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Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before Hons. Caleb H. Norris, S.M. Douglass and R.M. Voorhees, Judges of said Court of the February Term, A.D. 1902.

Be it remembered that heretofore, towit, on December 26th, 1901, the following Petition in Error was filed with the Clerk of said Court, towit:-

169 Petition

William H. Merchant, as Administrator, de bonis non, of the estate of Abner Liggett, deceased — Plaintiff in Error.

Vs. Circuit Court of Union County, Ohio,

Edwin H. Perkins, as Administrator of the estate of Lydia Ann Perkins, deceased — Defendant in Error,

The plaintiff in error says that at the September Term, A.D. 1901, of the Court of Common Pleas, in and for the County of Union and State of Ohio, said defendant in error recovered a judgment against the plaintiff in error in a certain action and proceeding then pending in said Court, wherein the said defendant in error was plaintiff, and the said plaintiff in error was defendant.

The original pleadings, and papers, and transcript of the Journal entries in said action, and proceeding are herewith filed; and the plaintiff in error says, that there is error in said record and proceedings, in said Court of Common Pleas in this, towit;

1, Said Court erred in sustaining the demurrer of the defendant in error to the 3rd, 4th and 5th grounds of defense set forth in the amended answer filed July 11th, 1901, of the plaintiff in error, and to each of said grounds of defense,

2, Said Court erred in refusing to overrule the demurrer to the said 3rd, 4th and 5th grounds of defense in said amended answer, and to each of them,

3, The Court erred in rendering judgment against the plaintiff in error for the said sum of $350.00 and the interest and costs, without any evidence whatever, except the evidence that the defendant in error, was the duly appointed and qualified Administrator, and without any evidence that any sum was due to the said Edwin H. Perkins, as such Administrator or otherwise,

4, Said judgment of said Court of Common Pleas is contrary to law,

5, Said judgment was given for the defendant in error, when it should have been given for the plaintiff in error,

The plaintiff therefore prays that the said judgment of the said Court of Common Pleas be reversed, and that the plaintiff in error be restored to all things that he has lost by reason thereof,

Porter & Porter and Merchant, Attys for Plaintiff.

169 Waiver

I hereby waive the issuing and service of summons in error in this case and enter my appearance herein,

Dec. 26th, 1901.

James McCampbell and James E. Robinson, Attorneys for Defendant in Error.

169 Transcripts

On Jan. 31st, 1902, the following Transcripts of Journal Entries were filed, towit:-

Edwin H. Perkins - Admr. — Plaintiff.

Vs.

H. H. Merchant, Admr. — Defendant.

Court Common Pleas, Union County, Ohio.

May, 6th, 1901.

This cause being heard on the demurrer to the 3rd and 4th grounds of defense set forth in the answer herein filed, it is considered and ordered by the Court that the said demurrer be

and the same thereby is sustained, And to the said order of the Court in sustaining said demurrer, the said defendant by his counsel, excepts.

And thereupon the said defendant not asking to plead further, and a Jury having been waived, this cause was submitted to the Court upon the pleadings and the evidence, and on consideration thereof, the Court find on the issues joined for the plaintiff, and find there is due and owing to said plaintiff, as Administrator of the estate of Lydia Ann Perkins, deceased, from the said defendant, as Administrator of the estate of Abner Liggett, deceased, the sum of Three Hundred and Fifty Dollars ($350.00) with interest at the rate of six per centum per annum from the 17th day of January, A.D. 1901,

It is therefore considered, ordered and adjudged by the Court that the said plaintiff recover from the said defendant, as such Administrator, the said sum of $350.00, with interest thereon at the rate of six per centum per annum from the 17th day of January, A.D. 1901, so as aforesaid found due, together with his costs in this behalf expended, taxed at $—.

And to the said findings, orders, and judgment of the Court in the premises, the said defendant by his counsel, excepts.

Edwin H. Perkins, Admr. - Plaintiff.
Vs. Court Common Pleas, Union County, Ohio,
H. H. Merchant, Admr. - Defendant. Filed July, 1st. 1901.

This day this cause came on to be heard upon the motion of the defendant to vacate and modify the entry placed on the Journal in this case at this term of Court as found in Journal 19 page 244 of this Court, so as to sustain the defendants motion and grant him leave to amend his said answer on file herein, and to that end the finding of the Court on the issue joined for the plaintiff, the amount so found due the plaintiff and the judgment rendered therefor is hereby set aside and vacated, and the defendant is ordered to amend his said answer in ten days from the date hereof, towit, by July 11th, 1901.

Said entry of May 6th, 1901, stands and remains in force as to the sustaining of said demurrer and exceptions by defendant thereto,

Edwin H. Perkins, Admr. - Plaintiff.
Vs. Court Common Pleas, Union County, Ohio.
H. H. Merchant, Admr. - Defendant. Filed, Sept. 23rd, 1901.

This cause being heard on demurrer to the third, fourth, and fifth grounds of defense set forth in the amended answer herein filed, it is considered by the Court that the said demurrer be, and the same is hereby sustained, And thereupon the said defendant not asking to plead further, and a jury having been waived, this cause was submitted to the Court, upon the pleadings and the evidence.

Thereupon, on consideration thereof, the Court finds from the evidence that the plaintiff is the duly appointed and qualified Administrator and finds that there is due and owing to said plaintiff, as Administrator of the estate of Lydia Ann Perkins, deceased, from the said defendant, as Administrator of the estate of Abner Liggett, deceased, the sum of Three Hundred and Fifty Dollars, with interest thereon at the rate of six per cent. per annum from the 17th day of January, A.D. 1901, And there was no other or further

evidence submitted by either party than above mentioned.
It is therefore considered, ordered and adjudged by the Court that the said plaintiff recover from the said defendant, as such Administrator, the said Sum of 350^{00}, with interest thereon at the rate of six per cent. per annum from the 17th day of January, A.D, 1901, so as aforesaid found due, together with his costs in this behalf expended taxed at $-. And to the findings, orders and judgment of the Court in the premises, the said defendant by his counsel excepts, and especially to the sustaining of said demurrer to said defendants third, fourth and fifth grounds of defense in said amended answer.

The State of Ohio, Union County ss,
I, Chas Reuhorwood, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript therefrom.
In testimony whereof, I have hereunto subscribed my name officially and affixed the seal of said Court at the Court House in Marysville in said County this 31st day of January, A.D. 1902.

(Seal) Chas Reuhorwood, Clerk.

169 Entry

On Feb. 13th, 1902, the following Entry was filed.
William H. Merchant, Admr, - Plaintiff in Error.
vs. Circuit Court of Union County, Ohio.
Edwin H. Perkins, Admr. - Defendant in Error.

This day this cause came on to be heard upon the petition in error of William H. Merchant, and upon the demurrer of the said Edwin H. Perkins to the amended answer of the said William H. Merchant, and the Court being fully advised in the premises do find that the Court of Common Pleas erred in sustaining said demurrer, and said demurrer is hereby overruled, and the judgment rendered by said Court below is reversed, and the Court looking to the whole record find that the petition of said Perkins is insufficient and defective and obnoxious to a demurrer, and the objection by said Merchant to the petition of the plaintiff, that the same is insufficient and defective, is sustained. and the costs are adjudged against the said Edwin H. Perkins, execution awarded therefor, and the cause is remanded to the Court of Common Pleas for execution and for further proceedings according to law. To all of which rulings and judgments the said Edwin H. Perkins at the time excepted.

Attest:
Chas Reuhorwood,
Clerk.

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Courts of the State of Ohio, before Hons. Caleb H. Norris, James H. Day and William T. Mooney, Judges of said Court of the October Term A. D. 1901,

Be it remembered that heretofore, towit, on May, 15th, A. D, 1901, the following appeal bond was filed with the Clerk of said Court, towit:

167 Appeal Bond.

Know all men by these presents, That we, Joshua Richardson, John Hard, J. C. Jenkins, Jane Hard, Aaron Richardson, H. Richardson and M. L. Hughs are held and firmly bound unto B. F. Paxson and Vene Paxson, his wife in the sum of One Hundred Dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Signed by us and dated this 10th day of May A. D, 1901.

The condition of the above obligations is such, that, whereas, the said Joshua Richardson has taken an appeal from a certain judgment rendered against him upon the issues joined in said cause and in favor of the said B. F. Paxson et. al, in the Common Pleas Court within and for the County of Union, in the State of Ohio, on the 1st day of May A. D, 1901, and also for the sum of $60.00, a large amount of costs, including $100.00 counsel fee &c. to the Circuit Court of Union County aforesaid,

Now, if the said Joshua Richardson and the others above named shall abide and perform the order and judgment of said Circuit Court, and shall pay all moneys, costs and damages, which may be required of or awarded against him by said Court; then this obligation to be void, otherwise to remain in full force and virtue in law.

H. Richardson
M. L. Hughs.
J. C. Jenkins,

Joshua Richardson,
John Hard,
Jane Hard,
Aaron Richardson.

I approve the above bond with the sureties thereto this 15th day of May, A. D, 1901,

Chas Deuhorwood,
Clerk of Courts,

167 Transcripts

On May, 15th, 1901, the following Transcripts of Journal Entries was filed,-

Joshua Richardson, Guardian of Clark Richardson, deceased - Plaintiff.
Vs.
B. F. Paxson et. al. - Defendants.

Court Common Pleas, Union County, Ohio.
Filed Sept. - 1900.

This day the death of Clark Richardson, an allegd imbecile is suggested, and leave is granted to plaintiff to make the heirs-at-law and the personal representative of said Clark Richardson, parties herein and cause continued.

Joshua Richardson, Guardian - Plaintiff.
Vs
B. F. Paxson et. al. - Defendants.

Court Common Pleas, Union County, Ohio.
Filed, January - 1901.

This day the plaintiff herein asked and obtained leave to amend, instanter his original Supplemental Petition heretofore filed in this case, and the Court also gave him leave in said amendment to utilize and use his Supplemental petition or so much thereof as he desired, reasonable notice to be given to J. S.

