random and the general result was the same as above indicated.

My conclusions are that all of the interlineations on page 2 of said complaint are made in the same kind of ink, but that the paper is not of uniform density, the fiber of some parts being closer than others; that lines of the same density written on paper of the same uniform structure would fade out practically the same time in the various parts of the page; and so far as it was possible for me to determine by the above chemical tests, and also from microscopical examination, all of the interlineations on page 2 of said complaint are of the same age.

T. W. Smith.

Subscribed and sworn to before me this 28th day of November, 1899.

Emma Kennicott
Notary Public.

Commission expires
September 29, 1901.

SUPREME COURT OF INDIANA.

CITIZENS STREET
RAILROAD COMPANY

VS.

SAMUEL HEATH.

Wymond J.Beckett being duly sworn on oath says that he is counsel for the appellee in the above entitled cause, and has made affidavit in this cause concerning certain facts in relation to the record in this cause; and that he deposes further and says that this A.M. about 9 o'clock he called up Will H.Latta by telephone and asked him to deliver to him, the said Wymond J.Beckett, the original files of the Hendricks Circuit Court in this case; that the said Latta told this affiant over the telephone that he would not deliver said files to any one until he was ordered so to do by this court; and positively refused to surrender them to this affiant. Affiant further says that he cannot properly prepare his defense to the charges made by the appellant in the affidavits of Hurty and Tolen filed by the appellant in this cause without the original complaint.

And affiant further says that there is other and manifest error in the transcript in this cause, to wit: That the demurrer to the plaintiff's amended second paragraph of reply was never filed in the Hendricks Circuit Court. That saidparagraph of reply was filed during the trial of said cause and after evidence had been introduced, the court permitted the plaintiff to amend the second paragraph of reply to defendant's amended second paragraph of answer. And that at that time, and no time during the trial of and no time during the term at which said case was tried, did the defendant file a written demurrer in said cause; and that the written demurrer which appears among the original files in this case was prepared long after the trial of the case, and after the term at which said trial was had, by defendant's counsel.

That when the deputy clerk of the Hendricks Circuit Court Zim E.Dugan was preparing the transcript in this cause, he discovered that there was no demurrer to the plaintiff's amended second para-

graph of reply to defendant's amended second paragraph of answer on file, nor among the file papers in said cause. That he called the attention of one of defendant's counsel in said cause,to wit: James L.Clark, of the firm of Hogate & Clark, that said demurrer was not on file nor among the papers in said cause; that then and there said Clark prepared a demurrer to the plaintiff's amended second paragraph of reply and gave the same to said deputy clerk, Zim E.Dugan; and said Zim E.Dugan then and there inserted said demurrer in the transcript and the same is copied in the transcript in this case at P._____. That the above facts as stated in this affidavit were told to this affiant by said Zim E.Dugan in the presence of Solon A.Enloe and Nelle Masten, clerk of said Hendricks Circuit Court, in the clerk's office at Danville Indiana on the 26th day of October, 1899 about 4 o'clock P.M.; and until this time this affiant had no positive knowledge as to how said demurrer got into and became a part of the transcript in this cause.

This affiant further says in answer to the affidavits filed by the appellant in this cause to the effect that the words and phrases interlined in the original complaint had been so interlined since the transcript in said cause was prepared by the clerk of the Hendricks Circuit Court; that he did not have in his possession, nor did he see nor have access to the original files in said cause, nor the original complaint in said cause, from the time of the trial of said cause during the January term 1899 until about the 7th day of September 1899. That on the said 7th day of September, 1899 Solon A.Enloe brought to this affiant's office the original files in said cause about 11 A.M. and left the same in the office of this affiant. That at the time in the presence of Samuel Heath, plaintiff in this cause, and Emma Kaminsky, clerk in the office of this affiant, this affiant opened said file papers and commenced the examination thereof and the comparision of said file papers with the purported copies thereof in said trascript. That the complaint in

said cause was the first paper examined by this affiant. That the said Samuel Heath read the said original complaint, and this affiant at the same time compared the same with the copy of said complaint in the transcript; and at that time this affiant discovered that the clerk had omitted certain words and phrases in said transcript which were in said original complaint,- said words and phrases being set out in appellee's motion for certiorari. That there were many interlineations in said original complaint enough to cover probably one half page of foolscap paper, but without the original complaint this affiant is unable to state just what words, phrases and clauses were interlined in said original complaint; but this affiant remembers distinctly that there were at last as many words and phrases interlined as would occupy the space above indicated. That he did not at that time nor any subsequent time write any word, phrase or clause or cause the same to be written, in saidoriginal complaint, nor did he write or cause to be written in said original complaint any word, phrase or clause after the trial of said cause. And this affiant firmly believes that no word, phrase or clause was ever written or interlined in said original complaint after the same was filed in the Marion Superior Court; and that the complaint was in precisely the same condition when this affiant examined it on the said 7th day of September, 1899 as to interlineations and words and phrases written therein with ink, as it was at the trial of said cause; and when this affiant returned said papers to the files of the Hendricks Circuit Court after the appellee had filed his motion herein for a certiorari.

WHEREFORE this affiant prays for and on behalf of the appellee in this cause that the appellee's said original motion for a certiorari be amended, and that the court order and direct in and addition to the relief prayed for in the original motion, that the said demurrer to the plaintiff's second amended paragraph of reply to defendant's amended second paragraph of answer be expunged from the transcript and record in said cause, and for all other proper relief.

Wymond J.Beckett.

Subscribed and sworn to before me this 28 day of October, 1899.

Emma Kaminsky
Notary Public

Commission expires 29 day of Sept 1901

IN THE SUPREME COURT OF INDIANA.

NO.19002.

CTTIZENS STREET RAILROAD COMPANY APPELLANT

VS.

SAMUEL HEATH APPELLEE.

AFFIDAVIT OF GROVE ANTHONY.

Grove Anthony, being dulysworn on oath says that he is a practicing physician in the city of Indianapolis, and makes a specialty of treating diseases of the eye, ear, nose and throat; that he has practiced his profession in the city of Indianapolis for ten years last past; that he uses the microscope very frequently in connection with his professional work; that he is familiar with the use of the microscope and has been in the habit for seven years last past of observing objects through the microscope and noting their variance in appearance, shape, color etc. That he has examined under the microscope at powers ranging from 75 to 150 diameters interlineations on page 2 of the complaint entitled Samuel Heath vs The Citizens Street Railroad company, No.55472; that he has examined all of said interlineations with great care, also the signature of said complaint on page 3. That he has compared the interlineations on page 2 in the lines 9 and 11 and has compared those with the signature to said complaint on page 3; that he has further selected certain letters in these lines as follows: the letter t in "without" in line 9 with the letter t in fault in line 11; that he was unable to detect any substantial difference in the appearance of these letters under the microscope as to color and general characteristics of the ink; both seemed to have undergone about the same degree of oxidization.

That in examining the interlineations in a general way differences as to shade were noted; these differences in shade were noted in letters in the words in lines 2, 11 and 13 and also in words in the other interlined parts of said complaint; that the same variance was observed in both. I therefore conclude that said interlineations were all made in said complaint at substantially the same time.

E. G. Anthony.

Subscribed and sworn to before me this 29th day of November, 1899.

Emmet Tannehill
Notary Public.

Commission expires
September 29th, 1901.

Supreme court of Indiana
Citizens St Railroad Co 1900 E
vs appellant
Samuel Heath appelee

Philip S. Baker being sworn states that he is professor of Chemistry in The Medical College of Indiana, that he has been a chemist for twenty-one years and a teacher of chemistry in DePauw University, that he has had some experience in examining inks and other coloring matters in a technical way, That he has examined the original complaint of Samuel Heath vs. Citizens St. R.R.Co., filed Sept. 23, 1897 in the Marion County Supreme Court, cause No. 55472, afterwards filed in the Hendricks Ccircuit Court and numbered 6501, as to whether the interlineations in lines 2,11, and 13, page 2, were made at a later date than the other interlineations in the same paper, and has found 1.All the interlineations were made in the same ink and by the same writer;

2. That after application of various chemical agents to the interlineations in lines 2,11, and 13, page 2, the letters faded out and on comparison with letters of words chosen from the other interlineations, as being made approximately of the same amount of ink, the speed of fading was somewhat greater. But, it was also found that there was a corresponding variation in the speed with which the words of the interlineations, not in dispute, faded out.

Further, that it was found that the fading of the words in the disputed interlineations was no more rapid than that of words of approximately similar weight of ink in the same handwriting, with the same ink, and on the same kind of paper, dated in '96, '97, '98, and '99, placed in his hands for examination.

Further, chlorinated lime, hydrochloric acid, oxalic acid, and ammonia

were saperately applied as agents with the results above stated, viz., that no safe reliance can be placed on these agents in trying to determine the relative age of the said interlineations when compared with the writings whose ages were known.

Philip S Baker

State of Indiana
Putnam County } ss.

Subscribed and sworn to before me the undersigned Notary Public within and for said County this the 28th day of November 1899.

My Commission Expires
March 2, 1900.

NOTARIAL SEAL INDIANA PUTNAM COUNTY

Tarrin C Grooms
Notary Public

Office of

Hendricks Circuit Court.

Mell. C. Masten, Clerk.

CIRCUIT COURT
BEGINS
FIRST MONDAY IN JANUARY.
FIRST MONDAY IN MARCH.
FIRST MONDAY IN MAY.
FIRST MONDAY IN SEPTEMBER.
FIRST MONDAY IN NOVEMBER.

Danville, Ind., _____ 189_

Supreme court
Samuel Heath appellee
vs
Citizens St Ryles appellant } 1900 E

Comes now Thomas J Cofer who being duly sworn on oath says that he was the Judge who tried the above entitled cause, That he prepared his instructions from the complaint in said cause and studied said complaint at the time he so prepared his instructions and that on reading said complaint he is certain that the complaint at the time he prepared his instructions in said cause contained the introduced words "without fault on her part or part of Plaintiff" in line eleven on page two (2) of said original complaint because he copied said phrase in substance in his instructions.

Thomas J. Cofer

CH 41

Item 603 affirmed in Part and reversed as to cost

1871

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel E. Perkins
John Pettit
Alexander C. } Judges

To the Clerk of the _____ Court of _____ County, Greeting:

You are hereby notified that the Supreme Court of said State has on this _____ day of _____, 187 , affirmed in part and reversed as to costs the judgment of the Court below in the case of

John Tarpy

against

Charles Crutchfield et al

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 14 day of March, 1872.

Theodore W. McCoy, C. S. C.

CH41

Item E04 affirmed Judgment

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State of Indiana, } November
SUPREME COURT. } ~~May~~ Term, A. D. 1858.

11th day January 10th, A. D. 1859

Present the Honorable

JAMES M. HANNA, Ch. J.

SAMUEL E. PERKINS,
ANDREW DAVISON,
JAMES L. WORDEN. } Judges.

The State of Indiana
vs.
David Doty

APPEAL FROM THE
Hendricks
Common Pleas Court.

Now at this time come the parties by their attorneys, and the Court being sufficiently advised in the premises, give the following opinion and judgment.

Per Curiam. Information for stalling against the act of 1853. Information Quashed. The judgment is Affirmed. (See Ingersoll vs. The State, at this term.)

36

State of Indiana, } May Term, A. D. 1859.
SUPREME COURT. }

The ____ day of ____ 1859.

Present the Honorable

SAMUEL E. PERKINS, Chief J.

ANDREW DAVISON,
JAMES L. WORDEN,
JAMES M. HANNA. } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting.

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Hendricks C.C. in the case of

Thomas B Harvey
vs
Aiken Baker

with 10 per cent damages

sixty days from the date hereof, will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 10th day of June A. D. 1859

W B Beach C. S. C.

5

State of Indiana, } May Term, A. D. 1859.
SUPREME COURT. }

The 29th day of June 1859.

Present the Honorable

SAMUEL E. PERKINS, Chief J.

ANDREW DAVISON,
JAMES L. WORDEN,
JAMES M. HANNA. } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting.

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Hendricks C.C. in the case of

James A Proctor
vs
George W Walker et al

sixty days from the date hereof, will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 29th day of June A. D. 1859.

W B Beach C. S. C.

State of Indiana, } May Term, A. D. 1859.
SUPREME COURT. }

The 29th day of June 1859.

Present the Honorable

SAMUEL E. PERKINS, Chief J.

ANDREW DAVISON,
JAMES L. WORDON,
JAMES M. HANNA. } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting.

You are hereby notified that the Supreme Court of said State has this day Affirmed the judgment of the Hendricks C.C. in the case of

Mary A Logan
vs
William Walter

sixty days from the date hereof, will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 29th day of June A. D. 1859.

W B Beach C. S. C.

The State of Indiana, } November Term, A. D. 1860.
SUPREME COURT.

The 12 day of Dec 1860.

Present the Honorable
JAMES M. HANNA, Chief J.
SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting.

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Court of Com Pleas Hendricks Co in the case of

Eden Bales

v

State ex rel Preston Pennington Admr

with 5 pr cent damages

Sixty days from the date hereof, will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court at Indianapolis, this 12 day of Dec A. D., 1860.

J P Jones C. S. C.

The State of Indiana, } November Term, A. D. 1860.
SUPREME COURT.

The 8 day of Dec 1860.

Present the Honorable
JAMES M. HANNA, Chief J.
SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting.

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Hendricks Cir Court in the case of

George S Culbertson use

v

Sarany Parker

with 5 pr cent Damages

Sixty days from the date hereof, will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court at Indianapolis, this 8 day of Dec A. D., 1860.

John P Jones C. S. C.

The State of Indiana, } November Term, A. D. 1860.
SUPREME COURT.

The 7 day of Dec 1860.

Present the Honorable
JAMES M. HANNA, Chief J.
SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting.

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Court of Com Pleas of Hendricks Co in the case of

Valentine Sinkinfetter

v

Benjamin R Dodson et al

Sixty days from the date hereof, will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court at Indianapolis, this 7 day of Dec A. D., 1860.

John P Jones C. S. C.

The State of Indiana, } November Term, A. D. 1860.
SUPREME COURT.

The 12 day of Dec 1860.

Present the Honorable
JAMES M. HANNA, Chief J.
SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting.

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Court of Common Pleas of Hendricks Co in the case of

Levi Pennington

v

Christian C Navers et al

with 5 pr cent damages

Sixty days from the date hereof, will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court at Indianapolis, this 12 day of Dec A. D., 1860.

John P Jones C. S. C.

State of Indiana. } May Term, A. D. 1861.
SUPREME COURT.

The 31 day of May 1861.

Present the Honorable
SAMUEL E. PERKINS, Chief J.
ANDREW DAVISON, JAMES L. WORDEN, JAMES M. HANNA, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Hendricks Cir Ct in the case of

John W D Mattoon

v

Ind & Ills Cent R R Co

with 5 pr cent damages

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 31 day of May A. D. 1861.

J P Jones C. S. C.

SUPREME COURT.

The Fourth day of June

Present the Honorable
SAMUEL E. PERKINS, Chief J.
ANDREW DAVISON, JAMES L. WORDEN, JAMES M. HANNA, } Judges.

To the Clerk of the Circuit Court of Hendricks County, G

You are hereby notified that the Supreme Court of said S this day Affirmed the judgment of the Court of C Pleas of Hendricks County in the case of

Jordan Denny

v

The North Western Indiana Mutu with five per cent damages

sixty days from the date hereof, will be allowed for filing a petitio re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State that the foregoing contains a true statement of the decision of said in the above entitled case.

In Testimony Whereof, I hereto sub name, and affix the seal of said Indianapolis, this 4 June A. D. 1

J P Jones C.

State of Indiana. } November Term, A. D. 1861.
SUPREME COURT.

The 26th day of Nov 1861

Present the Honorable
ANDREW DAVISON, Chief J.
JAMES L. WORDEN, JAMES M. HANNA, SAMUEL E. PERKINS, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day Affirmed the judgment of the Hendricks C. C. in the case of

Jacob Kimbleth

vs

Michael Collins et al

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 26th day of Nov A. D. 1861

John P Jones C. S. C.

State of Indiana. } November Term, A. D. 1861.
SUPREME COURT.

The 30th day of November 18

Present the Honorable
ANDREW DAVISON, Chief J.
JAMES L. WORDEN, JAMES M. HANNA, SAMUEL E. PERKINS, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeti

You are hereby notified that the Supreme Court of said, State this day affirmed the judgment of the Hendricks C. in the case of

James St John

v

Stephen Hardwick

with 5 per cent damages

sixty days from the date hereof, will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, ce that the foregoing contains a true statement of the decision of said in the above entitled case.

In Testimony Whereof, I hereto subscribe name, and affix the seal of said Cou Indianapolis, this 30th November A. D. 186

John P Jones C. S.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

November Term, 1867.

Present the Hon. James S. Frazer C. J.
Robert C. Gregory
Charles A. Ray
John T. Elliott
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 16 day of January 1868, affirmed the judgment of the Court below in the case of James A. Selch against Isaac N. Jones et al appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 16 day of January 1868.

Laz. Noble, C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

November Term, 1867.

Present the Hon. James S. Frazer C. J.
Robert C. Gregory
Charles A. Ray
John T. Elliott
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 23 day of May 1868, affirmed the judgment of the Court below in the case of The State of Indiana against Edward Weekley et al appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 23 day of May 1868.

Laz. Noble, C. S. C.

5

State of Indiana, SUPREME COURT. } May Term, A. D. 1862.

The Twelfth day of June 1862.

Present, the Honorable
JAMES L. WORDEN, Chief Justice,
JAMES M. HANNA, SAMUEL E. PERKINS, ANDREW DAVISON, } Judges.

TO THE CLERK OF THE CIRCUIT COURT OF Hendricks COUNTY, GREETING:

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Court of Common Pleas in the case of Richard Osborn v Madison Osborn & James C. Havens with 5 per cent damages.

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss,

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 10th day of June A. D. 1862.

Jno. P. Jones C. S. C.

5

State of Indiana, SUPREME COURT. } May Term, A. D. 1862.

The 14th day of June 1862

Present, the Honorable
JAMES L. WORDEN, Chief Justice,
JAMES M. HANNA, SAMUEL E. PERKINS, ANDREW DAVISON, } Judges.

TO THE CLERK OF THE CIRCUIT COURT OF Hendricks COUNTY, GREETING:

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Hendricks C. C. in the case of John Linderman v Henry G. Todd with 5 Per ct Damages

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss,

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 14th day of June A. D. 1862

John P. Jones C. S. C.
By Fobes Dept

State of Indiana, SUPREME COURT. } November Term, A. D. 1862.

The 28th day of November 1862

PRESENT, THE HONORABLE
JAMES M. HANNA, Chief Justice.
SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, } Judges.

TO THE CLERK OF THE CIRCUIT COURT OF Hendricks COUNTY, GREETING:

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Hendricks Circuit Court in the case of James H. Martin et al. vs. James Anderson et al. with five per cent damages

Sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss.

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 28th day of November A. D. 1862

John P. Jones C. S. C.

State of Indiana, SUPREME COURT. } November Term, A. D. 1863.

The 25th day of Nov 1863

Present the Honorable
ANDREW DAVISON, Chief Justice.
JAMES L. WORDEN, JAMES M. HANNA, SAMUEL E. PERKINS. } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Hendricks C P in the case of Simon Hornaday v Leander M Campbell with 3 per cent damages

Sixty days from the date hereof will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the Seal of said Court, at Indianapolis, this 25 day of Nov A. D. 1863

J P Jones C. S. C.

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State of Indiana, } November Term, A. D. 1864.
SUPREME COURT.

The 2d day of December 1864

Present the Honorable
JAMES M. HANNA, Chief Justice.
SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day ... in the case of Sellers vs Lingerman, affirmed the judgment setting aside the sale &c, and reversed the judgment or decree against Lingerman for the payment of money, at the costs of the appellant

Sixty days from the date hereof will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ NOBLE, Clerk of the Supreme Court of said State, certify, that the foregoing contains a true statement of the decision of said Court in the above entitled cause.

In Testimony Whereof, I hereto subscribe my name and affix the Seal of said Court, at the City of Indianapolis, this 7d day of December 1864

Laz Noble C. S. C.

State of Indiana, } November Term, A. D. 1864.
SUPREME COURT.

The 4th day of April 1865

Present the Honorable CHARLES A. RAY, Chief Justice.
JEHU T. ELLIOTT, JAMES S. FRAZER, ROBERT C. GREGORY, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Hendricks Com Pleas Court in the case of

John Lingerman Jr
v
The State ex rel. Franklin

Sixty days from the date hereof will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss.:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled cause.

In Testimony whereof, I hereunto subscribe my name and affix the Seal of said Court, at the City of Indianapolis, this 5th day of April 1865.

Laz Noble C. S. C.

THE STATE OF INDIANA,
IN THE SUPREME COURT,

May Term, 1865.

Present, the Hon. John T. Elliott Chief Justice.
James S. Frazer
Robert C. Gregory
Charles A. Ray } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 9th day of November 1865, affirmed the judgment of the Court below in the case of George H. Miles against Paulina Lingerman appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 9th day of November 1865

Laz Noble C. S. C.

5

State of Indiana, } November Term, A. D. 1862.
SUPREME COURT.

The first day of December 1862

PRESENT, THE HONORABLE
JAMES M. HANNA, Chief Justice.
SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, } Judges.

TO THE CLERK OF THE CIRCUIT COURT OF Hendricks COUNTY, GREETING:

You are hereby notified that the Supreme Court of said State has this day affirmed the judgment of the Hendricks Common Pleas in the case of

Jesse T. Matlock
v
Henry S. Todd

Sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss.

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 1st day of December A. D. 1862

John P. Jones C. S. C.

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THE STATE OF INDIANA,
IN THE SUPREME COURT,

May Term, 1865.

Present, the Hon. John T. Elliott Chief Justice.
James S. Frazer
Robert C. Gregory
Charles A. Ray } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 26th day of May 1865, affirmed the judgment of the Court below in the case of

James Moore et al
against
Elijah Worley et al.

appealed to said Supreme Court by the appellants

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 26th day of May 1865

Laz Noble C. S. C.

5

THE STATE OF INDIANA,
IN THE SUPREME COURT,

May Term, 1865.

Present, the Hon. John T. Elliott Chief Justice.
James S. Frazer
Robert C. Gregory
Charles A. Ray } Judges.

To the Clerk of the Circuit Court of Hendrick, County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 21st day of May 1865, affirmed the judgment of the Court below in the case of Thomas P. Sellers against John Lingerman Jr.

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 21st day of Sept 1865

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

May Term, 1865.

Present, the Hon. John V. Elliott, Chief Justice.

James S. Frazer
Robert C. Gregory
Charles A. Ray. } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 30th day of September 1865, affirmed the judgment of the Court below in the case of

Moses Gwynn

against

Edmund W. Straughn

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 30th day of September 1865.

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

May Term, 1865.

Present, the Hon. John V. Elliott, Chief Justice.

James S. Frazer
Robert C. Gregory
Charles A. Ray. } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 20th day of September 1865, affirmed the judgment of the Court below in the case of

D. Romar Bray

against

Jediah Hussey

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 20th day of September 1865.

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

May Term, 1865.

Present, the Hon. John V. Elliott Chief Justice.

James S. Frazer
Robt. C. Gregory
Chas. A. Ray } Judges.

To the Clerk of the Circuit Court of Hendrick County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 22d day of Sept 1865, affirmed with five per Cent damages the judgment of the Court below in the case of

James M Mitchell

against

James A. Smith

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 22d day of Sept 1865.

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

May Term, 1865.

Present, the Hon. John V. Elliott Chief Justice.

James S. Frazer
Robert C. Gregory
Charles A. Ray } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 20th day of September 1865, affirmed the judgment of the Court below in the case of

C. C. Nave, admr. &c.

against

Simon P. Hadley

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 20th day of September 1865.

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

May Term, 1865.

Present, the Hon. John V. Elliott Chief Justice.

James S. Frazer
Robert C. Gregory,
Chas. A. Ray, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 20th day of September 1865, affirmed the judgment of the Court below in the case of

James M. Gregg

against

David Y. Wilson, admr. &c.

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 20th day of September 1865.

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

May Term, 1865.

Present, the Hon. John V. Elliott Chief Justice.

James S. Frazer
Robert C. Gregory
Charles A. Ray } Judges.

To the Clerk of the Circuit Court of Hendrick, County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 30th day of May 1865, affirmed the judgment of the Court below in the case of

William T. Darnall et al

against

William P. Ayres et al

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 30th day of May 1865.

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

69 day November Term, 1865

Present, the Hon. James S. Frazer Chief Justice.

Robert L. Gregory
Charles A. Ray
John T. Elliott
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 14" day of February 1866 affirmed with one per cent damages the judgment of the Court below in the case of State of Indiana exrel. Owen R. Owen et al. ads. against Jonathan Owen et al. appealed to said Supreme Court by the

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 14" day of February 1866

Laz Noble C. S. C.
per deputy

THE STATE OF INDIANA,

IN THE SUPREME COURT,

November Term, 1865

Present, the Hon. James S. Frazer Chief Justice.

Robert L. Gregory
Charles A. Ray
John T. Elliott
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 4th day of January 1866 affirmed the judgment of the Court below in the case of Jacob Huber against The State of Indiana appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 4th day of January 1866

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

69" day November Term, 1865

Present, the Hon. James S. Frazer Chief Justice.

Robert L. Gregory
Charles A. Ray
John T. Elliott
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 14" day of February 1866 affirmed with 5 per cent damages the judgment of the Court below in the case of Laurence S. Shafer against Stephen N. Hardin appealed to said Supreme Court by the

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 14" day of February 1866

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

November Term, 1865

Present, the Hon. James S. Frazer Chief Justice.

Robert L. Gregory
Charles A. Ray
John T. Elliott
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 6th day of December 1865, affirmed the judgment of the Court below in the case of Ezra M. Cox against James Pruitt appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 6th day of December 1865

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

November Term, 1865.

Present, the Hon. James S. Frazer Chief Justice.

Robert L. Gregory
Charles A. Ray
John T. Elliott
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 14th day of December 1865, affirmed the judgment of the Court below in the case of Jonathan Owen et al against The State on rel. Owen et al No. 3873 appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 14th day of December 1865

Laz Noble C. S. C.

THE STATE OF INDIANA.

IN THE SUPREME COURT.

May Term, 1866.

Present, the Hon. Robert L. Gregory Chief Justice.

Charles A. Ray
John T. Elliott
James S. Frazer
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 20th day of Sept 1866, affirmed the judgment of the Court below in the case of Cornelius Chaves against Isaac M. Shidler Guardian appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause

Witness my name and the Seal of said Court, this 20th day of Sept 1866

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

9th day May Term, 1866.

Present, the Hon. Robert. C. Gregory Chief Justice.

Charles. A. Ray.
Jehu. T. Elliott. } Judges.
James. S. Frazer

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 10th day of September 1866, affirmed with four per cent damages thereon the judgment of the Court below in the case of

Eden Bales

against

George Scott.

appealed to said Supreme Court by the said Bales.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 10th day of September 1866

Laz Noble C. S. C.

THE STATE OF INDIANA.

IN THE SUPREME COURT.

9th day May Term, 1866.

Present, the Hon. Robert. C. Gregory Chief Justice.

Charles. A. Ray.
Jehu. T. Elliott } Judges.
James. S. Frazer

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 10th day of September 1866, affirmed the judgment of the Court below in the case of

The State of Indiana

against

George Moore. ex.

appealed to said Supreme Court by the said State

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause

Witness my name and the Seal of said Court, this 10th day of September 1866.

Laz Noble C. S. C.

THE STATE OF INDIANA.

IN THE SUPREME COURT.

November Term, 1866.

Present, the Hon. Charles A. Ray Chief Justice.

James S. Frazer
John T. Elliott } Judges.
Robert C. Gregory

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 12th day of January 1867, affirmed the judgment of the Court below in the case of

David Jenkins et al

against

Mary Dalton et al

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause

Witness my name and the Seal of said Court, this 12th day of January 1867.

Laz Noble C. S. C.

THE STATE OF INDIANA.

IN THE SUPREME COURT.

November Term, 1866.

Present, the Hon. Charles A. Ray Chief Justice.

John T. Elliott
James S. Frazer } Judges.
Robert C. Gregory

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 12th day of January 1867, affirmed the judgment of the Court below in the case of

James Shaeh

against

John D. Flynn

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause

Witness my name and the Seal of said Court, this 12th day of January 1867.

Laz Noble C. S. C.

THE STATE OF INDIANA.

IN THE SUPREME COURT.

November Term, 1866.

Present, the Hon. Charles A. Ray Chief Justice.

James S. Frazer
John T. Elliott } Judges.
Robert C. Gregory

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 26th day of February 1867, affirmed the judgment of the Court below in the case of

Jesse D. Carmichael

against

Margaret Gary et al

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause

Witness my name and the Seal of said Court, this 26th day of February 1867.

Laz Noble C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

May Term, 1867.

Present the Hon. John T. Elliott C. J.
James S. Frazer
Robert C. Gregory
Charles A. Ray } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 22d day of November 1867, affirmed the judgment of the Court below in the case of Thomas Jordan et al against Henry Sherman appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 22d day of November 1867.

Laz Noble, C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

November Term, 1867.

Present the Hon. James S. Frazer C. J.
Robert C. Gregory
Charles A. Ray
John T. Elliott
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 18' day of March 1868, affirmed with five per cent damages the judgment of the Court below in the case of Ambrose C. Hume et al against Joseph B. Dessar appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 18' day of March 1868.

Laz Noble, C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

May Term, 1868.

Present the Hon. Robert C. Gregory C. J.
John T. Elliott
James S. Frazer
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 3d day of September 1868, affirmed the judgment of the Court below in the case of William Haworth against Arthur J. Scarce appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 3d day of September 1868.

Laz Noble, C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

November Term, 1868.

Present the Hon. Charles A. Ray, C. J.
John T. Elliott
James S. Frazer,
Robert C. Gregory,
Judges.

To the Clerk of the ~~Circuit~~ CP Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 22nd day of May, 1869, affirmed the judgment of the Court below in the case of Martha A. Arnold et al against Eliza O. Arnold, appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 22nd day of May 1869.

T. W. McCoy, C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

November Term, 1867.

Present the Hon. James S. Frazer C. J.
Robert C. Gregory
Charles A. Ray
John T. Elliott
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 29' day of February 1868, affirmed the judgment of the Court below in the case of Ann B. Sears against Elizabeth Dessar appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 29' day of February 1868.

Laz Noble, C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

May Term, 1868.

Present the Hon. Robert C. Gregory C. J.
John T. Elliott
James S. Frazer
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 3d day of September 1868, affirmed the judgment of the Court below in the case of Eleanor Kline against The Sinnissippi Ins. Co. appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 3d day of September 1868.

Laz Noble, C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

May Term, 1869.

Present the Hon. John T. Elliott, C. J.
James S. Frazer
Robert C. Gregory
Charles A. Ray
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 7th day of September, 1869, affirmed the judgment of the Court below in the case of James S. Smith et al against William J. Scarce appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 7th day of September 1869.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1869.

Present the Hon. John T. Elliott C. J.
James S. Frazer
Robert C. Gregory
Charles A. Ray
Judges.

To the Clerk of the Common Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 11th day of November, 1869, Affirmed, with ten per cent Damages the judgment of the Court below in the case of

Grandison Eaton et al.

against

Margaret J. Burns and John A. Burns

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this Eleventh day of November, 1869.

T. W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1869.

Present the Hon. James S. Frazer C. J.
Robert C. Gregory
Charles A. Ray
John P. Elliott
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 17th day of January, 1870, Affirmed with five per cent damages thereon the judgment of the Court below in the case of

William J. Irons and Simon Hornaday

against

Susan A. Woodfill and Jared R. Woodfill

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 17th day of January, 1870.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1869.

Present the Hon. John T. Elliott C. J.
James S. Frazer
Robert C. Gregory
Charles A. Ray
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 11th day of November, 1869, Affirmed the judgment of the Court below in the case of

Fishback and Elizabethtown Gravel Road Company

against

John P. Wilson

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this Eleventh day of November, 1869.

T. W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1869.

Present the Hon. John T. Elliott C. J.
James S. Frazer
Robert C. Gregory
Charles A. Ray
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 9th day of October, 1869, Affirmed the judgment of the Court below in the case of

John G. Green

against

Horatio W. Ayres

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 9th day of October, 1869.

T. W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1869.

Present the Hon. John T. Elliott C. J.
James S. Frazer
Robert C. Gregory
Charles A. Ray
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 9th day of October, 1869, affirmed, with ten per cent damages the judgment of the Court below in the case of

John Baumgartner et al.

against

Christian C. Nave

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 9th day of October, 1869.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1870.

Present the Hon. Robert C. Gregory C. J.
Charles A. Ray
John T. Elliott
James S. Frazer
Judges.

To the Clerk of the Common Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 9th day of September, 1870, affirmed with 10 per cent damages the judgment of the Court below in the case of

Alexander Ramsay

against

James Flannigan

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 9th day of September, 187 .

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1870.

Present the Hon. John Pettit C. J.
Alexander C. Downey
James L. Worden
Samuel H. Buskirk
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 3d day of April, 1871, affirmed with 10 per cent damages the judgment of the Court below in the case of

Morgan B. Johnson et al

against

Jacob A. Crossland

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 3d day of April 1871.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1870.

Present the Hon. John Pettit C. J.
Samuel H. Buskirk
James L. Worden
Alexander C. Downey
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 22d day of February, 1871, affirmed the judgment of the Court below in the case of

James Turner et al.

against

Leander M. Campbell Admr of John Irons Dec'd

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 22d day of February, 1871.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1870.

Present the Hon. Robert C. Gregory C. J.
Charles A. Ray
John T. Elliott
James S. Frazer
Judges.

To the Clerk of the Common Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 9th day of September, 1870, affirmed the judgment of the Court below in the case of The State ex rel Middle Tp - Hendricks Co,

against

William G. Parker et al.

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 9th day of September, 1870.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1870.

Present the Hon. John Pettit C. J.
Alexander C. Downey
James L. Worden
Samuel H. Buskirk
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 28th day of January, 1871, affirmed the judgment of the Court below in the case of

Allen Heavenridge

against

Alfred Moody

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 28th day of January, 1871.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alexander C. Downey
Judges

To the Clerk of the Common Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 31 day of January, 1872, affirmed the judgment of the Court below in the case of

James E. Hiller Rec'r &c,

against

William E. Crawford

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 31 day of Jany, 1872.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alexander C. Downey
Judges

To the Clerk of the Cir. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 6th day of March, 1872, Affirmed the judgment of the Court below in the case of Wm R. Manlove Recvr

against

Peter Curtis

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 6th day of March, 1872.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alexander C. Downey
Judges

To the Clerk of the Cir. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 6th day of March, 1872, Affirmed the judgment of the Court below in the case of James E. Heller Recvr

against

Albert G. McCormick

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 6th day of March, 1872.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alexander C. Downey
Judges

To the Clerk of the Cir. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 2d day of April, 1872, Affirmed the judgment of the Court below in the case of Joseph K. Farrell

against

The State of Indiana

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 2d day of April, 1872.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alexander C. Downey
Judges

To the Clerk of the Cir. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 3d day of April, 1872, Affirmed the judgment of the Court below in the case of Wm R. Manlove Recvr

against

Henry D. Burgess

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 25th day of April, 1872.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alexander C. Downey
Judges

To the Clerk of the Cir. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 23d day of February, 1872, Affirmed the judgment of the Court below in the case of John C. Youngloe et al.

against

James Frantz

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 23d day of March, 1872.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alexander C. Downey
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 23d day of April, 1872, affirmed with five per cent damages the judgment of the Court below in the case of Edmund H. Staughan

against

The Indianapolis & St Louis R.R. Co.

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 23d day of April, 1872.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alexander C. Downey
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 26th day of April, 1872. Affirmed with five per cent damages the judgment of the Court below in the case of

Wm H. Blake

against

The Indianapolis & St Louis R. R. Co

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 26th day of April, 1872.

Theodore W McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alexander C. Downey
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 23d day of April, 1872. Affirmed the judgment of the Court below in the case of

Elias Leach

against

Wm D Lewis et al

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 23d day of April 1872.

Theodore W McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alex C. Downey
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 24 day of April, 1872. Affirmed with 5 per cent damages the judgment of the Court below in the case of

William A King

against

The Dudpls & St Louis R R Co.

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 24 day of April, 1872.

Theodore W McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alex C. Downey
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 24th day of April, 1872. Affirmed with 5 per cent damages the judgment of the Court below in the case of

Moses Kenney

against

The Indianapolis & St Louis R R Co.

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 24th day of April, 1872.

Theodore W McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alexander C. Downey
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 26th day of April, 1872. Affirmed with five per damages the judgment of the Court below in the case of

Wm Emmons

against

The Dudpls & St Louis R. R. Co.

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 26th day of April, 1872.

Theodore W McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alex C. Downey
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 24th day of April, 1872. Affirmed the judgment of the Court below in the case of

The Fishback Red Elizabethtown Gravel Road Company against The Fishback Gravel Road Co.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 24 day of April, 1872.

Theodore W McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1872.

Present the Hon. Samuel H. Buskirk C. J.
John Pettit
Alexander C. Downey
James L. Worden
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 10 day of September, 1872,
Affirmed the judgment of the
Court below in the case of
John F. Armstrong et al.
against
Augustus Keifer et al.
appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 10 day of September 1872.

Theodore W. McCoy C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1872.

Present the Hon. Samuel H. Buskirk C. J.
John Pettit
Alexander C. Downey
James L. Worden
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 23 day of October, 1872,
Affirmed the judgment of the
Court below in the case of
James Leary
against
The State of Indiana
appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 23 day of October, 1872.

Theodore W. McCoy C. S. C.

The State of Indiana, in the Supreme Court:

November Term, 1872

Present the Hon. John Pettit C. J.
Alexander C. Downey
James L. Worden
Samuel H. Buskirk
Andrew L. Osborn
Judges.

To the Clerk of the Com Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 8th day of January 1873
Affirmed the judgment of the
Court below in the case of
Asa Hendley
against
Henry V. Haywood
appealed to said Supreme Court by the former.

Sixty days from the date hereof. will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

THE STATE OF INDIANA, SS:

I, Charles Scholl, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 9th day of January 1873

Charles Scholl C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1872.

Present the Hon. Samuel H. Buskirk C. J.
John Pettit
Alexander C. Downey
James L. Worden
Judges

To the Clerk of the Com. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 30th day of May, 1872,
Affirmed the judgment of the
Court below in the case of
John D. Call
against
John Bryan
appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 30th day of May, 1872.

Theodore W. McCoy C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1872

Present the Hon. Samuel H. Buskirk C. J.
John Pettit
Alex. C. Downey
James L. Worden
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 28 day of May, 1872,
Affirmed the judgment of the
Court below in the case of
Martin Snider
against
The Duck Pond Ditching Association
appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 28 day of May, 1872.

Theodore W. McCoy C. S. C.

State of Indiana, in the Supreme Court:

May Term, 1873

Present the Hon. Andrew L. Osborn
Alexander C. Downey
James L. Worden
Samuel H. Buskirk
John Pettit
Judges.

To the Clerk of the Com. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 14th day of November 1873,
Affirmed the judgment of the
Court below in the case of
Sarah A. Herod et al.
against
The Duck Pond Ditching Ass'n
appealed to said Supreme Court by the former.

Sixty days from the date hereof, will be allowed for filing a petition for re-hearing unless otherwise ordered by the Court.

THE STATE OF INDIANA, SS:

I, CHARLES SCHOLL, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness, My name and the Seal of said Court, this 14th day of November 1873

Charles Scholl C. S. C.

State of Indiana, in the Supreme Court:

May Term, 1873

Present the Hon. Andrew L. Osborn
Alexander C. Downey
James L. Worden
Samuel H. Buskirk
John Pettit
Judges.

To the Clerk of the Com Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 6th day of October 1873, Affirmed — the judgment of the Court below in the case of

Parkin Madson

against

The Muck Pond Ditching Association.

appealed to said Supreme Court by the former.

Sixty days from the date hereof, will be allowed for filing a petition for re-hearing unless otherwise ordered by the Court.

THE STATE OF INDIANA, SS:

I, CHARLES SCHOLL, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness, My name and the Seal of said Court, this 6th day of October 1873

Charles Scholl C. S. C.

State of Indiana, in the Supreme Court:

November Term, 1873

Present the Hon. Alexander C. Downey Ch. J.
James L. Worden
Samuel H. Buskirk
John Pettit
Andrew L. Osborn
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 13th day of December 1873, Affirmed the judgment of the Court below in the case of

Peter Farmer

against

William H. Calvert

appealed to said Supreme Court by the former.

Sixty days from the date hereof, will be allowed for filing a petition for re-hearing unless otherwise ordered by the Court.

THE STATE OF INDIANA, SS:

I, CHARLES SCHOLL, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness, My name and the Seal of said Court, this 13th day of December 1873

Charles Scholl C. S. C.

State of Indiana, in the Supreme Court

MAY TERM, 1875.

PRESENT: THE HON. JOHN PETTIT, C. J.,
HON. HORACE P. BIDDLE,
HON. ALEXANDER C. DOWNEY,
HON. JAMES L. WORDEN,
HON. SAMUEL H. BUSKIRK,
JUDGES.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has, on this 29th day of September 1875, Affirmed the judgment of the Court below in the case of

Phillip Martin

against

Alfred Harrison et al.

appealed to said Supreme Court by the former.

Sixty days from the date hereof, will be allowed for filing a petition for re-hearing unless otherwise ordered by the Court.

THE STATE OF INDIANA, SS:

I, CHARLES SCHOLL, Clerk of the Supreme Court of said State certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness My name and the Seal of said Court, this 29th day of September 1875

Charles Scholl C. S. C.

State of Indiana, in the Supreme Court

MAY TERM, 1875.

PRESENT: THE HON. JOHN PETTIT, C. J.,
HON. HORACE P. BIDDLE,
HON. ALEXANDER C. DOWNEY,
HON. JAMES L. WORDEN,
HON. SAMUEL H. BUSKIRK,
JUDGES.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has, on this 12th day of October 1875, Affirmed the judgment of the Court below in the case of

Martha E. Adams

against

Alfred Waters et al.

appealed to said Supreme Court by the former.

Sixty days from the date hereof, will be allowed for filing a petition for re-hearing unless otherwise ordered by the Court.

THE STATE OF INDIANA, SS:

I, CHARLES SCHOLL, Clerk of the Supreme Court of said State certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness My name and the Seal of said Court, this 12th day of October 1875.

Charles Scholl C. S. C.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed at the costs of the appellant

all of which is ordered to be certified to said Court

And it is further considered by the Court, that the appellee recover of the appellant the sum of Ninety four dollars and fifty ~~for~~ four cents damages and the further sum of dollars and cent for his costs and charges in this behalf expended.

STATE OF INDIANA,
SUPREME COURT.

I, the undersigned, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

In Witness Whereof, I hereto set my hand and affix the Seal of said Court, at the City of Indianapolis, this 22 day of June 1897.

Theodore W. McCoy C. S. C.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed at the costs of the Appellant

all of which is ordered to be certified to said Court

And it is further considered by the Court, that the Appellee recover of the Appellant the sum of dollars and cents for his costs and charges in this behalf expended.

STATE OF INDIANA,
SUPREME COURT.

I, the undersigned, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

In Witness Whereof, I hereto set my hand and affix the Seal of said Court, at the City of Indianapolis, this 11 day of June 1897.

Theodore W. McCoy C. S. C.

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THE STATE OF INDIANA,

In the Supreme Court, November Term, 1897.

PRESENT:

Hon. TIMOTHY E. HOWARD, Chief Justice.
Hon. LEONARD J. HACKNEY. Hon. JAMES H. JORDAN.
Hon. LEANDER J. MONKS. Hon. JAMES McCABE.