Southard at Bellefontaine, O. attorney of some of the defendants.

Joshua Richardson, Guardian - Plaintiff.

Vs. Court Common Pleas, Union County, Ohio.

B. F. Paxson et. al. — Defendants, Filed, January, 1901.

This day this cause came on to be heard upon the motions of B. F. Paxson, and Lizzie Fry and the Court having heard the argument of counsel overruled said motions to which said Paxson and Fry excepted, and the cause came on further to be heard upon the demurrer of Lizzie Fry to the Supplemental Petition of plaintiff, Joshua Richardson filed herein, and the same being argued by the parties, the Court sustains the said demurrer, to which ruling the plaintiff excepted, and the plaintiff was granted 30 days leave to file second Supplemental Petition herein and cause continued,

Joshua Richardson, Guardian — Plaintiff.

Vs. Court Common Pleas, Union County, Ohio.

B. F. Paxson et. al. — Defendants, Filed, April - 1901.

This day on motion leave was granted defendant to file answer and the same was filed.

Joshua Richardson, Guardian — Plaintiff.

Vs. Court Common Pleas, Union County, Ohio.

B. F. Paxson et. al. — Defendants, Filed, April — 1901,

This day actions No. 7747 and No. 7837, Lizzie Fry Vs. Joshua Richardson et. al, were by order of the Court consolidated under No. 7747,

Joshua Richardson et. al. - Plaintiffs

Vs. Court Common Pleas, Union County, Ohio.

B. F. Paxson et. al. - Defendants, Filed, April - 1901,

This day this cause is passed for hearing until Wednesday, April, 24th, 1901, all witnesses ordered to return without further notice, order as to costs reserved,

Joshua Richardson, Guardian, et. al. - Plaintiffs.

Vs. Court Common Pleas, Union County, Ohio.

B. F. Paxson et. al. — Defendants, Filed, April - 1901,

On motion of B. F. Paxson leave is hereby granted him to file answer to the Supplemental petition of plaintiff, and petition of Lizzie Fry in case No. 7837, and Lizzie Fry is granted leave to reply in 7837 consolidated herewith,

Joshua Richardson, Guardian et. al. - Plaintiffs.

Vs. Court Common Pleas, Union County, Ohio.

B. F. Paxson et. al. — Defendants, Filed, April - 1901,

And now this cause coming on for hearing upon the pleadings and the evidence, was submitted to the Court without the intervention of a Jury; on consideration whereof the Court find on the issues joined for the defendant, B. F. Paxson, and that neither the plaintiff, Joshua Richardson as Guardian, Administrator or in person, nor any one of his co-defendants, in action No. 7747, nor the plaintiffs nor any one of the co-defendants in action No. 7837, nor any one as heir at law of Clark Richardson, deceased, has any estate in, or is entitled to the possession of the real property in the petitions described or any part thereof, but that said defendant, B. F. Paxson is seized in fee simple and is rightfully entitled to the possession of the land described in the petition, and to have his title and possession to said premises quieted. It is therefore ordered, adjudged and decreed that the title and possession of said B. F. Paxson to all and singular, the premises

in the petition described be quieted as against the plaintiffs in their several capacities and as against each and every one of their co-defendants and all persons claiming under them or any of them, and that said parties in the several actions, and in their several capacities, and each of them, and all persons claiming under them, be, and they are hereby enjoined from setting up any claim to said premises, or any part thereof adverse to the title or possession of said B. F. Paxson thereto. or in any manner interfering with his use and enjoyment of the same, and writ of restitution ordered. It is further ordered by the Court that the defendant, B. F. Paxson pay to the estate of Clark Richardson, deceased, the sum of $500.00 and the costs in the several actions by him made and that out of the said sum of $500.00 said Joshua Richardson, as Administrator of the estate of Clark Richardson, pay to the Clerk of the Court the costs, other than those made by said B. F. Paxson, in said several actions, and a further sum of $100.00, Attorney Fees, $65.00 to Porter & Porter and $35.00 to Dow Aikin of Bellefontaine O.
Balance to be distributed according to law. Notice of appeal is given by all parties interested, the bond fixed at $100.00.

The State of Ohio, Union County ss.

I, Chas Leuhorwood, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, Journals and Records of said Court are required by law of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House in Marysville, in said County, this 15th day of May, 1901.

(Seal) Chas Leuhorwood,
Clerk.

167 Entry

Joshua Richardson, et. al.
Vs.
B. F. Paxson et. al.

Circuit Court of Union County, Ohio.
Oct. 2nd, 1901.

This day this cause came on for trial and hearing upon the issues made by the pleadings of the parties, and the evidence, and was argued by counsel; and the Court being fully advised in the premises find the equities of the case to be with the plaintiffs against the defendants, B. F. Paxson and wife; and the Court find that said deed of conveyance so made by Clark Richardson to B. F. Paxson was fraudulent and void as claimed by plaintiffs in their petition, and should be set aside and cancelled of record. The Court, therefore order, adjudge and decree that said deed of conveyance so made be set aside, vacated, and held for naught, and order that the same be cancelled of record and the Court adjudge the costs made herein against the said B. F. Paxson. It is therefore considered by the Court that the plaintiff recover of the said B. F. Paxson their costs herein taxed to $—. and execution is awarded therefor.
And the Court further find from the issues joined in the case that said land is subject to partition, and said cause is remanded

to the Court of Common Pleas for execution for costs against the said B. F. Paxson, and for the partition of said real estate and for such other proceedings in said cause as are required by law.

Motion for new trial by said B. F. Paxson is overruled, and the said B. F. Paxson to all rulings and decisions and judgments herein made excepts, and fifty days is allowed for the bill of exceptions.

And it is further ordered that the Clerk of this Court cause to be entered on the margin of the record of said deed cancellation of the same,

Attest:

Chas Deuhorwood,

Clerk.

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Courts of the State of Ohio, before Hons. Caleb H. Norris, James H. Day and William T. Mooney, Judges of said Court of the October Term, A. D. 1901.

Be it remembered that heretofore, towit, on March 20th, 1901, the following petition in error was filed with the Clerk of said Court, towit:

165
Petition

The Toledo and Ohio Central Railway Company - Plaintiff in Error.

vs. Circuit Court of Union County, Ohio.

Albert Carr - Defendant in Error.

Plaintiff in error says that at the January Term, A.D., 1901, of the Court of Common Pleas of Union County, Ohio, defendant in error recovered a judgment by the consideration of said Court against the plaintiff in error, in an action then therein pending, being cause Number 7696 on the docket of said Court, wherein defendant in error was plaintiff, and plaintiff in error was defendant, a transcript of the docket and journal entries, whereof, together with the original files, papers and Bill of exceptions in said cause are filed herewith.

There is manifest error in said record and the proceeding of said Court to the prejudice of the plaintiff in error, in this:-

1. The said Court erred in overruling the demurrer to the petition.
2. The said Court erred in overruling the motion for a new trial made by the defendant below.
3. The said Court erred in overruling the several motions made by the defendant below at the close of the plaintiffs evidence, and at the close of all the evidence to direct the jury to bring in a verdict for the defendant below.
4. The said verdict is against the weight of the evidence.
5. The said verdict is contrary to law and to the evidence.
6. The said Court erred in admitting evidence objected to by the defendant below.
7. The said Court erred in rejecting evidence offered by the defendant below.
8. The said Court erred in refusing to charge the jury as requested by the defendant below.
9. The said Court erred in its charge to the jury.
10. The said Court erred in rendering judgment for the plaintiff below, when judgment should have been rendered for the defendant below.

Wherefore plaintiff in error prays that the judgment and proceedings of the Court below may be reversed and that it may be restored to all things that it has lost thereby.

Robinson and Woodburn.
Doyle & Lewis and C. A. Seiders,
Attys for Plaintiff in Error.

The appearance of the defendant in error is hereby entered, and the issuing and service of summons waived,

Cameron & Cameron,
Atty's for defendant in Error.

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Transcripts

On March 20th, 1901, the following Transcripts of Journal Entries in Common Pleas Court were filed, towit;-

Albert Carr- Plaintiff.

Vs.

The Toledo and Ohio Central Railway Company- Defendant.

Court Common Pleas, Union County, Ohio.
Filed, Dec. 1st. 1899.

This day came the parties and this cause came on to be heard upon the demurrer of the defendant to the petition, on consideration whereof the Court being fully advised in the premises overrules said demurrer, to which ruling the defendant excepted, Thereupon defendant asked and had leave of the Court to answer in twenty days.

Filed Sept. 10th, 1900.

On motion the Court grants leave to file reply instanter, and done.

Filed January 23rd, 1901.

This day came the parties herein by their Attorneys; also came the following named persons as jurors, towit: E. S. Rinehart, M. R. Bond, H. G. Haines, G. B. Romine, Chas. A. Moran, Alfred Amerine, Jasper Graham, Chas. Davis, T. J. Sovell, Byron Galloway, and W. L. James, who were duly impaneled and sworn according to law; and thereupon the case came on for hearing on the pleadings and evidence, and the said Jury having heard the testimony adduced in part said cause was continued until tomorrow morning at 8:30 o'clock.

Filed January 23rd, 1901.

This day again came the said parties by their Attorneys, and also came the Jury heretofore impaneled and sworn and the trial proceeded.

And the said Jury having heard the testimony adduced in part, said cause was continued until tomorrow morning at 8:30 o'clock.

Filed January 24th, 1901.

This day again came the said parties by their Attorneys, and also came the Jury heretofore impaneled and sworn and the trial proceeded.

And the said Jury having heard all the testimony adduced in this case, and the argument of counsel in part, said cause was continued until tomorrow morning at 8:30 o'clock.

Filed, January 25th, 1901.

This day again came the said parties by their Attorneys, and also came the Jury heretofore impaneled and sworn and the trial proceeded.