IN THE CASE OF

Daniel Lewis, admr

vs.

Caroline Watkins

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ALEXANDER HESS, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 18 day of March 1898.

Alex Hess
Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1899.

PRESENT:

Hon. JAMES H. JORDAN, Chief Justice.

Hon. JOHN V. HADLEY. Hon. ALEXANDER DOWLING.

Hon. FRANCIS E. BAKER. Hon. LEANDER J. MONKS.

IN THE CASE OF

David Thompson

VS.

Thompson Henry

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day

Affirmed *the judgment*

of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this

14 *day of* June *1899.*

Robert A Brown

Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1900.

PRESENT:

Hon. Francis E. Baker, Chief Justice.

Hon. Alexander Dowling. Hon. James H. Jordan.

Hon. Leander J. Monks. Hon. John V. Hadley.

IN THE CASE OF

Hannah E. Brown, et al

VS.

Isaac Armfield, et al.

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day

Affirmed *the judgment*

of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this

21 *day of* June *1900.*

Robert A Brown

Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1900.

PRESENT:

Hon. Alexander Dowling, Chief Justice.

Hon. Leander J. Monks. Hon. John V. Hadley.

Hon. James H. Jordan. Hon. Francis E. Baker.

IN THE CASE OF

Mary E. G. Morgan

VS.

Adam Hoadly, et al

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day

Affirmed *the judgment*

of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this

2nd *day of* March *190 1.*

R A Brown

Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1901.

PRESENT:

Hon. Leander J. Monks, Chief Justice.

Hon. James H. Jordan. Hon. Francis E. Baker.

Hon. John V. Hadley. Hon. Alexander Dowling.

IN THE CASE OF

Elijah Lee

VS.

A. R. McClelland et al

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 28 day of May 1901.

R. A. Brown

Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1901.

PRESENT:

Hon. James H. Jordan, Chief Justice.

Hon. John V Hadley. Hon. Alexander Dowling.

Hon. Francis E. Baker. Hon. Leander J. Monks.

IN THE CASE OF

M. Helen Dunninghā

VS.

Rufus K. Sypes, et al

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 26 day of Nov. 190 1.

R. A. Brown

Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1901.

PRESENT:

Hon. James H. Jordan, Chief Justice.

Hon. John V Hadley. Hon. Alexander Dowling.

Hon. Francis E. Baker. Hon. Leander J. Monks.

IN THE CASE OF

Jacob Frankel

VS.

Michigan Mutual Life Insurance Co. et al.

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 5 day of February 1902

Robert A. Brown

Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1902.

PRESENT:

Hon. John V. Hadley, Chief Justice.
Hon. Leander J. Monks. Hon. James H. Jordan.
Hon. John H. Gillett. Hon. Alexander Dowling.

IN THE CASE OF

Mary A. Osborn

VS.

Douglas Hall et al

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Reversed in part & Affirmed in part the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 26 day of February 1903

Robert A. Brown
Clerk Supreme Court.

THE STATE OF INDIANA.

In the Supreme Court, May Term, 1904.

PRESENT:

Hon. James H. Jordan, Chief Judge,
Hon. Alexander Dowling. Hon. Leander J. Monks.
Hon. John V. Hadley. Hon. John H. Gillett.

IN THE CASE OF

John E. Vestal

VS.

Jesse E. Dougan &c

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 27 day of June 1904

Robert A. Brown
Clerk Supreme Court.

THE STATE OF INDIANA.

In the Supreme Court, May Term, 1905.

PRESENT:

Hon. Leander J. Monks, Chief Justice.
Hon. John H. Gillett. Hon. Oscar H. Montgomery.
Hon. James H. Jordan. Hon. John V. Hadley.

IN THE CASE OF

Raymond R. McDaniel et al.

VS.

Cyrus Osborn, et al

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Affirmed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 24th day of October 1905.

R. A. Brown
Clerk Supreme Court.

THE STATE OF INDIANA

In the Supreme Court, November Term, 1905.

PRESENT:

Hon. John H. Gillett, Chief Justice.
Hon. James H. Jordan. Hon. John V. Hadley.
Hon. Oscar H. Montgomery. Hon. Leander J. Monks.

IN THE CASE OF

Indpls and Martinsville Rapid Transit Co.

VS.

John M. Hall

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 28 *day of* November *190*5

R. A. Brown

Clerk Supreme Court.

THE STATE OF INDIANA

In the Supreme Court, November Term, 1906.

PRESENT:

Hon. Oscar H. Montgomery, Chief Justice.
Hon. John V. Hadley. Hon. John H. Gillett.
Hon. Leander J. Monks. Hon. James H. Jordan.

IN THE CASE OF

Volney T. Malott, Rec'r.

VS.

Central Trust Co., of Greencastle, Admr

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 27th *day of* November *1906.*

R. A. Brown

Clerk Supreme Court.

THE STATE OF INDIANA

In the Supreme Court, November Term, 1906.

PRESENT:

Hon. Oscar H. Montgomery, Chief Justice.
Hon. John V. Hadley. Hon. John H. Gillett.
Hon. Leander J. Monks. Hon. James H. Jordan.

IN THE CASE OF

William H. Hardin

VS.

Lora Hardin

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 23 *day of* April *1907.*

Edward V. Fitzpatrick

Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1909.

PRESENT:

Hon. Oscar H. Montgomery, Chief Justice.
Hon. John V. Hadley. Hon. Quincy A. Myers.
Hon. Leander J. Monks. Hon. James H. Jordan.

IN THE CASE OF

C. C. C. and St. L. Railway Company
VS.
Robert T. Hollowell

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day

affirmed *the judgment*

of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this

11th day of June 1909.

Edward V. Fitzpatrick
Clerk Supreme Court.

THE STATE OF INDIANA.

In the Supreme Court, May Term, 1910.

PRESENT:

Hon. Leander J. Monks, Chief Justice.
Hon. Quincy A. Myers. Hon. Oscar H. Montgomery.
Hon. James H. Jordan. Hon. John V. Hadley.

IN THE CASE OF

Thomas Maddrw Sow and Company
VS.
Ralph Wilcox, By next friend, etc.

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day

Affirmed *the judgment*

of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing unless otherwise ordered by the Court

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this

24th day of May 1910.

Edward V. Fitzpatrick
Clerk Supreme Court.

THE STATE OF INDIANA.

In the Supreme Court, May Term, 1910.

PRESENT:

Hon. Leander J. Monks, Chief Justice.
Hon. Quincy A. Myers. Hon. Oscar H. Montgomery.
Hon. James H. Jordan. Hon. John V. Hadley.

IN THE CASE OF

Harry E. Jennings etc.
VS.
Charles E. Dark et al.

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day

affirmed *the judgment*

of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing unless otherwise ordered by the Court

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this

28th day of October 1910.

Edward V. Fitzpatrick
Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1912

PRESENT:

Hon. Charles E. Cox, Chief Justice

Hon. Leander J. Monks — Hon. John W. Spencer

Hon. Quincy A. Myers — Hon. Douglas Morris

IN THE CASE OF

C. C. C. & St. L. Ry. Co.

VS.

Flora S. Harrison et al

APPEALED FROM THE

Hendricks Circuit COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State has on this day affirmed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, J. FRED FRANCE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 10th *day of* June *1912.*

J. Fred France

Clerk Supreme Court.

CH41

Item E05 Appeals Hendricken Circuit Court

1856
1896
1897
1900
1901
1902
1904
1906
1909

State of Indiana } November Term
Supreme Court } A D 1856

Tuesday December ninth A D 1856

Present the Hon

Samuel B Hoskins Ch J
Samuel D Perkins
Andrew Davison } Judges
Williams & Stuart

John Hampton } Appeal from the
vs } Hendricks C C.
The State of Indiana }

Now come the parties by their Attorneys and the Court being sufficiently advised of the premises give the following opinion and judgment pronounced by Judge Hoskins Ch J.

The Appellant was indicted in the Hendricks Circuit Court for forging, in passing a counterfeit bank note. A motion to quash the indictment was overruled, and upon not guilty pleaded, the defendant was tried and convicted, and sentenced to the State prison.

Two objections are taken to the indictment. One is that the time, at which the offence is stated to have been committed is given in figures instead

" nor any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant on the merits". We cannot imagine any words less material than those here complained of, and we are inclined to regard them, under this statute as mere surplusage. They could have made no difference in the proof required, and could in no way have prejudiced the defendants rights, so far as we can perceive. It may be said that if an offence were laid, at a time not more than one day within the Statute of limitations, and the words "on or about" were employed, it would not certainly appear that it was not barred. This would be entitled to weight, if the allegation could in any degree affect the proof. It is as easy to allege a day certain just within the period of limitation, and so put the party to his defence as to say "on or about", nor can we readily perceive why it was then necessary, that the allegation should have been more certain as to time than the proof. If this provision of the Statute, can possibly apply to any case, it must be thought aptly here. It is imperative; "No indictment may (which here means shall) be quashed for any defect which does not tend to the prejudice of the substantial rights of the defendant on the merits.

State of Indiana S.S.

I William B Beach Clerk of the Supreme Court of said State hereby certify that the foregoing is a full and true copy of the opinion and judgment of said Court in the above entitled cause.

In witness where of I hereto subscribe my name and affix the Seal of said Court at the City of Indianapolis this Seventh day of February A D 1857

Wm B Beach Clk S C

By Josiah B Ventis Deputy

of words. In support of this position the Appellant cites Finch vs. The State 6 Black 533 and the State vs Vashall 4 Ind 564. In the latest of these cases the indictment was found before the R.S. 1852 were in force. These Statutes Vol 2 p 368 § 61 provides that no indictment shall be quashed for the reason that dates and numbers are represented by figures.

Another objection is, that the offence is alleged to have been committed on or about the 30th day of December &c; At common law it was necessary to state in an indictment a time when the offence was committed, but in general as variances in proof from the time stated was immaterial. Arch Cr Pl 34-5. The 2 R.S. p 367 § 56, provides that the precise time of the commission of an offence need not be stated in the indictment or information, but it is sufficient if shown to have been within the Statute of limitations, except when the time is an indispensable ingredient of the offence. This does not change the common law rules as above stated. It does not dispense with the stating of a time, but it need not be the precise time proved.

The same Statute § 61 provides that no indictment or information may be quashed for certain defects enumerated concluding with;

the motion to quash the indictment, and that in arrest of judgment based upon the same objections, were severally overruled.

On the trial an exception was taken to the admission of evidence on the grounds of variance. The indictment professed to set out in words and figures, a note purporting to have been issued by the Banks of Geauga in the State of Ohio, for the payment of two dollars to the bearer. The instrument offered in evidence had the word "Two" in small letters twelve times repeated in the upper margin, and also a figure 2 occupying the place of the vignette, not shown in the indictment; In all other respects it was correctly set forth; This was no variance. In describing a counterfeit bank note it is not necessary to set out the ornamental devices; but only all the substantial parts of the instrument. The number, letter, date, and other facts which would if genuine make the instrument a valid note, must be stated correctly, where the pleader professes to give the tenor of the instrument. This having been done it was properly admitted in evidence.

It is therefore considered by the Court that the judgment of the Court below, be affirmed at the costs, of the Appellant.

All which is ordered to be certified to said Court

THE STATE OF INDIANA,

IN THE SUPREME COURT.

IN THE CASE OF

Addison Hadley

et al

vs.

Stacy Hadley

No. 18010

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13th, 1885, and the rules of the Supreme Court, adopted September 23d, 1885, in relation thereto.

WITNESS my hand and the seal of said Court, this 24

day of July 1896

Alex. Stess

Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1897.

On the 18th *day of* March 1898, *being the* 101st *Judicial day of said November Term, 1897.*

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HON. TIMOTHY E. HOWARD, CHIEF JUSTICE.
HON. LEONARD J. HACKNEY,
HON. LEANDER J. MONKS,
HON. JAMES H. JORDAN,
HON. JAMES McCABE,
JUDGES.

IN THE CASE OF

Daniel Lewis, Admr.

vs.

Caroline Watkins

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises, gave the following opinion and judgment pronounced by Monks, *J.*

THE STATE OF INDIANA,

IN THE SUPREME COURT.

In the case of

David L. Bradlove

vs.

Wayne Bradlove

No. 19294

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13, 1885, and the rules of the Supreme Court, adopted in relation thereto.

WITNESS my hand and the seal of said Court, this 21

day of April, 1900.

R. A. Brown

Clerk Supreme Court.

THE STATE OF INDIANA,

IN THE SUPREME COURT.

In the case of

Jacob Frankel

vs.

The Michigan Mutual Life Insurance Co. et al

No. 19,360.

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13, 1885, and the rules of the Supreme Court, adopted in relation thereto.

WITNESS my hand and the seal of said Court, this 11th *day of* June, 1900.

P. A. Bunn.

Clerk Supreme Court.

THE STATE OF INDIANA,

IN THE SUPREME COURT.

In the case of

Elijah Lee

vs.

H. R. McClelland et al

No. 19601

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13, 1885, and the rules of the Supreme Court, adopted in relation thereto.

WITNESS my hand and the seal of said Court, this 30th *day of* March, 1901.

P. A. Bunn

Clerk Supreme Court.

THE STATE OF INDIANA,

IN THE SUPREME COURT.

In the case of

Mary A. Patton

vs.

John T. Hacker

No. 19719

Appeal from the Hendricks Circuit Court.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that in the above entitled cause an order of submission has been this day entered of record, as provided by the Act of the General Assembly of April 13, 1885, and the rules of the Supreme Court, adopted in relation thereto.

WITNESS my hand and the seal of said Court, this 2d *day of* Oct., 1901.

P. A. Bunn

Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1902.

On the 27th *day of* January *1903, being the* 56th
Judicial day of said November Term, 1902.

HON. JOHN V. HADLEY, CHIEF JUSTICE.
HON. LEANDER J. MONKS,
HON. JOHN H. GILLETT,
HON. JAMES H. JORDAN,
HON. ALEXANDER DOWLING. } JUSTICES.

19,719

IN THE CASE OF

MARY A. OSBORN

vs.

JOHN T. HOCKER

APPEAL FROM THE

HENDRICKS CIRCUIT COURT

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises gives its opinion and judgment as follows, pronounced by MONKS *J.*

THE STATE OF INDIANA.

In the Supreme Court, May Term, 1904.

On the 24th *day of* June, *1904, being the* 29th
Judicial day of said May Term, 1904.

No. 20,372.

HON. JAMES H. JORDAN, CHIEF JUSTICE.
HON. ALEXANDER DOWLING,
HON. JOHN V. HADLEY,
HON. LEANDER J. MONKS,
HON. JOHN H. GILLETT, } JUSTICES.

IN THE CASE OF

John E. Vestal,

vs.

Zimri E. Dougan, et al.

APPEAL FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises gives its opinion and judgment as follows, pronounced by Dowling, *J.*

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1906.

On the 23rd *day of* April, 1907, *being the* 128th
Judicial day of said November Term, 1906.

No. 20,909.

HON. OSCAR H. MONTGOMERY, CHIEF JUSTICE.
HON. JOHN V. HADLEY,
HON. LEANDER J. MONKS,
HON. JOHN H. GILLETT,
HON. JAMES H. JORDAN. } JUSTICES.

IN THE CASE OF

William H. Hardin

vs.

Lora Hardin.

APPEALED FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises gives its opinion and judgment as follows, pronounced by
Jordan, J.

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1909.

On the 18th *day of* November, *1909, being the* 153rd *Judicial day of said May Term, 1909.*

HON. OSCAR H. MONTGOMERY, CHIEF JUSTICE.
HON. JOHN V. HADLEY,
HON. LEANDER J. MONKS,
HON. QUINCY A. MYERS,
HON. JAMES H. JORDAN,
} JUSTICES.

No. 21304

IN THE CASE OF

Samuel H. Smith, et al.

vs.

Board of Commissioners of Hamilton County, et al.

APPEALED FROM THE Hamilton Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Jordan, J.- Hadley, J. not voting.

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Item EO 6 appeal - Hendricks common

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Plean Court

State of Indiana, } May Term, A. D. 1861.
SUPREME COURT.

29 DAY, May 1861

Present, the Honorable Samuel E. Perkins, Ch. J.

ANDREW DAVISON,
JAMES L. WORDEN, } JUDGES.
JAMES M. HANNA,

Grenville A Spicklemire

VS.

Stephen Stephenson

Appeal from the Hendricks C.P.

~~Now come the parties by their Attorneys, and the Court being sufficiently advised in the premises, give the following opinion and judgment pronounced.~~ Now comes the appellant by his attorney on whose motion the appeal herein is dismissed at the cost of the appellant,

appeal from the

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be ~~in all things~~ dismissed at the cost of the appellant all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the appellee recover of the appellant the sum of for his costs and charges in this behalf expended.

STATE OF INDIANA, }
SUPREME COURT.

I, JOHN P. JONES, Clerk of the Supreme Court of the State of Indiana, do certify the above and foregoing to be a full, true, and complete copy of the opinion and judgment of said Court in the above entitled cause.

In Witness Whereof, I hereto set my hand and affix the Seal of said Court, at the City of Indianapolis, this 3 day of June 1861.

John P Jones C. S. C.

State of Indiana, } NOVEMBER TERM, A. D. 1861.
SUPREME COURT.

3d DAY. Nov. 27th 186/

Present, the Honorable Andrew Davison, Ch. J.

JAMES L. WORDEN,
JAMES M. HANNA,
SAMUEL E. PERKINS. } *Judges.*

John Clifford,
James Burgess, Leonards,
of Michael Clifford Dec'd } *Appeal from the* Hendricks C. C.

VS.

Abraham Bland
admr,

Now come the parties by their Attorneys, and the Court being sufficiently advised in the premises, give the following opinion and judgment pronounced. Per Curiam.

No bond was required of, or filed by an administrator before making sale of real estate, and some other irregularities in the proceedings occurred: but no steps were taken below to set aside the sale and correct the proceedings. This should have been done. Under repeated decisions, this case was not ripe for appeal, to this Court.

That the party may not be cut off from his remedy by applying to the Court below, to set aside the sale, we shall dismiss the appeal with costs.

It is therefore considered by the Court that the appeal from the judgment of the Court below in the above entitled cause, be in all things dismissed *at the cost of the* appellants *all of which is ordered to be certified to said Court.*

And it is further considered by the Court, that the appellee *recover of the* appellants *the sum of for* his *costs and charges in this behalf expended.*

STATE OF INDIANA, }
SUPREME COURT.

I, JOHN P. JONES, *Clerk of the Supreme Court of the State of Indiana, do certify the above and foregoing to be a full, true, and complete copy of the opinion and judgment of said Court in the above entitled cause.*

In Witness Whereof, *I hereto set my hand and affix the Seal of said Court, at the City of Indianapolis, this*

2d day of December 1861

John P. Jones C. S. C.

By Jones

State of Indiana, } May Term, A. D. 1864.
SUPREME COURT.

Sixth DAY. May 28th 1864.

Present the Honorable James L. Worden, Ch. J.

JAMES M. HANNA,
SAMUEL E. PERKINS, } Judges.
ANDREW DAVISON,

The Indiana & Illinois Central Rail Way Company and Thomas Nichols
VS.
Commodore P. Williams } Appeal from the Hendricks C.P.

Now come the parties by their Attorneys, and the Court being sufficiently advised in the premises, give the following opinion and judgment pronounced by Davison Judge — "Complaint for an injunction. The appellee was the plaintiff below, and the appellants were the defendants. It is alleged that the Railway Company on March the 5th 1860, recovered a judgment, in the Hendricks circuit Court against Williams for $187.70/100 which judgment was upon an obligation on which Williams was surety for one Elisha Hornady, who was the principal debtor to the company: That defendant Jordan, being Hornady's agent, and having in his hands means of Hornady sufficient to pay the judgment, for and on his, Hornady's, behalf, became Replevin Bail for the stay of execution on the judgment, and undertook to pay the same: that on Sept. the 28th 1860, Execution was issued on said judgment, which was placed in the hands of defendant Nichols, the sheriff,

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Court. Anterior to the Revision of 1852, the jurisdiction, in cases of this sort, was vested in the Courts of Equity. But the Statutes, now in force, abolish all distinction between actions at law and suits in Equity, and, in reference to proceedings for injunctions, enact that injunctions may be granted by the Circuit Court and Court of Common Pleas in their respective counties." 2 G. & H. pp. 39, 131 Secs. 1, 136 — This provision simply confers jurisdiction; but does not, even impliedly, allow one of these Courts to enjoin the proceedings or process of the other. Nor does it seem consistent with any correct rule of procedure, that a party, who has instituted an action, recovered judgment, and obtained final process in one court, should be compelled to litigate matters connected therewith before a different tribunal. In New York it has been expressly decided, under Statutory provisions, in effect the same as those to which we have referred, that "No court of that state can rightfully Enjoin a party from proceeding in a suit in another Court of the same state having Equal power to grant the relief sought by the complaint on which such injunction is asked" Grant vs Quick 5 Sandf. 612 — Bennet v LeRoy 5 Abbott Pr. Rep. 55 — The principle involved in these decisions, seems to apply to the case before us. Indeed there is no legal propriety in allowing the Common Pleas, a court of inferior jurisdiction, to enjoin and adjudicate upon the validity of process issued from the Circuit Court. And the statute, properly construed, in our judgment, intends that each of these courts shall enjoin, control, and litigate in reference to its own process. Id. Secs. 136, 137 — Other points are made and discussed, but the Common Pleas having no power to hear and determine the cause, they do not properly arise in the record —

It is therefore considered by the Court that the judgment of the Court below in the above-entitled cause be in all things Reversed at the costs of the appellee — all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the appellants recover of the appellee the sum of $ for their costs and charges on this behalf expended.

State of Indiana, }
SUPREME COURT. }

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled cause.

In Testimony Whereof, I hereto subscribe my name, and affix the Seal of said Court, at Indianapolis, this 28 day of July A. D. 1864.

John P. Jones C. S. C.

THE STATE OF INDIANA.
IN THE SUPREME COURT, November TERM, 1871.

On the 14 day of March 1872

Present the Hon James L. Worden C. J.

Samuel H. Buskirk
John Pettit
Alex. C. Downey
Judges.

In the Case of

John Tarpy
vs.
Charles Cuttchfield
et al.

Appeal from the Hendricks Common Pleas Court.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises, gave the following opinion and judgment pronounced by Downey J.:

Suit by the appellant against the appellees before a justice of the peace. There was a trial and judgment for the plaintiff. This judgment was afterwards set aside and a new trial granted on the application of defendants and on payment of costs, with in four days. On the day set for second trial, on motion of the plaintiff the order of the justice granting the new trial was set aside and a new judgment for the same amount and the costs which had accrued since the rendition of the first judgment, was rendered. From this judgment, the defendants appealed to the Common pleas. In that Court the

2. justice of the peace and a new judgment rendered by him for the plaintiff, and it was from this new judgment that the appeal was taken and not as counsel for appellant seems to think, from the order setting aside the grant of the new trial. This disposes of the first and third assignments of error. The second assignment of error raises a question of some interest. It is this, when a party has been required ~~an~~ to pay and has paid costs to obtain a new trial, and is afterwards successful in the case can he recover from his adversary the costs so paid by him to obtain the new trial. We think he cannot. The case is like that when a party is required to and does pay the costs occasioned by a continuance to obtain the same. In neither case can the costs so paid ever again be taxed in the cause or recovered by the party paying no matter what may be the result of the case. The judgment is affirmed, except as to the costs so paid by the defendants for the new trial before the justice. As to them it is reversed with costs

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be ~~in all things~~ Affirmed except as to costs which is reversed at the costs of the Appellees all of which is ordered to be certified to said Court

And it is further considered by the Court, that the Appellant recover of the Appellees the sum of dollars and Cents for his costs and charges in this behalf expended.

STATE OF INDIANA,
SUPREME COURT.

I, the undersigned, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

In Witness Whereof, I hereto set my hand and affix the Seal of said Court, at the City of Indianapolis, this 11th day of June 1872.

Theodore W. McCleary C. S. C.

THE STATE OF INDIANA.

IN THE SUPREME COURT, November TERM, 1871.

On the 6 day of March 1872

Present the Hon. James L. Worden C. J.

Samuel A. Buskirk
John Pettit
Alex. C. Downey
} Judges.

In the Case of

William R. Marlow Recvr &c.
vs.
Peter Curtis
} Appeal from the Hendricks Common Pleas Court.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises, give the following opinion and judgment pronounced by Buskirk J.:

This was an action by the appellant as the receiver of the Farmers and Merchants Insurance Company against the appellee, upon a promissory note payable to the said Company. The Court sustained a demurrer to the complaint and the appellant excepted and refusing to plead further the Court rendered judgment for the appellee. The only error assigned is based upon the action of the Court in sustaining the demurrer to the Complaint. Was such ruling correct? This case comes clearly within the principles decided by this Court in the well considered case of Eichen v. Shidler at the present term

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed at the costs of the Appellant all of which is ordered to be certified to said Court

And it is further considered by the Court, that the Appellee recover of the Appellant the sum of Dollars and Cents for his costs and charges in this behalf expended.

STATE OF INDIANA,
SUPREME COURT.

I, the undersigned, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

In Witness Whereof, I hereto set my hand and affix the Seal of said Court, at the City of Indianapolis, this 11th day of June 1872.

Theodore W. Clay C. S. C.

THE STATE OF INDIANA.

IN THE SUPREME COURT, November TERM, 1871.

On the 6. day of March 1872

Present the Hon. James L. Worden C. J.

Samuel A. Buskirk
John Pettit
Alex. C. Downey
Judges.

In the Case of

James E. Detter
Rcvr. Farmers Ins. Co.
vs.
Albert G. McCormick

Appeal from the Hendricks Common Pleas Court.

Came the parties by their Attorneys, and the Court having heard the arguments of counsel and being duly advised in the premises, gave the following opinion and judgment pronounced by Buskirk J.:

The appellant sued the appellee, upon a promissory note, before a justice of the peace, a trial resulted in a finding for defendant. The appellant appealed to the Common Pleas where the cause was by the agreement of the parties submitted to the Court for trial which resulted in another finding for the defendant. The Court overruled a motion for a new trial and rendered judgment. The only error which presents any question for our decision is based upon the action of the Court in overruling the motion for a new trial. The evidence is in the record and we have read and properly considered it. This case comes

THE STATE OF INDIANA.

IN THE SUPREME COURT, November TERM, 1874.

On the 23 day of April 1875

Present the Hon. James L. Worden C. J.

Samuel A. Buskirk
John Pettit
Alex. C. Downey
} Judges.

In the Case of

Washington West
vs.
Joseph Asher

Appeal from the Hancock Common Pleas Court.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises, gave the following opinion and judgment pronounced by Downey J.:

Asher sued Hamick and West on a joint and several promissory note. on the 18th day of January 1870 Hamick appeared and was ruled to plead. On the 20 day of January in the same year he filed his answer and the plaintiff was ruled to reply. On the 21 day of the same month the plaintiff filed his reply On the 28 day of the same January the plaintiff caused a summons to be issued against West returnable at the next term, which was served by the Sheriff on West on the same day. and on this day, on the application of Hamick alone the cause in the Court was changed to the

Putnam Common Pleas.

After one continuance of the cause in that Court on the 27 day of June 1870 in term the plaintiff moved the Court for a default against West which was refused. He then moved to have the cause continued as to West which was also refused. The Court then ordered that the name of West be stricken from the docket as the docks entry states It was then ordered by agreement that the cause be remanded to the Hendricks Common Pleas

On the 29 of July 1870 a transcript and the papers in the cause was filed in the office of the clerk of the Hendricks Common Pleas On the 9th day of September 1870 a new Summons was issued by the clerk of the Hendricks Common Pleas at the instance of the plaintiff against West who was stated to be misjoinded with Hamick to appear on the second day of the next term to answer the complaint of Asher and this summons was issued on West by copy on the 17 of September 1870. at the next term of the Hendricks Common Pleas on the 15 day of October 1870 Hamick made default and judgment was rendered against him for the amount of the note. The plaintiff then moved the Court to reinstate the case against West and on motion the cause as to West was continued until the next term for notice At the next term on the 16 of January 1871 West appeared and made his objection to the case being reinstated as to him but his

2. objection was overruled and the case placed on the docket. West took his exception and was ruled to answer on the next day. On that day having failed to answer he was defaulted and final judgment rendered against him for the amount due on the note.

Counsel for appellant have assigned for error the action of the Court in ordering the case to be docketed against West and in rendering judgment against him. They insist that the cause was dismissed as to West while it was in the Common Pleas of Putnam County.

It seems to us that this is a mistake. The record does not show a dismissal of the case, but only shows that the name of West was by that Court ordered to be stricken from the docket of the Court There is we think a material difference in the two things. Assuming that when the change of venue was ordered on the application of Hamick, that the case as to West was also transferred to the Common Pleas of Putnam County if the cause was not then dismissed as to West, he was yet a party to the suit, and in Court when the case got back to the Hendricks Common Pleas and no further notice to him was necessary.

But suppose the case was dismissed in the Putnam Common Pleas as to West as contended by his Counsel, what objection was there to a renewal of the case against him after its return to the Hendricks Common Pleas by the issue and service of a new Summons, requiring him to appear and answer the complaint with

Hannick's? We can see none. It would be in effect a renewal of the action against him. There was no objection, nor could there be any to the rendition of separate judgments against the defendants. It is expressly authorized by the code "In a suit against several defendants the court may in its discretion render judgment against one or more of them leaving the action to proceed against the others, whenever a several judgment is proper" 2 G and H. 218 § 369

The judgment is affirmed with ~~costs~~ ten per cent damages and costs.

CH41

Item E07 Certified copies of Opinions

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THE STATE OF INDIANA,

In the Supreme Court, November Term, 1877.

On the 14th day of March 1878

HON. HORACE P. BIDDLE, CHIEF JUSTICE.
HON. WILLIAM E. NIBLACK,
HON. GEORGE V. HOWK,
HON. JAMES L. WORDEN,
HON. SAMUEL E. PERKINS, JUDGES.

IN THE CASE OF

Milton A. Malone

VS.

Ruth A. McVey and others

Appeal from the Marion *Court.*

Civil Circuit

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises, gave the following opinion and judgment pronounced by Biddle C. *, J:*

The complaint of the appellant against the appellees, who are alleged to be the heirs at law of J. Maler McVey, deceased, avers the following facts:

That Jacob Jones of the county of Gentry, and state of Missouri, on the 14th day of September, 1857. executed his title bond to William McVey, binding himself in the penalty of four thousand dollars to convey to William McVey certain described lands in said county and state, upon the payment of eighteen

hundred dollars. That at the time of the execution of said title bond it was agreed between William McVey and the plaintiff that each should contribute towards the purchase money of said land, and that when said lands should be sold, William McVey should either return to the plaintiff the amount of money so contributed by him with the advance or decrease in the proportion which said amount bore to four thousand dollars, or to make a good and efficient deed of warranty to the plaintiff for the undevided half of the lands. That in pursuance of said agreement the appellant on the 14th day of September, 1857. paid to William McVey seven hundred dollars on said purchase, and on the 10th day of November, 1857. the further sum of seven hundred and fifty dollars for said purpose, and that at the date of the last mentioned payment said agreement was reduced to writing, which is made an exhibit. That the plaintiff and William McVey entered upon possessed, and farmed said land as tenants in common until the breaking out of the rebellion, when the appellant abandoned the premises

the plaintiff as to said lands. That the said J. Maler McVey, in addition to the part of the thirteen hundred and fifty dollars which he so

paid, paid to William McVey the further sum of fifteen hundred dollars, which is all that has been paid on said trust. That no part of the money paid by the plaintiff to William McVey, and invested in said lands, has ever been paid to him. That J. Waler McVey, and leaving the defendants has heirs at law, and that they have received property from the estate of J. Waler McVey, and that said estate has been settled and the executor discharged. Prayer for an account and other and general relief.

There is a second paragraph of complaint founded on the same alleged trust, not different in principle, and not essentially different in its averments from the first paragraph, and therefore need not be stated in detail. A demurrer to each paragraph for the alleged want of sufficient facts stated, was overruled, and exceptions reserved by the appellees.

Proceedings were then had which resulted in a final judgment against the appellant, from which he appeals. The appellees assign as cross-errors, the overruling of the demurrer to the first and second paragraphs of the complaint,

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advanced, the benefits of which they had accepted by adopting the repurchase of the land from Jones. Besides there is no averment in the complaint that the lands ever descended to the appellees or that the estate of J. Waler McVey, was ever benefited by it in the least. There is an averment that the appellees "received property from the estate of J. Waler McVey., deceased", but how much or what it was is not stated. The facts averred in the complaint show that the appellees were entitled to receive from the land as against the plaintiff and William McVey, the amount their ancestor had advanced, upon the second purchase of the land from Jones.

The complaint is defective for want of several material averments, and wholly insufficient for the want of a basis upon which to rest.
We do not notice the proceedings subsequent to the decision upon the demurrer to the complaint, because that being insufficient the judgment upon the whole record is right.

The judgment is affirmed, at the costs of appellant.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed *at the costs of the* Appellant

all of which is ordered to be certified to said Court

And it is further considered by the Court, that the Appellees *recover of the* Appellant *the sum of*

for their

costs and charges in this behalf expended.

The State of Indiana,
Supreme Court.

I, GABRIEL SCHMUCK, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the Seal of said Court, at the City of Indianapolis, this 18th *day of* March 1878

Gabriel Schmuck C. S. C.

THE STATE OF INDIANA.

In the Supreme Court, November Term, 1882.

On the 13th *day of* Dec. 1882, *being the* 15th

Judicial day of said November Term, 1882.

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Hon. WILLIAM A. WOODS Chief Justice.
Hon. WILLIAM E. NIBLACK,
Hon. GEORGE V. HOWK,
Hon. BYRON K. ELLIOTT,
Hon. JAMES L. WORDEN, *Judges.*

IN THE CASE OF

Fred Burrows

vs.

The State of Indiana

Appeal from the Hendricks *Circuit Court.*

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises, gave the following opinion and judgment pronounced by Howk *J.:*

In this case, the affidavit and information charged in substance that the appellant, Fred Burrows, on or about the 24th day of June, 1882, in the day time, at and in Hendricks county did then and there unlawfully and feloniously enter the dwelling-house, then and there owned and occupied by one James L. McCown, then and there situate, on lots 10 and 11 in Morgan's Addition to the town of Danville, in said county, and did then and there, in said dwelling house, unlawfully and feloniously attempt to commit a felony, to-wit, to feloniously steal, take and carry away certain goods, chattels and

3.

provided in substance, as follows:

"Whoever, in the day-time or night-time, enters any dwelling-house, x x x x x x and attempts to commit a felony, shall be imprisoned in the State prison not more than fourteen years nor less than two years, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period".

It seems to us, that the affidavit and information in this case have stated facts sufficient to charge the appellant with the commission of the offence, which is defined in this section of the statute. In their brief of this case the appellant's counsel have not pointed out any objection, nor can we see any, to either the form or substance of the affidavit or information, which would authorize the reversal of the judgment below.

The only error complained of, in argument, by the appellant's counsel, is the decision of the court in overruling the motion for a new trial. The causes assigned for such new trial were, that the verdict of the jury was not sustained by the evidence and was contrary to law. It is earnestly insisted by the appellant's counsel, that there was no sufficient evidence of the d-

5.

bed. I afterwards saw some tracks going west and north, in the direction of the defendant's home. One track was made by a person with shoes or boots, the other was made by a person in his bare feet. The boy whom I saw, in the room, was bare-footed; I saw his feet. My opinion is that the tracks made by the bare feet were about the size of defendant's feet. I missed from my house, that morning, my pants. There was nothing in the pockets, but a pocket-knife and my store-key. The pants were found, I only know where by hearsay. My knife and key were given back to me by the person who found them. I had some money in the house, part belonging to myself and part to Co., about $80. but I had removed it from my pants' pocket before going to bed the night before. I think the defendant was in my house for the purpose of stealing. The house belonged to me, and is situated on lots 10 and 11, in Morgan's addition to the town of Danville, Ind. and I was occupying it at the time as a dwelling-house. The goods and money and furniture in it belonged to myself and family. I do not know just what property, nor the value of the same, that the defendant attempted to steal

7. the evidence the unlawful entry of the appellant into McCoun's dwelling-house in the daytime of June 24th 1882. But counsel earnestly insist, that the evidence did not authorize a finding of the fact, necessary to the appellant's conviction of the offence charged, that he then and there attempted to commit the larceny of McCoun's goods, as charged in the affidavit and information. We are of the opinion, however, that the facts and circumstances, detailed in McCoun's evidence, were abundantly sufficient, in the absence of any explanation, to authorize the jury to find that the appellant then and there attempted to commit the particular felony, wherewith he stood charged.

The judgment is affirmed, with costs.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed *at the costs of the* appellant

all of which is ordered to be certified to said Court

And it is further considered by the Court, that the appellee *recover of the* appellant *the sum of* Two *for costs and charges in this behalf expended.*

THE STATE OF INDIANA,

SUPREME COURT.

I, SIMON P. SHEERIN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, *I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this* 21st *day of* Feby *188*3

S P Sheerin *C. S. C.*

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1896.

On the 23rd *day of* February *189* 7 *being the* 80th *Judicial day of said November Term, 1896.*

17351

HON. JAMES H. JORDAN, CHIEF JUSTICE.
HON. JAMES McCABE,
HON. TIMOTHY E. HOWARD,
HON. LEONARD J. HACKNEY,
HON. LEANDER J. MONKS,
} JUDGES.

IN THE CASE OF

L. N. A. & C. Ry. Co.

vs.

Anna Schmidt
by next friend.

APPEAL FROM THE

Hendricks Circuit

COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises, gave the following opinion and judgment pronounced by Jordan, C. *J.*

This is an action by the appellee to recover damages for the alleged negligence of appellant which resulted in her sustaining serious personal injuries. There was a special verdict and upon the facts found the trial court awarded appellee a judgment. On July 5, 1890, the time of the accident, appellee, who was about seventeen years of age accompanied by her brother, who was fifteen years old, and also by another boy of the age of fourteen years, was riding in a light spring wagon taking flowers to market in the City of Indianapolis. At a point on East Street, a public street in said City, where appellant's railroad track crosses said street the horse attached to the wagon became frightened and ran way by reason of appellant's alleged negligence in permitting and suffering the steam in one of its engines standing near the crossing to escape with a loud and unusual noise.

This is the second appeal of this cause by appellant. See 134 Ind. 16. It was held in the former appeal that under the issues as then formed, that the evidence did not support the verdict of the jury, and the judgment was reversed. After the cause was certified back to the lower court the issues were reformed and two additional paragraphs to the complaint were filed. It is clearly disclosed that the special verdict rests upon the second paragraph of the complaint and for this reason alone appellant can not predicate available error upon the action of the court in adjudging , upon demurrer, the first and third paragraphs sufficient. It is substantially alleged in the second paragraph that appellant's railro ad runs through the City of Indianapolis, Indiana, and crosses East Street, a public street and highway in said City, and that this crossing is much used at all hours of the day and night by persons riding in carriages, wagons and other vehicles, all of which was well known to appellant at the time of the accident. That on July 5, 1890, the appellant carelessly and negligently ran and moved one of its locomotivexx engines with two freight cars attached thereto, and stopped the same near to said crossing and highway for the purpose of remaining there a long and unreasonable length of time, and carelessly and negligently permitted the same to remain at said point for an unreasonable period of time, where the hissing, noises, smoke and confusion made by escaping steam were liable to frighten horses drawing vehicles along said East street and over said crossing.

That at the time said engine was stopped at the said crossing it "had on" an excessive amount of steam that was not necessary for its work, and that the carrying of such a high pressure of steam at such a time and place, under the circumstances, was negligence upon the part of the defendant. That when the defendant so negligently moved said locomotive near to said crossing and stopped at said point the steam guage indicated that the steam in the boiler was liable to escape through the automatic safety valve at any moment and make a loud hissing and unusual noise, unless regulated and controlled, as the defendant at the time knew, and was thereby liable to frighten and cause horses drawing vehicles along said street and over said crossing, thereby causing them to become unmanageable, and run away as the defendant well knew. That while the said engine, with said cars attached, was standing near to said crossing as aforesaid, the plaintiff, Anna Schmidt was driving along and upon said street in a spring wagon drawn by a quiet and gentle pony or horse, that with her in said wagon were her brother Joseph Schmidt and one, Eddie Halley. That as she approached said crossing for the purpose of crossing the same, she sent said Halley to the servants in charge of said engine to ascertain if it was safe for her to drive over the crossing and railroad track at that time. That the servants in charge of said engine and the flagman of defendant at said crossing, with the full knowledge of the danger of the steam escaping from said engine as aforesaid charged, informed the plaintiff that it was safe for her to cross and signaled and invited her to cross, and she believing from said information and invitation that it was safe tocross and that no harm would result, started to drive over said crossing, and while driving over the same she was compelled to drive near to said engine for the reason that it was negligently stationed near to the crossing. That while in the act of driving over the crossing and when near to said engine the defendant without any notice or warning carelessly and negligently suffered and allowed the steam to escape from the boiler of the engine, thereby making a very loud blowing, hissing and unusual noise, which escape the defendant could have avoided by the exercise of reasonable care. It is further averred that the escape of the steam as aforesaid alleged so frightened plaintiff's horse that it became unmanageable and

ran away and upset the wagon in which she was riding, and that she was thrown out and severely injured, etc.

Appellant makes no specific charge of insufficiency against this paragraph, and we are of the opinion that it contains sufficient facts to constitute a cause of actionable negligence. Appellant's counsel in the main contend that the special verdict does not respond to or support the issue as made by the second paragraph of the complaint, that the verdict does not support the judgment, and that the former is not sustained by the evidence. The facts found by the jury bearing upon the question of the alleged negligence in the second paragraph appear to be as follows: The line of the defendant's railroad crosses East street, one of the public streets in the City of Indianapolis, Indiana, in the populous part of the City. That said East Street at said crossing was on July 5th, 1890 much used by the public in crossing with wagons, carriages and other vehicles." That on the morning of the 5th day of July, 1890, the defendant by its agents and employees, took one of the engines from the building where it kept its engines, designated as a round house, a distance of a few hundred feet from said East Street crossing, and backed said engine down to and across said East street to a point about 25 or 30 feet west of the west line of said crossing. That at the time the said a engine was brought down from said round house to said crossing, said engine came to and passed said crossing, two cars and a caboose, standing on defendant's ~~xxxxxx~~ switches, west of said crossing, were attached to said locomotive. That after said cars were so attached to said ~~xxxxx~~ ~~xxxxx~~ engine, said engine and cars were moved up to within 25 or 30 feet of the west line of said East street crossing, to await orders to go to t the yards of the defendant two or three miles distant, to make up a freight train there to to go Monon, in the northern portion of the State of Indiana."

Fourth. "That at the time that said engine came to said East street crossing, from said round house, it carried an unnecessary and excessive amount of steam for the work it was intended said engine to do, and did do at that time. That 80 pounds of steam would have been amply sufficient for the work which said engine did and was intended to do at that time."

Fifth. "Said engine at said time had on it as a part of its appliances , a steam guage, which indicated the amount of steam pressure in the boiler of said engine. That said steam guage had on it a dial of about six inches in diameter, with figures on the outer rim thereof, and and a hand to indicate the amount of steam pressure, that the amount of a steam pressure could be easily seen at a distance of seven feet."

Sixth. "That said engine also had upon it an automatic safety valve, a device in general use for the purpose of permitting the escape of steam automatically when the pressure of steam reached a given point. That the automatic safety valve of said engine was so adjusted that the steam would escape automatically when the pressure of steam reached 140 pounds, and when said steam guage indicated a pressure of 140 pounds the steam would escape through the automatic safety valve, and make a loud, blowing and hissing noise. That said device was made and adjusted by the manufacturer of the engine, sealed up, and could not be adjusted or changed by any one in charge of the engine. And whenever the steam was permitted to reach a pressure of 140 pounds no one controlling the engine could prevent the escape of the steam, or the noise consequent therefrom. That said automatic safety valve and the steam guage were of the most modern and approved appliances, and were in general use and were used for the purpose of avoiding the danger incident to a too high steam pressure."