And the said Jury having heard all the evidence, the argument of counsel, and the charge of the Court, retired to their room in charge of the Sheriff for delibration. And now comes said Jury into open Court with their verdict in writing signed by their Foreman, and say:-

"We, the Jury, being duly impaneled, sworn and affirmed, find the issues in this case in favor of the plaintiff, and assess the amount due to the plaintiff from the defendant at the sum of Nine Hundred and Fifty Dollars. — Dated January, 25th, 1901. T. J. Sovell, Foreman.

Filed January 28th, 1901.

This day came the defendant and submitted their motion in writing to set aside the verdict found in this case for the reasons assigned in said motion, and also for a new trial.

And the Court having been fully advised in the premises, overruled said motion to which ruling of said Court the said defendant then and there excepted, and on defendants consent defendant is hereby given 50 days time to reduce its exceptions to writing, and file a

Bill of Exceptions herein.

Filed January, 28th, 1901.

The Jury on a former day of this term having rendered their verdict in favor of the plaintiff for the sum of Nine Hundred and Fifty Dollars, and a motion for a new trial having been overruled by the Court; it is therefore considered, ordered and adjudged by the Court that the said plaintiff recover from the said defendant, The Toledo and Ohio Central Railway Company, the said sum of Nine Hundred and Fifty Dollars, as heretofore by the verdict of the Jury found due him, together with his costs herein expended.

Filed March, 13th, 1901.

The defendant by its Attorneys, having heretofore presented its certain bill of exceptions taken at the trial of this case, and it being found by the Court that the same has been duly submitted to the opposite counsel for examination and to the trial Judge for his signature and allowance within the respective times required by law, and that the said Bill of exceptions is true and correct, the same is now, this 13th day of March, 1901, allowed, signed and sealed, and on motion is hereby made part of the record in this case, but not to be spread at large thereon, And thereupon the said bill of exceptions was duly filed by the defendant."

The State of Ohio, Union County ss,

I, Chas E Rushorwood, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, Journals and Records of said Court are required by the laws of the State of Ohio, to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct Transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House in Marysville, in said County, this 16th day of March, 1901.

(Seal) Chas E Rushorwood,
Clerk,

165 Entry

The Toledo & Ohio Central Railway Company - Plaintiff in Error.
Vs. Circuit Court of Union County, Ohio.
Albert Carr - Defendant in Error. Oct. 3rd. 1901.

This cause came on to be heard upon the petition in error, bill of exceptions, original papers, and pleadings, and the transcript of the docket and Journal entries in the Court of Common Pleas, and was argued by counsel; upon consideration whereof the judgment of the Court of Common Pleas is reversed for the reason that the verdict and judgment are not sustained by the weight of evidence; and no further errors assigned were passed upon for the reason that the same were not noted on the margin of the bill of exceptions; and this case is remanded to the said Common Pleas Court for further proceedings according to law.

It is therefore considered that said plaintiff in error recover of said defendant in error its costs herein. Ordered that a

Special
Judgm

special mandate be sent to the Court of Common Pleas to carry this judgment into execution.

Attest:

Chas Beauhorwood,

Clerk.

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Courts of the State of Ohio, before the Hons. Caleb H. Norris, R. M. Voorhes, and S. M. Douglass, Judges of said Court for the February Term, 1902. Be it remembered that heretofore towit, on Jan 30th, 1902, the following Transcript of Journal Entry from the Common Pleas Court of said County was filed with the Clerk of said Circuit Court, towit:-

170 Transcript

Mary A. Jones - Plaintiff
Vs.
J. H. Monroe, Treasurer et. al. - Defendants.

Court Common Pleas, Union County, Ohio.
Oct. 8th, 1901.

This cause having come up for hearing on the 8th day of October, 1901, upon the pleadings and the evidence, and having been so heard at that time, and taken under consideration by the Court until this 19th day of October, 1901, it is adjudged and decreed that the defendants be enjoined from collecting any of the assessment against plaintiffs property herein sought by her to be enjoined, in excess of Fifty Dollars. and that the said assessment be and hereby is approved and confirmed for said sum of Fifty Dollars.

It is further considered and adjudged that the defendant, the Village of Richwood pay the costs herein taxed to $-.

To all which judgment and decree against plaintiff her Attorneys duly excepted and gave notice of her intention to appeal therefrom, and the amount of her bond therefor was fixed by the Court at One Hundred Dollars.

The State of Ohio, Union County ss.

I, Chas Penhorwood, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In Testimony whereof I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House in Marysville in said County, this 30th day of Jan. A.D. 1902.

(Seal) Chas. Penhorwood, Clerk.

170 Entry

Mary A. Jones — Plaintiff.
Vs.
J. H. Monroe, Treasurer and
The Village of Richwood — Defendants.

Circuit Court of Union County, Ohio.
Feb. 13th, 1902.

This day this cause came on to be heard upon the pleadings and the evidence, and was argued by counsel and submitted to the Court; whereupon the Court find in favor of the plaintiff.

It is therefor considered by the Court that the injunction prayed for by plaintiff in her petition be made perpetual

It is further ordered that the defendant, the Village of Richwood pay the costs of this proceeding taxed at $-, and that the plaintiff recover her cost herein expended taxed to $-, and execution is awarded therefor, to all of which rulings and judgments of the Court the defendant, the Village of Richwood excepts.

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and this cause coming on further to be heard on the motion of defendant for a new trial, the Court, on consideration, overrule the same, to which ruling and judgment of the Court, the defendant, the Village of Richwood, by its counsel excepts, and 50 days are allowed for preparing a bill of exceptions herein, and cause remanded for execution.

Attest:

Chas Tuthorwood,
Clerk.

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Courts of the State of Ohio, before Hons. Caleb H. Norris, R. M. Voorhes and S. M. Douglass, judges of said Court of the October Term, A.D. 1901.

Be it remembered that heretofore, towit, on December 24th, 1901, the following petition in error was filed with the Clerk of said Court, towit:-

Petition 168

The National Masonic Provident Association - Plaintiff.

Vs. Circuit Court of Union County, Ohio.

Patrick C. Dra - Defendant.

The said plaintiff in error, by its undersigned Attorneys says that at the September Term of the Court of Common Pleas of Union County, Ohio, towit: On the 19th day of October A.D. 1901, the said defendant in error, by the consideration of the said Court, procured an order and judgment against the said plaintiff in error in an action then pending in the said Court on Appeal, wherein the said defendant in Error was plaintiff, and the said plaintiff in error was defendant.

The said plaintiff in error further says that there is manifest error prejudicial to it, appearing in the records and proceedings of the said Court of Common Pleas, a transcript of the Journal entries whereof, marked "A", and the following original papers filed in said cause, towit, the bill of exceptions, taked and allowed therein, made a part of said record upon said Court's order, duly authenticated and marked "B", and the motion of said defendant in error whereon said order, first aforesaid was based, marked "C", are made a part hereof, and herewith filed. Said error in said records and proceedings consists in this, towit: Said Court of Common Pleas erred in view of the statement of admitted facts in said Bill of Exceptions set forth, in sustaining the motion of said defendant in Error to dismiss the appeal, aforesaid, theretofore taken to said Court by said plaintiff in error. And there are other errors, prejudicial to the plaintiff in error, manifest upon the face of the record.

And, therefore, said plaintiff in error says that said order and judgment of said Court was given for said defendant in Error, when it ought to have been given for said plaintiff in error.

Therefore, said plaintiff in Error prays that said order and judgment of said Court of Common Pleas may be reversed, with costs, and that it be restored to all things it has lost by reason thereof.

Curtis E. McBride and James McCampbell
Attorneys for Plaintiff in Error.

168 Waiver

Issuing and service of summons on the foregoing petition in Error is hereby waived, and the appearance of Patrick C. Dra, defendant in Error, hereby voluntarily entered thereto this 26th day of December, A.D. 1901.

D. W. Ayers,
Attorney for defendant in Error.

168 Transcript

168 Entry

168
Transcript

On Dec. 24th, 1901, the following Transcript of Journal Entries in the Common Pleas Court, were filed, towit:-

Patrick C. Dea. — Plaintiff

Vs.

Court Common Pleas, Union County, Ohio.

The National Masonic Provident Association - Defendant. Oct. 19th, 1901.

This cause now coming on for hearing on motion of the plaintiff to dismiss the appeal herein upon the ground that the undertaking on appeal was not filed within the period of ten days after judgment entered in the premises, and the evidence adduced on the part of the said defendant, the Court, on consideration, sustains the said motion, to which order and judgment of the Court, the said defendant by its counsel excepts, And leave is granted the said defendant to file a Bill of exceptions in the premises in fifty days, and execution is stayed for that purpose for the period last aforesaid.

Entry, Filed Nov. 25th, 1901.

This day the defendant, The National Masonic Provident Association, by its counsel, prepared and presented to the Court its certain Bill of Exceptions, which the Court allowed and signed, and ordered the same to be filed with the pleadings as part of the Record herein, but not to be spread upon the Journal of the Court. Bill of Exceptions filed.

The State of Ohio, Union County ss,

I, Chas Pinkerwood, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio, to be kept, Hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing entry has been compared by me with the original entry on said Journal and that the same is a correct Transcript thereof,

In testimony whereof, I have hereunto subscribed my name officially and affixed the seal of said Court, at the Court House in Marysville in said County, this 24th day of December, A.D, 1901,

(Seal) Chas Pinkerwood, Clerk,

168
Entry

The National Masonic Provident Association - Plaintiff in Error.

Vs, Circuit Court of Union County, Ohio.

Patrick C. Dea - Defendant in Error. Filed Feb. 13th, 1902.

This cause came on for hearing on the petition in error, the Transcript, and the original papers and pleadings from the Court of Common Pleas of said County, and was argued by Counsel and submitted to the Court, Whereupon on consideration thereof, the Court finds that there is error apparent upon the record in the proceedings of the said Court of Common Pleas, to the prejudice of the said plaintiff in error, in this towit:- said Court of Common Pleas erred, in view of the statement of admitted facts in the Bill of Exceptions set forth, in sustaining the motion of the said defendant in error to dismiss the appeal theretofore taken to said Court of Common Pleas, by said Plaintiff in Error, from the judgment of said Justice of the Peace, and in said Courts order dismissing said appeal, This Court further find, from the admitted facts aforesaid, that the undertaking of said plaintiff in error for said appeal was executed and presented in time under the Statutory

limitation therefor. It is, therfore, considered, ordered, and adjudgrd by this Court that the judgment and orders so as aforsaid rendrid by said Court brlow be, and the same is, hereby reversed and held for naught; and that the said Plaintiff in error recover from the said defendant in error its costs herein expended taxed at $—.

And this Court further proceding to render such judgment as the said Court of Common Pleas ought to have rendered, considers and overrules the said motion to dismiss the said appeal. It is further considered and ordered by this Court that this cause be remanded to the said Court of Common Pleas for execution, and for further proceedings and judgment according to law; and that a speciâl mandate therfor be sent to said Court brlow, to which orders and judgments of this Court, the said defendant in error excepts

See additional statement at "X" page 3 hereof

"Marginal Reference"

Defendant relies for relief, upon attempt to file sufficient bond within ten days after judgment and it's failure so to do by reason of the voluntary absence and neglect of the Justice of the Peace.

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Bill of Exceptions

State of Ohio, Union County ss.

I, Chas C. Rutherwood, Clerk of Courts, in and for said County, hereby certify that the following Bill of Exceptions, marked "B" is the original and only Bill of Exceptions taken in the case of Patrick C. Dea, plaintiff, Vs. The National Masonic Provident Association, defendant, being Case No. 7952, in the Court of Common Pleas of said County, and allowed and signed by Hon. Duncan Dow, Judge of said Court, on the 25th day of November, A.D. 1901, and by order Journalized as of said day, made a part of the Record and filed in said Court.

And I further certify that said Bill of Exceptions, is the identical Bill of Exceptions, marked "B" filed this day in the Circuit Court of said County in Case No. 168, wherein said, The National Masonic Provident Association is plaintiff in error, and said Patrick C. Dea, is defendant in error.

In testimony whereof I have hereunto subscribed my name officially and affixed the seal of said Court, at the Court House, in Marysville, in said County, this 24th day of December, A.D. 1901,

(Seal) Chas C. Rutherwood, Clerk.

Patrick C. Dea, Plaintiff.

Vs.

The National Masonic Provident Association, Defendant.

Court of Common Pleas, Union County, Ohio.

Bill of Exceptions.

Additional admitted facts omitted above entered here by agreement of Counsel Nov. 21 st. 1901.

Be it remembered that at the September Term of this Court, towit, on the 19th day of October, A.D. 1901. before Hon. Duncan Dow, Judge of said Court of Common Pleas, this cause came on to be heard on said plaintiff's motion to dismiss said defendants appeal, theretofore taken herein from the judgment of A. H. Kollfrath, a Justice of the Peace of said County, upon the ground that said defendants undertaking for said appeal had not been filed with said Justice within ten days after the rendition of the said judgment. The original authenticated Transcript of which proceedings before said Justice, filed in said Court on the 14th day of June, 1901, is hereto attached, Marked, "Exhibit", and made a part of this "Bill of Exceptions."

Thereupon, both parties being represented by their respective counsel, said motion was submitted to the Court upon said Transcript and the following statement of facts adduced by said defendants counsel, admitted by said plaintiff on the hearing thereof to be true, and so received and considered by the Court, towit:—

Statement of Admitted Facts.

The Judgment was rendered by the Justice, in favor of the Plaintiff and against the Defendant, a corporation, on Tuesday, May 28th, 1901, at which time defendant declared to the Justice its intention to appeal, Defendant, a

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See additional statement at "X" page 3 hereof

corporation, has its office in Mansfield, Ohio. On May 29th, 1901, defendant, by its Counsel, began its endeavor to procure a surety on its undertaking for appeal, [X] On the morning of Thursday, June 6th, 1901, defendant procured the signature of Walter C. Pullington, of the Bank of Marysville, as surety upon its undertaking for appeal and forthwith, defendants Counsel, and its said surety, appeared at the office of said Justice for the purpose of tendering, and having filed, the said undertaking, But the door of said Justice's office was locked, Posted upon the inside of the glass panel of said door was a paper, bearing written thereon, the words, "Out of town. Back on Saturday." Defendants counsel appeared repeatedly thereafter, with said undertaking, at said office, on said June 6th, and likewise on Friday, June 7th, and likewise on Saturday, June 8th, and at all times found said office closed and locked. Defendants counsel made inquiry for said Justice, but was unable to find him, nor could he learn anything of his location, save that he was out of town on business. Neither defendant, nor its Counsel, had knowledge, prior thereto, of the intended absence of said Justice. The ten days period for filing said undertaking expired Friday, June 7th, 1901, Said Justice did not return to his office until Monday morning, June 10th, 1901, at which time defendants Counsel stated to said Justice that he (Counsel) had appeared at his office with said undertaking within ten days after judgment, and thereupon requested the Justice to approve and file the undertaking as of June 6th or June 7th, 1901, The Justice refused Counsel's request but, having said undertaking in his possession, did, against Counsel's protest, approve and file said undertaking as of June 10th, 1901. Defendant filed a transcript of the proceedings of the Justice, in this Court, on June 14th, 1901,

"Marginal Reference" Defendant relies for relief, upon attempt to file sufficient bond within ten days after judgment and its failure so to do by reason of the voluntary absence and neglect of the Justice of the Peace.

And the same being all the testimony offered on the hearing of said motion, the Court, on consideration thereof, held said facts true but insufficient to warrant relief to the said Defendant, and, therefore, sustained said motion and dismissed said appeal, To which ruling and judgment of the Court the defendant, by its Counsel, then and there excepted.

Additional admitted facts omitted above entered here by agreement of Counsel Nov. 21 st. 1901.

[X] See page 2 hereof. The Surety agreed to sign the undertaking provided satisfactory assurance against loss were given him, The time from May 29th to June 6th, 1901, was consumed daily, in procuring such assurance in a form satisfactory to the surety, Defendants local Bank, at Mansfield, Ohio, finally satisfied the demand of the surety on the afternoon of June 5th, 1901, Defendant has no office in Union County, The office and regular place of business of the Justice of the Peace was on the North East corner of Main and Fifth Streets, Marysville, Ohio,

And thereupon, the defendant, by its Counsel, presents, this, its Bill of Exceptions, and prays the Court to allow and sign the same which is accordingly done. And said Bill of Exceptions is filed as a part of the record in this cause, but is not to be spread upon the Journal.

Dated this 25th day of November, A.D. 1901. Duncan Dow, Judge of Court of Common Pleas. Union County, Ohio.

Exhibit

Patrick C. Dra. Plff.
Vs.
The National Masonic Provident Association - Defd.

Before A. H. Kollifrath, Justice of the Peace, of Paris Tp. Union Co. O. No. 43. May 6th, 1901.

The plaintiff says that the defendant is an incorporated Company duly incorporated under the laws of Ohio for the purpose of carrying on the business of accident Insurance in said State, That said defendant by its agent, W. J. Wood of Marysville, Union County, Ohio, procured from the above named plaintiff on the 25th day of May, 1900, an application for membership, and to be insured and indemnified against accident by the said defendant, The National Masonic Provident Association, and on the 29th day of May said National Masonic Provident Association issued and delivered to the said plaintiff a certificate of membership in said National Masonic Provident Association by the

terms of which certificate the said defendant undertook to and did indemnify and insure the said plaintiff against accident or sickness in the sum of Eighteen Dollars per week against accident and six dollars per week against the said plaintiff. Plaintiff says his privileges and benefits by and under said certificate was to and did commence on the 1st day of June, 1900, for which this plaintiff was to and did pay to said defendant the sum of two dollars per week.

That afterwards and while this plaintiffs contract with said defendant was in full force and effect, towit, on or about, the 31st day of October, 1900, this plaintiff without any fault or carelessness on his part sustained severe and dangerous bodily injury which totally disabled him from performing manual labor of any kind until about the 27th day of February, 1901. That said defendant was duly notified of said injury and disability aforesaid and requested by plaintiff to pay to him the said sum of $18.00 per week as stipulated and provided in said certificate, but defendant then and ever since said request has refused and neglected to pay plaintiff said sum of $18.00 per week or any sum whatever. Therefore plaintiff prays judgment against said defendant by reason of the premises for the sum of $288.00.

Patrick C. Dra.

Issued summons to Frank Mumell, constable of Paris Township, Union County, Ohio, to serve on the defendants, Indorsed returnable May 9th, 1901, amount for which plaintiff will take judgment if defendant fails to appear $288.00 Justice Fees $3.00. Return of Summons, Received this writ, May 6th, 1901, and May 6th, 1901, served the same on defendants by leaving certified copy thereof with the agent of The National Masonic Provident Association, W. T. Wood, resident agent there being no chief officer of said Corporation in said County constable fees, service & return 25 copy 25 mileage 20 total .70

Frank Mumell, Cons.