"7. That the engineer in charge of said engine looked at the steam guage at the round-house and saw and knew that it indicated a steam pressure of from 130 to 140 pounds. And that he also saw the steam guage at the East street crossing and knew that the steam pressure was increasing and was now 140 pounds, and that the steam was liable to escape through the safety valve at any moment."

"8. That the steam pressure on said engine at said time could have been controlled by the persons in charge thereof, and the increase of such pressure prevented, either by regulating the fire, or by opening the doors of the furnace, or by closing the dampers, and such means may be employed to prevent the increase without injury to the machinery. And in addition, the same result may be obtained by letting the steam escape into the tank, if the water in the tank is not too hot, and by letting cold water into the boiler, if the boiler is not too full, but the evidence in this case fails to show whether the water was hot in the tank

or whether the boiler was full of water."

"9. That at no time after the engineer in charge received said engine at the round-house up to the time of the injuries to the plaintiff hereinafter mentioned did any one in charge of said engine employ any means to reduce steam pressure on said engine, or to prevent its increase.

"10. That on the 5th day of July, 1890, while said engine was standing as aforesaid, about 25 or 30 feet west of the said East Street crossing, and while said engine was in the condition as aforesaid, the said plaintiff, Anne Schmidt, in company with her brother, Joseph Schmidt, and another boy, by the name of Edward Halley, were driving north on said East street, in a spring wagon, filled with flowers for sale in the market, whither they were going. That when they came near to said East street crossing, they saw said engine standing on said track as aforesaid, and before they attempted to cross, stopped their horse and wagon, and said Joseph Schmidt sent the boy, Eddie Halley, to the persons in charge of said engine, to inquire if it was safe tocross said tracks at that time. That said Halley went to the engineer in charge of said engine, and inquired of him if it was safe to cross the tracks at that time. That said engineer answered "yes" and further said that "they were not going to pull out for half an hour." That said engineer knew at that time, the steam in the boiler of said engine was liable to escape through the automatic safety valve at any moment, with a, loud, hissing noise, likely to scare and frighten horses. That said Halley went to the flagman, stationed on the north sidemof said crossing, and asked him if they could cross. He said "yes" and signaled them with his flag to come across and that the said Halley also called to them and waved his hand ~~xx~~ for them to come across. That said Joseph Schmidt, who was driving, then started to go across, and when he came near to said engine, the steam escaped from said automatic safety valve of said engine, with a very loud and unusual noise, which frightened said horse and caused him to become unmanageable, and to run away and upset said wagon and throw said plaintiff into the gutter near the flagman's shanty, and breaking her leg and otherwise injuring her internally. That said horse was a quiet and gentle horse, and used to the cars, and that the

driver, Joseph Schmidt, was accustomed to the use of and driving horses. That at said time he was fifteen years of age, and did all he could to check and control said horse."

"11. That the evidence does not show the precise length of time said engine was standing near said crossing, but it does appear from the evidence that it was several minutes, and the engineer and fireman were at, and on said engine oiling and cleaning it. That a portion of the time, the fireman was on the north side of said engine, and the engineer was on the south side thereof. That the foreman of the crew running said engine, was reading orders while at said crossing, but it was not shown whether or not the order was to move or when to move, or whether the move ment of said engine was in pursuance of said order or not. The track on which said engine was standing was the third or fourth on the north side of said crossing."

Briefly stated,the special verdict, among other things, discloses that on the day of the accident the appellant by its servants took the freight engine in question from the round-house, a short distance from the East street crossing and backed it to a point near to said crossing, and there stopped the engine and the cars attached to it to wait orders to go to the yards of appellant some two or three miles distant. That at the time the engine reached the crossing, and while it remained there it carried an unnecessary and excessive amount of steam for the work that it was to perform. That East street is in a populous part of the City of Indianapolis, and both the street and crossing are much used by persons passing in vehicles drawn by horses. That the engine remained there for several minutes, the precise time being shown by the evidence, and while standing near the crossing the engineer or fireman thereon were engaged in oiling and cleaning the engine and while so standing the engineer saw and knew that the steam pressure was increasing and had already reached 140 pounds, the point of explosion, and that it was liable, at any moment, to escape through the valve. With knowledge of these facts it appears that no precaution whatever was taken by appellant to stop the increase of the steam pressure and thereby prevent it from escaping as it did, although as disclosed by the verdict some simple methods or means might have been employed to avoid that result. Under these

circumstances appellant invited appellee to cross and gave assurance to her that it was safe for her to go over the crossing, and while in the act of so doing the steam was suffered or permitted to escape or blow off with a very loud and unusual noise which frightened her horse and resulted in the injury of which she complains. The special verdict in our opinion substantially responds to the second paragraph of the complaint, and the facts embraced therein, under the circumstances, impute actionable negligence to appellant. The rights and duties of these parties at this public crossing were mutual or equal and both were respectively bound to do what the law required. Ohio etc. Railway Co. vs. Walker, 113 Ind. 196. She, under the circumstances, had the right to pass over the tracks of appellant but in doing so, however, she was bound to exercise ordinary care and diligence to avoid injury. There is nothing to indicate that she was not in the exercise of such care upon her part. While upon the other side it may be said that the appellant had the legal right in the line of its business, to move its engine to the point near the crossing where it did, and there stop; however, in permitting the engine to stand there as it did, it was bound to exercise this right with due regard to the safety of others using this crossing. Or in other words, the appellant, under the circumstances, was required to exercise such ordinary care and diligence as to void injury to those travelling upon this street and over the crossing in controversy. The law interprets ordinary care to be of that degree which a person of or - dinary prudence, under the particular circumstances is presumed to exercise, to avoid injury. Such care is required to be in proportion to the danger to be avoided and the fatal consequences that may result from the neglect.

The Toledo etc. R. R. Co. vs. Goddard, 25 Ind. 185;

In Billman vs. The Indianapolis etc. R. R. Co. 76 Ind. 174, it is said: "The liability of horses to take fright at unusual noises or h objects is a thing to be apprehended and guarded against." It is a settled rule that the ordinary use of a locomotive engine by a railroad company or the ordinary sounding of the whistle attached thereto on proper occasions, or the escape of its steam, in like manner, is not negligence. But these rights must be exercised in a lawful manner. The

negligent or careless sounding of the whistle or the blowing off of steam, at a public street, or highway, or at a public crossing, in such a manner as to make an unusual noise and thereby cause horses driven along or over such street, highway or crossing to take fright, which results in an injury, is an actionable wrong. Indianapolis et c. R. R. Co. vs. Boettcher, 131 Ind. 82 The Cincinnati etc. R. W. Co. vs. Gaines, 104 Ind. 526. The rule which applies to affirmative acts of negligence in such cases is also applicable to negli ence through the omission of a legal duty, whereby, the steam is permitted to escape or blow off in like manner to the injury of others. It is a well recognized legal proposition that actionable negligence may consist in either omitting to do under the particular exigencies or circumstances what a reasonable and prudent person would ordinarily have done, or in doing that which he would not have done. The fault of the wrong doer may lie in, or arise out of his act of omission as well as that of commission, in regard to a legal duty. Am. & Eng. Ency. Law, Vol. 16 pp. 404, and 405. Wharton's Law of Negligence, §§1, 2, 3, and 83. Tested by these rules, it is clear, we think, that under the particular circumstances and facts, the appellant must be adjudged guilty of negligence in like manner as though the steam upon the occasion in controversy had been blown off through the active agency of itsservants in charge of the engine. When all of the facts in the case are considered appellant's liability can not be successfully controverted. It placed the engine at the crossing (over which persons at all times were passing with horses) under an excessive and unnecessary pressure of steam, and permitted it to stand there for a period of time. long enough at least to warrant its employees in charge to engage in oiling and cleaning the machinery-without exercising any care or employing any of the means or methods which the jury find it couldhave employed, to control or reduce the steam and thereby prevent it from escaping in the manner it did. While it is true the valve appears not to have been under the control of the engineer and was liable to let the steam escape automatically when it had reached a certain pressure, still the fire which produced the steam was under the control of appellant's servants, and the jury find that the increase of the steam could have been prevented by regulating the fire or by opening the doors of the furnace or by closing the dampers. These means

were practicable and could be employed without any injury to the machinery, as the finding discloses. None of these were used, but the steam pressure was permitted to increase until it had reached a point where it was liable to blow off at any moment, and with this fact evident to the engineer, affirmative assurance of safety was given to appellee and she was invited to cross and thereby subjected to a peril of which she had no knowledge but which was well known to appellant. Having been thus invited, she had the right to presume that necessary precaution had been taken by appellant to render the act of her crossing safe, at least so far as any of its acts were concerned. Under the circumstances she had no reason to apprehend that the steam in the engine was not under control, and while passing, would escape as it did, and alarm her horse. The authorities affirm that when a person rides or drives up to a railroad crossing by the invitation of direction of a flagman or gate keeper there stationed and is injured at such crossing from trains, machinery or appliances of the railroad company, he has the right to recover, because the invitation or direction was an assurance of safety upon which he had a right to rely.

Am. & Eng. Ency. of Law, Vol. 4, p. 931;
The Cleveland etc. Ry. Co. vs. Keely, 138 Ind. 600; Elliott on Railroads, § 1157;
Pennsylvania R. R. Co. vs. Horst, 110 pa. St. 226;
Keech vs. Rome, W. R. Co. 13 N. Y. Supp. 149.

In the case last cited, the plaintiff approached a railroad crossing where the defendant's engine and cars had stopped. The plaintiff inquired if it was all right for him to go on. A servant on the engine replied: "It is all right, go ahead." Plaintiff did so and when abreast of the engine and within forty feet of it, the steam began to escape from its "pop whistle" and alarmed his horse, causing it to throw him from the buggy and breaking his leg. It appeared that the "pop whistle" was not under the control of the engineer. The court held that although there was no evidence of negligence in the operation of the engine, the assurance of safety made to the plaintiff without reservation, implied the control of the engineer over the engine and its instruments of alarming sounds and that the defendant was liable for plaintiff's injuries

received in acting upon the assurance. The court there said: "If the pop whistle was not under control, but worked automatically, and was liable to go off whenever the engine stood still, these facts were known to the engineer. The plaintiff was not shown to have known them. The question would then be, whether it was negligent to stop the engine in advance of the plaintiff instead of in the rear, and tell him to go ahead, without regard to the liabilityn of the pop whistle to go off. The assurance of safety was made without reservation and implied, we think, the control of the engineer over his engine and its instruments of alarming noises."

This reasoning is peculiarly applicable to the facts in this appeal. The engineer knew that the steam valve was not under his control. That it acted automatically, when the pressure attained to 140 pounds, and permitted the steam to escape at that point with a loud and unusual noise. He knew that the pressure had already reached this point and was upon the very eve of exploding through the valve, when in response to the inquiry if it was safe to cross at that time, he answered that it was, and in this the flagman seems to have concurred, and signaled the parties to cross. This, under the circumstances, reasonably implied and carried with it the assurance that the engineer had control over his engine and its appliances, and that there would be no such alarming escape of steam as happened upon the occasion.

In view of the facts, we are of the opinion the court did not err in awarding judgment in favor of appellee upon the ~~general~~ special verdict.

Appellant insists that upon the evidence when tested by the decision in the former appeal there can be no recovery. Counsel for appellee, however, contend that the evidence is not in the record, and we are of the opinion that their contention must be sustained. The record recites that the defendant on March 3rd, 1894, filed in the office of the clerk the long hand manuscript of the evidence adduced at the trial which long hand manuscript is recited to be as follows: (Here follows what appears to be a long hand report of the evidence.) The trial judge certifies that this long hand manuscript was presented to him as a bill of exceptions on April 4, 1894 and was signed by him on June 11, 1894.

If this could be regarded as a proper bill embracing the evidence,

it would be clear that it had been filed before receiving the Judge's signature. No where does the record disclose that what was intended as a bill of exceptions was filed after it received the signature of the Judge on June 11, 1894. After a bill has been signed by the Judge, it must be filed in order to become a part of the record. Wakepeace vs. Bronnenberg, at this term. 45 N. E. 336.

It follows for the reason stated that the evidence is not in the record and we cannot consider any question arising out of, or depending thereon.

Judgment affirmed.

And afterwards, to-wit: On the 18th day of May, 1895, the Court being fully advised, overruled the petition for rehearing heretofore filed herein by Appellant.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed *at the cost of the* Appellant

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellee *recover of the* Appellant *the sum of* $39 60 *for* her *costs and charges in this behalf expended*

THE STATE OF INDIANA, }
SUPREME COURT. }

I, ALEXANDER HESS, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 21st *day of* May *189* 7

Alex. Hess C. S. C.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1896.

On the 9th *day of* April *1897, being the* 119th *Judicial day of said November Term, 1896.*

18010

HON. JAMES H. JORDAN, CHIEF JUSTICE.
HON. JAMES McCABE,
HON. TIMOTHY E. HOWARD,
HON. LEONARD J. HACKNEY,
HON. LEANDER J. MONKS,
} JUDGES.

IN THE CASE OF

Addison Hadley, etal

vs.

Tacy Hadley

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises, gave the following opinion and judgment pronounced by McCabe, *J.*

The appellee sued the appellants in the Hendricks Circuit Court to quiet her alleged title to certain land in Hendricks County.

A trial of the issues formed by the court without a jury resulted in a special finding of the facts whereon the court stated conclusions of law favorable to appellee. The court rendered judgment for the plaintiff pursuant to the conclusions of law.

The errors assigned call in question the action of the trial court in sustaining plaintiffs' demurrer to the answef of the defendants, Addison Hadley, and Addison Coffin, and the conclusions of law.

The substance of the special finding is that on June 27, 1895, Job Hadley died testate in the County of Hendricks, the owner in fee simple of land situate in said county particularly described containing 294 1/4 acres.

The last will, of said Job Hadley reads as follows: "I do hereby will, give and bequeath all my real and personal property or the residue of the same after all my indebtedness is paid to Tacy Hadley, my wife, except the lands owned by me in § § 14 and 15 in township 17 north and Range one west, which at her death I will that Addison Hadley, Mordecai Hadley and Addison Coffin take in charge as trustees and devo te the same if thought practicable to the erection and maintenance of an institution for the edcation of the poor, virtuous and aspiring children and young persons. Said institution to be located in some suitable place on the farm.

But if the erection of such an institution was not in the judgment of said trustees deemed practicable, the said lands to be sold and three fourths (3/4) of the proceeds to be distributed among my legal heirs, and the remaining one -fourth (1/4) to go to the legal heirs of Tacy Hadley, my wife."

That the real estate described in the finding above is the same real estate mentioned in said will as owned by Job Hadley in § § 14 and 15 Township 17 north one west and that said real estate is all the real estate of which Job Hadley died seized or possessed. That said will was probated in said Hendricks Circuit Court on March 9th, 1896 and that plaintiff has filed her written election rejecting the will of said Job Hadley and that she filed her written election to take the provisions

made for her as widow by the law of descent. That Job Hadley at his death was 79 years old and his wife Tacy Hadley the plaintiffwas of the age 84 years, and that they had been married and lived together as husband and wife 49 1/2 years.

That at the time of his death Job Hadley left no father or mother nor the descendants of any child or children him surviving, but Tacy Hadley, his wife the plaintiff as his sole heir at law. That the defendants other than Addison Coffin are the brother and sister, nephews and neices of Job Hadley deceased and they constitute all the brothers and sisters of said Job Hadley surviving him.

That Mordecai Hadley, mentioned in said will died on June 17th, 1890 and his death was known to said Job Hadley at the time, and that the defendants Addison Hadley and Addison Coffin are the only surviving persons named in said will as trustees.

That the personal estate of Job Hadley after the payment of his debts funeral expenses and expenses of last sickness and costs of administration amounts to about $400.00.

That plaintiff Tacy Hadley as the surviving widow of Job Hadley deceased has been ever since his death and is now in the quiet and peaceable possession of the real estate above mentioned.

That the defendants are claiming an interest in said real estate by virtue of said will, but concede that the plaintiff now owns in fee simple the undivided one third interest in said real estate, and that she owns a life estate in and to the remaining undivided two-thirds thereof.

That all the defendants other than the surviving trustees named in said will are claiming that should said trust be adjudged to be void, or should it be adjudged to be valid, but on the death of the plaintiff, the execution of it should be deemed impracticable, as contemplated in said will it might be, in either event on the death of the plaintiff, the undivided two-thirds imterest in said real estate should be sold and three fourths of the proceeds thereof should be distributed among them and none of them are claiming any other right in said real estate.

And upon the foregoing facts the court states the law to be with the plaintiff, and that she is entitled to have her title quieted in the lands described in the complaint against each of the defendants. At the

time the special finding was filed the time for the widow filing her election had not yet expired.

It is contended by the appellee that the trust sought to be created by the will is void for the reasons, 1. that the objects or beneficiaries of the charity thereby sought to be established are so indefinite that a court of equity can not ascertain them and no power is conferred on the three trustees to select them; 2. by the death of one of the three trustees during the life of the testator all power in the surviving trustees to execute the trust was extinguished, and 3. that being the case, neither the defendant trustees had any power over or interest in the real estate and hence the contingency could never arise by which the other defendants could have any interest in the real estate through a sale thereof and a distribution to them of any portion of the proceeds thereof under the will.

Should that turn out to tbe the status of the real estate and the parties, then Job Hadley died intestate as to that real estate.

In that event the whole of Job Hadley's property, real or personal, would descend to his widow. R. S. 1894, §2651; R. S. 1881, §2490.

We deem it unnecessary to d ecide whether the vagueness and uncertainty of the will as to the objects or beneficiaries of the trust there in provided for and declared, renders the trust sought to be created void or not. See

Grimes vs. Harmon, 35 Ind. 198 and cases cited;

Erkstine vs. Whitehead, 84 Ind. 357 and cases there cited;

Board &c vs. Dinwiddie, 139 Ind. 128.

The language "I will that Addison Hadley, Mordecai Hadley and Addison Coffin take in charge as trustee and devote the same (the real estate if thought practicable to the erection and maintenance of an institution for the education of the poor, virtuous and aspiring children and young persons" vests a naked power in the three trustees not coupled with an interest.

Doe vs. Manius, 3 Ind. 441;

Thompson vs. Schenck, 16 Ind. 194;

Brumfield vs. Drook, 101 Ind. 190;

Gregg vs. Currier, 36 N. H. 200.

A power is usually defined as an authority whereby a person is enabled to dispose of an interest in real estate vested in himself or another. The exercise of these powers, in most instances, depends upon the discretion of the donee of the power, and no person can take by virtue of the power unless the donee thereof chooses to exercise this discretion. Bispham's Equity, §77.

If the authority be committed to trustees, the presumption is, that as the power was coupled with an interest, it was meant to survive. If a power be a joint one coupled with an interest, it will survive if one of the donees of the power die. But whereit is a mere naked authority it will not survive. So if the authority be to two or more in an official capacity ratione officii it will survive if one die. But if it be to them nominatim or they are clothed with a special confidence of a personal nature, it will not survive. 2 Wash. Real Prop. (5 ed.) 553. For if the act to be done requires an exercise of the judgment and discretion of the several persons named as trustees, it can only be exercised by them all. 2 Wash. Real Prop. 554.

Where the power is given to several donees, nomonatim, it indicates the repose of a personal discretion in each, and the power will not survive the death of one of them. Tiedeman on Real Proper, §566.

And if the power be accompanied by a personal confidence and trust in the donee or donees, he or they alone can execute it; nor can it pass to others, it must be executed by the persons named, unless authority to substitute another is expressly given. 2 wash. Real Prop. (5th Ed.) p. 717.

If the power of sale or any other power is given to two or more persons by name, with no words of survivorship and one dies or refuses to act the others can not execute the power.

Perry on Trusts, §499;

Wilder vs. Ramey, 95 N. Y. 7;

Gambell vs. Trippe, 75 Md. 252;

S. C. 32 Am. St. R. 388.

The power here given by the will not being coupled with an interest accompanied by no words of survivorship and no authority given to any number of the trustees less than the whole and Mordecai Hadley one of the

trustees having died before the will creating the trust took effect, the trust is wholly inoperative and void for want of authority on the part of the surviving trustees to act.

Doe vs. Manius, supra;

Thompson vs. Schenck, supra;

Brumfield vs. Drook, supra;

Gregg vs. Currier, supra.

But it is contended with great apparent earnestness that there is a devise over in case of failure of the trust directing the land to be sold and the proceeds to be distributed to the defendants embraced in that clause of the will. But that is a mistake. There is a contingency provided for in the will on the happening of which the land is directed to be sold, and the proceeds to be divided between the legal heirs of Job Hadley and the legal heirs of his widow, though no power to sell is given to any one. What contingency was not the failure of the trust. The contingency is expressed in the will thus: "But if the erection of such an institution was not in the judgment of said trustees deemed practicable, the said lands to be sold," &c.

This contingency has been impossible ever since the will took effect on the death of Job Hadley, because before that time one of the three trustees named died. Therefore the judgment of the three trustees never having been exercised, it now never can be, and hence the contingency on the happening of which the land was directed to be sold and the proceeds divided between certain of the parties to the action, the devise over as appellants call it wholly fails. Because a contingent interest in real estate must rest upon the happening of an event that is a possibility. Mr. Washburn in his work on Real Property, Vol. 2 (5th ed.) p. 629, says: "In the next place, the event must not be too remote, or beyond what is deemed in law to be a common possibility, such as that of the death of a person, or of his dying without issue, or of coverture or the like. If the event is not within such possibility a limitation dependent upon it is void at common law."

Therefore there was none of the defendants that had any power over, or interest in said real estate whatever, by virtue of said will though they were claiming that they had.

Hence the circuit court did not err in its conclusions of law that

the plaintiff was entitled to have her title quieted.

It follows from what we have decided above that the court correctly sustained the demurrer to the partial answer of the two trustees, Addison Hadley and Addison Coffin.

Judgment affirmed.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed *at the cost of the* Appellants.

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellee *recover of the* Appellant *the sum of* $18.75 ——— *for* Lis *costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ALEXANDER HESS, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 11 *day of* June *189*7

Alex. Hess *C. S. C.*

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1899.

On the 14th *day of* June *1899, being the* 21st *Judicial day of said May Term, 1899.*

HON. JAMES H. JORDAN, CHIEF JUSTICE.
HON. JOHN V. HADLEY,
HON. FRANCIS E. BAKER,
HON. ALEXANDER DOWLING,
HON. LEANDER J. MONKS,
} JUDGES.

18894.

IN THE CASE OF

David Thompson

vs.

Thompson Henry.

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Monks, J *J.*

This action was brought by appellant to enjoin appellee from removing gravel from the real estate described in the complaint.

The court made a special finding of the facts, and stated conclusions of law thereon in favor of appellee, and rendered judgment accordingly.

The conclusions of law are challenged by the assignment of errors.

The special finds, so far as necessary to the determination of this case, is substantially as follows:-

Jesse Hendricks died intestate in 1873, and left surviving him his widow (a second and childless wife) and children by his former wife. Afterwards, in 1874, on petition of the widow and a part of the children partition was made of the land owned by said Hendricks at the time of his death, setting off to the widow one third thereof for life, and to the children their respective shares in severalty including the part so set off to the widow. The widow sold and conveyed by warranty deed the real estate set off to her, and by virtue of said deed ~~the real estate~~ and divers mesne conveyances appellee became the owner of what ever title was conveyed by the warranty deed of said widow.

Mark D. Hendricks, one of the children and heirs of Jesse Hendricks sold and conveyed by warranty deed to appellant the part of said real estate set off to him subject to the life estates of the widow, being the real estate described in the complaint. Said appellant is the owner of what-ever title in said real estate was conveyed by said deed.

The other facts found and not set out above are sufficient to entitle appellant to an injunction against appellee enjoining him from removing the gravel from said real estate if the facts set out show that appellant owns said real estate in fee simple subject to a life estate of said widow. Gwaltney vs. Gwaltney, 119 Ind. 144. If therefore appellant owned the real estate described in the complaint in fee simple subject to a life estate of the widow the court erred in its conclusions of law.

Prior to the decision of Utterback vs. Terhune, 75 Ind. 363, at the May Term 1881 of this court, it was uniformly held that under the provisions of Secs. 2483, 2487, R.S. 1881, a second or subsequent wife having no child by her husband took a life estate only in his lands, where, upon

his death he left surviving him a child or children by a former wife or their descendants. These decisions, however, were overruled in Utterback vs. Terhune, supra, and it was held in that case that when a man dies intestate leaving a second or subsequent wife and no children or their descendants by such widow surviving, but has children or their descendants alive by a former wife, that the interest that such widow takes in his land is a fee simple, which at her death descends from her to said children by the former wife or their descendants if then living. This is now the settled construction of said sections.

Byrum vs. Henderson, 151 Ind. 102, 51 N.E. 94;

Stephenson vs. Boody, 139 Ind. 60, 65;

Haskett vs. Maxey, 134 Ind. 182, 187;

Hilt vs. Hilt, 52 N.E. 699.

Ordinarily a judgment in partition simply has the effect to sever the unity of possession and does not vest in either of the co-tenants any new or additional title. After the rendition of such judgment each co-tenant has precisely the same title he had before, except that he holds his share of the whole in severalty instead of in common. Haskett vs. Maxey, supra, 189.

Pleadings in actions for partition may be so framed as to raise and settle questions of title, but when only partition is asked between tenants in common no question of title is settled. The complaint in the action brought for partition of the lands of Jesse Hendricks in 1874 only asked that the respective interests of the widow and children be set off in severalty, and it is settled law that such a pleading raises no question of title.

Habich vs. Dodge, 127 Ind. 31, 37;

Haskett vs. Maxey, supra, 189, and cases cited;

Stephenson vs. Boody, supra, 67.

The complaints and judgments in partition considered in Habich vs. Dodge, supra, Haskett vs. Maxey, supra and Stephenson vs. Boody, supra, were of the same character as the complaint and judgment in partition in this case, and it was held in those cases that no question of title was tendered or settled thereby.

It is manifest, therefore, that the widow of Jesse Hendricks being

his second wife, by whom he had no child, inherited the undivided one third of his real estate in fee simple, and his children by the former wife inherited only the remaining individed two thirds thereof, and said widow owned the part set off to her in said partition proceeding in fee simple. Byrum vs. Henderson, supra.

It is also settled law in this State that when in a case like this, the real estate was conveyed prior to the decision of Utterback vs. Terhune, supra, in 1881, when it was held that the second or subsequent childless wife had only a life estate in the lands of her deceased husband, that the rights of all parties would be governed by the law as declared by this court at the time the land was sold and conveyed.

Haskett vs. Maxey, supra, 190-193;

Stephenson vs. Boody, supra, 65-67.

Under the law as declared in the cases last cited, if the land in controversy in this case had been conveyed by the widow and children in the manner stated in the special finding before the decision of Utterback vs. Terhune, supra, in 1881, appellee would only own said real estate during the life of the widow, and appellant would own the same in fee simple subject to said life estate, and appellant could maintain an action to enjoin appellee from removing the gravel therefrom. The special finding, however, does not show when the widow and children executed the deeds for the real estate described in the complaint. The case made by the special finding does not therefore fall within the rule declared in the cases of Haskett vs. Maxey, supra and Stephenson vs. Boody, supra. It follows that the court did not err in the conclusions of law. Judgment affirmed.

Hadley J. did not participate in the decision of this cause.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed *at the cost of the* Appellant

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellee *recover of the* Appellant *the sum of* — $17.20 — *for* his *costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 15th *day of* August *189*9. R. A. Brown, *C. S. C.*

This action was brought by appellant to enjoin appellee from removing gravel from the real estate described in the complaint.

The court made a special finding of the facts, and stated conclusions of law thereon in favor of appellee, and rendered judgment accordingly.

The conclusions of law are challenged by the assignment of errors.

The special finds, so far as necessary to the determination of this case, is substantially as follows:-

Jesse Hendricks died intestate in 1873, and left surviving him his widow (a second and childless wife) and children by his former wife. Afterwards, in 1874, on petition of the widow and a part of the children partition was made of the land owned by said Hendricks at the time of his death, setting off to the widow one third thereof for life, and to the children their respective shares in severalty including the part so set off to the widow. The widow sold and conveyed by warranty deed the real estate set off to her, and by virtue of said deed ~~the real estate~~ and divers mesne conveyances appellee became the owner of what ever title was conveyed by the warranty deed of said widow.

Mark D. Hendricks, one of the children and heirs of Jesse Hendricks sold and conveyed by warranty deed to appellant the part of said real estate set off to him subject to the life estates of the widow, being the real estate described in the complaint. Said appellant is the owner of what-ever title in said real estate was conveyed by said deed.

The other facts found and not set out above are sufficient to entitle appellant to an injunction against appellee enjoining him from removing the gravel from said real estate if the facts set out show that appellant owns said real estate in fee simple subject to a life estate of said widow. Gwaltney vs. Gwaltney, 119 Ind. 144. If therefore appellant owned the real estate described in the complaint in fee simple subject to a life estate of the widow the court erred in its conclusions of law.

Prior to the decision of Utterback vs. Terhune, 75 Ind. 363, at the May Term 1881 of this court, it was uniformly held that under the provisions of Secs. 2483, 2487, R.S. 1881, a second or subsequent wife having no child by her husband took a life estate only in his lands, where, upon

his death he left surviving him a child or children by a former wife or their descendants. These decisions, however, were overruled in Utterback vs. Terhune, supra, and it was held in that case that when a man dies intestate leaving a second or subsequent wife and no children or their descendants by such widow surviving, but has children or their descendants alive by a former wife, that the interest that such widow takes in his land is a fee simple, which at her death descends from her to said children by the former wife or their descendants if then living. This is now the settled construction of said sections.

Byrum vs. Henderson, 151 Ind. 102, 51 N.E. 94;

Stephenson vs. Boody, 139 Ind. 60, 65;

Haskett vs. Maxey, 134 Ind. 182, 187;

Hilt vs. Hilt, 52 N.E. 699.

Ordinarily a judgment in partition simply has the effect to sever the unity of possession and does not vest in either of the co-tenants any new or additional title. After the rendition of such judgment each co-tenant has precisely the same title he had before, except that he holds his share of the whole in severalty instead of in common. Haskett vs. Maxey, supra, 189.

Pleadings in actions for partition may be so framed as to raise and settle questions of title, but when only partition is asked between tenants in common no question of title is settled. The complaint in the action brought for partition of the lands of Jesse Hendricks in 1874 only asked that the respective interests of the widow and children be set off in severalty, and it is settled law that such a pleading raises no question of title.

Habich vs. Dodge, 127 Ind. 31, 37;

Haskett vs. Maxey, supra, 189, and cases cited;

Stephenson vs. Boody, supra, 67.

The complaints and judgments in partition considered in Habich vs. Dodge, supra, Haskett vs. Maxey, supra and Stephenson vs. Boody, supra, were of the same character as the complaint and judgment in partition in this case, and it was held in those cases that no question of title was tendered or settled thereby.

It is manifest, therefore, that the widow of Jesse Hendricks being

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1899.

On the 14th *day of* June *1899, being the* 21st *Judicial day of said May Term, 1899.*

HON. JAMES H. JORDAN, CHIEF JUSTICE.
HON. JOHN V. HADLEY,
HON. FRANCIS E. BAKER,
HON. ALEXANDER DOWLING,
HON. LEANDER J. MONKS,
} JUDGES.

18894.

IN THE CASE OF

David Thompson

vs.

Thompson Henry.

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Monks, J *J.*

R.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1899.

On the 22nd *day of* December *being the* 23rd *Judicial day of said November Term, 1899.*

19002.

HON. JOHN V. HADLEY, CHIEF JUSTICE.
HON. FRANCIS E. BAKER,
HON. ALEXANDER DOWLING,
HON. LEANDER J. MONKS,
HON. JAMES H. JORDAN,
} JUSTICES.

IN THE CASE OF

Citizens Street Railroad Co.

vs.

Samuel Heath.

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Jordan, *J.*

On Petition for Certiorari.

2.

Appellee in this cause has filed an application for a writ of certiorari to be issued to the clerk of the lower court to correct certain alleged errors and omissions existing in the record of the appeal filed in this court. The application is duly verified by the oath of the petitioner and substantially states that the plaintiff's bill of exceptions No. 2 is defective in this, that what purports to be Exhibit A, and is not a copy of the said exhibit; that appellee never at any time agreed to substitute what purports to be Exhibit A. for the original thereof and he never agreed that what purports to be such exhibit, in said transcript at page 154, was a copy of the original Exhibit A.; and never authorized any one to make an agreement for him to the above effect, etc.

at page 64 of the stenographer's report of the evidence as incorporated in the bill of exceptions, is not the original Exhibit A

It is further charged that the record in this cause is also defective in this, that the complaint is not properly or correctly copied into the transcript; that what purports to be a copy of the complaint as set forth in said transcript, commencing at page 3 and extending to and including page 5, is not a true copy of said original complaint; that the clerk of the lower court, in copying said complaint, has omitted therefrom "words," "Phrases" and "clauses;" and what appellee alleges is a true and correct copy of the complaint is set out in the petition.

It is further alleged and specified in the application that the words omitted by the clerk in transcribing said complaint are the following, to-wit: The words "as aforesaid" have been omitted between the words "signal" and "the" in line 27, page 4 of said transcript. Also that the words "without fault on her part or part of plaintiff" have been omitted in said transcript between the words "back" and "causing" in line 11, page 5 of the transcript. Also that the words "so received" have been omitted between the words "injuries" and "have" in line 16 , page 4 of the transcript.

The transcript, it is charged, is further defective in this, to-wit: The word "execution" has been omitted from plaintiff's amended second paragraph of the reply to defendant's second paragraph of answer; and the word "exclusive" has been substituted therefor in line 16, page 52 of the transcript. What is alleged to be a perfect copy of the amended second paragraph of plaintiff's reply to defendant's amended second

3.

paragraph of answer is set out in the petition.

It is further averred that all of said omissions, insertions and erroneous entries are prejudicial to plaintiff's rights in this court and that a correction of said record is necessary and material to the legal rights of appellee and for a proper determination of said cause.

The petitioner prays that the court direct a writ of certiorari to issue requiring the clerk of the lower court to certify to this court the following original papers, to-wit:

First, Plaintfff's original Exhibit A. or to show the fact, if any, as to why said exhibit can not be produced.

Second, Plaintiff's original complaint.

Third, Plaintiff's amended second paragraph of reply to defendant's amended second paragraph of answer.

And for all other and proper relief in the premises.

Appellant, in response to notice, has appeared to this application and strenuously insists that the petition for the writ be in all things denied. Numerous affidavits have been filed and presented to the court by appellant tending to contradict the averments of the application or petition. In order to rebut or countervail the matters and things stated in appellant's counter-affidavits, appellee has been diligent upon his part in filing and presenting affidavits, and an issue, in respect to the truth of the averments of the application is, under these several affidavits, attempted to be raised by the parties, which this court is asked to determine upon the statements therein made by the respective affiants.

This we decline to do, and it is needless, perhaps, to say that we have not considered the affidavits in question for the reason that, under a well settled rule of practice pertaining to the hearing of a petition for a writ of certiorari, neither affidavits nor parol evidence will be accepted or considered by the court for the purpose of contradicting such petition. While affidavits in support of a petition may be received and considered, still, as a general rule, when the petition is duly verified and discloses merits under the facts therein stated,

the court will usually grant the writ from the prima facie case presented under the petition. Vol. 4 Ency. Pl. and pr. pp. 197 and 198.

Of course we may, and usually do, when it is deemed essential to a proper hearing of an application for a writ of certiorari, inspect the record on file in the particular appeal. A part of the relief demanded by the petitioner is that this court, by means of the writ, expunge from the bill of exceptions what he denominates a "false exhibit." An examination of the record on file in this cause discloses that the bill of exceptions, embracing the evidence given upon the trial below, is the original bill filed in the office of the clerk of the lower court and that the same, instead of a transcript thereof, has been, under the authority of the statute, duly certified to this court.

It further appears, by inspection of the bill, that what purports to be Exhibit A., given in evidence, is copied into and made a part of said bill of exceptions. The trial judge, who signed the bill, certifies therein that it is a true and correct bill of exceptions containing all of the evidence given upon the trial of the cause.

The settling of a bill of exceptions, so as to cause it to express or speak the truth, is a judicial act, and it is the duty of the trial judge to ascertain if the bill is complete and correct before he signs it. Elliott's App. Proc. §§798 and 810. This court has repeatedly asserted that a bill of exceptions, properly within the record of a cause on appeal "imports verity" and can not, in this court, be contradicted except only such contradictions as affirmatively appear from the bill itself.

What the petitioner seems in part to be seeking, as previously said, is to have this court amend or change the bill in question by expunging therefrom the paper in dispute, which paper appears to have been embodied therein at the time the bill was signed and approved by the trial judge. If we were to make the change desired, it would not be correcting the record in this court so as to make it respond to the record as made below, but we would be making a record different from that made in the lower court. This, it is clear, we are not authorized to do. If the paper in controversy, through mistake, inadvertence or

otherwise, has been improperly made a part of the bill, then the remedy of the appellee is to apply to the lower court to have the bill properly corrected, and, when so corrected, it may be brought to this court by a writ of certiorari.

Drake vs. The State, 145 Ind. 210;

Elliott's App. Proc. §206;

Burton vs. Ferguson, 69 Ind. 486.

In the case last cited, there was an attempt to show to this court, by affidavits, that the bill of exceptions in that cause was altered after it had been signed by the trial judge. Worden, J., speaking for the court in that appeal, said: "We can not try the correctness of a record on affidavit, but must take it as correct, as it comes up to us under the hand and seal of the clerk of the court below. If it is wrong, the remedy of the party complaining is to have it corrected in the court below, and the corrected record may be sent to us on certiorari."

So far as rule 32 of this court can be said to be in conflict with this opinion, in regard to the holding herein, that counter-affidavits will not be considered to contradict a petition for a writ of certiorari, it to that extent must be deemed to be rescinded.

We conclude, therefore, that appellee is entitled to be awarded the writ to have the complaint, upon which the cause was tried below, correctly certified to this court and also to have certified his amended second paragraph of reply to the defendant's amended second paragraph of its answer. The petition, so far as it seeks to secure the writ to expunge Exhibit A., as it appears in the bill of exceptions, is, for the reasons stated, denied. If the clerk of the lower court shall be satisfied that the pleadings mentioned herein, for which the writ is allowed, have been already correctly certified to this court, as they actually existed upon the trial of the cause, he can return the facts accordingly. The clerk of this court will issue forthwith a writ of certiorari as herein directed.

~~*It is therefore considered by the Court that the judgment of the Court below*~~ *in the above entitled cause, be in all things*

at the cost of the

all of which is ordered

to be certified to said Court.

And it is further considered by the Court, that the

recover of the

the sum of *for*

~~*costs and charges in this behalf expended*~~

THE STATE OF INDIANA,

SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion ~~*and judgment*~~ *of said Court in the above entitled cause.*

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 22nd *day of* December 1899.

R. A. Brown C. S. C.

Pet. R

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1910.

On the 28th *day of* October, *1910, being the* 137th *Judicial day of said May Term, 1910.*

HON. LEANDER J. MONKS, CHIEF JUSTICE.
HON. QUINCY A. MYERS,
HON. JAMES H. JORDAN,
HON. OSCAR H. MONTGOMERY,
HON. JOHN V. HADLEY,
} JUSTICES.

No. 21557

IN THE CASE OF

Harry E. Jennihgs, &c.

vs.

Charles E. Dark, et al.

APPEALED FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Myers, J.-

Appellant sued appellees by a complaint in four paragraphs. The first are two are grounded upon a claim of statutory liability as stockholders in an insurance corporation, claimed to have been organized under the act of January 14, 1850, Local Laws 1850, p. 30 with the amendment of February 22, 1893, Acts 1893, p. 133; the last two upon a liability as copartners in an association of persons claiming to be incorporated, in which incorporation was not effected, and hence a liability is claimed as of a copartnership. Demurrers were sustained to the first, third and fourth paragraphs, and overruled as to the second, upon which trail was had, a special finding of facts made, and conclusions of law stated, and judgment rendered for appellees.

Errors are here urged upon the ruling upon the demurrers to the First, Third and Fourth paragraphs of complaint and conclusions of law, and in overruling the motion for a new trial on the Second paragraph of complaint.

The facts found are substantially, the enactment of the statute of January 14, 1850, and that in 1891 the defendant McGilliard for a valuable consideration purchased and took an assignment from one McCullough a son and heir of Hugh McCullock, named as one of the grantees in said charter, all and whatever interest said McCullock might then have in said charter as a son and heir of said Hugh McCullock; that McGilliard had no knowledge of any of the other parties named in said charter, or of their heirs or assigns, and at the time no corporation was in existence, or doing business under said charter, nor had any corporation prior to that time transacted any business under said charter; that McGilliard and a number of other persons attempted to organize a corporation for the purpose of doing an insurance business under said charter by virtue of the authority and rights obtained through said assignment, and established themselves as an insurance company under the style of The Indiana Insurance Company of Fort Wayne, with their general offices in Fort Wayne, Indiana, and carried on a general insurance business throughout the state, and other states, issuing policies of insurance, establishing agencies, electing boards of directors, and officers, such as President, Secretary and Treasurer, and continued subh business as a corporation under said name until the 22nd day of February 1893, when the parties in interest procured the passage of the Act found on page 133, Acts 1893,

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changing the name to The Fort Wayne Insurance Company. That in 1899 The Fort Wayne Insurance Company became insolvent, and a Receiver of its assets was appointed by the Lake Superior Court, in which court an order was made directing the sale by the Receiver of the assets, books, and charter of said so called corporation, under which order the Receiver did sell or attempt to sell, and said McGilliard, and others, purchased, or attempted to purchase the assets, books, and charter, and the sale was approved by the court, and the charter was assigned, or attempted to be assigned to said McGilliard and others, free from any claims, or liens of the creditors, or stockholders of The Fort Wayne Insurance Company; That in June or July 1901, said McGilliard, Charles E. Dark, W. W. Dark, Edward E. Dark, Wilmer Christian and David Cline attempted by virtue of the authority and rights held by them through said purchase, to organize an insurance company under the name The Equitable Insurance Company of Indiana with its principal office in the City of Indianapolis, Indiana. That said McGilliard was a stockholder in said Fort Wayne Insurance Company, but neither of the other persons named as the organizers of The Equitable Insurance Company held a stock in the Fort Wayne Insurance Company; that McGilliard in his participation in the attempted orgnaization of The Equitable Insurance Company, did not represent or pretend to prepresent the capital stock held by him in The Fort Wayne Company; that said parties in their meeting for the purpose of organizing The Equitable Insurance Company, and in their records of said meeting denominated themselves the stockholders of The Fort Wayne Company, and by resolution changed the name to "The Equitable Insurance Company of Indiana," and changed the location of the home office from Fort Wayne to Indianapolis, retained the stock at $200,000.00 with $100,000.00 only of the stock issued, and accepted or attempted to accept the provisions of the Act of March 6, 1883, Acts 1883, p. 135, respecting corportations created and existing at and before November 1, 1851, and filed a copy of the resolution in the office of the Secretary of State, who issued a certificate of the fact. That said so called Equitable Insurance Company issued common stock, elected officers, and conducted a general insurance from its general offices in the City of Indianapolis until the appointment of a Receiver. The stock certificates recited that the company was incorporated under the laws of the State as "The Equitable In-

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surance Company of Indiana", with $200,000.00 capital stock, divided into shares of $100.00 each, subject to the terms of the charter of the company, and were in the usual form, signed by the President, and attested by the Secretary; that by an agreement of the stockholders an issue of $25,000.00 of preferred stock was authorized, and a part of the issue sold; these certificates recited that the company was organized under the laws of the State of Indiana, and the shares of preferred stock, $100.00 each, non assessable and non taxable; the company guaranteeing to redeem them in five years, and to pay semi-annually a cash dividend of 8% per annum, January 1, and July 1, with the right to cancel at the end of one year, or any interest maturing date. These certificates were signed by the President and attested by the Secretary; that no record was made of the action of the stockholders authorizing the issue of the preferred stock; that the defendant McGilliard was the owner of 25 shares and Hackedorn and Wagner the owners each of one share of common stock, Charles E. Dark, the owner of 22 shares, McGilliard seven shares, and Hackedorn ten shares, Christian five shares, McGilliard and Charles E. Dark as partners eight shares, Wilbur W. Dark one share, Jameson Five shares, Wilson one share, Tarlton five shares, E. R. Owen one share, B. F. Owen ten shares, Holman ten shares, White one share, Edward Dark one share, Wilbur and Edward Dark as partners one share of the preferred stock; Wagner and Hackedorn owned their preferred stock from July 14, 1902, to July 1, 1903, Christian, Jameson, Wilson, Tarlton, Owen, Owen, White and McGilliard owned their preferred stock April 1, 1903, and ever since. Charles E. W. W. and E. H. Dark surrendered their preferred stock in July 1902, and said shares were cancelled on the books of the company, and they were paid the par value of the stock. All of the common stock, except that held by Wagner and Hackedorn from July 14, 1902, to April 2, 1903, was sold, assigned and transferred on the books of the company on or before July 14, 1902; Tarlton, Jameson, Owen, Owen, White and Wilson in no way participated in the business, the management, or the meetings of directors or stockholders, but received one or two dividends on their stock. The defendant McLain at no time held any stock in his own right, but for a time held five shares of the preferred stock of McGilliard, as collateral to a loan which had been paid, but McLain has the custody of the stock. The facts are found as to the ownership

well stated in Shumaker, Law of Partnerships, 61; "Where the corporation is wholly illegal, and unauthorized by law, the stockholders are liable as partners. Members of a corporation de facto, acting in good faith, under the belief that they constitute a corporation are not liable as partners. Mere defects in organization, such as failure to comply with some statutory enactment, will not, by the weight of authority, render the members liable as partners." "The intention of the parties as gathered from a construction of the contract they have made, is the real test of the existence of a partnership." p. 21. See also Mechem's Elements of Partnership, Sections 10,11.

Many conflicting cases are presented in the books arising upon special facts which it would be impracticable to review, or to state the grounds of the decisions, except one case in this State; Coleman v. Coleman (1881) 78 Ind. 344.

That case presented no question of de facto corporation, or of estoppel. It simply held in affirmance of the judgment, that the action could not be maintained upon the theory of the complaint, for if there were no incorporation whereby the members became liable as co-partners, the liability was against all, and not against those only who were sued, and is not decisive of the question here. There is no claim made here, that appellees were copartners before attempting to act as incorporators, or that they held themselves out as copartners, but the contrary; no claim that they did not in good faith believe themselves to be incorporated, and dealt in that belief, except the allegation that they concealed their true relation, (which is a conclusion) and appellant dealt with that belief, and in reliance upon it, at a time when they might have been legally incorporated; the third paragraph shows some attempt to comply with the statutes, and the fourth does not negative such attempt, and under these pleadings we think the paragraphs disclose such a state of facts as to invoke the court's construction of these facts, and that the statements that the defendants were partners, can only be construed as the pleaders conclusion from the other allegations.

We do not deem it essential to this inquiry to determine under the facts found whether there was any corporation formed under the act of January 14, 1850, by the incorporating Act or not. We point out however,

that this Act is quite different from the Act reviewed in Stoops v. Greensburgh Co. 10 Ind. 47, for in that case certain specifically named persons were constituted a corporation, while in the case at bar certain persons are named as commissioners to receive stock subscriptions, and are not incorporators, but it does not follow that a corporation may not have been formed either with or without their intervention.

Judah v. The American Ins. Co. (1853) 4 Ind. 333.

If the special charter of 1850 was not accepted prior to the taking effect of the New Constitution, November 1, 1851, it could not be thereafter adopted, nor a corporation organized under it. Snyder v. Studebaker 19 Ind. 462. State v. Dawson, 16 Ind. 40.

Nor could the franchise to be a corporation be alienated without the consent of the State, in the absence of express provision therefor, so that the charter as such could not be the subject of barter or sale. Sate v. Hare, 121 Ind. 308; L. N.A & C. Co. v. Boney, 117 Ind. 501; Hall v. Sullivan etc Co. (1857) Fed Cases No. 5948; 11 Fed Cases p. 257; 21 L. Rep. 138; Arkansas v. Choctaw, etc Co. (1905) 134 Fed. R. 106; Galveston etc Co. v. Cowdrey (1870) --11 Wall. 459; Memphis etc Co. v. Commissioners (1884) 112 U. S. 609; Rochester v. Sibley, 11 Allen 65; Commonwealth v. Smith, 10 Allen 448; Fietsam v. Hay, 122 Ill. 293; 13 N. E. R. 501; Clark & Marshall on Corporations, pp 447, 978; 10 Cyc. pp. 1091, 1186.

But there were general laws of the State of Indiana which did authorize the formation of corporations for the purpose of carrying on the business of fire insurance, and there was some attempt at complying with the requirements of the Act of 1850 under the various styles or names assumed by those who claimed to be incorporated, under legislation authorizing such acts as were performed, such as change of name and location, and limiting liability, etc., in all other respects the provisions of the general law were followed in electing directors and officers, the provisions being quite similar. We call attention to this state of facts, and of the law, for the purpose of pointing out that there was a semblence, or pretense of exercising corporate functions under express legislative recognition. Precisely the same things were done in carrying on the business carried on under various names as were authorized under the general laws then in force, and by the same methods

prescribed under the general laws. They exercised the functions and powers, and claimed the rights and privileges granted by the Act of 1850, but those powers and privileges are practically the same as are conferred by the general laws, save as to the question of liability. Appellant dealt as with a corporation; as there was a law under which incorporation might have been consummated, neither he or appellees will be heard to deny a de facto corporation under such general law, at the time of making the contract. Snyder v. Studebaker, supra; Clark v. American etc Coal Co. (1905) 165 Ind. 213; Doty v. Patterson (1901) 155 Ind. 60; Bradford v. Frankfort etc Co. (1895) 142 Ind. 383; Baker v. Neff (1880) 73 Ind. 68; Mullen v. Beech Grove Driving Park (1878) 64 Ind. 202; Indiana Bond Co. v. Ogle (1899) 22 Ind. App. 593, and cases cited; 72 A. S. R. 326, and notes; McTighe v. Macon, etc Co. (1894) 94 Ga. 306; 32 L. R. A. 208, and notes.

It is wholly aside from the question here, that upon intervention by the State the exercise of the powers of a corporation under which the business was conducted would probably have been arrested, for only the State may interpose to question the rights asserted in a direct proceeding for that purpose, in cases where constitutionally a de jure corporation may exist. Clark v. American etc Coal Co. supra; Doty v. Patterson, supra; Marion Bond Co. v. Mexican etc Co. (1903) 160 Ind. 558.

In order that they may be a de facto corporation, it must appear that there was first a valid law under which a corporation might have been formed, second, a bona fide attempt to incorporate under such law, and third, an actual exercise of such corporate powers. Clark v. American etc Coal Co. supra; Doty v. Patterson, supra; Marion Bond Co. v. MexicanCo., supra;

It is quite clear under the findings in this case that there was an actual exercise of corporate powers, and there was a valid law under which an insurance company might have been formed, but there was no attempt to incorporate under the general law, though a colorable attempt to incorporate under the Act of 1850. Even though they did not create a de facto corporation, they may so far avail themselves of the general law, as to enable them to invoke the estoppel of a de facto corporation, as against one who has dealt with them as a corporation. McTighe v. Macon etc Co. supra, and cases cited in notes.

If it could be said that the attempted incorporations was void, and no de facto corporation was created, it would follow, unless some estoppel intervened, that the stock was void, and there could be no recovery against the alleged holders. Scovill v. Thayer (1881) 105 U. S. 143; American Tube Works v. Boston Co (1885) 139 Mass. 5; 29 N. E. R. 63; Schierenberg v. Stephens (1888) 32 Mo. App. 314;

We think that the true condition is that of a corporation de facto by virtue of the general law, as incident to which is the general statutory provision for the issuance of preferred stock in all corporations, the holders of which are subject to no liability, and are in effect preferred creditors over the general, and common stock holders. Burns 1908, sections 5093, 5096.

All the appellees are shown to be preferred stockholders except McLain, and he is shown to be a pledgee, and his relation to the corporation governed by the general laws of the State by which the pledgee of stock is not liable as an owner. Burns 1908 section 4051.

There is another phase of the case which is of controlling importance and that is the one of mutual estoppel. From all that here appears all parties were equally chargeable with knowledge of the corporate powers and obligations of those claiming incorporation, and appellant clearly dealt as with a corporation, in good faith, and in the belief that it was duly incorporated, as did the alleged stockholders, and he is estopped, unless there was no law authorizing the formation of a corporation, to claim that appellees are partners. Doty v. Patterson, supra and cases there collected; Smelser v. Wayne etc Co. (1882) 82 Ind. 417; Jones v. Kokomo, etc Co. (1881) 77 Ind. 340; Baker v. Neff, supra; Mullen v. Beech Grove Driving Park, supra; Williams v. Franklin Twp. etc (1868) 26 Ind. 310; Heaston v. Cincinnati etc Co. (1861) 16 Ind. 275; Meikel v. The German Society (1861) 16 Ind. 181; Jones v. Cincinnati etc Co. (1860) 14 Ind. 89; Bradley v. Ely (1900) 24 Ind. App. 2; Snider's Sons' Co. v. Troy (1890) 91 Ala. 224; 11 L. R. A. 515; 8 S. R. 658; 24 A. S. R. 887; Central Assoc. v. Ala. Ins. Co (1881) 70 Ala. 120; Gartside Coal Co. v. Maxwell (1884) 22 Fed. R. 197; 1 Clark & Marshall, Private Corporations, pp. 61, 78, 222, 267; 1 Cook, Corporations, 6th ed. section 234; Taylor, Private Corporations, 3rd ed. section 148; 2 Morawetz, Private Corporations, section 748;

There is no fraud, or lack of good faith found, which would invoke an equitable estoppel by which appellees should be charged as partners. The only element which is wanting is an attempt to organize under a valid law, but it had been long acted upon before plaintiff contracted with the Equitable Insurance Company, had received legislative recognition, and had been acquiesced in by the State and appellant had dealt with no other idea than of incorporation, and with no idea of a partnership on the part of any one. Gibbs Estate (1893) 157 Pa. 59; 22 L. R. A. 276; 27 At. R. 383; Ward v. Brigham (1879) 127 Mass. 24; American Salt Co. v. Heidenheimer (1891) 80 Tex. 344; 15 S. W. R. 1038; 26 A. S. R. 743; Finnegan v. Noerenberg, etc Co. (1893) 52 Minn. 239; 38 A. S. R. 552; 18 L. R. A. 778; 53 N. W. R. 1150; Rutherford v. Hill (1892) 22 Ore. 218; 29 A. S. R.; 596; 17 L. R. A. 549; 29 Pac. R. 1038; Merriman v. Magiveny (1873) 12 Heisk. 494; Cannon v. Brush Elec. Co. (1903) 96 Md. 446; 54 At. R. 121.

None of appellees were holders of common stock when the contract of insurance was made, and the only statutory provision for the issuance of preferred stock expressly relieved them from liability; they were entitled to what they had a right to have, valid preferred stock, which in effect only made them preferred creditors; a new contract of personal liability can not be made for them. Richardson v. Carlton (1899) 109 Ia. 515; 80 N. W. R. 532; Safe deposit Co. v. Cahn (1906) 102 Md. 530; 62 At. R. 819; Webster v. Lanum (1905) 137 Fed. R. 376; 70 C. C. A. 56; Buckle v. Iler (1903) 81 N. Y. Supp. 631; Ussery v. Crusman (1898) Tenn. Ch. 47 S. W. R. 567; Scovill v. Thayer, supra; American Tube Works v. Boston Co., supra; Schierenberg v. Stephens, supra.

We think there is no harmful error shown, and the judgment is affirmed.

And afterwards, to wit: On the 14th day of March, 1911, the court being fully advised overrules the petition for rehearing heretofore filed herein by appellant.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed *at the cost of the* appellant *all of which is ordered to be certified to said Court.*

And it is further considered by the Court, that the Appellees *recover of the* Appellant *the sum of* $24.30 *for* their *costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT

I, ~~ED. V. FITZPATRICK~~ J. Fred Grance, *Clerk of the Supreme Court, of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.*

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 14th *day of* March *1911.*

J. Fred Grance, *C. S. C.*

Appellants by this action seek to enjoin the board of commissioners of the county of Hamilton from further proceeding in the improvement of certain highways and parts thereof by grading, draining and graveling the same under certain provisions of an act of the general assembly entitled "An Act concerning highways", and from issuing bonds to pay for the construction of said highways, and to enjoin the county treasurer from selling such bonds and the auditor from placing upon the duplicate any levy of taxes for the payment of the improvement of these highways or for the payment of such bonds. The complaint of appellants consisted in six paragraphs, to each of which appellees herein separately demurred for want of facts. The court sustained each of said demurrers, to which decision and ruling appellants at the time separately and severally excepted. Upon the sustaining of the demurrers to the complaint appellants refused to further plead, but elected to stand by each paragraph of their complaint, and thereupon the court rendered judgment that they take nothing and that each of the appellees recover his costs and charges laid out and expended. From this judgment appellants appeal and assign as errors the ruling of the court in sustaining the demurrers to each of the paragraphs of the complaint.

Each paragraph of the complaint travels upon the theory that the provisions of the statute under which the board of commissioners is proceeding to lay out, construct and improve the several highways are, for the reasons herein advanced, unconstitutional, being violative of certain provisions of the constitution of this state and of the federal constitution. The sixth paragraph of the complaint assails generally the constitutional validity of section 62, together with other sections which form a part of an act of the legislature entitled "An Act Concerning Highways", approved March 8, 1905 (Acts 1905, p. 520; see Sec. 7711 et seq. Burns Statutes 1908). The sections or provisions of the law called in question in this action appear immediately under the caption of "gravel roads by taxation," in said act of 1905.

The sixth paragraph of the complaint, among other things, charges that each of the plaintiffs is the owner of lands and other property situated in Washington township, Hamilton county, Indiana, of the value of more than $10,000.00 which is subject to taxation; that since

the taking effect of said act of 1905 and the amendments thereto, divers petitions have been filed and presented to the board of commissioners purporting to be signed by fifty or more freeholders and legal voters, praying that certain parts of highways described in said petition and being within said township, or on the boundaries thereof, be improved by grading, draining and graveling, as provided for by the provisions of sections 62 to 82 inclusive, and amendments thereto, and praying for the issuing of bonds to pay for said improvements and for the levy of taxes on all property of said township for the payment of such bonds. That said proceedings are numbered and entitled on the records of said board of commissioners respectively. (Here is set out the number and title of the cases as the same stand upon the docket of the board of commissioners.) That said proceedings have been referred to an engineer and viewers who have filed their reports with the county auditor and have found and reported that such proposed improvements of the highways will be of public utility, etc. That the board has let contracts for the construction of such improvements, amounting in the aggregate to more than $40,000.00 and have ordered the issuing of bonds to raise funds to pay for the cost of such improvements; that the board and treasurer of the county are now negotiating for the sale of such bonds and unless restrained by the court will sell the same and the contractor will proceed with the construction of said improvements and the defendants will apply the proceeds of such bonds in the payment of the cost thereof. And the plaintiffs aver and charge that each and all of such orders establishing said improvements and ordering the same to be constructed, as made by said board, were made without jurisdiction or power upon the part of said board of commissioners, and it is further charged that so much of said act and amendments as provide for the making of any such improvements with or without submitting the question to the voters of the township is unconstitutional and void; that unless restrained by the court, said board will issue bonds to pay for the construction of said improvements and the cost of said proceedings, and that the board will annually, for a period of ten years, levy a tax on all the property of the township of Washington, including the lands and property of the plaintiffs, to pay said bonds and interest thereon, and the defendant auditor will place said tax upon the duplicate and the defendant treasurer will proceed to sell the bonds and pay warrants for the construction of said improvements and will

collect said taxes to pay the bonds and interest thereon; that said tax levy will constitute a cloud upon plaintiffs' title to their property and cause them and other taxpayers of the township great damage, etc.

Wherefore they pray that the defendants be enjoined from proceeding further in said matter; that the board be enjoined from issuing and the treasurer from selling any bonds to raise funds for the construction of said improvement; that the board be enjoined from making and the auditor from placing upon the duplicate any levy of taxes for paying for such improvement or for paying any such bonds, and that the plaintiffs demand all other proper relief.

Section 62 (Sec. 7711 Burns 1908) provides: "The boards of commissioners of the several counties of the state of Indiana are hereby authorized and empowered to lay out, establish and cause to be graded, drained and paved with stone, gravel or other road paving material any new highway or part of a highway in any township in said state, or on the line dividing any two or more townships in any county of this state, or to cause to be graded, drained and improved in like manner any public highway already established in any such township or on the line dividing any two or more of such townships, in the manner and upon the conditions hereinafter prescribed."

Some of the material conditions prescribed are embraced in section 63 (Sec. 7712 Burns 1908) as amended in 1907. This section provides: "Whenever a petition signed by fifty or more freeholders and voters of any township in any county in this state, includes any incorporated town or city in such township having a population of less than thirty thousand inhabitants, praying that any public highway or highways within such township shall be laid out, established and improved by grading, draining and paving with stone, gravel or other road paving material, or that any public highway or highways, already established, shall be graded, drained and paved with stone, gravel or other road paving material, or by fifty or more freeholders and voters of two or more townships in such county praying that a public highway shall be laid out, graded, drained and paved on a line dividing such townships, or that a highway on such line shall be graded, drained and paved, shall be addressed to the board

of commissioners of the county in which said township or townships are located, and filed in the ~~auditor~~ office of the auditor of such county, it shall be the duty of such auditor to cause to be published in a weekly newspaper of general circulation, printed and published in said county, and to be posted in not less than three public places within each of the townships named in such petition, and at the door of the courthouse of such county, a notice setting forth a copy of such petition, and the day upon which the same will be presented to such board of commissioners: Provided, That in any township in this state in which there are not to exceed one hundred freehold voters, then upon the petition of a majority of the freehold voters of any such township to the board of county commissioners for the improvement of any road or roads, as required by fifty freehold voters, as in this act provided, then this act shall apply in all such cases and the board of county commissioners shall proceed under such petition and carry out the provisions of this act the same as if upon the petition of fifty freehold voters, as in this act provided."

Section 64 (Sec. 7713 Burns 1908) provides what the petition shall set forth. Section 65 (Sec. 7714 Burns 1908) prescribes certain duties to be discharged by the auditor in respect to publication, etc. Section 66 (Sec. 7715 Burns 1908) provides that any taxpayer of any county named in such petition, or any person or corporation, whose lands or property would be affected by ~~wer~~ the work therein prayed for, may file in writing his objections to the form and sufficiency of the petition. It is further provided by this section that if the petition filed by adjudged by the board to be in due form and sufficient, either in the first instance or after the same has been amended, such board of commissioners shall make an order causing such petition to be spread of record and referring the matter therein prayed for to a competent civil engineer, to be appointed by such board, and two viewers, etc. Sections 67 (Sec. 7716 Burns 1908) and 68 (Sec. 7717 Burns 1908) deal with matters of detail in respect to the proposed improvement.

Section 70 (Sec. 7719 Burns 1908) reads as follows: "When all matters in respect to damages have been determined finally as hereinabove provided, such board of commissioners shall examine the reports and profile made by engineer and viewers, and if they find and adjudge the same to be in due form and sufficient, they shall make an order requiring the

auditor to give notice by publication for three consecutive weeks in a weekly newspaer of general circulation, printed and published in said county, that on a day to be named by the board the polls will be opened at the several voting places in each township named in the petition and report for the purpose of taking the votes of the legal voters thereof upon whether the proposed new highway or highways named in the petition and report shall be laid out, established, graded, drained, and paved, or the public highway or highways named therein shall be graded, drained and paved, and that said petition and report and all records and matters pertaining to said matters may be found at the office of said auditor, and the auditor shall publish such notice as required by the order: Provided, That said publication shall contain the report of the viewers and engineer, excepting the plats and profiles: And, provided, further That if any petition filed as provided in section 62 of this act calls for the building or improvement of a road less than three miles in length connecting at each end with an improved free gravel or macadamized road either within said township or townships or at the boundaries thereof, or connecting a free gravel or macadamized road with a boundary of said township, the board of county commissioners may, in their discretion, if they find said petition otherwise complies with this act, establish and order the construction of said road without submitting the question of building the same to an election of the voters of the township or townships concerned, and when said board shall so decide they shall proceed to have said road constructed in all other respects as if submitted to an election and vote as hereinafter provided: And, provided, further, That should a United States rural mail route pass over any such road of less than three miles as last herein mentioned, or any part thereof, the said board of county commissioners shall, if they find said petition otherwise complies with this act, grant said petition, establish and order the construction of said road without submitting the question of building the same to an election of the voters of the township of townships concerned, and where said board shall so decide they shall proceed to have said road constructed in all other respects as if submitted to an election and voted as hereinafter provided."

Section 71 (Sec. 7720 Burns 1908) provides for holding elections. Sections 73 (Sec. 7722 Burns 1908) and 74 (Sec. 7723 Burns 1908) provide

for the letting of contracts for improving the highways and receiving bids therefor. Section 75 (Sec. 7725 Burns 1908) provides that for the purpose of rasing money to pay for the construction of the improvement the board of commissioners shall issue the bonds of the county, etc. Section 76 (Sec. 7726 Burns 1908), among other things, provides that for the purpose of raising money to meet these bonds and the interest thereon, the board of commissioners shall annually thereafter levy a special tax upon the property of the township or townships, including the towns and cities, if such there be, of less than thirty thousand inhabitants, in such manner as to meet the principal and interest of said bonds as they become due.

Section 77 (Sec. 7727 Burns 1908) declares that all roads built under the act shall be free ~~from~~ of toll and shall be kept in repair the same as other free gravel roads constructed under the other laws of the state are repaired. Section 78 (Sec. 7729 Burns 1908) provides that after the payment of the cost of the construction of the roads, if there be any surplus collected or due on delinquent taxes for that purpose, it shall be transferred to the gravel road repair fund. Section 79 (Sec. 7730 Burns 1908) provides in respect to amendments made in the petition and report of viewers and provides compensation for the engineer. Section 80 (Sec. 7731 Burns 1908) requires the county auditor to make a complete record of all the proceedings had in making the improvement. Section 82 (Sec. 7733 Burns 1908) provides for the report to be made on completion of the work by the workmen and awards to a taxpayer or contractor an appeal to the circuit court on the question of completion of the road.

Principally among the constitutional objections raised and pointed out by appellants as impairing the validity of the statute in question is that it is a special or local law within the inhibition of section 22 of Article 4 of the state's constitution, which declares that "The general assembly shall not pass local or special laws in any of the following enumerated cases; that is to say: * * * For laying out, opening and working on highways, * * * for the assessment and collection of taxes for * * * road purposes."

It is undisputed that the legislation in question relates to and provides for the laying out, establishing and opening of highways

and also requires the assessment and collection of taxes for road purposes. The question then arises, is the statute special or local legislation within the inhibition of the provisions of the constituion to which we have referred? It will be observed that the power or jurisdiction of the board of commissioners of the several counties of Indiana to lay out, establish and cause to be graded, drained, paved, etc., as declared in section 62, depends or is based upon the conditions prescribed in section 63, which section, when read as the legislature intended, prescribes that "whenever a petition signed by fifty or more freeholders and voters of any township in any county of this state," which township has or contains an incorporated town or city having a population of less than thirty thousand inhabitants, "praying that any public highway or highways within such township shall be laid out, established and improved by grading, draining and paving with stone, gravel, etc., * * * shall be addressed to the board of commissioners of the county in which such township or townships are located, and filed in the office of the auditor of such county, it shall be the duty of the auditor to cause to be published, etc."

It is provided under section 66 that on the date designated by the auditor in his published notice for presentation of the petition to the board of commissioners, such board, if it adjudges the petition to be in due form and sufficient, shall make an order causing such petition to be spread of record, and refer the matter of improvement therein prayed for to a competent civil engineer and two viewers, etc.

It is clear that under the provisions of section 63, supra, the authority or power of the board of commissioners to entertain a petition and inaugurate and carry forward the laying out, establishing and improving of a public highway within the township is limited to or based upon the condition that a petition for such improvement, signed by the prescribed number of freeholders and voters residing within a township which contains within its boundaries an incorporated town or city having a population under thirty thousand inhabitants. These requirements of the law manifestly exclude first, every township which does not have an incorporated town or city with a population of under thirty thousand inhabitants; second, every and all townships which have no incorporated

town or city whatever. All townships so situated are excluded as to them and as to them the law in question has no application.

Section 23 of Article 4 of the constitution may be said to emphasize what the provisions of section 22 of the same article were intended to bring about in respect to laws enacted by the legislature upon cases or subjects therein enumerated. Section 23 declares that "in all cases enumerated in the preceding section and in all other cases where a general law can be made applicable, all laws shall be general and uniform operation throughout the state." That this requirement of the constitution in the enactment of the statute in question has been violated is certainly beyond controversy.

What material difference is there between a township having an incorporated town or city of less than thirty thousand inhabitants and one containing a town or city with a population of say one or two in excess of thirty thousand ? The inquiry then arises, what reason, other than an arbitrary one, had the legislature for classifying the townships of the state upon the basis of their containing an incorporated town or city of less than thirty thousand and why should other townships having substantially the same population be placed in a separate and different class? Can it with any color of reason be claimed that townships, wherein there is an incorporated town or city with a population of less than thirty thousand, afford or furnish a reasonable basis for making a law for the laying out, establishing and improving of public highways applicable alone to them, to the exclusion of all other townships which may have a town or city containing a population in excess of thirty thousand? Certainly such classification is not a natural or reasonable one. It cannot be said to inhere in the subject matter of laying out, establishing and improving public highways. The classification in question, when considered with reference to the subject matter, manifestly has only an arbitrary or artificial basis which has been frequently condemned by the decisions of this court.

In the appeal of the Town of Longview v. City of Crawfordsville 164 Ind. 117, this court said: " It is contended that, as said act applies to all cities having between six thousand and seven thousand population according to the last preceding census, such classification takes it out of the category of special legislation and makes it a general law.

In jurisdictionswhere classification is permitted by the organic law, it is settled that the same, in order to furnish a basis for legislation that will exempt it from the charge of being special, must be a classification which, in the nature of things, suggests and furnishes a reason for and justifies the making of the class. The reason for the classification must inhere in the subject-matter, and the same must be natural, not artificial. Under this rule, neither mere isolation nor arbitrary selection is proper classification.

In School City of Rushville v. Hayes, 162 Ind. 193, we said: "Can it be said that cities and towns having substantially the same population should be placed in different classes, and each class governed by a different set of laws? What reason requires that such distinctions should be made? Why should cities having a population not exceeding 4,545 nor less than 4,540 be placed in a separate class from cities having a population of not more than 5000 nor less than 4,000? It is not possible that the political necessities of one of these classes founded on population alone could be different from those of the other. Why should the school corporation of a city of not more than 4,545 inhabitants nor less than 4, 540 be authorized to issue bonds for the support of its public schools without submitting the question of the expediency of incurrin the debt to the electors of the city, while the school corporation of every other city in the State incorporated under the general law is required to decide such question by a popular vote? In what respect does the one corporation differ from all others? The mode of classification furnishes a conclusive answer to the question. It consists solely in a trifling difference in population."

That the statute in controversy is special or local in its nature and character and violates the provisions of section 22 of Article 4 of the constitution, to which we have hereinbefore referred, is, under our decisions, a well settled proposition. See Board, etc v. Spangler, 159 Ind. 575; Board, etc. v. State ex. rel. Brigham, 161,Ind 616; Town of Longview v. City of Crawfordsville, supra; and authorities therepited; School City of Rushville v. Hayes, supra, and authorities there cited; Bedford Quarries Co. v. Bough, 168 Ind. 671, and authorities there cited; Armstrong v. State, 170 Ind. 188; Kraus v. Lehman, 170 Ind. 408 and authorities there cited.

See also the following authorities:

State, ex. rel. v. Parsons, 40 N. J. L. 1; Lodi v. State, 51 N. J. L. 402; State. ex rel. v. Hamner, 42 N. J. L. 432; State v. Loomis, 115 Mo. 307; Gulf, etc R. Co. v. Ellis, 165 U. S. 150; Durkee v. City of Janesville, 28 Wis. 464; 30 Am. and Eng. Ency. Law. (2nd Ed.) pp. 1238, 1239.

Various other objections are urged against the constitutional validity of the statute, but as the law must be condemned for the reasons which we have herein stated, we pass these without consideration.

We conclude, and so hold, that section 63 of the act in qudstion (Sec. 7712 Burns 1908) is unconstitutional and therefore void. Excepting section 81, and it may be said that all of the sections of the act in controversy which appear and follow each other under the caption "gravel roads by taxation", from section 62 to 82 inclusive, depend upon said section 63 and are so mutually connected and associated therewith that under the decisions of this court each and all must fall or go down together. State ex rel v. Denny, 118 Ind. 449; Griffin v. State ex. rel. 119 Ind. 520; State ex rel W. Blend, 121 Ind. 514; Board, etc. v. State, ex rel. 161 Ind. 616.

The statute herein involved is but a reenactment substantially of the provisions of the act of 1893 (Acts 1893 p. 196). This latter act may be said to be open to the same constitutional objections which invalidate the act in this case. The act of 1893 was before this court fro consideration in the case of Board, etc. v. Harrell, 147 Ind. 500, but its constitutional validity in that case was not assailed upon the ground that it was special or local legislation within the prohibition of section 22 of Article 4 of the Constitution. That point was not raised or considered in that appeal neither was it raised or considered in the decision in Board of Com. etc v. Spangler, supra.

It follows that the trial court erred in sustaining the demurrer to the several paragraphs of the complaint. JUDGMENT REVERSED and cause remanded for further proceedings not inconsistent with this opinion.

Hadley, J. not voting.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things at the cost of the all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the recover of the the sum of for costs and charges in this behalf expended

THE STATE OF INDIANA,
SUPREME COURT

I, ED. V. FITZPATRICK, Clerk of the Supreme Court, of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 24th day of November 190[illegible]

Edward V. Fitzpatrick, C. S. C.

Pet R.

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1910.

On the 24th *day of* May, *1910, being the* 2nd *Judicial day of said May Term, 1910.*

No. 21675

HON. JOHN V. HADLEY, C. J.
HON. LEANDER J. MONKS,
HON. QUINCY A. MYERS,
HON. JAMES H. JORDAN,
HON. OSCAR H. MONTGOMERY, } JUSTICES.

Hon John V Hadley

IN THE CASE OF

Thomas Madden, Son and Company.

vs.

Ralph Wilcox, by his next friend Lydia A. Gulick

APPEALED FROM THE Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Montgomery, J.-

This cause was transfefred from the Appellate Court under the provisions of the second ~~el~~ subdivision of section 1394 Burns Statutes 1908.

This is an action for a personal injury sustained by a servant on account of alleged negligence of the master.

The errors assigned and relied upon for a reversal of the judgment are, the overruling of appellant's motion to make each paragraph of the complaint more specific, its demurrer to each paragraph on the ground that the facts therein alleged were insifficient to constitute a cause of action, and its motions for judgment on the interrogatories and the answers of the jury thereto, notwithstanding the general verdict, and for a new trial.

The complaint is in two paragraphs, and a condensed statement of the allegations of the first paragraph is as follows:-

That appellant is a corporation owning and operating a factory in the City of Indianapolis, and that on February 8th 1905, appellee was in its employ and had been for six months, and under his employment had been and was engaged in nailing or wiring springs on couches, lounges, and davenports; and, was than a minor under sixteen years of age, inexperienced in mechanical labor, and ignorant of the dangerous character of a tow-picker, and by reason of this youth and inexperience unable to comprehend and judge of the dangers attendant upon working about a tow-picker; that on said date appellant, well-knowing that appellee was young, inexperienced in the use of machinery, and without capacity and judgment to do the work to which he was about to be assigned, by and through one William Proctor, its general foreman of the upholstering department, whose orders appellee was bound to obey, negligently ordered and directed appellee to leave his usual and ordinary service of wiring srpings, and to operate and work at a machine commonly called a tow-picker; and negligently failed to give him any warning of the attendant dangers, or sufficient instructions as to how to operate and work with said machine; that said tow-picker was a machine through which tow was run preparatory for use in upholstering furnisture, and contained sharp steel teeth, knives or bits fastened to a journal, with belt-pully, cogwheel, and other attachments, which were made to revolve with great force and rapidity by steam power over which appellee had no control.

That while appellee was working at and about said machine, as ordered and directed, and engaged in removing tow from the rear thereof, and in the exercise of due care, his right hand was, by the moving tow and the force of the machinery, suddenly drawn into said machine and against the revolving teeth, knives and bits, and the fingers and thumb of his right hand cut and torn off, all on account of appellant's negligence, as aforesaid, in ordering appellee to leave his usual and ordinary empolyment and to work with said machine, without warning or instruction, well knowing his youth, inexperience, lack of capacity and judgment.

The second paragraph of complaint is substantially the same as the first, except that there is no averment that appellee was working outside the scope of his employment, at the time of receiving his injury.

The grounds of appellant's motions to make each paragraph of the complaint more definite and certain were as follows:-

"1st. That he state fully and definitely in what manner the alleged failure of the defendant to warn and instruct the plaintiff caused his injury, and what the danger was as to which he should have been instructed.

2nd. That he state fully and definitely what he was doing when his hand was drawn into the machine.

3d. That he state fully and definitely what caused the tow to be drawn into the machine, if it was so drawn in.

4th. That he state fully and definitely how the force of the machine caused his hand to be drawn in.

5th. That he state fully and definitely how far his hand was drawn in from the opening in the rear of the machine.

6th. That he state fully and definitely how the accident to him happened or was caused."

This motion in the main calls for mere evidentiary details, which are not required to be stated in a pleading, but if desired may be obtained by other proceedings than a motion to make the complaint more specific. The facts are stated with sufficient clearness and fullness to enable a person of ordinary understanding to comprehend the ground of complaint made, and the manner in which the ~~accident~~ accident occurred. It cannot be plausibly urged that appellee should have described more minutely the dangers incident to the operation of appellant's machine, of which he alleges he was ignorant, and which he was unable to understand

and appreciate but which hazards and dangers were necessarily within appellant's knowledge. Knickerbocker Ice Co. v. Gary, 171 Ind. 395, 84 N. E. 343; Louisville etc R. Co. v. Crunk, 119 Ind. 542, 12 Am. St. Rep. 443. Indiana Bicycle Co. v. Willis, 18 Ind. App. 525. Cox v. Providence Gas Co. 17 R. I. 199; Cohaake v. Eagle etc Can. Co. 135 Cal. 485. Schneider v. Wis. Cnet. Co. 81, Wis. 306; Louisville etc Co. v. Jones 83 Ala. 380; Goshen etc Turnpike Co v Sears, 7 Conn. 86.

The court did not err in overruling appellant's motion to make each paragraph of the complaint more definite and certain.

It is next urged that each paragraph of the complaint is insufficient and appellant's demurrer thereto should have been sustained. It appears from the answers of the jury to special interrogatories that the verdict is founded upon the first paragraph of complaint, and hence it will not be necessary to determine the sufficiency of the allegations of the second paragraph.

The gist of the complaint is that appellee was employed in appellant's factory to nail springs on couches, lounges, and davenports and was engaged in that work; that he was under sixteen years of age, inexperienced in the use of machinery, and incapable of comprehending the dangers attending the opration of the machine mentioned, which facts were well known to appellant, and that with such knowledge appellant negligently ordered him to leave his customary work, and to operate and work about a machine containing revolving knives and teeth propelled by steam power by means of belt pulley, cog wheels, and gearing, and negligently failed to give him any warning of danger, or instruction in regard to the use of the machine.

These allegations certainly constitute a cause of action. The service in which appellee was engaged under his usual employment was simple and comparatively free from danger of serious personal injury. It is averred that he was taken from this service and assigned other duties outside the scope of his employment. This was a breach of appellant's duty. It is also charged that he was young and inexperienced and was assigned new and strange duties without warning or instruction with respect to the performance of the same, and this was a breach of duty. It is further alleged that he was not only young and inexperienced, but that his youth and inexperienced were such that he was incapable of appreciating the danger to himself from the use of the machine described,

and that appellant then and there knew these facts. If this allegation is true, and it must be so regarded in this connection, then appellant's conduct in requiring him e to operate the machine, under the circumstances was little short of criminal.

The insistence of appellant's counsel is that there is no showing in the complaint that the tow-picker was a dangerous machine or that in its operation appellee was exposed to any danger against which he should have been warned. The court judicially knows that a machine, consisting of a cylinder equipped with steel knives, or teeth, revolving rapidly, is a more dangerous instrument for an inexperienced boy to operate, than is a tack hammer. It appears that this machine was equipped with belth pulley, cog wheel and gearing, and the statutes of this state in classifying manufacturing establishments as hazardous places for the employment of children, have specifically named "cogs, gearing and belting" as dangerous machinery. It was not required that appellee allege, in terms, that a tow-picker of the description given, in use in a factory was a dangerous machine to a youthful and inexperienced operative. It is manifest that by the transfer to the tow-picker appellee was required to encounter greater risks and perils than those surrounding him in his usual employment. A child under fourteen years of age is, in effect, declared by law to be incapable of incurring the risks incident to the operations of a manufacturing establishment, and if employed therein in violation of the statute and injured in consequence, he is not chargeable either with assumption of risks or contributory negligence.

Inland Steel Co. v. Yedinak, 172 423, 87 N. E. 229;

Appellee could not be held to an assumption of unknown risks while at work in pursuance of orders, outside the scope of his employment, and if he was lacking in mental capacity, as alleged, could not be held accountable for not avoiding patent conditions which to mature minds might appear obviously dangerous. In disposing of the question of proximate cause in the Yedinak case, this court said:- "The state has said in positive terms that employers must not take children under fourteen years of age into the service of their factories and subject them to the danger of being mangled or killed by machines propelled by the powerful agencies of steam or electricity. This mandate, it is alleged, appellant disobeyed, and appellee was injured in the mill and by the agencies against which the law sought to protect him. The connnection be-

tween the unlawful employment and the injury in this case is as direct as cause and effect, and brings appellant within the operation of the statute."

So in this case, the transfer of an inexperienced and incompetent boy from an employment free from peril to life and m limb, and requiring him without warning or instruction to operate a powerful machine inherently dangerous, knowing his inexperience and want of understanding, was negligence and constituted the proximate cause of his injury; and the demurrer to the complaint was rightly overruled. Brazil Block Coal Co. v. Gaffney, 119 Ind. 455; Brazil Block Coal Co.v. Young, 117 Ind. 523; Binford v. Johnston, 82 Ind. 426; Hill v. Gust, 55 Ind. 45; Noblesville Foundry Co. v. Yeaman, 3 Ind. App. 521; Hickey v. Taaffe, 105 N. Y. 26; Coombs v. New Bedford etc Co. 102 Mass. 572; Sullivan v. India Mfg. Co. 113 Mass. 396;

In answer to special interrogatories, among other facts, the jury found:- that appellee on his own application, was employed by appellant only to learn upholstering, and worked several months in the upholstering room; that the tow-picker was in a passage way near the upholstering room, but tow-picking was no part of the trade of upholstering; that appellee was employed to do work as directed in the line of upholstering, and it was the duty of the operator of the tow-picker to take tow from the rear end of the machine; that at the time of the accident the spout of the tow-picker was full of broken straw, and appellee's hand became entangled in the tow in front of the spout and was drawn into the cylinder, and that the injury occurred because appellee had not been properly instructed in regard to operating the machine.

These findings are clearly in harmony with the allegations of of the complaint and consistent with the general verdict. Other findings were more favorable to appellant, but they were not contradictory of these, which forme the basis of recovery. It follows that the court did not err in overruling appellant's motion for judgment in its favor upon the interrogatories and answers thereto, notwithstanding the general verdict.

A new trial is axed on the grounds that the court erred in admitting, and refusing to strike out, certain evidence; in refusing to set aside the submission and discharge the jury for misconduct of counsel in argument; and in the giving of instructions; and, because the verdict

is not sustained by sufficient evidence and is contrary to law.

Appellee asked a competent witness what would happen, if when the room was filled with tow and the spout was filled with tow back of the cylinder, the operator should strike his hand near the outer margin of the spout. Objection was made at the time, and urged, on the principal ground that the question called for matter not within the issues. This objection is not tenable. The complaint alleged that appellee's hand was drawn into the cylinder by the tow and the force of the revolving machinery, and this question was evidently intended to elicit information explanatory of the manner in which the accident happened and supportive of appellee's theory of the occurrence.

Counsel for appellee desiring to exhibit evidence of mental suffering on his part and referring to the time of the accident, asked the witness Charles Lund this question: "What did he say, what expression did he make?" Appellant objected on the ground that it was a leading, called for an opinion, did not tend to support any issue and was self serving. The objection was overruled, and the answer was that appellee said - "My God, what will my poor mother do." Appellant moved to strike out the answer for the reason that it was not a proper way to show mental suffering; and this motion was overruled.

The question was clearly competent; and, the propriety of the answer is not challenged as not responsive, or as not in substance indicative of that mental pain and anguish which necessarily accompany a physical injury and for which compensation may be had at law. Appellant's insistence was and is, that exclamations of pain are in the nature of self serving declarations, and should not be received as evidence. The witness testified that appellee came running out of the tow room "only a second or two" after the injury and made the exclamation above given.

The rule is general and well settled that where the bodily or mental feelings of a person are to be proved, the natural exclamations and expressions of such person, which are the spontaneous manifestations of pain and naturally flow from the pain being suffered by him at the time are competent and original evidence. Indianapolis ~~etc~~ St. R. Co. v. Schmidt, 163 Ind. 360; Hancock County v. Leggett, 115 Ind. /544. Cleveland etc R. Co. Newell, 104 Ind. 264. Carthage T. P. Co. v. Andrews 102 Ind. 138; Peett v. Beard, 86 Ind. 104; Town of Elkhart v. Ritter 66 Ind. 136. See also note to Federal Betterment Company v. Reeves, 77 Kan. 111, 15 Am. & Eng. Cases 796, 799.

In the closing argument to the jury, appellee's counsel referred to his own deceased sister, whose death had resulted from an injury to the hand caused by a cutting box. Appellant's counsel objected to this matter and requested that the same be withdrawn and the jury admonished to disregard it. Thereupon appellee's counsel withdrew the remarks to which objection had been made and the court formally withdrew the same from the consideration of the jury and admonished them as requested.

Appellant's counsel then moved to set aside the submission and discharge the jury for alleged misconduct of counsel based on this incident. This motion was denied and appellant insists that this ruling was error. Conceding that counsel transgressed the bounds of legitimate discussion, the action taken by the court was sufficient to correct any improper influence that might otherwise have resulted and no sufficient ground remained to justify the granting of another trial.

Complaint is made of the giving of instruction number 11 at the request of appellee. It is argued that this instruction at went outside the issues. The instruction substantially followed the allegations of the complaint, and the facts sought to be established by appellee's evidence, and was within the issues. In our view of the law a recovery could be justified without a finding of all the facts embodied in this instruction, and appellant has no just ground of complaint from the giving of the same.