Issued Subpoena to Dr. A. Boylan and Mike Dra. The parties appeared in Court by their Attorneys D. W. Ayers, for plaintiff and James McCampbell for defendant, and by agreement of parties the case was continued to May 21st 1901, at one o'clock P.M. at costs of defendant. Case continued at request of plaintiff to 28th day of May at one o'clock P.M. 1901, at cost of Issued Subpoena for W. T. Wood for plaintiff. Return of Subpoena, May, 9th, 1901, I have served the within writ on the persons named below as follows:-
Mike Dra, personally 8th May. A. Boylan, Residence, J. S. Boylan, Personally, 8th May, all 5 miles each, service and return for three persons, 45 three copies, 35 cts each 75 cts, 5 miles 60 total $1.60.
May 28th, A. D. 1901, I received this writ and afterward, I served the same in the manner and at the time shown by the annexed list and table, personally on W. T. Wood, for plaintiff, total costs 90 cts,

Frank Mumell, Constable,

May 28th, 1901, 1 P.M. the parties appeared, D. W. Ayers for plaintiff and James McCampbell for defendant. Patrick Dra and A. Boylan sworn and examined for plaintiff and policy introduced, plaintiff rested their case. Defendant then calls as their witnesses Patrick Dra, and sworn and examined, after hearing argument of counsel, It is thereupon on said day considered by me that the said Patrick Dra recover of the said The National Masonic Provident Association One Hundred and Eighty Dollars, debt and his costs taxed at $10.80

A. H. Kollefrath J. P.

The defendant made motion of appeal, the following bond of Three Hundred Eighty Two Dollars given by the defendant H. C. Fullington, surety. Approved by me June 10th, 1901, a copy of which is hereto attached.

Patrick C. Dea - Plaintiff
Vs.
The National Masonic Provident Association.

Judgment before A. H. Kollfrath, Justice of the Peace of Union Co. O.

Whereas on the 28th day of May, A.D. 1901, the said Patrick C. Dea obtained judgment against The National Masonic Provident Association on the docket of A. H. Kollfrath, a Justice of the Peace for the sum of One Hundred and Eighty Dollars and his costs taxed at Ten and 80/100 Dollars, and whereas the said The National Masonic Provident Association intends to appeal from the said judgment to the Court of Common Pleas of Union County, Ohio, Now therefore, I, H. C. Fullington, of Union County, Ohio, hereby promise and undertake in the sum and to the amount of Three Hundred and Eighty two Dollars. that the said appellant if judgment be adjudged on the appeal aforesaid against it, will satisfy such judgment and costs, and also that the said appellant will prosecute its appeal to effect without unnecessary delay. Dated June 6th, 1901. H. C. Fullington.

Taken recorded and acknowledged before me and surety approved this 10th day of June A.D. 1901. A. H. Kollfrath Justice of the Peace.

The State of Ohio, Union County, Paris Township ss.

I do hereby certify that the within and foregoing is a full and true Transcript from my docket of the proceedings had by and before me, at my office in said Township in the above entitled case, and of the costs therein as recorded in Docket E. Page 130.

Witness my hand this 10th day of June, 1901.

A. H. Kollfrath, Justice of the Peace.

Justice's Fees:-	Plff-	Dft.
Summons	$.35	
Subpoena 4 names	.40	
Swearing 3 witnesses	.15	
Adjournment	.20	.20
Filing 4 papers	.20	
Sitting in Trial	1.00	
Record	.75	
Judgment	.40	
Satisfaction	.20	
Judgment on Docket	.20	
Appeal Bond	.40	
Continuance for Plff	.20	
Transcript	1.00	
Certificate	.25	

Constable's Fees:	
Summons, ser. and mileage	$.70
Attending Trial	1.00
Subpoena, ser. and mileage	1.80
One Subpoena	.70
	$4.20

Witness Fees:-	
Dr. A. Boylan	$1.25
Michael Dea	1.25
A. T. Wood	.50

The State of Ohio, Union County ss.

I, Chas. Tenhorwood, Clerk of the Court of Common Pleas of Union County, do hereby certify that the within is the only and original Transcript of the proceedings before A. H. Kollfrath, Justice of the Peace of Paris Township Union County, Ohio, filed in the case of Patrick C. Dea Vs. The National Masonic Provident Association No. 7953, in Court of Common Pleas of Union County, Ohio. Said Transcript filed on June 14th, 1901.

In testimony whereof I have hereunto subscribed my name officially and affixed the seal of said Court at the Court House in Marysville in said County and State this 11th day of November, A.D. 1901.

(Seal) Chas. Tenhorwood, Clerk

Attest:
Chas. Tenhorwood, Clerk

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Hons. Caleb H. Norris, James H. Day and William B. Mooney, Judges of said Court for the February Term A.D. 1903. Be it remembered that heretofore to wit, on the 30th day of June 1902, the following Transcript of proceedings in the Court of Common Pleas of said County, was filed with the Clerk of said Circuit Court to wit:-

Frank O. Pinney, Plaintiff.

175 Transcript. vs. Court of Common Pleas Union County, Ohio.

The Village of Richwood, Defendant. Be it remembered that on the 15th day of November, 1901, the following Transcript was filed in said Court to wit:-

Transcript from Criminal Docket.

The Village of Richwood, Ohio,

vs. The State of Ohio, Union County, the Village of Richwood.

Frank O. Pinney. Before J. L. Jolliff Mayor of said Municipal Corporation in said County, Complaint No. 83, made this 21st, day of May 1901, by F. L. Berry, who being duly sworn, saith that on or about the 20th day of May, A.D. 1901, at the Municipal Corporation and County aforesaid, one Frank O. Pinney then and there being the owner and keeper of an ale, beer and porter-house, said house being a place where intoxicating liquors were then and theretofore sold at retail, within the corporate limits of said Village did erect and maintain a wooden screen in said place, in a vertical position near and at right angles to the front entrance thereto, and did erect and maintain curtains at and covering the lower half of the windows thereof, and by such obstructed and prevented a clear view into the interior of the said place from the street in front of the same, contrary to an ordinance of said Village, entitled an ordinance No. 171 to regulate ale, beer and porter houses and places where intoxicating liquors are sold; duly passed by Council of said Village on the 6th day of June A.D. 1898, May 21st, 1901 Complaint filed Warrant issued for the defendant to F. L. Berry, Marshall of said Municipal Corporation, who made return as follows to wit:- Received this writ, May 21st, 1901, I have the body of the within named Frank O. Pinney now in Court.

F. L. Berry Marshall.

Defendant arraigned before me the said Mayor on the 21st day of May 1901, and upon hearing said complaint pleaded "Not guilty" to the same. Continuance regards by defendant on account of want of time to procure an attorney. The case was Continued to May 24th 1901, at One o'clock P. M. Further continuance was obtained by defendant until the 31st day of May 1901, on account of time to prepare for trial. May 31st 1901 the following motion was filed by the defendant:- Now comes the defendant, Frank O. Pinney, and moves the Court to quash the affidavit or complaint in this case for the following reasons: 1st:- That said complaint or affidavit and the ordinance under which said proceedings were instituted was never published as required by statute.

W. T. Hoopes, attorney for Defendant.

Overruled said motion and the defendant to said ruling and opinion to said motion excepts and presented his bill of exceptions which was signed by me and filed May 31st, 1901 The following motion was filed by the defendant:- F. O. Pinney and moves the Court to quash the affidavit or complaint in this action for the following reasons: 1st- That said affidavit or complaint and the ordinance under which said proceedings were instituted,

are in conflict with the constitution of the State of Ohio, a copy of said ordinance No. 171 is as follows: Ordinance No. 171, to regulate sale, beer and porter houses and places where intoxicating liquors are sold. Exhibit "A"

Be it ordained by the Council of the Village of Richwood, Union County, Ohio. as follows:

Section I. That the sale of intoxicating liquors whether distilled, malt or vinous on the first day of the week, commonly called Sunday, except by a regular druggist on the written prescription of a regular practicing physician for medicinal purposes only, is hereby declared to be unlawful, and all places where such intoxicating liquors are on other days sold or exposed for sale, except regular drug stores, shall on that day be closed; and whoever makes any such sale, or being a tenant or owner of any such place, opens or permits the same to be opened, on that day, shall be fined as herein provided.

Section II. That it shall be unlawful for any owner or keeper, or any employe of any owner or keeper, of any ale, beer or porter house, or place where intoxicating liquors are sold at retail, within the said Village to open the same, or permit the same to be opened or to remain open for the purpose of selling or furnishing in any manner intoxicating liquors to any person or persons, or for any other business transaction, or to permit any person or persons, except the owner keeper or employes, to be or remain therein between the hours of thirty minutes past nine o'clock P. M. of each and every day and six o'clock A. M. of the succeeding day, Central standard time.

Section III. That it shall be unlawful for any person or persons to sell, give or in any manner to furnish to any person or persons in or at any ale, beer or porter house, or place where intoxicating liquors are sold at retail within said Village, any ale, beer, or porter or intoxicating liquor of any kind whatever, between the hours of thirty minutes past nine o'clock P. M. of each and every day, and six o'clock A. M. of the succeeding day Central Standard Time.

Section IV. That it shall be unlawful for any owner or keeper or any employe of any owner or keeper of any ale, beer or porter house or any place where intoxicating liquors are sold at retail, within said Village to permit any person or persons to gamble in or play at any game of chance of any kind, or to keep or to permit any person or persons to keep any gambling device or instrument used for playing any game or scheme of chance in or upon the premises where such house or place is kept.

Section V. That it shall be unlawful for any owner or keeper or employe of any such owner or keeper of any ale, beer or porter house, or place where intoxicating liquors are sold at retail within said Village to permit any person in a state of intoxication, or any minor under eighteen years of age, except in the discharge of lawful business, or accompanied by a parent or guardian to be and remain therein, or to cause or to permit therein any loud noise, clamor, quarreling, fighting, reveling, intoxication, obscene or profane language, lascivious acts or indecent behavior, or disorderly conduct of any description whatever.