Objection is urged to instruction number 12 given at appellee's request and relating to the measure of damages, for the reason that reference is not expressly made therein to the evidence. This court has repeatedly held such an objection without force and that -" No juror of average intelligence could fail to understand the court directed him to be guided by the evidence." City of Indianapolis v. Scott, 72 Ind. 196; Pittsburg, etc R. Co. v. Sponier 85 Ind. 165; Poland v. Miller, 95 Ind. 387, 391; Louisville etc R. Co. v. Falvey, 104 Ind. 429; Ohio, etc R. Co. v. Stein, 140 Ind. 61, 70. Pittsburg, etc R. Co. v. Collins, 168 Ind. 467, 475.

This instruction further advised the jury, that "in computing ~~the~~ damages it is proper to consider," the expense incurred for medicines and medical treatment, if such expenses were incurred." This part of the instruction is condemned for the reason that there was no evidence that any expenses for medicines and medical service were incurred, and in support of this contention the case of American Car etc Co. v. Clark 32 Ind. App. 644, is cited. That case was expressly overruled in the case of Indianapolis etc Tr. Co. v. Henderson 39 Ind. App. 324, 330, 331.

This instruction was not mandatory in its requirements but the recover as to the medical items was conditioned upon the incurrence of such expenses. It is plain, therefore, that if appellee wholly failed to introduce any evidence upon this subject, the instruction was harmless in this respect. Ohio. etc R. Co. v. Stein, 140 Ind. 61, 70. Lytton v. Baird, 95 Ind. 349, 357.

It can serve no useful purpose to set out a summary of the evidence, and it will suffice to say that the verdict is fully sustained thereby in every material respect. Appellee was unable to explain at the time just how his hand got into the machine, but the conditions existing were fully shown in evidence, and the fact that when tow was banked up back of the machine, slight agitation would cause it to be drawn in and again pass around with the cylinder was established, and it was shown that prior to this time a man's hand had been drawn into the machine and cut, as appellee charged his hand to have been in this instance. The jury was warranted in finding that the accident occured as charged in the complaint, and was due to appellant's negligence as alleged. The motion for a new trial was correctly overruled.

The judgment is affirmed.

And afterwards, to-wit: On the 22d day of November, 1910, the Court being fully advised overruled the petition for rehearing heretofore filed herein by appellant and modified the opinion heretofore rendered.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed *at the cost of the* appellant

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the appellee *recover of the* appellant *the sum of* — #46.55 — *for his costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT

I, ED. V. FITZPATRICK, Clerk of the Supreme Court, of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 25th *day of* November *1910.*

Edward V. Fitzpatrick, C. S. C.

TRANSFERRED FROM THE APPELLATE COURT UNDER
SECTION 1337u BURNS 1901, ACTS 1901, p. 590.

Appellee sued appellant to compel an entry of satisfaction of a mortgage held by appellant and to recover the penalty and attorney's fees provided for by Section 1105 Burns 1901, Acts 1893, p. 64.

A trial of said cause by the court resulted in a special finding of facts and conclusions of law thereon and final judgement in favor of appellee for the penalty and attorney's fees under said section and a decree for the satisfaction of said mortgage.

It appears from the special finding that, in 1899, Douglass Hall sold and conveyed certain real estate in Hendricks County to appellee who assumed and agreed to pay, as a part of the purchase money, a mortgage thereon executed by said Hall and wife to appellant, to secure five promissory notes. Said mortgage had been duly recorded within 45 days after its execution in the proper mortgage record in the Recorder's office of Hendricks County, but one of the promissory notes was stated in said record to be $1,308.00 instead of $1380.00, as was stipulated in said mortgage.

Appellee purchased said real estate believing, in good faith, that said promissory note secured by said mortgage was only for $1308.00 as shown by the record thereof, and had no notice or knowledge that it was in fact given for the sum of $1,380.00 and that the mortgage so stated.

When said notes became due, the amount thereof, counting one of said notes at $1,308.00 as shown in the record of said mortgage, instead of $1380.00 as shown in the mortgage, was paid to appellant by appellee who requested appellant to release and satisfy said mortgage of record, which was refused. At this time, appellee was informed that said mortgage, as to that note, was for the sum of $1380.00 and not for $1,308.00 as the same had been recorded. This was the first knowledge that appellee had that the same was for any other or greater sum than $1,308.00; that a reasonable attorney's fee for appellee's attorney is $25.00

Appellant only challenges the correctness of the second conclusion of law under which appellee recovered a penalty of $25.00 and an attorney's fee of $25.00.

It is settled in this State that, under the facts found, appellant's mortgage was good against appellee for the amount shown by the record, and not for the amount stipulated in the mortgage. Gilchrist v. Rough, 63 Ind. 576; Johnson v. Hess, 126 Ind. 298, 315-317; Lowry v. Smith, 97 Ind. 466, 467-468; State v. Davis, 96 Ind. 538, 544.

Section 1105 Burns 1894, Acts 1893, p. 64, provides, "That any person being the owner or holder of any mortgage recorded in the State of Indiana * * * who shall refuse, neglect or fail to release such mortgage of record when the debt or obligation which such mortgage was made to secure, shall have been paid or discharged and shall have been requested to release the same shall forfeit and pay to the mortgagor or other person having the right to demand the release of such mortgage the sum of twenty-five dollars ($25.00) which sum may be recovered by suit in any court of competent jurisdiction, together with reasonable attorney's fees incurred in the collection of said penalty."

It has been held by the Appellate Court in Southern etc. Association v. Doyle, 26 Ind. App. 102, citing Reese v. Western Union Tel. Co., 123 Ind. 294; Western Union Telegraph Co. v. Axtell, 69 Ind. 199; Rogers v. Western Union Tel. Co., 78 Ind. 169, that said section was a penal statute, and must be strictly construed. This decision was approved by this court in Studabaker etc. Co. v. Monden 64 N.E. 594.

It will be observed that the penalty and attorney's fee can be recovered under said section only when the debt or obligation which said mortgage was made to secure has been paid.

The special finding shows that the mortgage was made to secure an obligation for $1,380.00 and that only $1,308.00 thereof was paid by appellee. As the special finding does not show that the obligation which said mortgage was made to secure was paid, but on the contrary, shows it was not paid, it follows that appellee was not entitled to recover the penalty and attorney's fees provided for in said Act of 1893, supra. The second conclusion of law was, therefore, erroneous.

The judgement for said penalty and attorney's fees is reversed with instructions to restate said second conclusion of law, and to render judgement accordingly.

Hadley, C.J. took no part in the decision of this cause.

Russel B. Watkins died in December, 1894, at Montgomery, County, Indiana, leaving appellee, Caroline Watkins, his widow, and two daughters surviving him. Daniel Lewis was appointed administrator of his estate, and filed in the Montgomery Circuit Court a petition to sell two hundred acres of real estate, which the petition alleged was all the real estate owned by said decedent at the time of his death. The widow and children were made defendants to said petition, to which the widow, Caroline Watkins, filed an answer. The widow also filed a cross-complaint in which she alleged that she was the owner in fee simple of one hundred acres of said real estate, and asking that her title thereto be quieted, etc. The court made a special finding of facts and stated conclusions of law thereon. The court found that said two tracts of real estate were encumbered by mortgages in the execution of which the widow, Caroline Watkins, had joined with the deceased, her husband.

The court stated as a conclusion of law, in substance, that Caroline Watkins was the owner ~~of~~ in fee simple of the one hundred acres of land described in her cross-complaint, as against the heirs of said decedent but as against the creditors of the decedent she was estopped from setting up any claim or right to the same, and that the whole two hundred acres described in the petition, except the interest therein which said Caroline Watkins inherited under the law as widow of said deceased, was liable and subject to sale to pay the indebtedness of said deceased. The court rendered judgment upon said special finding that the deceased at the time of his death owned one hundred acres of said real estate, as described in the pleadings, and that the widow, Caroline Watkins, was the owner of the undivided one third thereof, and that said Caroline Watkins was the owner in fee simple of the other one hundred acres described in her cross-complaint, subject to certain liabilities set forth in the judgment, and, subject only to these provisions, that the title of said Caroline Watkins be quieted in her as to all parties to said suit, and all ~~xxxxxx~~ persons who may claim under, by or through them. The court entered an order for the sale of the said first mentioned one hundred acres, and that all the debts and expenses of administration that may remain unpaid after the application of the personal estate of $1150.00 be paid out of the proceeds of such sale, and the remainder, if any, be paid

over to said Caroline Watkins as her absolute property. No order was entered for the sale of the one hundred acres the title to which was quieted in said widow. The one hundred acres ordered sold, was sold by the administrator for cash, and the sale reported and the deed made to the purchaser. Out of the proceeds of said sale the administrator of said estate paid the two mortgages in the execution of which said widow had joined. Afterwards, appellee, the widow, brought this proceeding against appellant, the administrator of said estate, in the Montgomery Circuit Court, and asked that said administrator be ordered to pay her one third of the gross proceeds of the sale of said real estate.

Appellant's demurrer to the petition for want of facts was overruled. An answer in several paragraphs was filed by the appellant, to which appellee filed a reply. On the trial of said cause the court found for appellee, and ordered that appellant pay to appellee, out of the funds of said estate in his hands , the one third of the gross proceeds received for said one hundred acres of real estate, of which said appellee was the owner of the undivided one third.

It is settled law in this State that the interest a widow inherits in the real estate of which her husband dies seized, as against creditors, is free from all demands of such creditors, and that an order of court to sell such interest to pay thedebts of the estate, unless secured by a mortgage or other lien o n said real estate which binds her interest therein, and the sale thereof, are absolute nullities, and if such interest is sold the purchaser takes no title thereto.

Wendell vs. Trotter, 127 Ind. 332;
Roberts vs. Lindley, 121 Ind. 56;
Hutchinson vs. Lemcke, 107 Ind. 121;
Peper vs. Zahnsinger, 94 Ind. 88;
Mathews vs. Pate, 93 Ind. 443;
Compton vs. Pruitt, 88 Ind. 171;
Armstrong vs. Cavitt, 78 Ind. 476;
Unfried vs. Heberer, 63 Ind. 67;
Elliott vs. Frakes, 71 Ind. 412;
Hanlon vs. Waterbury, 31 Ind. 168;
§§224, 225, 227, 228 Henry's Probate Law.

If, however, the widow consents to such sale by the administrator under order of the court and afterwards receives her share of the purchase money, she would be estopped from disputing the validity of the sale.

Pepper vs. Zahnsinger, supra;
Smock vs. Reichwine, 117 Ind. 194.

There are only two cases in which the court having probate jurisdiction has the power to order the sale of the whole real estate of a decedent, including the widow's interest, on a petition of the executor or administrator, to sell the decedent's real estate to pay the debts of the estate, and these are provided for by §§2503, 2504, Burns' R. S. 1894 (§§2348 , 2349, Horner's R. S. 1897.)

§2503 (2348) supra, provides that when it is reported by the commissioner appointed to make partition that the widow's interest cannot be set off to her in severalty without damage to the owners, then the court may direct the whole of the real estate, including the widow's interest, to be sold by the executor or administrator, and the full share of the widow in the gross proceeds of the sale paid to her on confirmation of the sale. Under §2504 (2349) supra, if the interest of the widow in the real estate of the decedent be liable to sale to satisfy a lien on such real estate, the court has the power in proceedings for the sale of real estate for the payment of debts, to direct the sale of the whole thereof, including the widow's interest, to discharge such lien and to order the payment to the widow of her share or such part of her share of the gross proceeds of the sale as shall remain after satisfying such lien.

Under each of these sections the widow's interest may be sold by order of court whether she consent or not, but when the same is sold under the provisions of §2503 (2348) supra, her full share out of the gross proceeds must be paid to her, and when the same is sold under § 2504 (2349) supra, her full share of the gross proceeds must be paid to her if so much remains after satisfying the liens, if not, then what remains after satisfying the same must be paid to her. But in either case such share is no more liable for the payment of the debts of the deceased, except the liens, when sold under §2504 (2349) supra, than was

the land out of which the same was derived. All the rules stated in regard to the absence of power in the court to order the sale of the widow's interest in her deceased husband's lands apply with equal force to the power of the court to dispose of her share of the proceeds after the sale is made under §§2503, 2504, (2348, 2349) supra.

When the sale is made under §2504 (2349) supra and the liens which bind her interest are satisfied, she is entitled to her share of the gross proceedsof the sale, if so much remains, and if not, then she is entitled to all that remains, and any order of the court directing a contrary disposition of her share of the proceeds is void.

In his case it was the duty of the administrator to pay out of the $115 0.00 personal property in his hands, enough of the liens on the hundred acres of land sold so that the widow's share of the gross proceeds of the sale would remain after the satisfaction of said liens, to be paid to her. Shobe vs. Brenson, (Last term,) 47 N. E. 625. And under the rule in this state, the order of the court that any part of appellee's share of the gross proceeds of the sale of said hundred acres of land be applied to the payment of any debts or cost of said estate, except the satisfaction of the two mortgages thereon, was void and not binding on any one. The only jurisdiction given the court was to order the sale of the land, including the widow's interest, and that the liens binding her interest be paid, and the remainder was beyond the court's jurisdiction to dispose of except to order it paid to her. Any other order was void.

It is urged that the complaint does not show that the appellee's interest as widow in said one hundred acres was sold by the administrator, and that if it was not sold she is not entitled to any part of the proceeds of said sale. The complaint sets up facts showing that the court was authorized by §2504 (2349) supra, to sell one hundred acres of land, including the widow's interest therein, to pay mortgage liens there on in the execution of which appellee had joined. We think it sufficiently appears that said real estate, including appellee's interest as widow in said real estate, was sold. The case of Compton vs. Pruitt, 88 Ind. 171, cited by appellant is not, therefore in point.

What we have said disposes of the errors assigned.

Finding no available error in the record, the judgment is affirmed.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed *at the cost of the* Appellant

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellee *recover of the* Appellant *the sum of* $24 45 *for her costs and charges in this behalf expended*

THE STATE OF INDIANA, }
SUPREME COURT. }

I, ALEXANDER HESS, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 19th *day of* May *1898.*

Alex. Hess, C. S. C.

Per R.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1908.

On the 5th *day of* January, 1909, *being the* 38th *Judicial day of said November Term, 1908.*

HON. JAMES H. JORDAN, CHIEF JUSTICE.
HON. OSCAR H. MONTGOMERY,
HON. JOHN V. HADLEY,
HON. LEANDER J. MONKS,
~~HON. JOHN H. GILLETT,~~ } JUSTICES.
Hon. Quincy A. Myers,

No. 21,161.

IN THE CASE OF

Indianapolis & Western Railway Company.

vs.

Rebecca Branson, et al.

APPEALED FROM THE

Hendricks Circuit

COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by Jordan, J. Hadley, J. not participating.

1909- June 3rd. Petitition for Rehearing Overruled.

Appellant is an incorporated electric interurban railway company, seeking to condemn and appropriate a right of way for its railroad through Hendricks County, Indiana. In fact this cause arises out of the same condemnation proceedings involved in the appeal of the Indianapolis and Western Railway Company v. Charles B. Hill, et al., No. 21160, decided at this term. Appraisers were appointed to assess the damages resulting to [illegible]. The evidence in the case establishes, among others, the following facts: On the south side of appellee's farm, which embraces seventy-seven acres, and out of which lands appellant's right of way is appropriated, there is a public highway running east and west. Between this highway and the south line of her farm is located the right of way of the Vandalia Railroad Company, over which said Company has for many years propelled by steam both passenger and freight cars. The dwelling house of appellee, wherein she and her husband and the members of her family reside, is about two hundred feet north of the line of appellant's railroad.

2.

By instruction number two appellant requested the court to advise the jury to the effect that, in assessing damages, if any, to the residue of defendant's land, it would not be warranted in anticipating and taking into consideration any danger attendant upon ingress or egress to and from said land arising out of any negligence on the part of either appellant company or the defendant or any members of defendant's family. The court refused so to instruct. No instructions given by the court referred to or advised the jury upon this proposition. In view of the evidence given on behalf of appellee, we are of the opinion that the court erred in its refusal to so advise the jury. It is provided by clause three of section six of the act of 1905 (Acts 1905, p. 62), which deals with the assessment of damages: "Third. The damages to the residue of the land of such owner or owners to be caused by taking out the part sought to be appropriated." The provision of section six of the statute is that it is not only the value of the land sought to be appropriated which is to be determined, but also the damages to the remainder of the particular tract of land caused by the part thereof appropriated, or in other words, the material inquiry is in regard to the actual depreciation of the market value of the land not taken caused by the carving out thereof of the portion actually appropriated. In determining the question of the depreciation of the market value of the residue of the land, the jury must be confined to the consideration of proper evidence. It will not be permitted to anticipate damages of any character which will not certainly, but only possibly, result in the future from the appropriation of the railroad. It is well affirmed by the authorities that damages which may in the future arise from the happening of some possible but uncertain event cannot be considered. These are too remote, speculative and uncertain and may be said to rest upon mere conjecture. Such uncertain or speculative matters are not proper to go to the jury as evidence relative ~~the~~ to the depreciation of the market value of the remaining lands. Neither do they afford a proper basis for a witness to take into consideration in forming his opinion upon such depreciation. To this class of speculative, uncertain and remote damages may be assigned the peril or danger to which the owner of the ~~m~~ remaining land and the members of his family may be subjected, or exposed, in crossing the track or tracks of the railroad located upon the right of way condemned. Such peril or danger is said to rest upon or be due to the negligence of the company in the future operation of its cars or trains over the right of way in controversy. It cannot be assumed that the railroad company will, in the future operation of its road and the cars thereover, be guilty of such negligence as will result in personal injury to the owner of the land or to any member of his family. The principles or rules which sustain the above propositions are well settled. Chicago, etc. R. Co. v. Hunter, 128 Ind. 213; Indianapolis, etc. Tr. Co. v. Larrabee, 168 Ind. 237, and authorities there cited; Indianapolis, etc. R. Co. v. Hill, No. 21160, at this term; Conness v. Indiana, etc. R. Co., 193 Ill. 464; Chicago Elec. etc. Co. v. Mawman, 206 Ill. 182; Illinois, etc. R. Co. v. Freeman, 210 Ill. 270; Chicago, etc. R. Co. v. Nolin, 221 Ill. 367; Neilson et. ux. v. Chicago, etc. R. Co. 58 Wis. 516, and authorities there cited; Lyon v. G.B. and M.R.Co., 42 Wis. 538; Montana R. Co. v. Fresser, 29 Mont. 210; 2 Elliott on Railroads (2nd ed.), Secs. 991, 991a and 991b; 2 Lewis on Eminent Domain, Sec. 482.

In Neilson, et. ux. v. Chicago, etc. R. Co., supra, the court, upon this question, said: "Witnesses may testify to depreciation and be permitted to state the grounds of their opinion, as in Snyder's case,

4.

but evidence of remote and conjectural cause of depreciation should not be submitted to the jury as a basis for their assessment of damages." The general presumption is that the railroad will be constructed and operated in a proper manner and upon this presumption the actual effects upon the remaining lands should control the assessment of damages. In case the road is improperly constructed by the railroad company, or is in the future negligently operated, to the injury of the land owner, then under such circumstances the law affords him an ample remedy for the recovery of damages resulting from such injury, notwithstanding the award made in the original condemnation proceedings. It is true, as the authorities affirm, that damages are assessed "once for all," and all legitimate damages resulting from the appropriation of the land should be included in the original award or assessment, for such assessment is conclusively presumed to embrace damages for every injury which could have been legally included in the appraisal made by the appraisers or the assessment made by the jury, and it will operate to bar a recovery of the land owner for any damages which should and could have been legally included therein. Chicago, etc. R. Co. v. Hunter, supra; Lyon v. G.B. and M. Co. supra; 2 Elliott on Railroads (2nd ed.), Sec. 104; White v. Chicago etc. R. Co., 122 Ind. 317, and authorities there cited; 4 Sutherland on Damages, Sec. 1072.

It follows that the court erred in not charging the jury as requested by appellant in instruction number two.

Appellant, by instruction number three, asked the court to charge the jury in effect that the law of this state casts upon the railroad company the duty of constructing and maintaining a good and substantial fence along the line between its right of way and the defendant's land; that the jury should not take into consideration in assessing the defendant's damages "the cost of a permanent fence along the north line of the right of way of plaintiff's railway." There is evidence in the case to which this instruction was applicable. By the statute of 1903 (Acts 1903, p. 426; see also Secs. 5707, 5708, et. seq. Burns 1908), it is provided that, "any corporation, lessee, etc., owning, controlling or operating, etc., any interurban railroad, traction line, or suburban railway, within the state of Indiana, using electricity for a motive power, etc., shall within one year from the taking effect of this act, as to

those already constructed and as to those hereafter constructed within one year from the date of the completion of any part of such line and putting the same in operation, erect, build, construct and thereafter maintain fences on both sides throughout the entire length of such road completed, * * * sufficient and suitable to turn and prevent cattle, horses, mules, sheep, hogs or other stock from getting on such road, except at crossings, etc." It is further provided that "when such fences and cattle guards are not made as herein provided, or when such fence or cattle guards are not kept in repair, such railroad corporation or person operating the same shall be liable for all damages which may be done by the agents, employes, servants or cars of such corporation, or persons operating the same, to any such cattle, horses, sheep, hogs or other stock thereon." By section 5708 supra, in case such corporation neglects or refuses to construct such fence, barriers or cattle guards as provided, etc., the landowner is given the right to construct the same and recover of the corporation or person operating the road a reasonable compensation therefor. Section six of the act (Sec.5712 Burns 1908) provides that "when such railroad is fenced on one or both sides at the point where such way is constructed, such abutting landowner shall erect and maintain substantial gates in the line of such fence or fences across such way and keep the same securely fenced and closed when not in use by himself or his employes."

In view of the provisions of the statute, the cost of building permanent fences along the sides of appellant's railroad would not constitute an element of damages to be considered by the jury in making the assessment. In fact this is the prevailing rule in states wherein the railroad company is by statute required to fence its road or right of way. It will be presumed that the railroad company, within the time provided, will comply with the requirements of the law, therefore, under the circumstances in this case, the jury should have been advised by the court that the cost of building fences along the sides of appellant's railroad, after the expiration of the time allowed by the statute, should not be taken into consideration by them, or included in the award or assessment of damages. 2 Elliott on Railroads (2nd ed.), Sec. 996;, Chicago, etc. R. Co. v. Baker, 102 Mo. 553; St. Joseph etc. R. Co. v. Shambaugh, 106 Mo. 557; Winona, etc. R. Co. v. Waldron, 11 Minn. 515; 82 Am.

Dec. 100; Jones v. Chicago, etc. R. Co., 68 Ill. 380; 4 Sutherland (2nd Ed.), Sec. 1072; 2 Lewis on Eminent Domain, Sec. 498; Mills on Eminent Domain, Sec. 212.

For the error of the court in refusing to charge, as requested by appellant in its instructions numbered two and three, the JUDGMENT is REVERSED and a new trial ordered.

Hadley, J. not participating.

Comes the parties by counsel and the court being advised in the premises, overruled petition for rehearing heretofore filed herein by appellee on February 10, 1909 with an opinion pronounced by Hordan, J. which said opinion is in the words and figures following to-wit:

Appellee petitions for a rehearing on the ground that the instructions in this case are not properly in the record and therefore the court should not have considered numbers two and three refused by the trial court, for which refusal the judgment was reversed. Counsel for appellee do not claim that these two charges, as requested by appellant and refused by the lower court, were not correct, nor do they in their brief upon the petition for a rehearing advance any reason to show that appellant was not entitled to have the instructions in question or either of them, given to the jury, but their sole contention is that the record does not disclose that the instructions refused were ever filed with the clerk of the lower court. The point or question in regard to their filing was in no manner raised, suggested or pointed out by appellees' counsel in their original brief filed on April 11, 1908. The only adverse criticism made in this breif against the instructions asked by appellant and refused by the court was that appellant's brief did not disclose that they were signed by its counsel. The rule is well settled that a point or question not presented for decision by a party upon appeal in his original brief or briefs will not be entertained or considered by this court in determining whether a petition for rehearing should be granted. Such a petition can only be based on points or questions that were properly presented for decision at the original hearing. Ewbanks' Manual, Sec. 242, and authorities there cited. Elliott's App. Proc., Secs. 556, 557; Rules 22 and 23 of this court.

It is true, as appellee claims, that in a document endorsed "Additional Points and Authorities", filed on September 5, 1908, under the authority of Rule 21 of this court, a statement therein is made that the instructions given and those refused were not filed with the clerk. Rule, 21 supra, after providing for the filing of original briefs by an appellant and appellee and the reply brief on the part of appellant, then expressly declares that "no supplemental or additional briefs by either party will be received. Further citation of authorities

in support of any proposition stated in the briefs may be filed by either party at any time without comment or argument." Under this latter provision of the Rule 21 appellee in this case could not for the first time raise or advance the question or proposition that the instructions in controversy were not properly in the record. Consumers' Paper Co. v. Eyer 160 Ind. 424, 427; Malott, Recvr. v. State, ex rel. 158 Ind. 678; Gates v. Baltimore, etc. R. Co. 154 Ind. 338; Underwood v. Sample , 70 Ind. 446;

In the case last cited appellee therein based his petition for a rehearing upon the ground that the bill of exceptions upon its face disclosed that all of the evidences was not in the record. In considering the petition for a rehearing in that appeal, this court said : "The objection thus urged to the bill of exceptions was not made, or in any manner referred to, by the appellee in his original brief, and is for the first time now presented by his petition for a rehearing. By the well established practice of this court, the objection comes too late. We cannot now be called upon to reopen the cause for the purpose of inquiring whether there may not have been some defect in the record, of which the appellee might have availed himself, when he filed his original brief, but did not. The appellee is as much bound to present, in the first instance, all the questions relied upon by him, as is the appellant, and his failure to do so operates in the same way, against him, upon his application for a rehearing."

Counsel for appellee apparently assumes that it was the duty of this court, on its own motion, to have searched the record in this appeal in order to discover whether instructions in the case were properly in the record. But appellees, in her original brief, treated the instructions in question as being properly before us for our consideration, hence, under the circumstances, we were not required on our own motion to search the record in order to discover the contrary. While it is true that upon questions or points apparent upon the record in a case appealed to this court which will prevent a personal reversal of the judgment of the trial court, we may, in the exercise of our discretion, give an appellee the benefit thereof, although he has omitted in any manner to refer to or present such points in his brief, nevertheless the searching of the record by this court on its own motion, in order to ascertain if there is some point in the case or defect in the

record which will obviate a reversal of the judgment, is a matter wholly optional with the court and can neither be demanded or relied upon by an appellee who has neglected to raise or present the point in his original brief.

Again, upon another view, conceding without deciding that the instructions in question are not properly in the record, nevertheless to grant appellee a rehearing would not better her present condition, for it appears that the question or point upon which the judgment was reversed was not alone raised or presented by appellant under instruction number two as refused, but also by objections made by it to the introduction of certain evidence by appellee, consequently upon another hearing a reversal would necessarily follow, because of the error of the lower court in admitting the evidence in question.

Petition for rehearing overruled.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Reversed at the cost of the Appellee

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellant recover of the Appellee the sum of — $32.40 — for its costs and charges in this behalf expended (transcript fee not included)

THE STATE OF INDIANA,
SUPREME COURT

I, ED. V. FITZPATRICK, Clerk of the Supreme Court, of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 7th day of June 1909.

Edward V. Fitzpatrick C. S. C.

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THE STATE OF INDIANA,

In the Supreme Court, November Term, 1908.

On the 10th *day of* December, 1908, *being the* 16th *Judicial day of said November Term, 1908.*

HON. JAMES H. JORDAN, CHIEF JUSTICE.
HON. OSCAR H. MONTGOMERY,
HON. JOHN V. HADLEY,
HON. LEANDER J. MONKS,
HON. JOHN H. GILLETT,
} JUSTICES.

No. 21,160.

IN THE CASE OF

Indianapolis & Western Railway Company.

vs.

Charles B. Hill, et al.

APPEALED FROM THE

Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by Jordan, C. J., Hadley, J. not participating.

Appellant, an incorporated interurban railway company, filed, on July 23, 1906, its complaint in the office of the clerk of the Hendricks Circuit Court, thereby seeking to condemn and appropriate certain real estate situated in Hendricks County, Indiana, for the use of the right of way of its railroad. Numerous landowners, whose lands were affected, were made parties defendant. Among these were Charles B. Hill and Emma Alice Hill, his wife, appellees in this appeal. The condemnation proceedings were instituted under an act of the legislature concerning proceedings in the exercise of eminent domain (Acts 1905, p. 59; Sec. 8700 et. seq. Burns Annotated Statutes 1908). Such action was had in court as resulted in an interlocutory order being entered, appointing appraisers to assess damages to the several property owners for the lands sought to be taken. On August 17, 1906, the appraisers made their award and report and filed the same in the office of the clerk of the Hendricks Circuit Court. They awarded damages to Charles B. Hill for his real estate appropriated, to the amount stated in their report. On August 21, 1907, said Hill, under section eight of the statute in question, filed in the office of the clerk of the Hendricks Circuit Court his written exceptions to the award of damages made to him. On the 27th of the same month appellant company also filed its written exceptions to damages awarded by the appraisers to certain landowners other than Hill. On January 31, 1907, the issues as raised and tendered upon the written exceptions filed and presented by appellee, Charles B. Hill, were by the agreement of the parties herein submitted to a jury for trial. The trial of the cause appears to have been continued from day to day until the introduction of evidence by each of the parties was completed. Thereupon the jury was instructed by the court and subsequently returned the following verdict: "We, the jury, find for the defendant, Charles B. Hill, and assess his damages at $1125.00.

Simon Hadley, foreman."

Appellant moved for a new trial, assigning in the motion the grounds prescribed by our civil code, among which was excessive damages. Also error of the court in giving and refusing certain instructions and rulings upon motions relative to certain evidence, etc. This motion was denied and ninety days were granted for filing bills of exception. Judgment was rendered in favor of appellee, Charles B. Hill, upon the verdict

of the jury. From this judgment appellant company appeals and assigns that the court erred in overruling its motion for a new trial. Counsel for appellee insist that appellant has failed to comply with the rules of this court; first, in not setting out in its brief the original complaint filed for the condemnation of the property and the appointment of appraisers; second, in not setting out in its entirety instruction number three. They further insist that the bill of exceptions embracing the evidence was not properly made a part of the record. The first objection is without merit. No error in this appeal is predicated upon the original complaint filed for the appropriation of the land. Under the circumstances, therefore, this complaint is not such a part of the record as is necessary to present any of the errors upon which appellee relies, consequently, under the rules of this court, it is not required to be set out in appellant's brief. In appellant's brief we find that instruction three is fully set out therein. Therefore, there is no foundation whatever for appellee's second contention. Equally unsupported is the third insistence. It is true that the record discloses that the bill of exceptions containing the evidence was filed after the time granted by the court had expired, but it is shown by a statement of the trial judge in the bill itself that it was presented to him on June 6, 1907, which was within the time allowed by the court and was taken under advisement by him, and as is disclosed, was subsequently approved, signed and filed by him. The delay of the trial judge in signing and filing the bill would not deprive appellant of the benefit thereof in this appeal. Sec. 660 Burns Annotated Statutes 1908.

In addition to the statement in the bill of exceptions in respect to the time of its presentation to the judge, the same statement appears on the margin of the bill over the signature of the trial judge. It is this latter statement apparently which appellee's counsel claim does not comply with the statute. We concur in their contention. Under the repeated decisions of this court, a statement on the margin of a bill of exceptions, disclosing the time of its presentation, is not within the requirements of the statute. Ayres v. Armstrong, 143 Ind. 263.

It is the statement in the bill itself to which we give consideration and not to that which appears upon the margin thereof. The bill of exceptions is properly in the record.

Some other minor criticisms are interposed in respect to the record and the failure of appellant to observe the rules of this court. These, however, are not sustained.

The court, on its own motion gave to the jury a series of instructions relative to the assessment of damages arising out of the appropriation of lands in controversy. This was the only issue in the case. Among these was the following charge, numbered three: "If you find for the defendant, it will then be your duty to determine and assess his damages. In the event you find for the defendant, then the measure of his damages is the difference between the market value of the defendant's land, described in the complaint, before the appropriation of the particular part thereof sought to be taken and the location and construction of the interurban railroad thereon in the manner proposed by the plaintiff and the market value thereof after the appropriation and the location and construction of the railroad thereon in the manner proposed by the plaintiff, as shown by the evidence, if so shown, not considering any benefits to said land on account of the construction of said road. In determining this difference of value, if there be any difference, you may take into consideration the value of the land actually appropriated and the decrease in the value of the residue of the land. In determining this decrease in value, if any of the residue, you may take into consideration, as shown by the evidence, if so shown, all present and prospective decrease in the value of the residue of the defendant's said real estate that will naturally and reasonably be caused by the location, construction and operation of the railroad in the manner proposed by the plaintiff, and, in determining such decrease in value, if any, you may take into consideration, as shown by the evidence, if so shown, how and in what manner, if at all, the defendant's said lands will be divided and cut up by the use of the land appropriated in the manner proposed; how passage from one part of said land to the public highway will be interrupted, if at all, by such use of said part of said land; the increased danger, if any, that may be incurred, and any other facts or things, if shown by the evidence, that may be either annoying or hurtful to the defendant and which will necessarily be caused by the permanent location and operation of a railroad over the particular land appropriated." (Our italics).

Appellant's counsel criticise as erroneous that part of the

above instruction embraced in italics. They argue that any danger which might be incurred from the location and operation of appellant's railroad over the land in controversy is too remote and speculative to afford a basis for a proper assessment of damages. They further insist that the court also erred in advising the jury by this instruction that, in assessing the damages, it might take into consideration "any other facts or things which may be annoying or hurtful to the defendants."

That portion of the charge included in italics is manifestly wrong. Thereby the jury was given the liberty to take into consideration a class of damages of the nature or character of imaginary or speculative, or such as the occurrence of which would be quite remote. It is well settled that this class of damages cannot be regarded or taken into consideration in the assessment of damages in condemnation proceedings. Indianapolis, etc. Tr. Co. v. Larrabee, 168 Ind. 237, and cases there cited; Toledo, etc. Int. R. Co. v. Wagner, at last term, No. 21167; 2 Elliott on Railroads, Sec. 993 (2nd ed.).

In the Larrabee case, supra, an instruction of like import as the one herein in controversy was condemned as erroneous. In the Wagner case, supra, which was a condemnation proceeding, a charge of the court advised the jury in a general manner that in determining the amount of damages to be assessed for land taken for a right of way, it might consider the inconveniences and annoyances, if any, resulting from the appropriation of the real estate. This charge was held to be erroneous and the judgment was reversed. The court, in passing upon the question in that appeal, said: "In considering the decrease in value of the residue, the jury would necessarily have to take into account all the inconveniences and other prejudicial facts that were produced by the appropriation, and that went to the depreciation of the value of the remaining land, and when the jury had added the full sum of the diminished value to the full value of the parcel taken, it had then arrived at the amount for which the verdict should have been returned. The jury had no right to go further, and consider 'inconveniences and annoyances' as entitling the defendants to additional damage. * * * We have held that danger, arising from the proper operation of a railroad, to the 'occupants of the farm and stock thereon,' is not a proper element of damage, because too remote and speculative to admit of admeasurement. Traction Co. v. Larra-

bee, 168 Ind. 237, 240. So with annoyances, when they relate to mental conditions created by the operation of a railroad, the damage rests so completely on mere surmise and conjecture, as to forbid consideration by the courts." It was annoyances upon which this court in that case laid stress and held that they were not a proper element of damages because too remote and speculative. But in the instruction herein involved the court, as elements of damages, included not only increased danger, but "any other facts or things which may be annoying or hurtful to the defendant." Section six of the act of 1905, supra, (Sec. 934 Burns Annotated Statutes 1908) in a general way prescribes a rule or basis for assessing damages in a proceeding, under the statute, to condemn property. Under this provision of the statute there is no warrant for assessing speculative damages such as were authorized by the court to be awarded by the charge in question. Counsel for appellee do not attempt to justify the instruction in dispute, but assert that an examination of the evidence will show that the assessment of damages was correct and that therefore the instruction in question was harmless. The damages allowed by the jury appear to be more than double the amount awarded by the appraisers and there is quite a conflict between the witnesses who testified in favor of appellant upon the question of damages and those who testified in favor of appellee. In this condition of the record there is nothing to disclose to this court that the charge as asserted by appellee was harmless.

Again, upon another view, the damages in the case are unliquidated and we cannot, upon the evidence, interpose our judgment in regard to the correctness of the assessment thereof. Monongahela River, etc. Co. v. Hardsaw, 169 Ind. 147.

Other rulings of the court relative to giving and refusing instructions are complained of by appellant's counsel. These, in part at least, are determined by our decision upon the charge in controversy, and the other rulings which can be said to be left undecided possibly will not arise again upon another trial. Therefore we pass them without consideration.

For the error of the court in giving instruction number three, the JUDGMENT below is REVERSED, with instructions to the court to grant appellant a new trial.

Hadley, J. not participating.

And afterwards, towit: On the 3rd day of June, 1909. the Court being fully advised overrules the petition for rehearing heretofore filed herein by appellees.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Reversed *at the cost of the* appellees

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the appellant *recover of the* appellees *the sum of* — #31 60 — *for its costs and charges in this behalf expended* (transcript fee not included)

THE STATE OF INDIANA,
SUPREME COURT

I, ED. V. FITZPATRICK, Clerk of the Supreme Court, of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 3rd *day of* June 1909.

Edward V. Fitzpatrick, C. S. C.

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THE STATE OF INDIANA,

In the Supreme Court, May Term, 1909.

On the 11th *day of* June, *1909, being the* 17th *Judicial day of said May Term, 1909.*

HON. OSCAR H. MONTGOMERY, CHIEF JUSTICE.
HON. JOHN V. HADLEY,
HON. LEANDER J. MONKS,
HON. QUINCY A. MYERS,
HON. JAMES H. JORDAN,
} JUSTICES.

No. 21125.

IN THE CASE OF

The Cleveland, Cinnati, Chicago & St. Louis Railway Company.

Robert T. Hollowell

APPEALED FROM THE Hendricks Circuit COURT.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Monks, J.

This action was brought by appellee agaist appellant to recover damages for an alleged breach of its common law duty to safely carry and deliver a car load of sheep.

The first paragraph alleged a contract to carry to Chicago, Illinois. The second paragraph is the same as the first, except it alleged a contract to carry to Terre Haute, Indiana, and there to deliver to another carrier, whose line ran from Terre Haute to Chicago, Illinois.

Appellant filed an answer to the complaint in four paragraphs, the first paragraph being a general denial.

Appellees. demurrer for want of facts to the second, third, and fourth paragrahs of answer was sustained to the second and fourth paragraphs and overruled as to the third paragraph of answer.

Trail by the court, special finding of facts made and conclusion of law stated thereon in favor of appellee, and over a motion for a new trial, judgment against appellant.

The errors assigned and not waived call in question the conclusion of law and the action of the court, in sustaining appellee's demurrer to the second and fourth paragraphs of answer.

The second paragraph of the answer set out at length a written contract between appellant and appellee for the transportation of appellee's sheep which limited appellant's common law liability and alleged that the said contract was the sole and only contract for the transportation of said sheep.

The fourth paragraph of answer was substantially the same as the second.

It is insisted by appellant that the action of the court in sustaining the demurrer to the second and fourth paragraphs of answer was erroneous for the reason that the Act of 1905 (Acts 1905, p. 58, being sections 3918-3920 Burns 1908) entitled "An act relative to the liability of common carriers and prescribing the practice and procedure and fixing the burden of proof in certain cases" is in violation of that part of Section 22, Art. 4 of the Constitution of this State which forbids the enactment of laws "regulating the practice in courts of justice" and therefore void and for the further reason that it is in violation of the 14th. Amendment of the Constitution of the Unites States.

Before the taking effect of said Act of 1905 (Acts 1905 p. 58 it had been uniformly held by the court that when a shipper sues on the common law liability and it appears that there was a written contract, the shipper could not recover, on account of failure of proof. Section 402 ~~100~~ Burns 1908 and notes; Sec. 396 Burns 1901 and notes. Bralett v. Pittsburg, etc Co. 94 Ind. 281, 284. Indianapolis, etc R. Co. v. Remmy, 13 Ind. 518. Jeffersonville R. Co. v. Warland, 50, Ind. 339. Lake Shore etc R Co. v. Bennelt, 89 Ind. 457, 471; Hall v. Pennsylvania R. Co. 90 Ind. 459; Show v. Indiana etc R. Co. 109 Ind. 422, 426. Pennsylvania R. Co. v. Walker 29 Ind. App. 285; Parril v. Cleveland, etc. R. Co. 23 Ind. App, 638; Stewart v. Cleveland, etc R. Co. 21 Ind. App. 218, 226. Indianapolis etc . R. Co. v. Forsythe, 4 Ind. App. 326; Baltimore R. Co. v. Ragsdale, 14 Ind. App. 406. Sanders v. Hartage, 17 Ind. App. 243.

This was only an application of the rule that where an oral or implied contract is declared upon, no recovery can be had upon a written contract, and where a ~~wiiten~~ written contract is sued upon, no recovery can be had upon an oral or implied contract. Paris v. Strong, 51 Ind. 339; Jeffersonville etc R. Co. v. Warland, 50, Ind. 339; Sanders v. Hartage, 17 Ind. App. 243, 250, 252 and cases cited. Pennsylvania R. Co. v. Walker, 29 Ind. App. 285; 4 Ency Pldg & Prac. 922-927;

It was uniformly held, that such defense was provable under the general denail. Indianapolis etc R. Co. v. Remmy supra. Baltimore etc., R. Co. v. Ragsdale, supra, p. 411. Crum v. Yundt, 12 Ind. App. 308. Sanders v. Hartage, 17 Ind. App. supra. 251.

The error if any in sustaining a demurrer to a pleading is harmless if no more evidence is required to establish the cause of action or defense alleged under a paragraph left in the record than would have been required under the paragraphs held bad. Field v. Noblett, 154 Ind 357 Ind. 361; Hormann v. Hartmetz, 128 Ind. 353, 354;

As the same defenses could be made and evidence given under the general denail, which was left in the record as under the paragraphs held bad, the error, if any, in sustaining said demurrer was harmless.

The law charges the common carrier with the ~~dty~~ duty of carrying all goods of the kind he professes to carry under the common law liability, which makes him a practical insurer of the safety thereof while in

his ~~own~~ custody.

The owner may rightfully demand that such property shall be received and carred under the carriers common law liability and a contract limiting such liability to which he is obliged to assent in order to secure transportation can not be considered as having been freely and fairly entered into, and will be of no effect in relieving the carrier from his common law liability. It is not necessary to conclude the owner by the terms of a special contract limiting the liability of the carrier that he should actually have been offered the option of shipping subject to the terms of such contract or under the carriers common law liability. If will be sufficient if it would have been given if the owner had demanded it. But if such demand would have been unavailing, the owner would be under no duty to make it and his assent to a contract restricting the common law liability of the carrier would not bind him by its terms.

I Hutchison on Carriers, 3rd Sec. 404; Lake Erie etc R. Co. v. Holland, 162 Ind. 407. Louisville, etc. R. Co. v. Gilbert, 88 Tenn. 430; 7 L. R. A. 162; Railway c. v. Cravens, 57 Ark. 112; 38 Am . St. Rep. 230; 18LRA 527. 88 Am. St. Rep. note pp.77-79,93-95.

It appears from the special finding that the said carload of sheep was shipped from Danville, Indiana, on June 3, 1906, that at the time a contract was prepared by appellant's agent on one of the forms furnished by it, which limited its liability in the shipment of live stock, that the same was signed on behalf of appellee and by the agent of appellant.