Section VI. That the owner or keeper of any ale, beer or porter house or place where intoxicating liquors are sold at retail, within said village, shall cause all sales and deliveries of such intoxicating liquors to be made and all drinking thereof upon the premises to be done in a lower or ground floor front room abutting upon or next adjacent to a street; shall cause the window curtains or blinds to be fully drawn away from every window thereof; shall cause to be placed and kept in all the windows thereof, glass of at least

common transparency; and cause to be removed all screens, partitions and other obstructions within such room or place so that a clear view may at all times be had into all parts of the interior thereof from the street in front of the same; and shall cause to be kept continuously burning in such room at all times while the same shall be kept closed during the night season as herein required one full light of an illuminating power sufficient to reveal the whole interior of said room.
Section VII.- Nothing in this ordinance contained shall apply to any place or room where intoxicating liquors are sold exclusively at retail and in good faith upon prescriptions of reputable physicians in active practice or for exclusively known mechanical or pharmaceutical or sacramental purposes; nor to any manufactory where intoxicating liquors are manufactured from the raw material or to the sale thereof at such manufactory by the manufacturer of the same; and in regular hotels and eating houses, the word place used in this ordinance shall be held to mean the room or part of room where such liquors are usually sold or exposed for sale and the keeping of such room or part of room securely closed, shall be held as to such hotels and eating houses, as a closing of such place within the meaning of this ordinance.
Section VIII.- That any person violating any of the provisions of this ordinance shall upon the conviction thereof be fined in any sum not more than fifty dollars nor less than twenty five dollars for the first offense, and not more than one hundred nor less than fifty dollars for each subsequent offense; and the Mayor shall order the person so fined, committed to jail until such fine and costs of prosecution are paid or secured to be paid, or the party is discharged by due process of law.
Section IX.- It shall be the duty of the Marshall of said Village to arrest and bring before the Mayor any person or persons by him found violating any of the provisions of this ordinance to be dealt with according to law, and it shall be the further duty of said Marshall upon reliable information of any violation of any of the provisions of this ordinance to procure proper warrant for the arrest of any such offender and to arrest and to conduct such party before the Mayor for trial.
Section X. That ordinance No. 168 passed on the 11th day of March, 1895, bearing a like title to this ordinance, and a certain other ordinance bearing the same title as this ordinance, passed on the 7th day of August 1891, be and the same are hereby repealed.
Section XI-. That this ordinance shall take effect upon and continue in force from the expiration of ten days after its legal publication. Passed this 6th day of June A.D. 1898.
Attest: Stephen D. Evans Clerk. M. M. Hill Mayor.
I overruled said motion, and the defendant to said ruling and opinion to said motion excepts and presented his bill of exceptions, which was signed by me & filed May 31st 1901.
Trial was had accordingly before me the said Mayor on the 31st day of May 1901, the parties being present, witnesses sworn on behalf of the plaintiff to wit: F. L. Berry, George Morgan and George Worden. F. L. Berry being first duly sworn, testifies that he is the Marshall of said Village of Richwood, Ohio, that on or about the 20th day of May, 1901, one Frank O. Penney was the owner and keeper of an ale, beer and porter house in the County of Union and the Village of Richwood; that said house was a place where beer and whiskey and other intoxicating liquors were then and theretofore sold at retail, that it was situated on the North

side of East Ottawa Street in said Village, and that the floor thereof was about two feet above the pavement in front of the same; that at said time and within said place said Frank O. Penny had erected and was maintaining a wooden screen, that said screen was about eight feet long and six feet high, and was placed about five feet back from the front door and extended across and at right angles to the entrance through said door, and stood in an upright position; that at the same time and within the same place said Frank O. Penny did maintain curtains covering the lower part of the windows of said place; that said curtains extended from the bottom of said window upwards about two feet and a half and from one side of each window across the same to the other side thereof; and that said screen and curtains effectually prevented persons passing along said street and sidewalk in front of said place of business so conducted by said Frank O. Penny from seeing into the interior thereof.— George Morgan being first duly sworn testified that he had heard the testimony of said Frank L. Berry, and that the same was to his knowledge true. George Worden being first duly sworn testified that he was the owner and publisher of the Richwood Gazette, that the same is a newspaper of general circulation in the said Village of Richwood and vicinity, and that the ordinance herewith included in the record of this action and marked Exhibit "A" was all the evidence that was offered and heard in the trial of said action. It is thereupon, on said 31st day of May A.D. 1901, by me the said Mayor adjudged and ordered that the said defendant Frank O. Penny pay to the Village of Richwood, Ohio, a fine of fifty dollars and the costs of his prosecution herein taxed to ten and 65/100 dollars and stand committed in the jail of said Village until said fine and costs are paid, or secured to be paid, or he be otherwise discharged according to law. Whereupon the following motion was filed by the defendant:- Now comes the defendant, Frank O. Penny and moves the Court for a new trial in this cause for the following reasons:- 1st- That said judgment was given for the plaintiff when it should have been given for the defendant. 2nd- That the ordinance under which said proceedings were instituted are in conflict with the laws of the State of Ohio. 3rd:- That the ordinance under which said proceedings were instituted, was never published as required by law, and therefore void. 4th:- That the ordinance under which said cause was instituted, is in conflict with the Constitution of the State of Ohio. 5th:- That said conviction, finding and judgment are contrary to law. 6th:- That said court erred in not sustaining the two motions of defendant herein to quash the complaint or affidavit in this action. Overruled said motion for a new trial, and the defendant to said ruling and opinion as to said motion excepts and presented his bill of exceptions which was signed by me and filed May 31st 1901.

J. L. Jolliff Mayor.

The State of Ohio, Union County ss: Village of Richwood.

I, the undersigned, Mayor of the said Municipal Corporation hereby certify that the within and preceding is a full and true transcript of the proceedings had by and before me in the above named case on complaint No. 83 and of the costs therein, as recorded in my docket Page 25"

June 5th 1901.

(Seal)

J. L. Jolliff Mayor as aforesaid.

That afterwards to wit, on the 15th day of November A.D. 1901, the following Journal Entry was filed by the Clerk of said Court to wit:—

Frank O. Pevney, Plaintiff.
vs
The Village of Richwood, Defendant.

Court of Common Pleas, Union County, Ohio.

This day this cause came on to be heard on the application of plaintiff for leave to file petition in error herein, and the Court after hearing same, grants said application.

That afterwards, to wit, on the 15th day of November, A.D. 1901, the following petition in error was filed by the Clerk of said Court to wit:—

Frank. O. Pevney, Plaintiff.
vs.
The Village of Richwood, Defendant.

Court of Common Pleas, Union County, Ohio.

Plaintiff in error says that on the 31st day of May, 1901, before J. L. Jolliff, Mayor of the Village of Richwood, Union County Ohio, the defendant in error recovered a judgment and decree of said Court against Plaintiff in error in an action then therein pending wherein defendant in error was plaintiffs, and plaintiff in error was defendant, a transcript of the docket and journal entries whereof is filed herewith. There is error in said records and proceedings in this to wit:—

1st:- Said Court erred in overruling the motion of plaintiff in error for new trial.

2nd:- Said Court erred in giving judgment for defendant in error when it should have been for plaintiff in error.

3rd:- Said Court erred in not sustaining the motions to quash the affidavit or complaint in said action.

4th:- The said Court erred in not dismissing said complaint on motion of plaintiff in error for the reason said ordinance was in conflict with the Constitution of the State of Ohio; for the further reason that ordinance was in conflict with the Statute and further there was no Statute in Ohio, granting Corporations such authority as taken in said ordinance. Plaintiff in error therefore prays that said judgment may be reversed, and that he be restored to all things lost by reason thereof.

J. E. Robinson & W. J. Hoopes. Attys. for Plaintiff in error.

Now comes J. F. Millar, Solicitor for the defendant in error, and waives the issuing and service of summons and enters the appearance of said defendant in error herein.

J. F. Millar, attorney for Defendant in error.

That afterwards, to wit, on the 17th day of February, A.D. 1902. the following Journal Entry was filed with the Clerk of said Court to wit:

Frank. O. Pevney Plaintiff in Error.
Vs.
The Village of Richwood defendant in Error.

Court of Common Pleas, Union County. Ohio.

This cause came on for hearing upon the petition in error, the Transcript and the original papers and pleadings from the Mayor's Court of the Defendant Village and was argued by counsel; on consideration whereof, the Court find there is no error apparent on the record in said proceedings and judgment. It is therefore considered by the Court that the judgment

175. Petition in Error.

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aforesaid be, and the same hereby is affirmed; and that the defendant in error recover of the plaintiff in error its costs herein expended, taxed at $, to all of which finding and judgment the plaintiff in error, by his attorneys duly excepted at the time thereof.

The State of Ohio, Union County ss:

I, Chas. C. Penhorwood, Clerk of the Court of Common Pleas within and for said County and State, do hereby certify that the within and foregoing is a true transcript of the proceedings in said Court wherein Frank O. Penney is plaintiff in error and the Village of Richwood is defendant in error. In testimony whereof, I have hereunto subscribed my name officially and affixed the seal of said Court at the Court House in Marysville in said County and State, this 30th day of June, A.D. 1902.

(Seal) Chas. C. Penhorwood, Clerk.

175. Petition in Error.

Frank O. Penney, Plaintiff, vs The Village of Richwood, Defendant. In the Circuit Court of Union County, Ohio. 10th District 2 Sub-Division. Petition in Error Filed May 26th 1902.

Plaintiff in error says that on the 31st day of May, 1901, before J. L. Jolliff, Mayor of the Village of Richwood, Union County, Ohio, the defendant in error recovered a judgment and decree of said Court against plaintiff in error in an action then pending therein, wherein defendant in error was plaintiff and plaintiff in error was defendant: that on November 18th 1901, a petition in error from said Mayor's Court with all papers, bills of exceptions and a full and complete transcript of said proceedings were filed in the Court of Common Pleas, of Union County, Ohio. That on the 17th day of February, 1902, said Court of Common Pleas affirmed the finding of the said Mayor's Court and made a finding against said plaintiff in error for costs therein.

A transcript of the docket, bills of exceptions and the original papers of said Mayor's Court together with the transcript of the findings and entry and the original papers of said Court of Common Pleas are filed herewith.

There is error in said records of said Mayor's Court and in the findings of the Court of Common Pleas affirming the same in this to wit:-

First:- Said Court of Common Pleas erred in affirming the over-ruling of the motion of plaintiff in error for new trial.