That said form of contract was the only form of contract then in use at said Station for the shipment of live stock. That no agent of appellant had any authority to make on appellant's behalf any contract for the shipment of said sheep at the risk of appellant on the payment of a higher rate than that named in said contract or on any other consideration, or to make any contract therefore except the one signed by the parties, and no opportunity was given appellee to make any contract for the shipment of said sheep, except the one executed,

It is evident from said finding that any demand of appellee that appellant carry said sheep under the common law liability would have been unavailing because there was no one authorized to make such a contract on behalf of appellant and therefore under the authorities

above cited his assent to the contract limiting the common law liability of appellant did not bind him.

In such case under the authorities above cited, appellee had the right to disregard the contract limiting the liability of appellant because he was not bound thereby and had the right to sue for the breach of the common law duty.

Lake Erie etc R. Co. v. Holland, supra.

This was the rule before the taking effect of said Act of 1905 (Acts 1905 p. 58, being sections 3918-3920 Burns 1908)

Even if said Act of 1905 (3918-3920) supra, is uncontitutional as claimed by appellant, the conclusion of law stated in favor of appellee upon the facts found was not erroneous.

It is settled law that this court will not pass upon the constitutional validity of a statute when it can properly rest its decision upon other grounds.

White v. Sun Pub. Co. 164 Ind. 426, 430, and cases cited.

As the special finding shows that appellee was not bound by the contract limiting the common law liability of appellant it was liable for a breach of its common law duty.

The court did not err, therefore in its conclusion of law.

Judgment affirmed.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed *at the cost of the* Appellant *all of which is ordered to be certified to said Court.*

And it is further considered by the Court, that the Appellee *recover of the* Appellant *the sum of* — $26 85 — *for his costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT

I, ED. V. FITZPATRICK, Clerk of the Supreme Court, of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 11th *day of* August *1909,*

Edward V. Fitzpatrick C. S. C.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed *at the cost of the* Appellant

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellee *recover of the* Appellant *the sum of* — #22 75 — *for* her *costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT

I, ED. V. FITZPATRICK, Clerk of the Supreme Court, of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 24th *day of* June *1907*

Edward V. Fitzpatrick *C. S. C.*

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed *at the cost of the* Appellant

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellees *recover of the* Appellant *the sum of* — #2250 — *for* their *costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 24th *day of* August *1904*

R. A. Brown *C. S. C.*

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1905.

On the 24th *day of* October *1905, being the* 134th *Judicial day of said May Term, 1905.*

HON. LEANDER J. MONKS, CHIEF JUSTICE.
HON. JOHN H. GILLETT,
HON. JAMES H. JORDAN,
HON. OSCAR H. MONTGOMERY, } JUSTICES.
HON. JOHN V. HADLEY.

20,723.

IN THE CASE OF

Raymond R. McDaniel, et al.

vs.

Cyrus Osborne, et al.

APPEAL FROM THE Hendricks Circuit COURT

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises gives its opinion and judgment as follows, pronounced by Montgomery, J.

§1337-J, Burns 1901, subdivision 2.

Appellee, Cyrus Osborne, brought this action upon two notes for $850 and $1200, dated January 15th, 1898, and due in four months, and in two years, respectively, after date, and to foreclose two real estate mortgages given to secure the same. Appellants, upon their own application, were made parties to the action, and filed their intervening petition, setting up their respective claims against the mortgagor, and averring that they were liens upon the mortgaged property superior to the lien of appellee's said mortgages. Appellee's demurrer to this petition for want of facts was sustained, and appellants declining to plead further, judgment was rendered against them for costs. Such further proceedings were had in the case as resulted in a judgment for appellee upon said notes and a decree foreclosing said mortgages, and for the sale of the mortgaged premises.

It is alleged on appeal that the court erred in sustaining the demurrer of appellee to the intervening petition of appellants.

Appellant's averred in their petition, that James O. Winstead, the mortgagor, became the owner of the real estate in question on the 19th day of December, 1892, and continued as such owner until the 15th day of July, 1901, at which time he made a voluntary assignment of all his property to Henry S. Cox as trustee for the benefit of his creditors, under the laws of this state; that at the time of the execution of said mortgages said Winstead was, and prior thereto had been, and thereafter until the date of assignment continued in the business of general farm implement merchandizing; that on July 15th, 1901, said H. S. Cox accepted the deed of assignment, caused the same to be duly recorded, qualified as such assignee, and entered upon the duties of his trust.

That on October 5th, 1901, said Winstead was duly adjudged a bankrupt by the United States District Court for the District of Indiana, and on November 25th, 1901, James M. Ogden was appointed and qualified as trustee in bankruptcy of all the property of said bankrupt; that in January 1902, appellee commenced this action, and caused William C. Osborne to be appointed by the court as receiver of the mortgaged property " to take charge of the property, rent the same, and collect the rents and apply them to the payment of the plaintiff's debt, taxes, and the making of necessary repairs of the buildings on said property; " and that said

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receiver qualified and took charge of said property.

That the money realized from the sales of property coming into the hands of James M. Ogden as trustee in bankruptcy, was not more than sufficient to pay the actual costs of the administration of said bankruptcy matter, and that there were no funds, and would be none for distribution to any creditor of said Winstead.

That within six years next preceding the 15th of July 1901, appellants each performed "manual and mechanical labor, work, and services for said James O. Winstead, at his special instance and request for which he is indebted" to appellant McDaniel in the sum of $107.85, to appellant Sadie Winstead in the sum of $112.75, and to appellant Elmer E. Winstead in the sum of$800.39, all of which was due, and that said James O. Winstead was insolvent and all his property had passed into the hands of Henry S. Cox, as assignee as aforesaid, since which time he had not had any control of the same; and that the claim and right of appellee in and to said property was inferior to the liens and claims of appellants.

The prayer was that appellant's claims be decreed to be liens upon said real estate, and ordered paid first and full out of the proceeds arising from the sale of said mortgaged premises.

It was also shown by the record, that by an order of the Federal Court the mortgaged property was abandoned by the trustee in bankruptcy, on the ground that there were no equities in the property above the mortgages.

The theory of appellant's petition evidently is that their claims for labor, under the statute, became liens upon the property of their debtor Winstead at the time the title to such property passed to his assignee under the deed of assignment for the benefit of the creditors, superior to the liens and claims of all other persons, and that the liens having once attached was not divested by the subsequent bankruptcy proceedings in Federal Court. If the premises are sound the conclusion must of necessity follow.

The statute upon which the claims of appellants are based is $7058 Burns 1901, and reads as follows:- " All debts due any person for manual or mechanical labor shall be a preferred claim in all cases against any individual, co-partnership, corporation or joint stock company, where the property thereof shall pass into the hands of an assignee or receiver,

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and such assignee or receiver, in the distribution and payment of the debts, shall be required to first pay in full all debts due for manual or mechanical labor before paying any other, except legitimate costs and expenses."

The act is entitled, "An Act in regard to the payment of employees of companies, co-partnerships, individuals and associations doing business or employing labor in this state." Acts 1885, p. 86.

This statute has not been construed upon the point in question by this or the Appellate Court, but §7051, which is similar in principle, has been considered in a number of cases.

Appellant's counsel in support of their contention have cited cases in which other statutes upon the subject of liens and preferences have been construed and applied, to which we will briefly refer.

Warren et al vs. Sohn et al. 112 Ind. 213, involved §7448 Burns 1901, by the terms of which a lien is expressly given to miners and other employees for their labor, prior and paramount to all other liens, except the lien of the state for taxes, and, the decision is clearly right.

Bass, et al vs. Doerman, et al. 112 Ind. 390, related to §7051, Burns 1901, and was correctly decided upon the facts stated.

Watts trustee, et al. vs. Sweeney, et al. 127 Ind. 116, presented the question of priority of the lien of a mortgage of a locomotive engine and that of a mechanic under §7868, Burns 1901, for necessary repairs made upon the order of the mortgagor while in possession of the property, and, was rightly decided.

The case of Farmers Loan and Trust Co. vs. Canada etc. Ry. Co., et al. [illegible] involved the priority of the lien of laborers for labor performed in the construction of a railroad, where the lien was acquired upon notice duly given and recorded as provided by §§7265 and 7266 Burns 1901.

In Shull vs. Fontanet etc. Mining Association, et al. 128 Ind. 331, it was held that the claim of a laborer rendering services for an assignee while in charge of and operating a coal mine was preferred, and should have been paid as part of the costs and expenses of the assignee.

The case of Aurora National Bank vs. Black, et al. 128 Ind. 598, correctly declared the priority of the liens of laborers acquired

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upon notice given and recorded in accordance with the provisions of §§ 7248 and 7249 Burns 1901, by the terms of which such laborers might obtain " a first and prior lien upon the corporate property."

McElwaine, et al. vs. Hosey, et al. 135 Ind. 481, correctly construed §1, of the Mechanics Lien Law, Acts 1889, p. 357.

The case of Jenckes vs. Jenckes, et al. 145 Ind. 624, also involved the construction of the Mechanics Lien Law, §§ 7255 and 7257, Burns 1901, it was expressly overruled in the case of Sulzer -Vogt Mch. Co. vs. Rushville Water Co.,160 Ind. 202.

The cases of Small vs. Hammes, 156 Ind. 556, and Bell, et al vs. Hiner, 16 App. 184, construed §7051, and so far as they may be deemed authority for the construction of the statute under immediate consideration, are disapproved.

There is no intent manifest in the title, or from any language employed in the body of the statute under consideration, that an employee should have or could acquire a lien upon all the property on account of general, manual or mechanical labor. It is provided only, that when the property of the debtor passes into the hands of an assignee or receiver in the interest of creditors, and the estate is reduced to cash and ready for distribution, the laborer shall be so preferred as to receive payment of his claim first in point of time and to the full amount, as against the claims of general creditors. As a general rule, an assignee or receiver cannot acquire or exercise any greater title or rights in and to the property committed to his control than the insolvent or embarrassed debtor had and could enforce. An assignor cannot transfer to his assignee a greater right than he holds himself; and, as against bona fide and valid encumbrance upon his property, his assignment passes only his equity of redemption in the property covered by the lien. This equity of redemption is all that the assignee or receiver may ordinarily sell and administer upon, and by the sale of such equity and any other property in his hands, the fund is created for distribution, out of which the assignee or receiver is directed by this statute to pay labor claims first and in full, after the payment of his own legitimate costs and expenses. The assignment statute expresly declares that " any part of the property assigned on which there are liens or encumbrances may be sold by the trustee, subject to such liens or encumbrances,"

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except when otherwise ordered by the court for cause shown upon special application. There is a very clear and marked distinction between a preferred debt, and a debt secured by a specific lien. A general debt cannot become superior to another secured by a lien, unless expressly made so by a valid law, and, if a statuary lien is to be created the language employed should be specific in declaring the fact, as well as the nature, character and extent of such lien. The construction contended for by appellants would require the court to infer the lien, and that it attached to this particular property and superseded a pre-existing valid mortgage. If such a result is within the meaning and intent of the statute, then in case of an employers insolvency, labor claims in amount unlimited and bounded in time only by the statute of limitations may be enforced against his estate to the displacement and exclusion of debts of unquestioned validity secured by mortgage liens of may years standing. We are unable to ascribe such an intent to the legislature or so to interpret this statute. The obvious purpose of the legislature in this enactment was to give laborers of the class named in the statute, preference in the payment of their claims from the estate of the insolvent employer, in the same extent, that preference is given in the payment of funeral expenses under the statute for the administration of decendants estates.

The facts alleged in appellant's intervening petition were not sufficient to show the existence of a lien in their favor upon the mortgaged premises, and the demurrer of appellee Osborne was rightly sustained.

The JUDGMENT IS AFFIRMED.

Hadley, J. did not participate in this decision.

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And afterwards, to-wit: On the 23rd day of January, 1906, the Court being fully advised in the premises, overrules the petition for rehearing heretofore filed herein by appellants.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed *at the cost of the* appellants

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the appellees *recover of the* appellants *the sum of* — $61.15 — *for* their *costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 24 *day of* January *1906.*

R. A. Brown *C. S. C.*

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1901.

On the 26th *day of* November, *1901, being the* 2nd *Judicial day of said November Term, 1901.*

HON. JAMES H. JORDAN, CHIEF JUSTICE.
HON. JOHN V. HADLEY,
HON. FRANCIS E. BAKER,
HON. ALEXANDER DOWLING,
HON. LEANDER J. MONKS. } JUSTICES.

No. 19,307

IN THE CASE OF

M. Helen Dunnington

vs.

Rufus K. Syfers, et al.

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised tn the premises gave the following opinion and judgment pronounced by Jordan, C.J.

Appellant originally commenced this action in the Marion Circuit Court against appellees Rufus K. Syfers, Frank A. McBride, and George C. Webster, to recover the sum of $25,000. The venue of the cause was changed to the Hendricks Circuit Court. The following may be said to be an epitome of the facts alleged in the complaint. Appellees herein, together with one Andrew Dunnington, on March 10, 1891, agreed among themselves that they would each contribute $1,500 for the purpose of purchasing from Leslie E. Keeley, of Dwight, in the State of Illinois, the right to use, in the states of Indiana and Kentucky, Illinois, a certain secret process for the treatment of persons addicted to the excessive use of intoxicating liquors and morphine. That after the purchase of said right by the afore said parties, they, in the month of March, 1891, began the use of said treatment at the town of Plainfield, Hendricks county, Indiana. The institute established at Plainfield for that purpose being operated by them under the name and style of "The Keeley Institute." Appellant together with her husband Andrew Dunnington, executed a promissory note for $1,500 payable to said institute for a one-fourth interest, which her husband was to have and hold in the concern. There after in August, 1891, said institute was incorporated by appellant and appellees, who became the owners and holders of the entire stock of said corporation; appellant owning thirty shares of the capital stock at the par value of $50 per share. Upon the organization of said corporation, all of the assets belonging to the Keeley Institute, including the right to practice said treatment under the process in question were turned over to and merged in said corporation. Prior to February 10, 1892, as averred, appellant had no knowledge of the business affairs of said concern, and the same were managed exclusively by appellees who concealed from her and her husband Andrew Dunnington, by whom she was represented, the books and business relating to said institute; that appellees knowing that appellant was ignorant of the value of her stock, and knowing that its value was far in excess of its par value, entered into and formed a conspiracy for the purpose of obtaining her stock for a sum greatly under its value, and for that purpose they represented to her through her husband, that said institute or corporation was losing money and that the stock thereof had become greatly depreciated in value and was worthless, and unless she sold the stock held by her within a certain time, they, appellees, would surrender up the right

to practice said treatment and would dissolve the corporation, and thereafter would organize a new one in which she would have no stock or interest. It is further averred that appellant by reason of these representations and statements believed that she was about to lose her stock or interest which she had and held in said corporation or institute, and being ignorant of the value of her said stock, sold her interest in said corporation to one Rose for the sum of $5,000, which interest in fact was of the value of $25,000. It is also alleged that appellees thereafter represented to said Rose that he had been swindled in the purchase of appellant's interest, that she had no such interest in the concern as he had purchased and advised him to "sell out." That thereafter Rose sold the interest which he had purchased from appellant to one Mahorney, who thereafter transferred the same to appellees; that the latter on becoming the sole owners of the stock of the corporation sold and transferred their right to practice said treatment in the State of Indiana for $50,000, retaining, however, their right to practice the same in the State of Kentucky. The complaint charges that all the acts, representations, and statements of appellees were false and fraudulent and made with the purpose and intent to defraud and cheat appellant, and that by reason thereof she has been damaged in the sum of $25,000, for which judgment is demanded. A demurrer to the complaint having been overruled, appellees answered by denying generally all the allegations of the complaint, and by setting up affirmative matter as a defense. The issues being joined between the parties, a trial before a jury resulted in the court, at the close of appellant's testimony, directing the jury to find for the defendant, with which instruction the jury complied, and over appellant's motion for a new trial, judgment was rendered that she take nothing by her action, and that the defendants recover their costs.

The learned counsel for appellees in his argument whereby he seeks to parry the force of the contention of appellant's learned counsel, to the effect that the court erred in directing the verdict, vigorously assails the complaint on the ground that it wholly fails to state any cause of action against his clients, hence, it is insisted that the appellant, is not in a position to complain of her failure to recover a judgment for the reason that there is no foundation whatever upon which

a judgment in her favor could rest or be supported. But as the judgment must be affirmed for the insufficiency of the evidence to sustain the complaint, we pass this contention without consideration.

Counsel for appellant contends that the court erred in several instances as shown by a bill of exceptions, in excluding testimony which appellant offered to prove by certain witnesses. Passing the question raised by appellees as to the relevancy of the evidence in question, we are of the opinion that, under the circumstances, she is not in a position to successfully complain of these rulings of the trial court in excluding such evidence for the reason, as it appears, that in each instance after the trial court had sustained appellees objections to the question propounded to the witness by which the evidence in controversy was sought to be elicited, that appellant excepted to the ruling of the court, and thereafter made an effort offer or statement to the court of what she proposed to prove by the witness under the question propounded. Such procedure, under a well affirmed rule of this court, does not raise or present any question for review in respect to the admissibility of the proposed evidence. See, Gunder v. Tibbits, 153 Ind. 591 and cases cited. Whitney v. State, 154 Ind. 573; Shenkenberger v. State, 154 Ind. 630; Siple v. State, 154 Ind. 647; Rinkenbarger v. Meyer, 155 Ind. 152; Wilson v. Carrico, 155 Ind. 570; Mark v. North, 155 Ind. 575; State v. Cox, 155 Ind. 593; Miller v. Coulter, 156 Ind. 290.

The question in respect to the alleged error of the court in denying appellant's application for a postponement of the trial on account of the absence of James E. Howland, a witness who resided at Streator, in the State of Illinois, is next presented for our consideration. We are satisfied that the court committed no error in denying this application. Passing the question as to whether the application and the affidavit filed in support thereof disclosed due diligence on the part of appellant and her attorney in their endeavors to secure the testimony of this witness, it is certainly true that, under the facts alleged in the affidavit in support of the continuance, it was not made to appear that there was any probability of obtaining the testimony of this witness within a reasonable time. This under the statute is required to be shown. §413 Burns Statutes, §410 Horner's Statutes.

It is lastly contended that the court erred in directing a verdict

on the motion of appellees at the close of appellant's evidence. In this contention we do not concur. An examination of the evidence introduced by appellant upon the trial satisfies us that it wholly fails to establish any cause of action in favor of appellant. There is an entire absence of evidence in respect to some of the material points which entered into the alleged cause of action. The rule to the effect that where there is a "scintilla" of evidence, the trial court must permit the case to be submitted to the jury for their determination, does not prevail in this State. Oleson v. Lake Shore, etc.R.Co., 143 Ind. 405; Meyer v. The Manhattan, etc. Co., 144 Ind. 439 and cases there cited; Diezi v. The G.H.Hammond Co., 156 Ind. 583.

Finding no available error the judgment is affirmed.

Hadley, J., did not participate in this decision.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed *at the cost of the* Appellant *all of which is ordered to be certified to said Court.*

And it is further considered by the Court, that the Appellees *recover of the* Appellant *the sum of* —#35 75— *for their costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 27th *day of* January *190*7.

R. A. Brown C. S. C.

Pet. Rest

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1902.

On the 5th *day of* February, *1902, being the* 63d *Judicial day of said November Term, 1902.*

HON. JAMES H. JORDAN, CHIEF JUSTICE.
HON. JOHN V. HADLEY,
HON. JOHN H. GILLETT,
HON. ALEXANDER DOWLING,
HON. LEANDER J. MONKS,
} JUSTICES.

No. 19,360

IN THE CASE OF

Jacob Frankel

vs.

The Michigan Mutual Life Insurance Company, etc.

APPEAL FROM THE

Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Dowling, *J.*

In January, 1889, the appellant was employed by the appellee as its agent to manage its business in the State of Indiana. The contract of employment was in writing, and among its provisions were the following: The appellant was to procure applications for insurance; to collect when due, so far as practicable, when authorized so to do by the appellee, all premiums payable to the appellee; to remit all sums due to the appellee immediately upon collection; in case of his inability to collect premiums on policies and renewal receipts, appellant was to return the same to appellee; and he was to be governed in all respects by the rules and regulations of the company and its officers. The appellee was to pay to the appellant commissions on first annual premiums on all business procured by him or his agents according to certain schedules of rates attached to said contract. It was also provided that the appellee should pay to the appellant a collection fee of seven and one-half per cent. upon all second and subsequent years premiums, collected by him in cash; and in case the contract of employment should be terminated by either party, that the appellant should receive the renewal commissions of seven and one-half per cent. before mentioned, for the term of five years upon each policy. The contract contained the further stipulation that, upon ~~the~~ any violation of its conditions by the appellant, or upon his failure to remit to the appellee all moneys collected by him, as required by the agreement, or to make any and every report required, the appellee should have the right to terminate the agreement, and that in any such case all the rights of the appellant under the agreement should be forfeited, and the appellee discharged from every liability to him. The term for which the contract was to continue seems otherwise to have been indefinite.

On March 23, 1893, a bond with sureties was executed by the appellant to the appellee conditioned for the payment by the appellant to the appellee of all moneys then due , or thereafter to become due from the appellant to the appellee on account of any and every kind of employment or service.

Another bond of like character was executed by the appellant, with other sureties, March 25, 1893.

The appellant remained in the service of the appellee for several years, and shortly before March 15, 1894, and examination of his proceedings, and an accounting became necessary. It was discovered that

the appellant had collected and had not paid over upwards of $8,000. An ~~agreement~~ arrangement was entered into between the appellant and the appellee by which a portion of this sum was paid, and a further ~~sum~~ part was supposed to be secured to the appellee. There remained, however, a balance of $2,773.47, which the appellant neither paid nor secured. Thereupon, the following agreement was executed:

"It is hereby agreed between the Michigan Mutual Life Insurance Company of Detroit, Michigan, and Jacob Frankel, state agent of said company for the State of Indiana, that all of the accounts of said Frankel have been carefully examined, and it is found by such examination that there is now due and unpaid the sum of $2,773.47 from said Frankel to said company, on account of moneys collected by said Frankel for said company, for which he, the said Frankel, had not accounted, and which he has not paid over. The sum is the amount unaccounted for after giving the said Frankel all of the credits of every kind to which he is entitled up to this day.

"In witness whereof the said parties have hereunto set their hands this 15th day of March, 1894.

Jacob Frankel.

H. S. Frede,

Sec'y. Mich. Mutual Life Ins. Co."

The appellee retained the appellant in its employment until April, 1895, a little more than one year after the accounting referred to in the foregoing instrument, and then discharged him.

This action was thereupon brought by the appellant in the Superior Court of Marion county, to recover damages for alleged breaches of the contract of employment by the appellee. These supposed breaches consisted of (1) the failure of the appellee to pay to the appellant the commissions of seven and one-half per cent. on second and subsequent years premiums collected by appellant while acting as the agent of the appellee, and (2) the denial by the appellee of the claim of the appellant to such commissions for the term of five years after the termination of his ~~term~~ agency.

Shortly after the commencement of the action by the appellant against the appellee, the latter brought suit against the former in said Superior Court of Marion county. Pleadings were filed in each case, and on the application of the appellant the venue of each cause was changed

to Hendricks county. On motion of the appellee, the two actions were consolidated. The issues were made up, and the case was tried by a jury, who returned a general verdict for the appellee, together with answers to certain questions of fact. The appellant moved for judgment in his favor upon the answers to the questions of fact, for a venire de novo, and for a new trial, all of which motions were overruled. Judgment was rendered against the appellant for costs in the action brought by him, and against the appellee for costs in the suit brought by it.

The errors assigned and discussed by counsel for appellant present for review the rulings of the court on demurrers to the pleadings, and its decision on the motions to consolidate the two actions, to render judgment for appellant notwithstanding the general verdict, and for a new trial.

1. The second paragraph of the answer of the insurance company was directed to so much of the complaint as sought to recover for any sum from the company on account of the seven and one-half per cent. commission on second and subsequent year renewals, after the termination of the employment. It alleged, in substance, that by the terms of the agreement sued upon it was expressly provided that, if the appellant should fail to remit to the company money collected by him belonging to the company, than all rights of the appellant under the agreement should be forfeited to the company, and the latter discharged from all liability to said appellant. That, before the termination of the employment, the appellant, as such agent, had collected more than $8,000 belonging to the company, that he concealed this fact from the company, that he failed to remit the sum so collected, but appropriated the same to his own use, and that for this cause he was discharged by the company.

No defect in this answer is pointed out, and we are unable to perceive any. If the appellant had himself violated the contract without legal excuse, he could not maintain an action upon it. This paragraph of answer charges that he had so violated it. Board v. Hill, 115 Ind. 316, 327; Sheehan v. Rummel, 124 Ind. 347.

The same facts, substantially, are pleaded in the third paragraph of the answer by way of set off. The objection that this answer is bad, because it does not set out the agreement of employment, or make a copy of it an exhibit, can not prevail. A copy of the agreement was filed with the complaint; it is referred to in the answer, and its execution is

admitted. The defense set up arise out of the instrument sued upon, a copy of which was already before the court, not only for the purposes of the complaint but equally in aid of any answer, set-off, or counterclaim founded upon it. It is sufficient in such cases to refer to the exhibit already on file. Additional copies of the same instrument, filed with the several paragraphs of the answer, would have served no useful purpose, but would have needlessly encumbered the record. Pattison v. Vaughan, 40 Ind. 253; Sidener v. Davis, 69 Ind. 336; Crowder v. Reed, 80 Ind. 1, 4; Cookerly v. Duncan, 87 Ind. 332; Gardner v. Fisher, 87 Ind. 369; Anderson v. Wilson, 100 Ind. 402; Grubbs v. Morris, 103 Ind. 166; Wadkins v. Hill, 106 Ind. 543.

Neither is there any force in the suggestion that the answer does not show that the set-off claimed arose out of a debt, duty, or contract held by the appellee at the time the suit was commenced, and that the same matured at or before the time it was offered as a set-off. §351 Burns 1901. The answer expressly avers that the appellant had collected moneys under the agreement sued upon, which it was his duty to pay over and remit, but which he wrongfully retained and appropriated to the amount of $10,000, "for which sum said plaintiff is now indebted to this defendant." The agreement states that the agent shall immediately remit all moneys collected by him for the company. The answer shows that the set-off arose from a duty imposed by a contract, that it was held by the appellee at the time the suit was commenced, and that the claim had matured before the time it was offered as a set-off. The demurrer to the third paragraph of the answer was therefore prpperly overruled.

The fourth paragraph of answer goes to so much of the complaint only as charges the appellee with the indebtedness to the appellant accruing before March 15, 1894, the date of the accounting and settlement. The facts stated did not create an estoppel against the appellant, but they did show that on that day an adjustment of the account of the appellant with the appellee took place, and that, by the admission and agreement of the appellant, he had received credit for all sums due him from the company to that date, leaving due from him to the company a balance of $2,773.47. The answer was rather in the nature of a plea of payment than a defense by estoppel, and, if such was the fact, the appellant had the right to plead and prove that by mistake or oversight items of in-

debtedness, which should have been included in his claim against the appellee, were omitted. The court did not err in overruling the demurrer to this paragraph.

The fifth paragraph of the answer, which was a set-off, is objected to for the same reasons urged against the third and also upon the grounds that no demand for the moneys alleged to have been held against the appellant was averred, and that the appellee can not dispute the correctness of the amount found to be due upon the accounting of March 15, 1894, while retaining any of the money paid to it under that settlement. No demand before suit was necessary. By the terms of the agreement, it was made the duty of the agent to pay over and remit all moneys collected by him immediately after collecting them. His failure to do so was a breach of his contract, and authorized the company to sue at once. Field v. Brown, 146 Ind. 293; Cree v. Sherfy, 136 Ind. 354; Richards v. Reeves, 149 Ind. 427.

It appears from the answer that the appellant did not faithfully account for the moneys collected by him, and that a much larger sum was, in fact, in his hands on March 15, 1894, than that reported by him. The memorandum of settlement made on that day did not operate as a release of the appellant from his obligation as agent to pay over all moneys in his hands belonging to the appellee, or give him any title to the moneys wrongfully retained by him. Notwithstanding the accounting and settlement, the appellee had the right to recover from the appellant not only the moneys he then admitted to be due, but all which he had failed to report at the time of the settlement, and it could not be required to return it to him that portion of the amount due to it which the appellant paid at the time the pretended accounting was made. The answer further stated that the appellee, at the time said supposed accounting took place, received from the appellant and his wife a conveyance of certain real estate in part payment of the amount admitted to be due from the appellant to the appellee, but that afterwards appellant's wife recovered a judgment against the appellee setting aside said conveyance on the ground that it was intended as a mortgage to secure a debt due from her husband, that the real estate was her separate property, and that said conveyance was void except as to a pre-existing lien of $3,000, which had been paid out of the proceeds of a mortgage executed by the appellant and his wife to a building and loan association, and

which mortgage debt had been assumed by the appellee in the said accounting and settlement. It was competent for the appellee to show that a supposed payment made to it by the appellant had been set aside by the judgment of a court, and thereby rendered unavailing, and to charge the appellant with the amount due to the company at the time the effectual payment was made. In our opinion, the fifth paragraph of the answer was sufficient to withstand a demurrer.

The ruling of the court upon the appellant's demurrer to the first paragraph of the reply of the appellee to the answer of the appellant to the cross-complaint of the appellee, if erroneous, was harmless, for the reason that the appellee was defeated upon its cross-complaint. The judgment upon this branch of the case was that the appellee take nothing, and that the appellant recover his costs.

The two actions between the appellant and the appellee, pending at the same time in the Hendricks Circuit Court, were properly consolidated. They involved, substantially, the same causes of action, and the same defenses, and there was no reason why all the issues should not be tried in a single suit. The circumstance that the action of the insurance company was against the sureties on Frankel's bonds, as well as against him, did not constitute an obstacle to such consolidation. The controversy was between the appellant and the appellee, and the defenses set up by the sureties do not appear to have differed in any respect from those of their principal.

Nothing contained in the answers of the jury to the questions of fact submitted to them authorized a judgment in favor of the appellant. The answers did not cover the issues, and many of them related to the evidence merely, and not to the ultimate facts of the case. The answer to the question, "Did the plaintiff forfeit his contract with the defendant?" "No." was a mere conclusion and not the finding of a fact.

The motion for a venire de novo rests upon the alleged uncertainty of the verdict. The form of the verdict was, "We, the jury, find for the defendant." Throughout the proceedings, the appellant had been described as the plaintiff, and the appellee as the defendant. There was no motion that the jury be required to make their verdicy more certain, and indeed there seems to have been no occasion for any change in it. The appellee was the only party who could have objected to it. Nothing was said in the verdict concerning the cross-complaint of the

company, but this did not harm the appellant.

The last question to be determined is whether the court erred in overruling appellant's motion for a new trial. The evidence is not in the record. The sole ground upon which the claim for a new trial is placed is that the court erred in giving, and in refusing to give, certain instructions. But an examination of the record discloses that while certain instructions are set out, it nowhere appears that these were the only instructions given. The transcript was prepared in pursuance of a precipe which specifically pointed out what should be included in it. We can not say that other instructions were not given covering every point now made by the appellant, and correcting every inaccuracy which may be found in those brought up; and the rule in such cases requires us to presume that this was actually done.

The motion for a new trial was correctly overruled.

Finding no error the judgment is affirmed.

Hadley, J., did not participate.

And afterwards, towit: On the 8 day of April, 1902, the Court being fully advised overruled the petition for a hearing heretofore filed herein by appellant.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed *at the cost of the* appellant *all of which is ordered to be certified to said Court.*

And it is further considered by the Court, that the appellee *recover of the* appellant *the sum of* —— #28 05 —— *for its costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 9th *day of* April *190*2.

R A Brown C. S. C.

Read

THE STATE OF INDIANA.

In the Supreme Court, November Term, 1900.

On the 3rd *day of* January, 1901, *being the* 34th *Judicial day of said November Term, 1900.*

HON. ALEXANDER DOWLING, CHIEF JUSTICE.
HON. LEANDER J. MONKS,
HON. JAMES H. JORDAN,
HON. JOHN V. HADLEY,
HON. FRANCIS E. BAKER,
} JUSTICES.

18,784.

IN THE CASE OF

Francis T. Hord, Trustee, Successor to George P. Bissell, Trustee

vs.

Daniel M. Bradbury.

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Baker, *J.*

Appellee's complaint (caption and exhibit omitted) reads: "Daniel M. Bradbury, the plaintiff, complains of Francis T. Hord, trustee, successor to George P. Bissell, trustee, and says that heretofore, to-wit, on the 20th day of February, 1875, Nancy S. Beaty, of the City of Indianapolis, Marion county, Indiana, executed and delivered to George P. Bissell, trustee, a certain trust deed upon certain real estate in Beaty's Addition to the city of Indianapolis, to secure the payment of thirty bonds for the sum of one thousand dollars each, which bonds were sold and are still held by divers persons whose names are to the plaintiff unknown; that said George P. Bissell remained and continued to act as such trustee for the holders of said bonds from the date of said trust deed until the 11th day of April, 1891, on which latter date said George P. Bissell died; that during the time in which said Bissell was acting as ~~such~~ said trustee, and to the date of his death, he was a non-resident of the State of Indiana; that afterward, to-wit, on the ___day of February, 1896, the defendant, Francis T. Hord, was by this court appointed as the successor to said George P. Bissell as trustee for the holders of said bonds; that during the time said George P. Bissell was acting as trustee as aforesaid, this plaintiff, at the instance and request of said George P. Bissell, trustee, and the beneficiaries in said trust, rendered to said Bissell and the beneficiaries in said trust divers and numerous services as their attorney in the matter of collecting, settling and adjusting the ~~xxx~~ claim of George P. Bissell as trustee against said Nancy S. Beaty and her estate after her death; and that at the time of the death of said George P. Bissell, trustee, he was indebted to this plaintiff in the sum of $4,413.85 for said services, as is more fully shown by a bill of particulars herewith filed and made a part hereof, marked "Exhibit A"; that on the 10th day of May, 1887, by an arrangement between said George P. Bissell, trustee, and John C. New, executor of the estate of Nancy S. Beaty, deceased, the balance of said claim on said bonds in favor of said George P. Bissell against the estate of Nancy S. Beaty, deceased, was settled by receiving from said John C. New, executor, a conveyance for a large number or lots, to-wit, five hundred or more in Beaty's Addition to the city of Indianapolis; that

the conveyance for said lots was made to this plaintiff as a sub-trustee under and for said George P. Bissell, trustee; that while acting as said sub-trustee the plaintiff sold a large portion of said real estate and collected and received large sums of money; that afterwards, to-wit, on the ___day of April, 1894, the plaintiff resigned his trust as such sub-trustee to George P. Bissell, trustee; that on said last named date said Francis T. Hord was by this court appointed the successor of this plaintiff as such sub-trustee; and that since the appointment of said Francis T. Hord as such successor to him, the plaintiff, he has accounted and settled with said Francis T. Hord as such sub-trustee for all money and property in his, plaintiff's, hands as such trustee except the sum of $3,390.01, which sum the plaintiff retained in his hands and by the direction of the said George P. Bissell, trustee, has applied as hereinbefore set out, leaving a balance due and unpaid to the plaintiff on said account for said services of the sum of $1,431.72, and interest on $4,413.85 since May 10, 1895, to-wit, $600. Wherefore plaintiff demands judgment that said sum of $3,390.01 still in his hands may be applied as a credit upon said plaintiff's claim for services as aforesaid, and that he may have judgment against the defendant as the legal successor of George P. Bissell, trustee, for said balance of said account for the sum of $2,500, and for all further and proper relief." On the issues of denial, payment, and set-off, a trial was had, resulting in a judgment in appellee's favor. A demurrer was sustained to the following answer: "For a further and fourth paragraph of answer to plaintiff's complaint, the defendant says that he admits that heretofore, to-wit, on the 20th day of February, 1875, Nancy S. Beaty, of the city of Indianapolis, Marion county, Indiana, executed and delivered to George P. Bissell, trustee, a certain trust deed upon certain real estate in Beaty's Addition to the city of Indianapolis to sevure the payment of thirty bonds for the sum of one thousand dollars each, which bonds were sold and are still held by divers persons, and that said George P. Bissell acted as such trustee for the holders of said bonds from the date of said trust deed until the expiration of several years thereafter, but defendant says that on, to-wit, the 5th day of April, 1894, and for many years prior thereto, the plaintiff was trustee for certain funds and

property accruing and belonging to the holders of said bonds under said deed of trust; and that on, to-wit, the 26th day of September, 1894, he filed in the Superior court of Marion county, Indiana, in cause No. 47063 of said court, his final report as such trustee; that on, to-wit, the 4th day of October, 1894, Francis T. Hord, who was then and there by appointment of said superior court the successor to the plaintiff as such trustee, as such successor filed his exceptions in writing to said report; that in and by said final report said Bradbury charged said Hord as such successor for the same and identical services for which he seeks to recover in this action, and in and by said exceptions to said report said Hord as such successor denied that he as such successor was liable for said charge or that said Bradbury was entitled to compensation therefor; that said final report and said exceptions were thereupon on, to-wit, said 4th day of October, 1894, referred by said superior court to Pierce Norton as master commissioner to take testimony and report to the court said testimony, together with any objections and exceptions thereto, and his finding of facts thereon in reference thereto; that upon the taking of said testimony said Bradbury introduced in evidence testimony in support of the same and identical charges as are set forth in the plaintiff's bill of particulars attached to and made a part of plaintiff's complaint in this action, which testimony was upon motion of said Francis T. Hord as such successor stricken out of the record by said master commissioner, to which ruling of said master commissioner said Bradbury then and there took an exception; that thereafter, on, to-wit, the 28th day of June, 1895, said master commissioner filed in said superior court, in pursuance of the aforesaid reference, his report upon the matter so as aforesaid referred to, and submitted to said court a longhand transcript of the testimony taken before him upon said matter, together with the briefs of counsel and all other papers and documents relating thereto; that thereafter, on, to-wit, the 14th day of October, 1895, said Bradbury filed his exceptions to said report of said master, in which he set up the same and identical claim for which he seeks to recover in this action; that on, to-wit, October 12, 1895, said Francis T. Hord as such successor filed his exceptions to said report of said master commissioner, and there-

upon said final report of said Bradbury and said exceptions thereto of said Hord and said report of said master, together with said exceptions thereto of said Bradbury and said Hord and said testimony taken before said master commissioner, were argued before said superior court by counsel for said Bradbury and said Hord and taken up by said court for final determination, and said court, after listening to said argument, finally decided said matter, finding that there was due from said Bradbury to said Hord as such successor a certain sum of money, and rendered judgment thereon accordingly in the presence of said Bradbury and said Hord on, to-wit, the 2nd day of November, 1895, in favor of said Hord as such successor for such sum and that said Hord as such successor recover of and from said Bradbury his costs and charges in said behalf laid out and expended; that on, to-wit, the 30th day of November, 1895, upon motion of said Bradbury, said court attempted to modify said judgment by adding thereto the following words: 'That said order and judgment shall be taken and held to be an adjudication of all claims whatsoever of D. M. Bradbury which have accrued since May 10, 1887, and the same shall not extend to or be held as an adjudication of any claim or claims of said D. M. Bradbury for compensation of services as attorney rendered to said bondholders and said George P. Bissell, trustee herein, prior to the 10th day of May, 1887; that said order and judgment shall be without prejudice to the rights of said D. M. Bradbury in and to such claim for attorney's fees'; that thereafter, on said day, said Bradbury filed his motion for a new trial in said matter, in which he assigned as a reason for a new trial the overruling of that part of said exceptions of said Bradbury to said report of said master commissioner in which the said Bradbury set forth the same and identical claim as that sued upon in this action, and in said motion for a new trial he also assigned as a further reason for a new trial that the court erred in that upon said hearing before said master commissioner said master commissioner sustained the motion made by said Hord to strike out all evidence introduced in support of the claim of said Bradbury for attorney's fees and services rendered to the holders of said bonds and George P. Bissell as trustee therefor, said services and attorney's fees being the same and identical services for which said Bradbury seeks to recover in

this action; that thereafter, on, to-wit, the 31st day of January, 1896, said court overruled said motion of said Bradbury for a new trial and granted said Bradbury sixty days within which to file his bill of exceptions; that said judgment as originally rendered is in full force and effect and unreversed; that the same identical debt and cause of action which is set forth in the case at bar was finally adjudicated and put at rest by the rendition of said judgment, as is shown by the aforesaid pleadings, papers, motions, evidence and entries in said cause, and the same evidence would support alike the debt and cause of action so adjudicated in said court and the debt and cause of action sued upon in this cause; that thereafter, on said day, said Hord was appointed by said court as successor to said George P. Bissell as trustee for the holders of said bonds under said deed of trust and given the title under said appointment of 'Francis T. Hord, trustee, successor to George P. Bissell, trustee,' and as trustee under said appointment he is sued in this action; that thereupon, by order of said court, said Hord's trusteeship as said successor to D. M. Bradbury, trustee, was consolidated into said Hord's trusteeship under said appointment of January 31, 1896, and all property in the hands of said Hord as the successor ~~of~~ to said Bradbury in his said trust was ordered by said court to be transferred to said Hord as trustee under the aforesaid appointment of January 31, 1896; that the beneficiaries under said Hord as the successor to said Bradbury in his trust and the beneficiaries of said hord as the successor ~~of~~ to said George P. Bissell, trustee, under said appointment of January 31, 1896, are the same and identical persons; that all the property and funds which ever came to said Hord under either of his aforesaid appointments came to him as the successor of said Bradbury in his said trust; and that the beneficiaries of said Hord as said successor to said Bradbury and the beneficiaries of said Hord as said successor to said George P. Bissell under said appointment of January 31, 1896, derived their rights by and through said deed of trust executed as aforesaid on the 20th day of February, 1875, by Nancy S. Beaty to George P. Bissell, trustee." Appellant alleges that various errors were committed, but, in view of the conclusion reached in respect to the answer of former adjudication, it is needless to determine more than the one assignment.

The sufficiency of the fourth paragraph of answer depends upon the solution of three questions: Were there two separate and distinct trusts, or was there but one entire trust? Did appellee perform services under two separate and distinct contracts of employment, or under one entire contract? What effect is to be given to the Marion superior court's entry of November 30th, 1895?

1. The present action was prosecuted by appellee against Hord, trustee, successor to Bissell, trustee. The judgment pleaded as a former adjudication was rendered against appellee in favor of Hord, trustee, successor to Bradbury, trustee. If there were two trusts, there could be no such identity or privity of parties as would make an the elder proceeding and adjudication of the later. A trust deed was executed in 1875. Bissell was named in it as trustee. The beneficiaries were the holders of the bonds secured by the trust deed. On default, it was Bissell's duty to proceed under the trust deed to collect the money due on the bonds. Bissell was a non-resident. Appellee was a resident lawyer. As shown by the first item in the bill of particulars, filed with the complaint as an exhibit, appellee began to render services in the enforcement and collection of the debt as early as May 7, 1881. By May 10, 1887, a part of the debt had been collected, and on that day (to quote from the complaint) "by an ~~agreement~~ arrangement between Bissell, trustee, and the executor of the Beaty estate the balance of the claim on the bonds was settled by receiving from the executor a conveyance of five hundred or more lots in Beaty's Addition to Indianapolis, and the conveyance was made to this plaintiff (appellee) as a sub-trustee under and for bissell, trustee, and while acting as such sub-trustee plaintiff (appellee) sold a large portion of the real estate and collected and received large sums of money". The lots were taken in settlement of the balance of the claims on ~~bonds~~ the bonds. The bondholders were the beneficiaries. The lots became part of the fund in the trust that originated under the trust deed of 1875. The so-called sub-trusteeship was "under and for Bissell, trustee". It was, in substance, simply a convenience in executing Bissell's duties as trustee. There was, therefore, but the one entire trust.

2. On May 7, 1881, there existed a contract between appellee on the one hand and Bissell, trustee, and the beneficiaries on the other, whereby appellee was employed at a quantum meruit to establish, enforce and collect the claim on the bonds secured by the trust deed. The complaint does not show any other contract of employment. The answer confesses the complaint and does not show any other contract of employment. On May 10, 1887, in settlement of the uncollected balance of the claim, Bissell, trustee, accepted certain lots. The Bondholders thereby became the beneficial owners of the lots. The title was taken in the name of appellee "under and for Bissell, trustee for the bondholders". As Bissell was a non-resident, it is manifest that it would be a convenience in making deeds to purchasers to avoid the bother and delay of sending deeds back and forth through the mails. While Bissell lived, appellee was accountable ~~xxxxx~~ to him for every step taken and every cent received in realizing on the claim after May 10, 1887, as well as before; and, similarly, all the funds of the one entire trust were liable to appellee's claim for services through out his employment. Bissell died in April, 1891. Thereafter, during appellee's time of service, no intermediary stood between appellee and the beneficiaries. The beneficiaries were entitled ~~xx~~ at any time to call upon appellee for a full accounting of his stewardship, and appellee was entitled to a full settlement for services rendered. When appellee resigned, he filed his claim for all services, -those rendered before May 10, 1887, and those afterwards. Hord, being appointed to represent the beneficiaries, contested the claim. Appellee offered evidence in support of the same charges for services rendered prior to May 10, 1887, that are contained in the bill of particulars attached to the complaint in this action. The court sustained Hord's objection to the evidence and excluded it. Judgment was rendered against appellee for a certain sum found due from him to the trust fund. Appellee moved for a new trial on the ground, among others, that the court erred in excluding the evidence in support of the charges that are the basis of this action. Instead of appealing, appellee began the present action to recover ~~the~~ for the items in respect to which the Marion superior court excluded ~~the~~ his evidence. The exclusion of evidence properly admissible under the issues

is as complete an adjudication as if the evidence were admitted and then discredited by the finding. The cause of action exhibited in the complaint herein was within the issues in the case brought before the Marion superior court, was actually litigated therein, and was determined by the judgment rendered on November 2nd, 1895. The answer of former adjudication is, therefore, a complete bar, unless it is overborne by the entry of November 30th, 1895.

3. The entry was made four weeks after the judgment was rendered. As against the pleader, it will be presumed, in the absence of a direct averment to the contrary, that the entry was made at the same term at which the judgment was rendered and while the cause was in fieri. The entry, therefore, will be considered as having been made immediately following the judgment. By the entry the court declared that the judgment already rendered "shall not extend to or be held as an adjudication of any claim or claims of said D. M. Bradbury for compensation of services as attorney rendered to said bondholders and said Bissell, trustee herein, prior to the 10th day of May, 1887; that said order and judgment shall be without prejudice to the rights of D. M. Bradbury in and to said claim for attorney's fees". This was just as effective as was a declaration that an instrument which in law constituted a mortgage should never be considered or treated as a mortgage. Proctor v. Cole 66 Ind. 576. The effect of an attempted withdrawal of a part of a cause of action is fully considered in Indiana etc. R. Co. v. Koons, 105 Ind. 507, and cases therein cited. In this case, however, there was no attempt to withdraw a part of the cause of action from the consideration of the court in determining what judgment to render, but merely an attempt to limit the effect of a judgment rendered upon the whole claim in view of the evidence the court deemed admissible.

Appellee contends that appellant is not entitled to the benefit of the judgment as a former adjudication because it was upon appellant's objection that the evidence in support of the present complaint was excluded by the Marion superior court. An appellant can not obtain a reversal on account of erroneous rulings made at his request in the proceedings and judgment appealed from. But certainly a judgment debtor

can not escape the judgment by failing to appeal from erroneous rulings and by relying, in a new action, on the errors committed against him in the former action in which the judgment was obtained.

Judgment reversed, with instructions to overrule the demurrer to the fourth paragraph of answer.

Monks and Hadley, J.J., did not participate in this decision.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Reversed *at the cost of the* Appellee

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellant *recover of the* Appellee *the sum of* —— $334.25 —— *for* his *costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 5th *day of* March *190*1.

R. A. Brown C. S. C.

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1901.

On the 28th *day of* May, *1901, being the* 2nd *Judicial day of said May Term, 1901.*

HON. LEANDER J. MONKS, CHIEF JUSTICE.
HON. JAMES H. JORDAN,
HON. JOHN V. HADLEY,
HON. FRANCIS E. BAKER,
HON. ALEXANDER DOWLING,
} JUSTICES.

19601

IN THE CASE OF

Elijah Lee

vs.

W. R. McClelland, et al.

APPEAL FROM THE

Hendricks Circuit

COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Monks, *J.*

-2-

Appellant brough this action under §8326 Burns 1894, §6223 R.S. 1881 and Horner 1897, to recover the custody of his son, who had been committed to the reform school for boys by the Huntington Circuit Court. The grounds upon which he claimed such recovery were stated as follows in his complaint: "That his son was committed to said institution without any warrant of law, in that that there was no proceeding in the Huntington Circuit Court to prosecute his said son for crime upon which any finding of record was made, or as to his age; that his son was not brought before the court or judge and no witnesses were heard and it was not ascertained by testimony of witnesses that his said son was a suitable person to be committed to said institution, and no record whatever or sentence was ever passed or made nor was any investigation, hearing, or trial had, or sentence committing him to said institution, upon the records of any court having jurisdiction to make such commitments; but his said son is held without any judgment, sentence, or other legal warrant of law, and is illegally so held and restrained of his liberty."

Appellees filed an answer in which it was alleged that appellant's son was committed to said institution by the Huntington Circuit Court, and the commitment papers made out and signed by the judge of said court, as required by §§8315, 8318 Burns 1894, §6213, 6220 Horner 1897, Acts 1883 p. 19, and the medical examination as required by §8314 Burns 1894, §6212 Horner 1897, Acts 1883 p. 19, were made a part of said answer. Appellants demurrer to said answer was overruled and a reply filed. The court tried the case and found for appellees, and over a motion for a new trial, rendered judgment against appellant. It appears from the record that the grand jury at the September term, 1899, of the Huntington Circuit Court, returned into said court an indictment charging a son of appellant with the offense of grand larceny in taking the personal goods of one Jerome Bronker. Said indictment was entered on the docket of said court as cause No. 1327. Afterwards on October 19, 1899, appellant's said son appeared to said cause in open court in person and by counsel and waived an arraignment and entered a plea of guilty to said charge. Thereupon the court found that said accused was 13 years of age, and in its discretion withheld sentence and ordered that said accused be released during good behavior as provided in §1836

-3-

Burns 1894, §1767 R.S. 1881 and Horner 1897. Afterwards, on March 23, 1900, appellant and his said son appeared in the Huntington Circuit Court and the said son was thereupon by said court committed to the reform school for boys until he was 21 years of age on said charge of larceny. The commitment was made out and signed by the judge of said court in all respects as required by §8315, 8318 Burns 1894, §6213, 6220 & Horner 1897, Acts 1883 p. 19, but no record thereof was made in the order books of said court. On the same day appellant made an affidavit that his said son was born on the 5th day of July, 1886, and said son was examined by a reputable physician of the county and a certificate of such examination made by such physician as required by §8314, §6212 Horner 1897, Acts 1883 p. 19. Afterwards on March 31, 1900, appellant appeared in said cause and filed an application in said criminal cause No. 1327 to revoke and set aside said order of commitment, and that his son be permitted to make a defense to any charge that might be preferred against him. The prosecuting attorney filed a written statement setting forth the reasons why said order of commitment should not be set aside, and negativing all the material allegations of application, and objecting to the same being granted. It was alleged in said statement of the prosecuting attorney that commitment was made under said indictment for larceny, and the court so announced at the time. The court overruled said application.

Appellant claims that said commitment was in violation of §13 of the Bill of Rights, being §58 Burns 1894, R. S. 1881 and Horner 1897, which provides, "In all criminal prosecutions the accused shall have the right to public trial by an impartial jury in the county where the offence shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; and to have compulsory process for obtaining witnesses in his favor."

It is not shown by the record that appellant's son was deprived of any of the rights mentioned in said section. He appeared in open court in person and by counsel, and entered a plea of guilty to an indictment charging him with grand larceny. Being a minor, the court in its discretion withheld sentence and released him during good behavior.

This was authorized by §1836 Burns 1894, §1767 R.S. 1881 and Horner 1897, which section also provides that the court shall have full power to pronounce sentence on said plea of guilty "whenever the conduct of the accused shall in the opinion of the court make such action proper." When the accused was again brought before the court by appellant on March 23, 1900, the court had full power under said section to pronounce sentence against him, if the conduct of the accused in the opinion of the court made such action proper. There was nothing for the court to try at that time, as there had already been a plea of guilty, and it rested entirely in the discretion of the court to pronounce or withhold sentence, under §1836 (1767) supra. The court was authorized by section 8310 Burns 1894, §6210 Horner 1897, to commit the accused to the reform school for boys until he attained the age of 21 years, instead of the county jail or State prison, on his plea of guilty of the crime of grand larceny, in taking the personal property of Jerome Bronker, as charged in said indictment. This the court did, and made out and signed the commitment, as provided in §8315 Burns 1894, §6213 Horner 1897. It ~~was~~ is expressly provided in §8318 Burns 1894, §6220 g Horner 1897, that no other record shall be made when the occasion of the commitment is a criminal charge, unless demanded by the infant, his parent or guardian.

Appellant insists that the order committing the accused should have been entered in the order book, and as it was not, the court below should have ordered the discharge of this proceeding. The accused, his parent or guardinn, had the right to have said commitment entered on the order books of said court, and by failing to make a demand therefor, waived such right, and appellant can not now complain. Said commitment, signed by the judge, is a record and a part of the proceedings in said cause, whether entered in the order book or not. The provisions of §§8308, 8311 Burns 1894, §§6211, 6220b Horner 1897, in regard to verified complaints have no application when the accused is charged with a crime by indictment or affidavit and information.

It is insisted by appellant that the commitment signed by the judge of the Huntington Circuit Court "says that the supposed charge upon which his son was sent to the reform school was made March 23,1900, and therefore there was no ~~contention~~ connection between such charge

and the indictment for larceny to which a plea of guilty had been entered six months before." Even if this was true, such recital would not overcome the other facts to the contrary, which clearly appear from the record. The commitment, however, states that the accused was brought before the judge of said court on March 23, 1900, but it does not state when the charge of larceny was made against him.

The record shows only one charge of larceny against appellant's son, and that by indictment to which he entered a plea of guilty, and it is clear from the record that he was committed to the reform school for boys, on that indictment.

During the progress of the trial appellant offered to prove by a witness that said witness was present in the court room on March 23, 1900, when appellant's son was committed to the reform school for boys, and that at that time "no written charge for larceny or any other offense was made or filed against him or read to him, either by affidavit and information, or by indictment nor was any such charge or charges made, presented or filed near such date." The court excluded said evidence. Such evidence was immaterial for the reason that the power of the court to commit appellant's son did not depend upon the charge against him being preferred, made or filed on or about or near March 23, 1900, or upon the same being read over to him on that day. The court had jurisdiction to commit him on the indictment for larceny although the same was returned by the grand jury and the plea of guilty entered thereto at the September term 1899 of said court. It follows that no error was committed in excluding said evidence.

This proceeding by appellant is a collateral attack on the order of the Huntington Circuit Court committing his son to the reform school for boys, and can not succeed unless that order is absolutely void. Lowry v. Howard, 103 Ind. 440, 443; McLaughlin v. Etchison, 127 Ind. 474, 476; Holderman v. Thompson, 105 Ind. 112,115; Willis v. Bayles, 105 Ind. 363,371; Turner v. Conkey, 132 Ind. 248; Bruce v. Osgood, 154 Ind. 375, 378,379; Helms v. Bell, 155 Ind. 502.

This cause can not, therefore, be used for the correction of mere errors or irregularities in the criminal case against his son, but to

entitle him to recover he must show, not that said order was erroneous or irregular, but that it was absolutely void. Willis v. Bayles, 105 Ind. 363,371.

As the Huntington Circuit Court had full and complete jurisdiction of the criminal case against the accused and of his person the order was not void.

Judgment affirmed.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed *at the cost of the* Appellant

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellees *recover of the* Appellant *the sum of* —— #17 15 —— *for* their *costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 29th *day of* July *190* 1, R. A. Brown *C. S. C.*

SUPREME COURT ★ STATE OF INDIANA
MDCCCXVI

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1899.

On the 2nd *day of* February, *being the* 59th

Judicial day of said November Term, 1899.

No. 18,268.

HON. JOHN V. HADLEY, CHIEF JUSTICE.
HON. FRANCIS E. BAKER,
HON. ALEXANDER DOWLING,
HON. LEANDER J. MONKS,
HON. JAMES H. JORDAN,
} JUSTICES.

IN THE CASE OF

The Cleveland, Cincinnati and St. Louis Railway Company.
vs.
Addie S. Parker, Administratrix of the Estate of Henry E. Hurshman, decd.

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Baker *J.*

Action against appellant to recover damages for negligently causing the death of Henry E. Hurshman. Demurrer to complaint for want of sufficient facts overruled. Trial and judgment for appellee.

The gist of the complaint is the charge that appellant negligently constructed a sidetrack and ordered the decedent, an engineer, to run his engine over it; and that the decedent, without fault on his part, was killed by the overturning of the engine as the result of the giving way of the sidetrack. There is no averment that the decedent, before going upon the sidetrack, did not have full knowledge of its dangerous and defective condition.

In cases of this character it is incumbent upon the plaintiff to show by the allegations of the complaint, not only that the decedent was free from fault, but that the risk was one not knowingly assumed as an incident of the service. If the decedent had notice (actual or implied) of the careless and negligent construction of the sidetrack and its dangerous condition, and thereupon voluntarily proceeded to run the engine over the track, then these conditions became a risk which the decedent voluntarily assumed. It must follow, therefore, that in order to establish a breach of duty creating a cause of action against appellant, it was necessary to allege that the decedent had no notice of the condition of the sidetrack. Louisville etc.Ry.Co. v.Sanford, 117 Ind.265;

Brazil Block and Coal Co. v Young, 117 Ind.520;
Louisville etc.Ry.Co.v.Corps, 124 Ind.427;
Wabash etc.Ry.Co. v.Morgan, 132 Ind.430;
Evansville etc.R.Co.v. Duel, 134 Ind.156;
The Pennsylvania Co.v.Congdon, 134 Ind.226;
Ames v.Lake Shore etc.Ry.Co., 135 Ind.363;
Big Creek Stone Co. v.Wolf, 138 Ind. 496;
Peerless Stone Co. v.Wray, 143 Ind.574;
Louisville etc.R.Co. v.Kemper, 147 Ind.561;
Consolidated Stone Co.v.Summit, 152 Ind.297;
Kentucky etc.Co. v.Eastman, 7 Ind.App.514;
New Kentucky Coal Co.v.Albani, 12 Ind.App.497;
Minty v.Union Pacific R. Co. 2 Idaho, 438; 4 L.R.A.409;

Atchison etc.R.Co. v Wagner, 33 Kans.660;
Wood's Law of Master and Servant, §382.

Appellee contends that the error in overruling the demurrer to the complaint is harmless because the special verdict includes a finding that the defendant had no notice and no opportunity to learn that the sidetrack was in a dangerous condition. To quote from Pittsburgh etc.R.Co. v Moore, 152 Ind.345; "This is not the law. When a pleading is tested by demurrer, it must stand or fall by its own averments. It can find neither weakness nor strength from other parts of the record." Furthermore, the supposed finding was not a part of the special verdict. If, in considering the sufficiency of a special verdict or a special finding of facts, a finding not within the issues must be stricken out and disregarded, ~~as was well decided in Bird v.St. John's Episcopal Church, at this term,~~ certainly such a finding could not be considered to be in the record for the purpose of supplying an issue omitted from the pleadings.

Judgment reversed with directions to sustain the demurrer to the complaint.

Hadley, C.J. took no part in the decision.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Reversed *at the cost of the* Appellee

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellant *recover of the* Appellee *the sum of* —— $179.56 —— *for* Costs *costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 4 *day of* April *1900.*

R. A. Brown C. S. C.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1899.

On the 2nd *day of* February, *being the* 59th *Judicial day of said November Term, 1899.*

HON. JOHN V. HADLEY, CHIEF JUSTICE.
HON. FRANCIS E. BAKER,
HON. ALEXANDER DOWLING,
HON. LEANDER J. MONKS,
HON. JAMES H. JORDAN,
} JUSTICES.

No. 18718.

IN THE CASE OF

William I. Ripley et al.

vs.

The Mutual Home & Savings Association et al.

APPEAL FROM THE Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Monks *J.*

All the errors assigned by appellant except the fifth are predicated upon the theory that Section 9 of the act of 1897 (Acts 1897 p.287, Horner, Sec.3406i; Burns Supp. 1897, Sec. 4463i) was void so far as it provides that all contracts theretofore made between borrowers and building and loan associations for the payment of premiums without any bidding are legalized. This question was decided in International &c.Association v. Wall et al. (this term 53 N.E. 431, adversly to appellants theory and contention.

By the fifth error assigned appellants attempt to challenge the appointment of the special judge who tried said cause, on the ground that the person appointed was incompetent. The record shows that appellants filed an affidavit for change of judge in the court below, and that the person appointed to try said cause by the judge of said court was "a competent and disinterested attorney of said court." No objection was made by any one to said appointment, nor was it questioned in any manner in the court below. It is settled in this state that the only questions not waived by a failure to present the same in the court below and that can be presented for the first time on appeal, are that the complaint does not state sufficient facts to constitute a cause of action, and want of jurisdiction over the subject matter of the action. Yorn v.Bracken No.18,671 (this term) Elliotts App.Proc. 489,674. Under this rule objections to the competency of a special judge to preside must be made at the time or the right to object thereto will be waived.

Lilly v. Trentman,130 Ind.16 ;
Carger v. Fee, 119 Ind.536;
Greenwood v.State,116 Ind.485;
Schlungger v.State 113 Ind.295;
Powell v.Powell,104 Ind.18;
Rodgers v.Beauchamp,102 Ind.33;
Adams v.Gowan,89 Ind.358;
Huffman v.Cauble,86 Ind.591;
State v.Murdock,86 Ind.124;
Feaster v.Woodfill, 23 Ind.493;
Case v. State,5 Ind.1.

Finding no available error in the record, the judgment is affirmed.

And afterwards, to-wit: On the 10th day of March, 1900, came the appellants by counsel and filed a waiver of their right to file a petition for rehearing herein -

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed *at the cost of the* appellants

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the appellee *recover of the* appellants *the sum of* ——— *for its costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 10th *day of* March *1900.*

R. A. Brown C. S. C.

R,

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1900.

On the 21" *day of* June, *1900, being the* 22" *Judicial day of said May Term, 1900.*

No. 19,282.

HON. FRANCIS E. BAKER, CHIEF JUSTICE.
HON. ALEXANDER DOWLING,
HON. LEANDER J. MONKS,
HON. JAMES H. JORDAN,
HON. JOHN V. HADLEY,
} JUSTICES.

IN THE CASE OF

Hannah E. Brown, et al.

vs.

Isaac Armfield, et al.

APPEAL FROM THE

Hendricks Circuit COURT.

Came the parties by their Attorneys, and the Court being sufficiently advised in the premises gave the following opinion and judgment pronounced by Monks *J.*

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Affirmed *at the cost of the* appellants

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellees *recover of the* Appellants *the sum of* — #16 05 — *for* their *costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 21st *day of* August *190* 0 —

R A Brown *C. S. C.*

CH 41

Item EOE Dismissed

1858
1860
1861
1862
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1872
1875
1905
1910

THE STATE OF INDIANA.

In the Supreme Court, May Term, 1910.

PRESENT:

Hon. Leander J. Monks, Chief Justice.
Hon. Quincy A. Myers. Hon. Oscar H. Montgomery.
Hon. James H. Jordan. Hon. John V. Hadley.

IN THE CASE OF

Aretas D. Hatch

VS.

Indpls. Telephone Co., et al

APPEALED FROM THE

Hendricks C. C. COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day ~~dismissed appeal on appellants motion the judgment of the Court below~~ in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing unless otherwise ordered by the Court

The State of Indiana, ss:

I, EDWARD V. FITZPATRICK, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS, my name and the seal of said Court, this 4th day of October 1910.

Edward V. Fitzpatrick
Clerk Supreme Court.

THE STATE OF INDIANA.

In the Supreme Court, November Term, 1904.

PRESENT:

Hon. John V. Hadley, Chief Justice.
Hon. Leander J. Monks. Hon. James H. Jordan.
Hon. John H. Gillett. Hon. Oscar H. Montgomery.

IN THE CASE OF

James A. Hamick

VS.

James A. Duncan, Adm.

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Dismissed the appeal from the judgment of the Court below in the above entitled cause, on appellants motion.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 23d day of Feby. 1905.

R. A. Brown
Clerk Supreme Court.

The State of Indiana, In the Supreme Court;

May Term, 187.

Present the Hon. Samuel E. Buskirk C. J.
John Pettit
Alexander C. Downey
James L. Worden
Judges

To the Clerk of the Com. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 26th day of October, 187?, on motion of Appellant dismissed the Appeal from the judgment of the Court below in the case of

Jacob Huber
against
Wm. H. Cash et al

appealed to said Supreme Court by the former.

~~Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 26th day of October 187?

Theodore W. McCoy, S. C.

The State of Indiana, In the Supreme Court;

May Term, 1871.

Present the Hon. Alexander C. Downey C. J.
James L. Worden
Samuel H. Buskirk
John Pettit
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 24th day of July, 1871, for non-compliance with Rule 14 "dismissed the appeal" from the judgment of the Court below in the case of

Alexander Chambers

against

John H. Lewis

appealed to said Supreme Court by the former.

~~Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 2d day of August, 1871.

Theodore W. McCoy C. S. C.

State of Indiana, in the Supreme Court:

November Term, 1872

Present the Hon. John Pettit C. J.
Alexander C. Downey
James L. Worden
Samuel H. Buskirk
Andrew L. Osborn
Judges.

To the Clerk of the Com. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 5th day of February 1873.

On motion of Appellant dismissed the appeal from the judgment of the Court below in the case of

James M. Arnold Admr. of James H. Scott

against

Columbus Ind. C. R. R. Co.

appealed to said Supreme Court by the former.

~~Sixty days from the date hereof, will be allowed for filing a petition for re-hearing unless otherwise ordered by the Court.~~

THE STATE OF INDIANA, SS:

I, CHARLES SCHOLL, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 5th day of February 1873

Charles Scholl C. S. C.

The State of Indiana, In the Supreme Court:

May Term, 1871.

Present the Hon. Alexander C. Downey C. J.
James L. Worden
Samuel H. Buskirk
John Pettit
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 24th day of July, 1871, for non-compliance with Rule 14. Dismissed the appeal from the judgment of the Court below in the case of

Alexander Chambers

against

John H. Lewis

appealed to said Supreme Court by the former.

~~Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 24th day of July, 1871.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1871.

Present the Hon. Alexander C. Downey C. J.
James L. Worden
Samuel H. Buskirk
John Pettit
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 24th day of July, 1871, for non-compliance with Rule 14 dismissed the appeal from the judgment of the Court below in the case of

Nathaniel W. Cossett

against

Lotan N. Jenkins

appealed to said Supreme Court by the former.

~~Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 2d day of August, 1871.

Theodore W. McCoy C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1871.

Present the Hon. Alexander C. Downey C. J.
James L. Worden
Samuel H. Buskirk
John Pettit
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 24th day of July, 1871 for non-compliance with Rule 14 dismissed the appeal from the judgment of the Court below in the case of

William W. Drone

against

William M. Hess

appealed to said Supreme Court by the former.

~~Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 2d day of August, 1871.

Theodore W. McCoy C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1871.

Present the Hon. Alexander C. Downey C. J.
James L. Worden
Samuel H. Buskirk
John Pettit
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 24th day of July, 1871 for non-compliance with Rule 14 dismissed the appeal from the judgment of the Court below in the case of

Nathaniel W. Cossett

against

Lotan N. Jenkins

appealed to said Supreme Court by the former.

~~Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 24th day of July, 1871.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1869.

Present the Hon. James L. Frazer C. J.
Robert C. Gregory
Charles A. Ray
John T. Elliott
Judges.

To the Clerk of the Com. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 24th day of November, 1869, dismissed the appeal from the judgment of the Court below in the case of

Smudson Eaton Et al.

against

Margaret J. Burns, et al.

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by The Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 24th day of November, 1869

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

May Term, 1871.

Present the Hon. Alexander C. Downey C. J.
James L. Worden
Samuel E. Perkins
John Pettit
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 24th day of July, 1871, for non compliance with Rule 14 dismissed the appeal from the judgment of the Court below in the case of

William W. Burns

against

William M. Hess

appealed to said Supreme Court by the former.

~~Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 24th day of July, 1871.

Theodore W. McCoy, C. S. C.

State of Indiana, SUPREME COURT. } May Term, A. D. 1862.

The 28th day of May 1862.

Present, the Honorable
JAMES L. WORDEN, CHIEF JUSTICE,
JAMES M. HANNA,
SAMUEL E. PERKINS,
ANDREW DAVISON, } JUDGES.

TO THE CLERK OF THE CIRCUIT COURT OF Hendricks COUNTY, GREETING:

You are hereby notified that the Supreme Court of said State has this day dismissed the appeal from the Hendricks C. C.

in the case of

Eliza King

v

John Shrunkhing

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss,

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 28th day of May A. D. 1862

John P. Jones C. S. C.

State of Indiana, SUPREME COURT. } NOVEMBER TERM, A. D. 1861.

53 DAY. Jany 25th 1862

Present, the Honorable Andrew Davison, Ch. J.
JAMES L. WORDEN,
JAMES M. HANNA,
SAMUEL E. PERKINS. } Judges.

John W. Estep
VS.
Ind & Ill. Cent R. W. Co.
} Appeal from the Hendricks C

Now come the parties by their Attorneys and the Court being sufficiently advised in the premises give the following opinion and judgment thereon.

Now come the parties and by agreement the appeal herein is dismissed at the costs of the appellant.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

18th day Nov Term, 1864

Present, the Hon. Charles A. Ray Chief Justice.
John T. Elliott
James L. Frazer
Robert C. Gregory
Judges.

To the Clerk of the Circuit Court of Hendrick, County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 18th day of April 1865 dismissed the appeal from the judgment of the Court below in the case of

Thomas Brast

against

Jedidah Hinshaw

for failure to file brief under the 41st Rule 3d Series appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 18th day of April 1865

Laz Noble C. S. C.

THE STATE OF INDIANA.

IN THE SUPREME COURT.

November Term, 1866.

Present, the Hon. Charles A. Ray Chief Justice.
John L. Elliott
James L. Frazer
Robert C. Gregory
Judges.

To the Clerk of the Circuit Court of Hendrick, County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 12th day of January 1867, dismiss the appeal from the judgment of the Court below in the case of

Lewis S. Hunter et al

against

Wade H. Evans et al

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause

Witness my name and the Seal of said Court, this 12th day of January 1867.

Laz Noble C. S. C.

State of Indiana. SUPREME COURT. } November Term, A. D. 1861.

The ~~23~~ 25th day of January 1863

Present the Honorable
ANDREW DAVISON, CHIEF J.
JAMES L. WORDEN,
JAMES M. HANNA,
SAMUEL E. PERKINS, } JUDGES.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the ~~Supreme Court of said State has this day~~ parties in the case of

John W. Estep

vs

Ind & Ill. Cent R.W. Co

have dismissed the appeal from the judgment of the Hendricks Circuit Court by agreement, ~~sixty days from the date hereof will be allowed for filing a petition for a re-hearing unless otherwise ordered by the Court~~

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the ~~decision~~ Record of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 25th day of January A. D. 1863

John P. Jones C. S. C.

State of Indiana. SUPREME COURT. } November Term, A. D. 1861.

The 27th day of Novemb 1861

Present the Honorable
ANDREW DAVISON, CHIEF J.
JAMES L. WORDEN,
JAMES M. HANNA,
SAMUEL E. PERKINS, } JUDGES.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day dismissed the appeal

in the case of

John Clifford et al

v

Alvin Bland et al

sixty days from the date hereof will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 27 day of Nov A. D. 186

John P. Jones C. S. C.

The State of Indiana, } November Term, A. D. 1860.
SUPREME COURT.

The Twenty Eighth day of November 1860.

Present the Honorable
JAMES M. HANNA, Chief J.
SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting.

You are hereby notified that the Supreme Court of said State has this day dismissed the appeal from the judgment of the Court of Common Pleas of Hendricks County in the case of

John W. Matlock

v

Arthur W. Little et. al

Sixty days from the date hereof will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court at Indianapolis, this 28th day of November A. D., 1860.

J. P. Jones C. S. C.

The State of Indiana, } November Term, A. D. 1860.
SUPREME COURT.

The Twenty Eighth day of November 1860.

Present the Honorable
JAMES M. HANNA, Chief J.
SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting.

You are hereby notified that the Supreme Court of said State has

State of Indiana. } May Term, A. D. 1861.
SUPREME COURT.

The 29 day of May 1861.

Present the Honorable
SAMUEL E. PERKINS, Chief J.
ANDREW DAVISON, JAMES L. WORDEN, JAMES M. HANNA, } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day dismissed the appeal from the judgment of the Hendricks C P in the case of

Grenville A. Specklemire

v

Stephen Stephenson

~~sixty days from the date hereof, will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 29 day of May A. D. 1861.

J. P. Jones C. S. C.

State of Indiana, } November Term, A. D. 1858.
SUPREME COURT.

The 24th day of November 1858.

Present the Honorable
JAMES M. HANNA, Chief J.
SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN. } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day ~~affirmed the judgment of the~~ dismissed by Appelant ~~in the case of~~

Ohio Cleveland et al

v

Charles H. Munson

from Hendricks Common Pleas Court

sixty days from the date hereof, will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 24 day of November A. D. 1858

W. B. Beach C. S. C.

CH41

Item E09 Opinion and Judgment
1839

#6

Danville
Indiana

Decision of S. Court

INDIANAPOLIS
FEB
1839
Ind.

The State of Indiana
Supreme Court } November Term A.D. 1838

Monday November the 19th A.D. 1838

Present the Honorable Isaac Blackford
Charles Dewey &
Jeremiah Sullivan } Judges

Abner Wiley
vs
Abraham C. Logan } In error to the Hendricks Circuit Court.

At this time come the parties by their counsel & the court being sufficiently advised of the premises give the following opinion & judgment, pronounced by Judge Blackford.

Scire facias, issued by the clerk of the Circuit Court to show cause why an execution should not issue on the transcript of a Justice's judgment filed in the clerk's office. Demurrer to the scire facias & the demurrer sustained.

Three objections are made to the scire facias.

First, that there is no averment that the Justice was informed that the defendant had lands. Such a statement is unnecessary. If such information must be given to the Justice, it will be presumed, from his furnishing the transcript, that the information was given.

The second objection is, that the scire facias does not show, that the Justice had issued an execution, to the proper constable as is required by the statute. It appears by the scire facias, that an execution had issued to a special constable, & that is sufficient. It must be presumed that the constable had been legally appointed.

It is objected in the third place, that the scire facias does not aver the judgment to be in force. Such an averment is unnecessary. If the judgment be paid or reversed, the defendant must show it. 1 Chitt. Pl. 404.

It is, therefore, considered by the court that the judgment of the circuit court be reversed at the costs of the defendant in error, & that this cause be remanded to said court for further proceedings to be had herein, all which is ordered to be certified to said court.

The State of Indiana ss

I Henry P. Coburn clerk of said court do hereby certify that the foregoing is a full, true, and complete copy of the opinion & judgment of said court in the above entitled case.

In testimony whereof I have hereto set my hand & affixed the seal of said court at Indianapolis this thirty first day of January A. D. 1839

H. P. Coburn C. S. C.

CH41

Glen EIO order to Stay

1856
1859
1861
1867
1868
1869
1870
1871
1873

State of Indiana, } Appeal from the Com. Pleas
SUPREME COURT. } of Hendricks County.

John McL Mattock et al
vs
Royal Wade

By a Judge of the Supreme Court,
Ordered that, execution on and all proceedings on the judgment below be stayed for three years, unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

A E Perkins
Judge Supreme Court

State of Indiana, S. S.

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge to stay proceedings in the above entitled cause.

Witness, WILLIAM B. BEACH, Clerk of said Court and the seal thereof, at Indianapolis, this 22d day of August A. D. 1859.

Wm B Beach C. S. C.

8

STATE OF INDIANA, } Appeal from the Common Pleas
SUPREME COURT. } of Hendricks County.

William C Cline
vs
Benedict B Crump, Walter C Couth & Benjamen N Couth

By a Judge of the Supreme Court,
ordered that, execution and all proceedings on the judgment below be stayed for three years, unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

Wm Z Stewart
Judge Supreme Court.

State of Indiana, ss.

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said judge to stay proceedings in the above entitled cause.

Witness, WILLIAM B. BEACH, Clerk of said Court and the seal thereof, at Indianapolis, this thirteenth day of June A. D. 1856.

Wm B Beach C. S. C.
per Jas S Kentzel Depy

8

STATE OF INDIANA, } Appeal from the Common Pleas
SUPREME COURT. } of Hendricks County.

William C Cline
vs
Robert Murrell and Hanson Triggs

By a Judge of the Supreme Court,
ordered that, execution and all proceedings on the judgment below be stayed for three years, unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

Wm Z Stewart
Judge Supreme Court.

State of Indiana, ss.

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said judge to stay proceedings in the above entitled cause.

Witness, WILLIAM B. BEACH, Clerk of said Court and the seal thereof, at Indianapolis, this 13th day of June A. D. 1856.

Wm B Beach C. S. C.
per Jas S Kentzel Depy

8

The State of Indiana, to-wit:

IN THE SUPREME COURT.

Madison Eaton, et al.
v.
Margaret J. Burns, et al.

Appeal from the Hendricks Common Pleas Court.

On application of the appellant, **It is Ordered,** *by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below* **be stayed** *as the law directs, whenever the appellant shall have given bond according to law.* Oct. 7th, 1867.

Chas. A. Ray.
Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 7th *day of* October *1867.*

Theodore W. McCoy
Clerk S. C. of Indiana.

The State of Indiana, to-wit:

IN THE SUPREME COURT.

Eleanor Kline
v.
The Miss. Ins. Company

Appeal from the Hendricks Circuit Court.

On application of the appellant, **It is Ordered,** *by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below* **be stayed** *as the law directs, whenever the appellant shall have given bond according to law.*

James L. Frazer
Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 17th *day of* December *1867.*

Laz Noble
Clerk S. C. of Indiana.

The State of Indiana, to-wit:

IN THE SUPREME COURT.

The Fishbacks w/ Elizabethtown Gravel Road Co.
v.
John P. Wilson

Appeal from the Hendricks Circuit Court.

On application of the appellant, **It is Ordered,** *by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below* **be stayed** *as the law directs, whenever the appellant shall have given bond according to law.*

J. T. Elliott
Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 13th *day of* November *1867.*

Laz Noble
Clerk S. C. of Indiana.

The State of Indiana, to-wit:

IN THE SUPREME COURT.

William F. Hamrick
v.
The Danville & No. Salem Gr. Road Co.

Appeal from the Hendricks Common Pleas Court.

On application of the appellant, **It is Ordered,** by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below **be stayed** as the law directs, whenever the appellant shall have given bond according to law. June 14, 1869

Chas. A. Ray
Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 14th day of June 1869.

T. W. McCoy
Clerk S. C. of Indiana.

The State of Indiana, to-wit:

IN THE SUPREME COURT.

William W. Irons et al.
v.
Susan A. Woodfill et al

Appeal from the Hendricks Circuit Court.

On application of the appellant, **It is Ordered,** by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below **be stayed** as the law directs, whenever the appellant shall have given bond according to law.

J. T. Elliott
Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 22nd day of December 1868.

T. W. McCoy
Clerk S. C. of Indiana.

The State of Indiana, SUPREME COURT. Appeal from the Circuit Court of Hendricks County.

John Linderman
v.
Henry G. Todd

By a Judge of the Supreme Court,

Ordered that, execution on and all proceedings on the Judgment of the Court below be stayed for three years, unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

S. E. Perkins
Judge Supreme Court.

State of Indiana, S. S.

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge, to stay proceedings in the above entitled cause.

Witness, JOHN P. JONES, Clerk of said Court and the seal thereof, at Indianapolis, this 29th day of July A. D. 1861.

J. P. Jones C. S. C.

The State of Indiana, to-wit:

IN THE SUPREME COURT.

Morgan B. Johnson et al
vs.
Jacob A. Crossland et al

Appeal from the Hendricks Circuit Court.

On application of the appellant, **It is Ordered,** *by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below* **be stayed** *as the law directs, whenever the appellant shall have given bond according to law.* May 2d 1870

Charles A. Ray
Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 2nd *day of* May *1870.*

Theodore W. McCoy
Clerk S. C. of Indiana.

The State of Indiana, to-wit:

IN THE SUPREME COURT.

James R. Bemisfield et al.
v.
Eppa Jane Hypes et al.

Appeal from the Hendricks Circuit Court.

On application of the appellant, **It is Ordered** *by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below,* **be stayed,** *as the law directs, whenever the appellant shall have given bond according to law.* March 23d 1871

John Pettit
Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 23d *day of* March *1871.*

Theodore W. McCoy
Clerk S. C. of Indiana.

The State of Indiana, to-wit:

IN THE SUPREME COURT.

Elijah C. Osborn
v.
The Indianapolis & St Louis R.R.Co.

Appeal from the Hendricks Circuit Court.

On application of the appellant, **It is Ordered** *by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below,* **be stayed,** *as the law directs, whenever the appellant shall have given bond according to law.* March 23d 1871

John Pettit
Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 23d *day of* March *1871.*

Theodore W. McCoy
Clerk S. C. of Indiana.

The State of Indiana, to-wit:

IN THE SUPREME COURT.

John C. Bartholomew and Lorenzo Fuller vs. Cornelius Loy et al.

Appeal from the Hendricks C.P. Court.

On application of the appellant, **It is Ordered,** *by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below* **be stayed** *as the law directs, whenever the appellant shall have given bond according to law.* Febr. 21 - 1873

A. C. Downey.

Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 21st *day of* February *1873*

Charles Scholl

Clerk S. C. of Indiana.

The State of Indiana, to-wit:

IN THE SUPREME COURT.

John Kisler vs. Lucinda Sanders Admx &c

Appeal from the Hendricks Comm. Pleas Court.

On application of the appellant, **It is Ordered** *by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below,* **be stayed,** *as the law directs, whenever the appellant shall have given bond according to law.*

A. C. Downey

Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 2d *day of* June *1871.*

Theodore W. McCoy

Clerk S. C. of Indiana.

The State of Indiana, to-wit:

IN THE SUPREME COURT.

Silas E. Cook vs. The Indianapolis & St Louis R. R. Co

Appeal from the Hendricks Circuit Court.

On application of the appellant, **It is Ordered** *by the undersigned, one of the Judges of the Supreme Court, that execution and other proceedings on the judgment of the Court below,* **be stayed,** *as the law directs, whenever the appellant shall have given bond according to law.* July 21st 1871

A. C. Downey

Judge of the Supreme Court.

The State of Indiana, ss:

I, the undersigned, Clerk of the Supreme Court of said State, certify that the above is a true copy of the order to stay further proceedings in the case therein specified, as the same is found ordered on the Record on file in my office.

Witness my name and official seal, this 21st *day of* July *1871.*

Theodore W. McCoy

Clerk S. C. of Indiana.

CH41

Glenn Ell Petitions

1865
1866
1871
1872

The State of Indiana, In the Supreme Court;

May Term, 1871.

Present the Hon. Alexander C. Downey C. J.
James L. Worden
Samuel H. Buskirk
John Pettit
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 6th day of September, 1871, overruled the petition for a rehearing of the judgment of the Court below in the case of

Allen Heavenridge

against

Alfred Moody

appealed to said Supreme Court by the former.

~~Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 6th day of September, 1871.

Theodore W. McCoy C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

May Term, 1865.

Present, the Hon. John T. Elliott Chief Justice.
James S. Frazer
Robert C. Gregory
Charles A. Ray
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 3d day of November 1865, granted the petition for rehearing on the judgment of the Court ~~below~~ in the case of

Moses Gwynn

against

Edmund H. Stranghan

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 3d day of November 1865

Laz Noble C. S. C.

9

The State of Indiana, In the Supreme Court;

May Term, 1872.

Present the Hon. Samuel H. Buskirk C. J.
John Pettit
Alexander C. Downey
James L. Worden
Judges

To the Clerk of the Com. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 21st day of June, 1872, overruled the petition for a rehearing of the judgment of the Court below in the case of

Washington West

against

Joseph Asher

appealed to said Supreme Court by the former.

~~Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 21st day of June, 1872.

Theodore W. McCoy, C. S. C.

9

The State of Indiana, In the Supreme Court;

November Term, 1871.

Present the Hon. James L. Worden C. J.
Samuel H. Buskirk
John Pettit
Alexander C. Downey
Judges

To the Clerk of the Com. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 12th day of January, 1872, overruled the petition for a rehearing of the judgment of the Court below in the case of

Elias Leach Excrs &c

against

Christian Prebster Excr &c

appealed to said Supreme Court by the former.

~~Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 12th day of Jany, 1872.

Theodore W. McCoy C. S. C.

9

THE STATE OF INDIANA,

IN THE SUPREME COURT,

November Term, 1865.

Present, the Hon. James S. Frazer Chief Justice.
Robert C. Gregory
Charles A. Ray
John T. Elliott
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 5th day of April 1866, overruled the petition for rehearing on the judgment of the Court ~~below~~ in the case of

Lawrence L. Shuler

against

Stephen N. Hardin Admr.

appealed to said Supreme Court by the former

~~Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 5th day of April 1866

Laz Noble C. S. C.

9

CH41

Item E12 Reverse Judgment

1856
1859
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State of Indiana, SUPREME COURT. } November Term, A. D., 1856

The Twenty sixth day of November 1856

Present the Honorable

SAMUEL E. PERKINS, Chief J.
ANDREW DAVISON,
WILLIAM Z. STUART,
SAMUEL B. GOOKINS, } JUDGES.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day ~~affirmed the judgment of the~~ dismissed ~~in~~ the case of Albert E. Jones et ux Indianapolis & Brownsburgh Plank road Company The Appellant being called and defaulted and, that after the expiration of sixty days from the date hereof, a copy of the opinion and judgment of this Court will be certified to the Court below, unless a petition for a rehearing shall have been filed, or the Court shall order otherwise.

The State of Indiana, ss:

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 26th day of November A. D., 1856

Wm B Beach C. S. C.
per G S Kentzel Dep

State of Indiana, SUPREME COURT. } November Term, A. D., 1856

The Twenty sixth day of November 185

Present the Honorable

SAMUEL E. PERKINS, Chief J.
ANDREW DAVISON,
WILLIAM Z. STUART,
SAMUEL B. GOOKINS, } JUDGES.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day ~~affirmed the judgment of the~~ in the case of John W. Smith Indiana & Illinois Central R R Co reversed the judgment errors having been confessed by Appellees and, that after the expiration of sixty days from the date hereof, a copy of the opinion and judgment of this Court will be certified to the Court below, unless a petition for a rehearing shall have been filed, or the Court shall order otherwise.

The State of Indiana, ss:

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 26th day of November A. D., 1856

Wm B Beach C. S. C.
per G S Kentzel Dep

State of Indiana, } May Term, A. D. 1859.
SUPREME COURT.

The 16 day of June 1859.

Present the Honorable

SAMUEL E. PERKINS, Chief J.
ANDREW DAVISON,
JAMES L. WORDON,
JAMES M. HANNA. } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting.

day dawes the judgment of the Hendricks C. C. has this
in the case of
State, Exrel Leach and Leach
Francis A. Scott Etal

sixty days from the date hereof, will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, WILLIAM B. BEACH, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 16 day of June A. D. 1859.