Second:- Said Court of Common Pleas erred in affirming the judgment in error, when it should have been for the plaintiff in error.

Third:- Said Court of Common Pleas erred in affirming said Mayor's Court in not sustaining the motion to quash the affidavit or complaint in said action.

Fourth:- Said Court of Common Pleas erred in affirming the findings of said Mayor's Court in not dismissing said complaint on motion of plaintiff in error for the reason the ordinance under which said action was being tried, was in conflict with the constitution of the State of Ohio, and for the further reason said ordinance was in conflict with the Statutes of the State of Ohio, and further there was no Statute in Ohio, granting Municipal Corporations such authority as assumed by said ordinance.

Plaintiff in error therefore prays that said judgment may be

reversed and that he may be restored to all things lost by reason thereof.

W. T. Hoopes
James E. Robinson
Attorneys for plaintiffs in Error.

175 Precipe. To the Clerk of the Circuit Court of Union County, Ohio:— Issue Summons directed to the Sheriff of Union County for the defendant in Error, The Village of Richwood, setting out that a petition in error in the above entitled case, returnable according to law.

W. T. Hoopes, Attorney for plaintiff in Error.

175 Waiver. Now comes J. F. Millar, solicitor and attorney of record for the defendant in error, and hereby waives the issue and service of Summons in error in this action and enters the appearance of the defendant in error therein for all purposes thereof this 27th day of May, 1902.

J. F. Millar atty. for Defts. in Error.

175 Entry. Frank O. Penney, Plaintiff in error,
vs. In the Circuit Court of Union County, Ohio.
The Village of Richwood, Defendant in error. Filed Feb. 4" 1903.

This cause came on for hearing upon the petition in error the transcript, and the original papers from the Court of Common Pleas of Union County, and was argued by counsel; on consideration whereof, the Court find there is no error apparent on the record in said proceedings and judgment. It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is, affirmed; and that the defendant in error recover from the plaintiff in error its costs herein expended, taxed at $, for which execution is awarded. It is further ordered that a special mandate be sent to the said Court of Common Pleas of Union County directing it to carry into execution the judgment hereby affirmed. To all of which finding judgment and order the plaintiff in error, by his attorney at the time thereof duly excepted, and caused his exception to be noted herein.

Attest, Chas. C. Penhorwood Clerk
By Milton Haines Deputy.

Petition 176.

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Pleas continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Hons. Caleb A. Norris, James H. Day and William T. Mooney Judges of said Court for the February Term A.D. 1903. Be it remembered that heretofore to wit, on the 28th day of May 1902, the following Petition in Error from the Court of Common Pleas of said County, was filed with the Clerk of said Circuit Court to wit:

The Mill Creek Church of Christ (Incorporated Society) et.al. Plaintiffs in Error,
vs.
Circuit Court of Union County, Ohio.
Lafayette Thompson, et.al, Defendants in Error.

The plaintiffs in error, The Mill Creek Church of Christ, (Incorporated Society) and Andrew H. Dean, Trustee say: That at the March Term 1902, the Court of Common Pleas in and for the County of Union, and State of Ohio, the defendants in error recovered a judgment by the consideration of said Court against the plaintiffs in error in an action then pending in said Court of Common Pleas wherein the said Lafayette Thompson et.al, were plaintiffs and the said plaintiffs in error were defendants A transcript of the docket and journal entries whereof with the original pleadings are hereby filed.

The plaintiffs in error say that in said record and proceedings in said cause No. 8013, in said Court of Common Pleas there was error prejudicial to the plaintiffs in error in this to wit:- 1- Said Court of Common Pleas erred in rendering judgment against the plaintiffs in error upon the petition thereon of the defendants in error.
2- The Court of Common Pleas erred in over-ruling the demurrer of the plaintiffs in error to the petition of said Lafayette Thompson et.al.
3- Said Court erred in not sustaining said demurrer to said petition.
4- The said Court erred in rendering a judgment against the plaintiffs in error, and in favor of the said defendants in error upon their petition alone and without any evidence being introduced in the case by either party. 5- The judgment and decision of said Court was in favor of defendants in error, when it should have been in favor of the plaintiffs in error, according to the laws of the land.

Wherupon the plaintiffs in error pray that said judgment and decision of said Court of Common Pleas be reversed, and held for naught, and that the plaintiffs in error be restored to all things they have lost in the premises.

Porter & Porter Attorneys for Plaintiffs in Error.

We hereby waive the issuing and service of summons in error upon us, and enter our appearance to the above petition in error as party defendants to the same. J. H. Minkade & J. L. Cameron Attys. for Defendants in Error.

176.

Transcript of Journal Entry. Filed June 25th 1902.
March Term 1902.
Lafayette Thompson et.al.
vs.
In Court of Common Pleas.
The Mill Creek Church of Christ et.al.

This day this cause came on to be heard upon the demurrer of the Mill Creek Church of Christ, Incorporated Society, to the petition of the plaintiffs, and was argued by counsel and submitted to the Court; On consideration whereof, the Court being fully advised in the premises overrules said demurrer, to which ruling of the Court the said Mill Creek

Church of Christ, Incorporated Society by its Counsel except. Thereupon neither party desiring to plead further the Court finds upon the petition for the plaintiffs and that the plaintiffs are entitled to the relief by them demanded. It is therefore considered, adjudged and decreed by the Court that A. H. Dean, O. S. Argo and George Holloway, Trustees of the fund named in the petition pay the same over to the plaintiffs within ten days from the date of this decree and that in default of such payment that execution be allowed to issue therefore as upon judgments at law. And it is further adjudged and decreed that the costs of this action be paid by the plaintiffs out of the said fund.

176. Entry.

The Mill Creek Church of Christ (incorporated society) and Andrew H. Dean Trustee. Plaintiffs in Error.

Vs. In the Circuit Court of Union County, Ohio.

Lafayette Thompson et. als. Defts. in Error. Filed Feb. 3rd, 1903.

The plaintiffs in Error release and surrender all claimes to the legacy of $500. provided in the will of A. H. Thompson, and also release and surrender all claims to a similar legacy of $500. in the will of Levi Rea, and also grant to the Church of Christ (unincorporated society) worshipping at Linda, Union County Ohio, and to the community at large, the use of the cemetery for the burial of their dead. and the use of the house for funerals when so desired and will co-operate in the work of repairs and beautifying the cemetery Grounds. The Church of Christ (unincorporated society) worshipping at Linda, Union County, Ohio and the defendants in error surrender any claim that they may have made or claimed upon the church house and premises and personal property therein used and occupied by the Mill Creek Church of Christ (incorporated society) the plaintiffs in error.

This settlement leaving each of said Church organizations free and independant of each other and without any contention between them. It is further Ordered that the judgment of the Court of Common Pleas awarding the $500. legacy in the will of A. H. Thompson to Lafayette Thompson for himself and in behalf of Cynthia E. Miller Mary E. Gleason, George F. Thompson, D. W. Thompson and Rachael M. Harshfield to the amount of said legacy $500 and one half of the accrued interest thereon from Oct. 15th, 1900. to February 1st, 1903, be and the same is hereby affirmed. and the costs of this suit shall be paid from said fund, except each party shall pay their own attorney's fees. Ordered that a special mandate be sent to the Court of Common Pleas of said County to carry this judgment into execution. Ordered that a copy of this Entry be certified to the Clerk of the Common Pleas Court approved etc.

Attest Chas. C. Penhorwood
Clerk
By Milton Haines Deputy.

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Pleas continued and held at the Court House in Marysville within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Hons. Caleb H. Norris, James H. Day and William S. Mooney Judges of said Court for the September Term A.D. 1902. Be it remembered that heretofore to wit, on the 30th day April 1902. the following Appeal bond from the Court of Common Pleas of said County was filed with the Clerk of said Circuit Court to-wit:-

173. Appeal Bond to Circuit Court.

Know all men by these presents: That Lucinda Reed, B. L. Talmage and F. L. Winters are held and firmly bound unto Lorena Graham in the penal sum of One Hundred Dollars, to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, Executors and Administrators. Sealed with our seals and dated this 25th day of April 1902. The condition of the above obligation is such that whereas the said Lucinda Reed has taken an appeal from a certain judgment rendered against her and in favor of the said Lorena Graham by the Court of Common Pleas within and for the County of Union and State of Ohio, at the March Term 1902 in case No. 8018 entitled Lorena Graham Vs Lucinda Reed to the Circuit Court of said County: Now if the said Lucinda Reed shall prosecute her appeal to effect, without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against her the said Lucinda Reed by said Court, then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

Lucinda Reed.
B. L. Talmage.
F. L. Winter.

In presence of Floyd Winter.
J. F. Millar.

The execution of the above undertaking and the sufficiency of the sureties therein approved by Chas. C. Pinkerwood Clerk of Court this 25th day of April A.D. 1902.

Certified Copy of Journal Entry.

173. The State of Ohio, Union County ss:-

Lorena Graham. In the Court of Common Pleas.
Vs March Term 1902.
Lucinda Reed. April 3rd, 1902.

And now this cause coming up for hearing upon the petition, answer and reply and the evidence, the Court finds that the said William H. Graham was, in his life time, seized in fee simple of the real estate and premises described in the petition, and that the plaintiff is the widow of the said William Graham, deceased; and that she is entitled to have her dower in said premises assigned and set off to her as prayed in her said petition. And the Court finding from satisfactory evidence that said estate is entire and cannot be divided by metes and bounds, it is therefore ordered, adjudged and decreed that the dower be assigned to said plaintiff as of one-third part of the rents and profits, and issues of the premises described in the petition, and that a writ issue to the Sheriff of Union County commanding him that by the oaths of three judicious and disinterested men of the vicinity in the said County, who are not

of him to either of the parties, and who are hereby appointed Commissioners for that purpose, he cause the dower of said Lorena Graham to be set off and assigned in the manner above ordered; and that of his said proceedings together with the said Commissioners appraisement of the yearly net value of said estate, estimated from the 31st day of December 1901, to the day of such assignment of dower, he make due return to this Court. Thereupon the defendant by her attorney, gave notice, and hereby gives notice of her intention to appeal this cause to the Circuit Court and the Court fixes the amount of the bond to be given therefore at the sum of One hundred Dollars, and suspends the execution of this order and decree for thirty days therefor.