W B Beach C. S. C.

345

The State of Indiana, In the Supreme Court;

May Term, 1869.

Present the Hon. John T. Elliott C. J.
James S. Frazer
Robert C. Gregory
Charles A. Ray } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 11th day of November, 1869,
reversed the judgment of the Court below in the case of
James M. Gregg
against
James T. Matlock
appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this Eleventh day of November, 1869.

T. W. McCoy, C. S. C.

THE STATE OF INDIANA,
IN THE SUPREME COURT,

November Term, 1867.

Present the Hon. James S. Frazer C. J.
Robert C. Gregory
Charles A. Ray
John T. Elliott } Judges.

To the Clerk of the Circuit Court of County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 16 day of January 1868,
reversed the judgment of the Court below in the case of
Melvina Barnett admx
against
The Cabinet Makers Union
appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 16th day of January 1868.

Laz Noble, C. S. C.

THE STATE OF INDIANA,
IN THE SUPREME COURT,

May Term, 1867.

Present the Hon. John T. Elliott C. J.
James S. Frazer
Robert C. Gregory
Charles A Ray } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 12th day of June 1867,
reversed the judgment of the Court below in the case of
The State of Ind. on rel. Joseph S. Miller
against
John V. Headley
appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 12th day of June 1867.

Laz Noble, C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

November Term, 1865.

Present, the Hon. James L. Frazer Chief Justice.

Robert C. Gregory
Charles A. Ray
John T. Elliott
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 11th day of December, 1865, upon the rehearing of the cause ~~upon appeal~~ the judgment of the Court below in the case of

Moses Gwynn

against

Edmund H. Vaughan

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 11th day of December 1865

Laz Noble C. S. C.

7

THE STATE OF INDIANA.

IN THE SUPREME COURT.

November Term, 1865.

Present, the Hon. Charles A. Ray Chief Justice.

John T. Elliott
James L. Frazer
Robert C. Gregory
} Judges.

To the Clerk of the Circuit Court of _____ County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 12th day of January 1866, reversed the judgment of the Court below in the case of

Daniel Conner

against

Maria Conner

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 12th day of January 1866.

Laz Noble C. S. C.

7

THE STATE OF INDIANA,

IN THE SUPREME COURT,

12th day Nov Term, 1864

Present, the Hon. Charles A. Ray Chief Justice.

John T. Elliott
James L. Frazer
Robert C. Gregory
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 21st day of April 1865, reversed the judgment of the Court below in the case of

Abraham Shelly

against

John M. Vanarsdall

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 21st day of April 1865.

Laz Noble C. S. C.

State of Indiana, } November Term, A. D. 1863.
SUPREME COURT.

The W day of February 1864

Present the Honorable

ANDREW DAVISON, Chief Justice.

JAMES L. WORDEN,
JAMES M. HANNA,
SAMUEL E. PERKINS. } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day reversed the judgment & cause

in the case of

John F. Arnold

&

Julia A. Arnold

Sixty days from the date hereof will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the Seal of said Court, at Indianapolis, this _____ day of _____ A. D. 1864

John P. Jones C. S. C.

THE STATE OF INDIANA,

IN THE SUPREME COURT,

November Term, 1865.

Present, the Hon. James L. Frazer Chief Justice.

Robert C. Gregory
Charles A. Ray
John T. Elliott
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 13th day of December 1865, reversed the judgment of the Court below in the case of

Jesse T. Mallett

against

Henry S. Todd

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 13th day of December 1865

Laz Noble C. S. C.

THE STATE OF INDIANA.

IN THE SUPREME COURT.

November Term, 1865.

Present, the Hon. Charles A. Ray Chief Justice.

John T. Elliott
James L. Frazer
Robert C. Gregory
} Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 13th day of January 1866, reversed the judgment of the Court below in the case of

The State of Indiana

against

Thomas Miller

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause

Witness my name and the Seal of said Court, this 13th day of January 1866.

Laz Noble C. S. C.

7

State of Indiana, } May Term, A. D. 1864.
SUPREME COURT.

The 28 day of May 1864.

Present the Honorable

JAMES L. WORDEN, Chief Justice.

JAMES M. HANNA,
SAMUEL E. PERKINS,
ANDREW DAVISON. } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day Reversed the judgment

in the case of

Ind. & Ills. Central Railway Co.

v

Commodore P. Williams

Hendricks C.P.

Sixty days from the date hereof will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled cause.

In Testimony Whereof, I hereto subscribe my name and affix the Seal of said Court, at Indianapolis this 28 day of May A. D. 1864.

John P. Jones C. S. C.

State of Indiana, SUPREME COURT. } May Term, A. D. 1862.

The Eleventh day of June 1862.

Present, the Honorable

JAMES L. WORDEN, Chief Justice,

JAMES M. HANNA, SAMUEL E. PERKINS, ANDREW DAVISON, } Judges.

TO THE CLERK OF THE CIRCUIT COURT OF Hendricks COUNTY, GREETING:

You are hereby notified that the Supreme Court of said State has this day Reversed the judgment of the Hendricks Circuit Court in the case of

Smith Herrin et al.

v

Abraham Bland Admr.

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss,

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 11th day of June A. D. 1862

Jno. P. Jones C. S. C.

State of Indiana, SUPREME COURT. } May Term, A. D. 1862.

The 28th day of May 1862

Present, the Honorable

JAMES L. WORDEN, Chief Justice,

JAMES M. HANNA, SAMUEL E. PERKINS, ANDREW DAVISON, } Judges.

TO THE CLERK OF THE CIRCUIT COURT OF Hendricks COUNTY, GREETING:

You are hereby notified that the Supreme Court of said State has this day reversed the judgment of the Hendricks C. P. in the case of

William Little et al

v

Danville & White Lick Plank Road Co.

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss,

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 29th day of May A. D. 1862

John P. Jones C. S. C.

State of Indiana, SUPREME COURT. } November Term, A. D. 1862.

The 26th day of November 1862

PRESENT, THE HONORABLE

JAMES M. HANNA, Chief Justice.

SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, } Judges.

TO THE CLERK OF THE CIRCUIT COURT OF Hendricks COUNTY, GREETING:

You are hereby notified that the Supreme Court of said State has this day reversed the judgment of the Hendricks Common Phase in the case of

Richard Graves et. al.

vs.

William Rayle et. al.

Sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss.

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 26th day of November A. D. 1862

John P. Jones C. S. C.

State of Indiana, SUPREME COURT. } November Term, A. D. 1862.

The 4th day of December 1862

PRESENT, THE HONORABLE

JAMES M. HANNA, Chief Justice.

SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, } Judges.

TO THE CLERK OF THE CIRCUIT COURT OF Hendricks COUNTY, GREETING:

You are hereby notified that the Supreme Court of said State has this day reversed the judgment of the Hendricks Circuit Court in the case of

The State on the relation of Sarah E. Conner

vs

John C. Rynearson

Sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss.

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 4th day of December A. D. 1862

John P. Jones C. S. C.

State of Indiana, SUPREME COURT. } May Term, A. D. 1862.

The 11th day of June 1862.

Present, the Honorable

JAMES L. WORDEN, Chief Justice,

JAMES M. HANNA, SAMUEL E. PERKINS, ANDREW DAVISON, } Judges.

TO THE CLERK OF THE CIRCUIT COURT OF Hendricks COUNTY, GREETING:

You are hereby notified that the Supreme Court of said State has this day Reversed the judgment of the Court of Common Pleas in the case of

William Parker

v

The State of Indiana

~~sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss,

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court, at Indianapolis, this 11th day of June A. D. 1862

Jno. P. Jones C. S. C.

State of Indiana, SUPREME COURT. } November Term, A. D. 1863.

The 7th day of Dec 1863

Present the Honorable

ANDREW DAVISON, Chief Justice.

JAMES L. WORDEN, JAMES M. HANNA, SAMUEL E. PERKINS. } Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day reversed the judgment of the Hendricks C P in the case of

William J. Reagan

vs

Teresia Long

Sixty days from the date hereof will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above-entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the Seal of said Court at Indianapolis, this 7 day of Dec A. D. 1863

J. P. Jones C. S. C.

7

State of Indiana. SUPREME COURT. November Term, A. D. 1861.

The 12th day of December 1861

Present the Honorable

ANDREW DAVISON, Chief J.

JAMES L. WORDEN, JAMES M. HANNA, SAMUEL E. PERKINS, Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day Reversed the judgment of the Hendricks C. C.

in the case of

Thornton Sawyer

vs

State of Indiana

~~sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.~~

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 12th day of December A. D. 1861

John P. Jones C. S. C.

State of Indiana, SUPREME COURT. November Term, A. D. 1860.

The Hendricks C. C. day of January 1861

Present the Honorable

JAMES M. HANNA, Chief J.

SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day reversed the judgment of the Hendricks C. C.

in the case of

David M. Markloch

vs

Peter Wagstaff

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, 25 this day of January A. D. 1861

John P. Jones C. S. C.

State of Indiana
Supreme Court November Term A.D. 1861.
The 6th day of February 1862.
Present the Honorable
Andrew Davison Ch. J.
James L. Worden
James M. Hanna
Samuel E. Perkins } Judges.

To the Clerk of the Circuit Court of Hendricks County Greeting,
You are hereby notified that the Supreme Court of said State has this day reversed the judgment of the Hendricks C. C in the case of

Frances Owen et al

vs

John C. ~~Runion~~ Rynearson

sixty days from the date hereof will be allowed for filing a petition for a rehearing unless otherwise ordered by the Court.

The State of Indiana, S.S.
I John P. Jones Clerk of the Supreme Court of said state, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In witness whereof I hereunto subscribe my name and affix the seal of said Court at Indianapolis, this 6th day of February A.D. 1862.

John P. Jones C.S.C.

State of Indiana. SUPREME COURT. November Term, A. D. 1861.

The 5th day of December 1861

Present the Honorable

ANDREW DAVISON, Chief J.

JAMES L. WORDEN, JAMES M. HANNA, SAMUEL E. PERKINS, Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day Reversed the judgment of the Hendricks C. C.

in the case of

James M. Leathers

vs

Martin Hogan et al

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 5th day of December A. D. 1861.

John P. Jones C. S. C.

State of Indiana. SUPREME COURT. November Term, A. D. 1861.

The 2d day of December 1861

Present the Honorable

ANDREW DAVISON, Chief J.

JAMES L. WORDEN, JAMES M. HANNA, SAMUEL E. PERKINS, Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day Reversed the judgment of the Hendricks C. C.

in the case of

Ezra N. Soare

vs

Ind. & Ill. Cent. R. R. Co.

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 20 day of December A. D. 1861.

John P. Jones C. S. C.

State of Indiana. SUPREME COURT. May Term, A. D. 1861.

The 12th day of June 1861.

Present the Honorable

SAMUEL E. PERKINS, Chief J.

ANDREW DAVISON, JAMES L. WORDEN, JAMES M. HANNA, Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day Revised the judgment of the Hendricks C. C.

in the case of

Wilson & Hunt et al

vs

Thomas R. Shannon et al

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 12th day of June A. D. 1861.

John P. Jones C. S. C.

State of Indiana. SUPREME COURT. May Term, A. D. 1861.

The 14th day of June 1861.

Present the Honorable

SAMUEL E. PERKINS, Chief J.

ANDREW DAVISON, JAMES L. WORDEN, JAMES M. HANNA, Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has this day Reversed the judgment of the Hendricks Circuit Court in the case of

John F. Conrad

vs

John Christe

sixty days from the date hereof, will be allowed for filing a petition for a re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name, and affix the seal of said Court, at Indianapolis, this 14th day of June A. D. 1861.

John P. Jones C. S. C.

State of Indiana, in the Supreme Court:

November Term, 1873

Present the Hon. Alexander C. Downey
James L. Worden
Samuel H. Buskirk
John Pettit
Andrew L. Osborn
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 25th day of November 1873,

Reversed the judgment of the Court below in the case of

T. & St. L. R. R. Co.
against
James Christy

appealed to said Supreme Court by the former.

Sixty days from the date hereof, will be allowed for filing a petition for re-hearing unless otherwise ordered by the Court.

THE STATE OF INDIANA, SS:

I, CHARLES SCHOLL, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness, My name and the Seal of said Court, this 25th day of November 1873

Charles Scholl C. S. C.

The State of Indiana, SUPREME COURT. November Term, A. D. 1860.

The Fifth day of December 1860.

Present the Honorable
JAMES M. HANNA, Chief J.
SAMUEL E. PERKINS, ANDREW DAVISON, JAMES L. WORDEN, Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting.

You are hereby notified that the Supreme Court of said State has this day Affirmed the judgment of the Court of Common Pleas of Hendricks County in the case of

Otto Gerguss
against
Hamm Homan

Sixty days from the date hereof, will be allowed for filing a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing contains a true statement of the decision of said Court in the above entitled case.

In Testimony Whereof, I hereto subscribe my name and affix the seal of said Court at Indianapolis, this 5th day of December A. D., 1860.

John P. Jones C. S. C.

State of Indiana, in the Supreme Court:

November Term, 1872

Present the Hon. John Pettit C. J.
Alexander C. Downey
James L. Worden
Samuel H. Buskirk
Andrew L. Osborn
Judges

To the Clerk of the Com. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 18th day of March 1873,

Reversed the judgment of the Court below in the case of

Christian C. Rowe
against
Levi Ritter

appealed to said Supreme Court by the former.

Sixty days from the date hereof, will be allowed for filing a petition for re-hearing unless otherwise ordered by the Court.

THE STATE OF INDIANA, SS:

I, CHARLES SCHOLL, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 20th day of March 1873

Charles Scholl C. S. C.

The State of Indiana, In the Supreme Court:

May Term, 1872.

Present the Hon. Samuel H. Buskirk C. J.
John Pettit
Alexander C. Downey
James L. Worden
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 31st day of May 1872,

Reversed the judgment of the Court below in the case of

Elizabeth Walton
against
Jacob Eichelstine

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 31st day of May 1872

Theodore W. McCoy C. S. C.

State of Indiana, in the Supreme Court:

May Term, 1873

Present the Hon. Andrew L. Osborn
Alexander C. Downey
James L. Worden
Samuel H. Buskirk
John Pettit
Judges.

To the Clerk of the Com. Pleas Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 27th day of May 1873,

Reversed the judgment of the Court below in the case of

John H. Hays Et al.
against
Henry Pickering Admr

appealed to said Supreme Court by the former.

Sixty days from the date hereof, will be allowed for filing a petition for re-hearing unless otherwise ordered by the Court.

THE STATE OF INDIANA, SS:

I, CHARLES SCHOLL, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness, My name and the Seal of said Court, this 27th day of May 1873

Charles Scholl C. S. C.

THE STATE OF INDIANA,
IN THE SUPREME COURT.

May Term, 1865.

Present, the Hon. John Elliott Chief Justice.
James Frazer.
Robert A. Gregory
Charles A. Ray
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 27th day of September 1865.

Reversed the judgment of the Court below in the case of

Marian O'Conner
against
Daniel O'Conner

appealed to said Supreme Court by the former

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, LAZ. NOBLE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 27th day of September 1865

Laz. Noble C. S. C.

The State of Indiana, In the Supreme Court:

May Term, 1872.

Present the Hon. Samuel H. Buskirk C. J.
John Pettit
Alexander C. Downey
James L. Worden
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 15th day of October 1872,

Reversed the judgment of the Court below in the case of

Alfred D. Nash
against
William Caywood

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 27th day of October 1872

Theodore W. McCoy C. S. C.

41-E12

The State of Indiana, In the Supreme Court:

May Term, 1871.

Present the Hon. Alexander C. Downey C. J.
James L. Worden
Samuel H. Buskirk
John Pettit
Judges.

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 4th day of November 1871,

Reversed the judgment of the Court below in the case of

Elias Leach Exr of estate of Frederick Rubottom Dcd against
Christian Rubottom, Exer &c

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 4th day of November 1871

Theodore W. McCoy C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1870.

Present the Hon. John Pettit C. J.
Alexander C. Downey
James L. Worden
Samuel H. Buskirk
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 30th day of March, 1871, Reversed the judgment of the Court below in the case of

Benjamin E. Smith et al

against

John Hollett

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 30th day of March, 1871.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1870.

Present the Hon. John Pettit C. J.
Alexander C. Downey
James L. Worden
Samuel H. Buskirk
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 29th day of March, 1871, Reversed the judgment of the Court below in the case of

James L. Smith et al

against

William J. Scarce

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 29th day of March, 1871.

Theodore W. McCoy, C. S. C.

The State of Indiana, In the Supreme Court;

November Term, 1870.

Present the Hon. John Pettit C. J.
Alexander C. Downey
James L. Worden
Samuel H. Buskirk
Judges

To the Clerk of the Circuit Court of Hendricks County, Greeting:

You are hereby notified that the Supreme Court of said State has on this 29th day of March, 1871, Reversed the judgment of the Court below in the case of

Mary E. Hughes

against

Eliphalet D. Sellers et al.

appealed to said Supreme Court by the former.

Sixty days from the date hereof will be allowed for filing a petition for re-hearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, THEODORE W. McCOY, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness my name and the Seal of said Court, this 29th day of March, 1871.

Theodore W. McCoy, C. S. C.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1899.

PRESENT:

Hon. John V. Hadley, Chief Justice.

Hon. Francis E. Baker. Hon. Leander J. Monks.

Hon. Alexander Dowling. Hon. James H. Jordan.

IN THE CASE OF

C. C. C. & St. L. Ry. Co.

VS.

Addie S. Parker, Admx

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Reversed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 21 day of February 1900

Robert A. Brown
Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1900.

PRESENT:

Hon. Alexander Dowling, Chief Justice.

Hon. Leander J. Monks. Hon. John V. Hadley.

Hon. James H. Jordan. Hon. Francis E. Baker.

No. 18784

IN THE CASE OF

Francis F. Hord, Trustee, &c

VS.

Daniel M. Bradbury

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Reversed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 3rd day of January 1901

R A Brown
Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, November Term, 1902.

PRESENT:

Hon. John V. Hadley, Chief Justice.

Hon. Leander J. Monks. Hon. James H. Jordan.

Hon. John H. Gillett. Hon. Alexander Dowling.

IN THE CASE OF

Mary A. Adam

VS.

John T. Hacker

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Reversed the judgment of the Court below in the above entitled cause.

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 27th day of June 1903.

R. A. Brown
Clerk Supreme Court.

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things Reversed *at the cost of the* Appellee

all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the Appellant *recover of the* Appellee *the sum of* —$29.20— *for* her *costs and charges in this behalf expended*

THE STATE OF INDIANA,
SUPREME COURT.

I, ROBERT A. BROWN, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 29th *day of* March *1903.*

R A Brown C. S. C.

THE STATE OF INDIANA.

In the Supreme Court, May Term, 1904.

PRESENT:

Hon. James H. Jordan, Chief Judge,
Hon. Alexander Dowling. Hon. Leander J. Monks.
Hon. John V. Hadley. Hon. John H. Gillett.

IN THE CASE OF

Julia A. Towles, et al.

VS.

Mary E. McCurdy, et al.

APPEALED FROM THE

Hendricks Circuit COURT.

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Reversed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, ROBERT A. BROWN, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 24 *day of* May *1904*

Robert A Brown
Clerk Supreme Court.

THE STATE OF INDIANA,

In the Supreme Court, May Term, 1912

PRESENT:

Hon. Charles E. Cox, Chief Justice
Hon. Leander J. Monks Hon. John W. Spencer
Hon. Quincy A. Myers Hon. Douglas Morris

IN THE CASE OF

William H. Miller Etal

VS.

Jackson Township of Boone County Etal

APPEALED FROM THE

Hendricks COURT

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Appellate Court of said State has on this day Reversed *the judgment of the Court below in the above entitled cause.*

Sixty days from the date hereof will be allowed for the filing of a petition for a rehearing, unless otherwise ordered by the Court.

The State of Indiana, ss:

I, J. FRED FRANCE, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

WITNESS my name and the seal of said Court, this 2nd *day of* July *1912.*

J. Fred France
Clerk Supreme Court.

CH 41

Item E13 Writ of Certiorari
1856
1865

(CERTIORARI.)

STATE OF INDIANA, SUPREME COURT. } November Term A. D. 1855.

To the Judges of the Circuit *Court of* Hendricks County **Greeting:**

Because in the record and proceedings, as also in the rendition of judgment in a certain action in the Hendricks Circuit *court wherein* Vincent L. McCormack *was plaintiff and* The President and Directors of the Terre Haute and Richmond Rail Road Company *were defendants, manifest error hath intervened as is said, to the great damage of the said* Defendants *The record and proceedings of which judgment were taken by said* Defendants *into our Supreme Court by appeal, and because as is alleged by counsel in behalf of said* Appellants *that the transcript of the said Record on file, and before the court is defectively certified in this to-wit:* "That it does not contain the instructions given by the Court to the jury."

and because it seems expedient and necessary for the judges of said Supreme Court for their information before they proceed further in this behalf to be certified upon the premises.

You are therefore commanded that searching the records and proceedings of said Circuit *court of* Hendricks County *you certify to the said Supreme Court, a full and complete record of the cause aforesaid and more particularly the matters and things alleged for diminution, and have you the same and this writ on the fourth Monday in* May *next before the judges of said Supreme Court at the State House in the city of Indianapolis.*

Witness, WILLIAM B. BEACH, *Clerk of said court and the seal thereof at Indianapolis this* 26th *day of* January *A. D. 1856.*

W. B. Beach C. S. C.

STATE OF INDIANA SUPREME COURT

The State of Indiana.
In the Supreme Court.
11th day Nov. Term. 1864. April 6. 1865.

Ezra Cox
v
James Pruett. } From the Hendricks C. C.

On application of the appellee, it is ordered Certiorari be issued to the Clerk of the Hendricks Circuit Court, commanding him forthwith to make out and certify under the seal of said Court, transcript of the original complaint in the above entitled cause; the transcript of the proceedings had in the Marion Circuit Court, together with the affidavit of James Pruett, for a change of the venue from before his Honor F. M. Finch, and of the affidavit filed in the Hendricks Circuit Court, by Ezra Cox, for a change of the venue of the above cause; and also make out and certify to the Supreme Court, a full and complete record of all the papers and record entries in said cause, in their appropriate places, and not of matter and papers not made parts of the record by Bill of exceptions without comments or explanations affixed thereto.

I certify that the above is a true copy of the order of the Supreme Court for certiorari to the Clerk of the Hendricks Circuit Court in the cause wherein Ezra

CH41

Item E14 Writ of Supersedeas
1862
1863
1864
1865
1866

The State of Indiana,

SUPREME COURT.

The State of Indiana Ex Rel. Riley McCaslin vs. Lewis Smock et al. } Appeal from the Court of Common Pleas ~~Court~~ of Hendricks County

By a Judge of the Supreme Court.

Ordered that execution on, and all proceedings on the Judgment *below, be stayed for three years unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.*

S. E. Perkins
Judge Supreme Court.

State of Indiana, ss:

I, JOHN P. JONES, *Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge, to stay proceedings on the above entitled cause.*

Witness JOHN P. JONES, *Clerk of said Court, and the seal thereof, at Indianapolis, this* 12th *day of* June *A. D., 1862.*

Jno. P. Jones *Clerk.*

The State of Indiana,

SUPREME COURT.

Peyton Richardson et al. vs. James Gibson } Appeal from the Circuit Court of Hendricks Counnty

By a Judge of the Supreme Court.

Ordered that execution on, and all proceedings on the judgment *below, be stayed for three years unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.*

S. E. Perkins
Judge Supreme Court.

State of Indiana, ss:

I, JOHN P. JONES, *Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge, to stay proceedings on the above entitled cause.*

Witness JOHN P. JONES, *Clerk of said Court, and the seal thereof, at Indianapolis, this* 11th *day of* February *A. D., 1863*

John P. Jones *Clerk.*

The State of Indiana,

SUPREME COURT.

State Ex Rel Sarah E. Conner vs. John C. Ryperson } Appeal from the Circuit Court of Hendricks Counnty

By a Judge of the Supreme Court.

Ordered that execution on, and all proceedings on the judgment below, be stayed for three years unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

S. E. Perkins
Judge Supreme Court.

State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge, to stay proceedings on the above entitled cause.

Witness JOHN P. JONES, Clerk of said Court, and the seal thereof, at Indianapolis, this 9th day of April A. D., 1862

John P. Jones Clerk.

The State of Indiana,

SUPREME COURT.

John F. Arnold vs. Julia A. Arnold } Appeal from the Circuit Court of Hendricks Counnty

By a Judge of the Supreme Court.

Ordered that execution on, and all proceedings on the judgment below, be stayed for three years unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

A. Davison
Judge Supreme Court.

State of Indiana, ss:

I, JOHN P. JONES, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge, to stay proceedings on the above entitled cause.

Witness JOHN P. JONES, Clerk of said Court, and the seal thereof, at Indianapolis, this 26 day of November A. D., 1863

Jno P. Jones Clerk.

The State of Indiana,

SUPREME COURT.

James M. Mitchell vs. James S. Smith 3861 } Appeal from the Common Pleas Court of Hendricks Counnty

By a Judge of the Supreme Court.

Ordered that execution on, and all proceedings on the Judgment below, be stayed for three years unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

S. E. Perkins
Judge Supreme Court.

State of Indiana, ss:

I, ~~JOHN P. JONES~~ Gaz Noble Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge, to stay proceedings on the above entitled cause.

Witness ~~JOHN P. JONES~~ Gaz Noble Clerk of said Court, and the seal thereof, at Indianapolis, this 27th day of December A. D., 1864

Gaz Noble Clerk.

The State of Indiana,

SUPREME COURT.

James M. Gregg
vs. (55.)
David G. Wilson, adm. of
State of David Matlock, dec'd.

Appeal from the Common Pleas Court of Hendricks County.

By a Judge of the Supreme Court.

Ordered that execution on, and all proceedings on the judgment below, be stayed for three years unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

Charles A. Ray
Chief Justice ~~Judge~~ Supreme Court.

State of Indiana, ss:

I, ~~JOHN P. JONES~~ Laz Noble, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge, to stay proceedings on the above entitled cause.

Witness ~~JOHN P. JONES~~ Laz Noble, Clerk of said Court, and the seal thereof, at Indianapolis, this eleventh day of May A. D., 1865

Laz Noble Clerk.
per Frank Kimball
Deputy

The State of Indiana,

SUPREME COURT. 22d day May Term 1865

Lawrence L Shuler
vs.
Stephen N. Harden Adm

Appeal from the Common Pleas Court of Hendricks County

By ~~a Judge of~~ the Supreme Court.

Ordered that execution on, and all proceedings on the judgment below, be stayed for three years unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

~~Judge Supreme Court.~~

State of Indiana, ss:

I, ~~JOHN P. JONES~~ Laz Noble, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge, to stay proceedings on the above entitled cause.

Witness ~~JOHN P. JONES~~ Laz Noble, Clerk of said Court, and the seal thereof, at Indianapolis, this 22d day of June A. D., 1865

Laz Noble Clerk.

The State of Indiana,

SUPREME COURT.

State ex rel. Owen R. Owen
vs.
Jonathan Owen et al.

Appeal from the Common Pleas Court of Hendricks County

By a Judge of the Supreme Court.

Ordered that execution on, and all proceedings on the judgment below, be stayed for three years unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

Chas A. Ray
Judge Supreme Court.

State of Indiana, ss:

I, ~~JOHN P. JONES~~ Laz Noble, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge, to stay proceedings on the above entitled cause.

Witness ~~JOHN P. JONES~~ Cho, Clerk of said Court, and the seal thereof, at Indianapolis, this 13th day of October A. D., 1865

Laz Noble Clerk.

The State of Indiana,

SUPREME COURT.

Jesse D. Carmichael
vs.
Margaret Gary and James Gary

Appeal from the Circuit Court of Hendricks County

By a Judge of the Supreme Court.

Ordered that execution on, and all proceedings on the judgment below, be stayed for three years unless otherwise ordered by this Court, as soon as the appellant shall have executed bond according to law.

Chas. A. Ray
Judge Supreme Court.

State of Indiana, ss:

I, ~~JOHN P. JONES~~ Laz Noble, Clerk of the Supreme Court of said State, certify that the foregoing is a full and true copy of the order of said Judge, to stay proceedings on the above entitled cause.

Witness ~~JOHN P. JONES~~ Laz Noble, Clerk of said Court, and the seal thereof, at Indianapolis, this 19th day of July A. D., 1866

Laz Noble Clerk.

CH41

Item E 15 Misc.-
1871
1904

The State of Indiana.
In the Supreme Court:
November Term. 1865
Present the Hon. James L. Frazer Chief Justice
Robert C. Gregory
Charles A Ray } Judges
John L. Elliott

To the Clerk of the Court of Hend=
ricks County, Greeting:

You are hereby notified that the docket entries in the Clerks office of the Supreme Court of said State, show that on the 14th day of December, 1865, said Supreme Court upon Confession of errors, made by the appellee, reversed the Judgment of the Court below in the case of Moses Gwynn against Edmund H. Straughan appealed to said Supreme Court by the former.

The State of Indiana. ss.
I, Theodore W. Mc Coy, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled Cause, as the same appears entered on the docket of said Court for the November Term thereof, 1865.

Witness my name and the Seal of said Court this 24th day of January 1871.

Theodore W. Mc Coy, Clerk of the Supreme Court of Indiana.

SUPREME COURT * STATE OF INDIANA * MDCCCXVI

17

The appellant was elected treasurer of Hendricks county at the general election of 1902, and qualified and took possession of the office at the expiration of the term of his predecessor, January 1, 1904.

James A. Clay, one of the appellees, was nominated as the successor of Vestal at a Republican primary election held in 1904, to be voted for as the candidate of the Republican party for treasurer of said county, at the general election to be held in November, 1904.

The appellant, Vestal, brought this suit against the chairman and secretary of the Republican County Committee, and said Clay, to enjoin those officers from certifying Clay's name to the Board of election commissioners of Hendricks county, as the candidate of the Republican party for county treasurer to be voted for at the said general election of November, 1904.

The ground of appellant's action was that, by the act of February 11, 1903, a successor in office to said Vestal could not be elected until the general election of November, 1906.

A demurrer to the complaint was sustained, and the appellant refusing to amend, judgment was rendered on the demurrer in favor of the appellees. The ruling on the demurrer is assigned for error. No objection is made to the form of the action, and nothing is decided concerning the appropriateness of the remedy sought.

The only question involved in this case is the constitutionality of the act of February 11, 1903. That question has been decided adversely to the appellant in Gemmer v. State ex rel., No. 20,374, at the present term of this court. Upon the authority of that case, the judgment is affirmed.

Hadley, J. did not participate in this case.

On May 17, 1906, appellant applied to the Hendricks Circuit Court for a writ of habeas corpus. In his verified complaint he alleges that he "is the grandfather of one Mills Hardin, a minor child of the age of five years, to whose custody and possession he is rightfully entitled; * * * that defendant, Lora Hardin, has wrongfully seized the body of said child and removed him from the state of Kentucky and now illegally and without cause restrains him in the town of Danville, in Hendricks County, state of Indiana, and wrongfully deprives this petitioner of the custody and possession of said child by forcibly confining and restraining him in and about the residence of said Lora Hardin; that said restraint is unlawful and without cause or right; that on the 15th day of May, 1903, in the McLean Circuit Court, in the state of Kentucky, said Lora Hardin obtained a judgment for divorce against one Mark L. Hardin * * * and for the care and custody of said infant child, Mills Hardin," which care, control and custody of said child she was to have subject to the further order of said court.

It was further ordered by said court that said Mark L. Hardin should be permitted to have a reasonable opportunity to see and associate with said child. It is further alleged that "on the 22nd day of September, 1903, said Mark L. Hardin served written notice upon said Lora Hardin that he would move the aforesaid court for an order to be permitted to see and have the custody of said child, Mills Hardin, at such reasonable times as the court might prescribe. This notice was properly served upon said Lora Hardin and the service thereof by her accepted.

The complaint then alleges that on the 28th day of September 1903, the judge of said McLean Circuit Court modified said order as to the care, custody and control of said infant child, Mills Hardin, in this respect that "this petitioner should have the custody of said child for one week in every three weeks for and on behalf of said Mark L. Hardin, that one Samuel H. Mills and said defendant, Lora Hardin, should have the custody of said child for two weeks out of every three weeks and that the parties should have alternately the custody of said child for the periods aforesaid, until the further order of the court." It is further alleged that in December, 1903, said defendant, Lora Hardin, in violation of the order and judgment of said court, ("which is still valid and subsisting and has never been set aside or rescinded or appealed from)

and without authority from or permission of said court, or from this petitioner, removed said child from the state of Kentucky and beyond the jurisdiction of said court, and has ever since, and does now deprive the petitioner herein of the possession of said infant." It is averred that the petitioner or complainant is a man of ample means to provide a home for such infant and supply it with all the necessaries of life, and is a fit person to have the care and custody thereof. The complaint closes with a prayer that a writ of habeas corpus be granted to the plaintiff and that defendant, Lora Hardin, be required and ordered to deliver up the custody of said child to the petitioner and that it be delivered from said unlawful restraint. Upon this complaint a writ of habeas corpus was issued, directed to the defendant, Lora Hardin, commanding her to have the body of Mills Hardin, etc., before the judge of the Hendricks Circuit Court on the 21st day of May, 1906, at the hour therein named at the court house at the town of Danville, to do and receive what should be ordered concerning him. The sheriff, it appears, made return to the writ, showing the service thereof on appellee. In obedience to the command of the writ appellee appeared in the lower court and filed a motion to quash the writ as follows: "Comes now the defendant in the above entitled cause by Solon A. Enloe and Otis E. Gulley, her attorneys and moves the court to quash the writ issued herein, for the following reasons, to-wit: 1st. The plaintiff has no legal capacity to institute this action. 2nd. There is no certified copy of the decree or modified decree of the Circuit Court of McLean County, Kentucky, in the case of Lora Hardin v. M. L. Hardin, attached to the complaint, or petition, as an exhibit thereto. 3nd. The said petition is insufficient to justify or authorize the issuing of the writ under the law of the state of Indiana, and said writ was improvidently issued." This motion was sustained, to which appellant excepted, and refused to further to plead, whereupon judgment was rendered against him. He appeals and assigns as error that the court erred in sustaining the motion to quash the writ. That the motion to quash tested the sufficiency of the complaint or application is well settled by the decisions of this court. Schleuter v. Canatsy, 148 Ind. 384, and cases there cited.

It will be noted that appellant, in his complaint, alleges that

he is the grandfather of the child in controversy. While the complaint does not expressly show that the defendant (appellee herein) is the mother of the child in question, nevertheless, from the facts therein averred, the inference reasonably and naturally arises that she is. Apparently, therefore, whatever right, if any, appellant may have to the custody of the child, is, as against the defendant, its mother, predicated or based on the judgment of the McLean Circuit Court, of the state of Kentucky, whereby, as averred, its custody was awarded to appellant for the time as alleged and shown in the complaint. It is disclosed that by the Kentucky court of appellee was awarded a judgment or decree of divorce from one Mark L. Hardin and the court gave her the care and custody of the infant child, Mills Hardin, subject to its further order. Subsequently, however, upon notice to her, it appears that the court modified its judgment and order in respect to the custody of the child to the extent that appellant should, on behalf of said Mark L. Hardin, have the custody thereof for one week out of every three weeks and that she and one Samuel H. Mills should have the custody of the child for two weeks out of every three weeks, until the further order of the court. The complaint then charges that she, in violation of the judgment and order of the court and without authority or permission therefrom, and without permission from appellant, removed said child from the state of Kentucky and beyond the jurisdiction of the McLean Circuit Court and deprived appellant of the possession thereof. Appellant's counsel contend that under the judgment of the McLean Circuit Court, of the state of Kentucky, appellant had the right and was entitled to the custody of the child. They argue that by section one of article fourteen of the Federal Constitution full faith and credit must be accorded to the judgment of the Kentucky court by the courts of Indiana and that so long as that judgment stands it must be held to be binding on the parties and that thereby the right to the custody of the child involved in this action is fixed and determined. It is true that a judgment rendered, divorcing a husband and wife and providing for and settling the care and custody of their child or children, by a court of a sister state having jurisdiction of the subject matter and the parties thereto, in the absence of any fraud affecting the jurisdiction in the particular case, will be given or accorded full force and effect by the courts of this state. Hood v. State, 56 Ind. 263; Walker v. Walker, 125 Ind. 163; Hilbish v.

Hattle, 145 Ind. 59; Middleworth v. McDowell, 49 Ind. 386.

In fact section 1061 Burns Statutes, 1901, declares that "a divorce decreed in any other state by a court having jurisdiction thereof shall have full effect in this state."

In further support of the general rule that a judgment or decree of divorce, dissolving the marriage relation of the parties and therein determining and fixing the custody of the children of such marriage, when rendered in accordance with the laws of another state, by a court thereof which is shown to have had jurisdiction of the subject matter and of the parties, will be regarded as valid and will be given full force and effect in all other states when the same matters or things come in issue. See 14 "Cyc.", pages 814, 815, and authorities there cited.

The infirmity, however, of appellant's complaint, in one respect at least, regardless of any others, is that there is an entire absence therein of any averments to show that the McLean Circuit Court of the State of Kentucky had jurisdiction over the subject matter and the parties in the proceeding wherein the judgment of divorce to appellee was awarded and whereby the custody of the infant child in question was determined and fixed as alleged in the complaint. There are no allegations in the pleading to show that the McLean Circuit Court was, under the laws of the state of Kentucky, a court of general jurisdiction. This at least was necessary in order to disclose that the judgment upon which appellant predicates his right to have the custody of the child was rendered by a court which was invested with the necessary jurisdiction in divorce proceedings. Bailey v. Martin, 119 Ind. 103; The American etc. Life Ins. Co. v. Mason, 159 Ind. 15; Gates v. Newman, 18 Ind. App. 392; Ashley v. Laird, 14 Ind. 222.

No certified copy of the judgment of the McLean Circuit Court was filed with or in any way made a part of the complaint. While the filing of such a copy with the complaint was not necessary in order to render the pleading sufficient on demurrer (Joab v. Sheets, 99 Ind. 328, 331), nevertheless the filing thereof would have been proper and possibly would have aided the pleading in showing that the court in question was one of general jurisdiction within the holding of Bailey v. Martin, supra, and Old Wayne, etc. Association v. McDonough, 164 Ind. 321. In

the absence of a proper showing that the McLean Circuit Court had jurisdiction there is no room for presuming that it had. Had it appeared by the complaint that the McLean Circuit Court was one of general jurisdiction, that would have been sufficient to show its jurisdiction in the proceeding, and under the rule affirmed by our own decisions and those of the Federal courts the legal presumption could be indulged that it, being one of general jurisdiction, proceeding within the general scope of its powers, acted rightly, and all intendments of the law would be presumed in favor of its acts. Under these circumstances, in the absence of anything to the contrary, it would be presumed to have had jurisdiction to give the judgment which it rendered and this presumption would embrace jurisdiction not only of the subject matter of the action in which the judgment was given, but also jurisdiction over the parties thereto. The American etc. Ins. Co. v. Mason, supra, and authorities cited on page 19 of the opinion; Galpin v. Page, 18 Wall. (U.S.) 359.

If the court mentioned in the complaint was one of special jurisdiction, then a general averment that the judgment was duly rendered or given as authorized by section 372 Burns Statutes 1901 would have been sufficient. Chicago etc. R. Co. v. Higgins, 150 Ind. 329.

The evident theory of the complaint, as disclosed by the facts therein alleged and the prayer thereof, is that appellant, as against appellee, is entitled to the custody of the child, not only for one week out of three, as determined by the modified judgment, but that he is entitled to the custody thereof absolutely and unconditionally, thereby seeking in effect, in this collateral proceeding, not to uphold the judgment of the Kentucky court, but on the contrary to break it down and set it aside so far as appellee's right to the custody of her child was fixed and determined thereby. Assuming, therefore, as counsel for appellant contend, that the McLean Circuit Court was invested with competent jurisdiction and that its judgment was binding and conclusive on the parties until set aside or changed in a proper proceeding, certainly then, under this view of the case, the judgment could not in whole or in part be set aside or avoided in this collateral proceeding for a writ of habeas corpus. Williams v. Williams, 13 Ind. 523; Bailey v. Schrader, 34 Ind. 260; Joab v. Sheets, 99 Ind. 328 and authorities there cited; Leming v. Sale, 128 Ind. 317.

CF 41

FO2 Correspondence From Probation Officer
1918

State of Indiana)
) NO, 22.
VS)
) In the Juvenile Court of
John Stilling) Hendricks County, Indiana.

To the Honorable George W. Brill, Judge:

The undersigne probation officer of Hendricks County, Indiana,hereby makes report to the Court in the above entitled matter,Upon investigation I find that John Stilling was born in Austra-Hungary; that he and his parrents came tothe United States about six years ago and came to Dayton, Ohio, andJohn Stilling's father and mother both died at Dayton, Ohio, in the year 1916. That his father became a naturalized citizen of the United States before his death. That after the death of his parents the boy wandered about and became a wayword boy. He would not remain inone place very long but would beat his way about on the freight trains. On the first day of August 1918, John Stilling was beating his way on the C & I freight train at Maplewood, Hendricks County Indiana and while doing so he stole some money and cloths,suit case and other articles from one McVey, a breakman on said train; of the value of $25.00 His age is sixteen years, I believe he should be Commited to the Indiana School for Boys at Plainfield, Ind.

C. H. Montgomery
Probation Officer.

CH 41

Item F01 Estimate of Expenses of Juvenile Court
1911

FORM PRESCRIBED BY THE STATE BOARD OF ACCOUNTS

County (Blank) Form No. 35. 7-1911-400

CLERK'S ESTIMATE OF EXPENSES OF THE JUVENILE COURT

OFFICE OF CLERK OF THE CIRCUIT COURT.

State of Indiana Hendricks *County,*

August 5th 1911.

TO THE COUNTY AUDITOR:

In compliance with the provisions of an Act of the General Assembly of the State of Indiana, approved March 3, 1899, entitled "An Act concerning County Business," the undersigned Clerk of the Circuit Court respectfully submits the following estimate of the expenses of the Juvenile Court of said County for the calendar year ending December 31, 191—

			AMOUNT ESTIMATED	AMOUNT APPROPRIATED
ITEM No. 179.	Salary of Judge,			
ITEM No. 180.	Witness Fees Allowed by Law,		200.	
ITEM No. 181.	Per Diem of Official Reporter,		50.	
ITEM No. 182.	Per Diem of Bailiffs Allowed by Law,		20	
ITEM No. 183.	Support of Dependent Children,		100	
ITEM No. 184.	Probation Officers,			
	(a) Per Diem,	$ 100.		
	(b) Expense,	$ 5.		
	Total Item No. 184,		105.	
ITEM No. 185.	Detained Children,			
	(a) Meals,	$ 10.		
	(b) Medical attention,	$ 50.		
	Total Item No. 185,		60	
ITEM No. 186.	Expense of Court Room,			
	(a) Supplies,	$		
	(b) Repairs,	$		
	(c)	$		
	Total Item No. 186,			
	Total,		535.	

I certify the above to be a fair and true estimate of the probable expense of the Juvenile Court of said County for the calendar year ending December 31, 191 1, and that according to my best knowledge and belief the amounts named in the various items will be necessary to the proper transaction of the business of said Court.

James M. Adams.
CLERK OF THE CIRCUIT COURT.

Subscribed and sworn to before me this 5th day of August. 1911.

Wm. H. Nichols
Auditor

Approved this 5th day of August. 1911.

James L. Clark
JUDGE JUVENILE COURT.

CH 41

item G01 Final Report
1918

38H

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Jno T Cox

Jne 26 - 1918