173
Amended Answer.

Lorena Graham. vs. Lucinda Reed.

The Circuit Court of Union County, Ohio.

Filed Sept. 30" 1902.

Now comes the defendant Lucinda Reed, and in answer to plaintiff's petition, admits that the plaintiff is the widow of one William H. Graham, deceased; that said decedent died intestate on the first day of December, 1901. and that at the date of their marriage and sometime thereafter he was the owner of the premises described in the petition; but denies each and every other allegation in said petition contained. Defendant avers that on or about the 25" day of December, 1884, being at a date previous to the marriage of plaintiff to said William H. Graham, he the said William H. Graham executed and delivered his mortgage deed to one Isaac Graham, thereby conveying to him all his title to and interest in the premises described in the petition, of which he was then the owner in fee simple, to secure the payment of his promissory note for the sum of $48,00 at the same time executed and delivered to him; that on or about the 10th day of June, 1888, B. L. Talmage, then the legal owner and holder of said promissory note and mortgage, for the Bank of Richwood, the equitable owner thereof, commenced an action in the Common Pleas Court of Union County Ohio, against said William H. Graham Isaac Graham and the plaintiff herein, to recover judgment upon said note and to foreclose said mortgage; that in the petition in said action it was alleged that said mortgage deed was executed and delivered by the said William H. Graham to the said Isaac Graham on or about the 25th day of December 1884, and that the said William H. Graham was then unmarried; that in the answer of said William H. Graham to said petition, said allegations were denied, and it was alleged that said mortgage was executed and delivered on or about the 26th day of October 1885 but on the threats and false representations of the said Isaac Graham was dated back so as not to get it behind a certain deed from said William H. Graham to one Nathan Graham, and that at the time of the execution of said mortgage deed said William H. Graham was married to one Lorena E. Graham, then living; that in his reply to said answer the plaintiff in said action denied each and all of said allegations therein contained; that said cause was duly heard upon its merits upon said issues on or about the 25" day of

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June, 1890, and the said Court having full jurisdiction over said matter and parties, made a general finding in favor of the plaintiff thereupon the issues joined between the parties, and rendered judgment in his favor for the sum of $340.25 and duly ordered the sale of said premises to satisfy the same; that said premises were duly sold at public sale on the 15th day of October, 1890, under said order of Court for $351,00 to one Nancy Winters, and said sale was duly confirmed and a deed ordered by Court which was duly executed and delivered to said purchaser; that the plaintiff herein was duly served with summons in said action on or about the 25th day of October, 1888 and was made a party defendant thereto, but made no defense to any of said proceedings and set up no claim of title to or interest in the said premises by pleading or otherwise in said action and suffered himself to become and remain in default therefor, and was so in default at the dates of the rendition of said judgment, decree and order. Defendant further says that on or about the 12th day of September, 1890, while the aforesaid action was still pending and after the said decree of foreclosure and order of sale therein, and before the said sale had been made thereunder, the plaintiff herein, commenced an action in said Common Pleas Court of Union County, Ohio, by filing her petition therein and causing summons to be issued thereon, in which petition she alleged her marriage to the said William H. Graham on the first day of April, 1885; his title to said premises on said date; the execution and delivery by him of said mortgage thereon, and the said proceedings in foreclosure on said mortgage, in so far as they had then progressed; and that the plaintiff was a party to said action, but was prevented by said William H. Graham from setting up her defense therein; and further alleged that said mortgage was in reality executed and delivered on or about the 26th day of October 1885 but by the collusion and fraud of said William H. Graham and Isaac Graham the grantor and grantee thereto, was antedated as though executed on the 25th day of December, 1884, a date prior to plaintiffs marriage to said William H. Graham, for the purpose of defrauding her out of her inchoate right of dower in said premises; and that plaintiff had an inchoate right of dower in said premises which would be defeated if the same should be sold under said order of Court; and prayed that the Court find said mortgage to have been executed on the 26th day of October 1885; instead of the 25th day of December, 1884, and save her inchoate right of dower in said premises by ordering said mortgage so corrected; and for all proper and equitable relief. The Lake Bank of Richwood, William H. Graham, Isaac Graham and Nancy Winters were made parties defendant to said to said action and were duly served with summons therein; and the said Nancy Winters demurred to said petition on the ground alone that it did not contain facts sufficient to constitute a cause of action; and the Court sustained said demurrer. The plaintiff filed three amended petitions in said action, to each of which said defendant demurred solely on the aforesaid ground in regular order, and the Court sustained said demurrer. Thereupon the plaintiff commenced an action in error to said proceedings in the Circuit Court of said County of Union, which action was by said Court at its February term of the year 1896, dismissed at plaintiffs costs for want of finds judgment or order to which error would lie and no.

further proceedings have been had upon said cause. More than four years had elapsed after plaintiffs knowledge of said fraud so alleged by her before the her commencement of this action. She defendant is the owner in fee simple and in possession of the premises described in the petition herein, and derived her title thereto by deed of conveyance with general warranty from the said Nancy Winters. Wherefore the plaintiff is estopped and barred upon her alleged cause of action in her petition herein; and defendant prays that upon hearing thereof it be dismissed at her cost, that the defendant's title to said premises be quieted as against plaintiffs claim, and for all proper equitable relief. J. F. Miller atty. for Defendant.

State of Ohio, Union County ss: Lucinda Reed, being first duly sworn, says that she is defendant in the above entitled action, and that the facts stated and allegations made in the foregoing amended answer are, as she verily believes, true. Lucinda Reed.

Subscribed in my presence and sworn to before me by said Lucinda Reed this 25" day of August, A.D. 1902.

(Seal) J. F. Millar Notary Public

173. Reply.

Lorena Graham, Plaintiff. vs. Lucinda Reed. Defendant. Union County, Ohio In Circuit Court. Filed Sept. 30" 1902.

Plaintiff says by way of reply, she admits the execution of the mortgage to said Isaac Graham referred to in the defendants answer but denies that it was executed on or about the 25" day of December 1884, or at any time prior to her marriage to said Graham but says that said mortgage was executed on or about the 21st day of October 1885 and was dated back to the 25" of December 1884 and was filed for record on or about the 26" day of October 1885 without her signature thereon. She plaintiff denies that at the time of the execution of said mortgage said William H. Graham was unmarried and says that said mortgage was executed on or about the 26" day of October 1885, and that they were married on or about the 1st of April 1885. Plaintiff also admits the Bank of Richwood brought suit on the said Mortgage and foreclosed the same, but denies that she was a party thereto so as to be required to answer therein. She further admits that she filed a petition for the establishment of her inchoate right of dower in said premises as alleged in the defendants answer but denies that there was any finial action or judgment thereon, and she denies that she was estopped of claiming or barred of dower in said premises. She therefore prays for the assignment of her dower as in her petition. J. M. Kennedy, atty. for Plaintiff.

The State of Ohio, Logan County ss:

Lorena Graham being first duly sworn says that the facts and allegations in the foregoing Reply are as she believes true. Lorena C. Graham.

Sworn to and subscribed by the said Lorena Graham before me this 30th day of September, A.D. 1902.

Chas. C. Penhorwood Clerk

173. Entry.

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173.
Entry.

Lorena C. Graham, plaintiff.
vs.
Lucinda Reed, defendant.

In the Circuit Court of Union County, Ohio.
Filed Oct. 1st. 1902.

This cause coming on for trial on for trial on appeal from the common Pleas Court, the defendant asked leave to file an amended answer instanter and was granted such leave; and thereupon the plaintiff asked and obtained leave to reply thereto instanter, and both of said pleadings were accordingly filed. The cause was then heard by the Court upon said pleadings, the petition, the evidence, and the briefs of counsel; and upon due consideration thereof, the Court find upon the issues joined in favor of the defendant. It is therefore considered, ordered and adjudged by the Court that the plaintiffs petition be dismissed; that defendant recover from plaintiff her costs herein expended, taxed at $; for which amount judgment is rendered and execution awarded; and that a special mandate be sent to the Court of common Pleas of Union County to carry this judgment and order into execution. To all of which finding, judgment and orders, the plaintiff by her attorney then and there duly excepted, and the Court granted fifty days for the preparation and allowance of a bill of exceptions.

Attest Chas. C. Dunlavy Clerk
By Milton Haines Deputy

Pleas continued and held at the Court House in Marysville, within and
for the County of Union in the Third Judicial Circuit of the Circuit Court
of the State of Ohio, before the Hons. Caleb H. Norris, James L. Day, William
T. Mooney Judges of said Court for the September Term, A.D. 1903, Be
it remembered that heretofore to wit: on the 20th day of April, 1903, the following petition in Error
was filed with the Clerk of said Circuit Court to wit:-

181
Petition

E. N. Moore, Plaintiff in Error.
vs. Circuit Court, Union County, Ohio.
Lon Yoder, by A. Yoder
his next friend - Defendant in Error.

The Plaintiff in Error says:- That at
the January Term of the Court of Common Pleas, for A.D. 1903, for said
County of Union the Defendant in Error, recovered a judgment by the
confederation of said Court against the Plaintiff in Error, in a certain
action then pending in said Court, wherein the said Lon Yoder, by A.
Yoder, his next friend, was plaintiff, and the said E. N. Moore was
defendant. A copy of the record of said judgment and proceedings in
said case, duly certified, is herewith filed, and made a part of this
petition; and the said E. N. Moore, plaintiff in Error avers that
there is manifest error in said record and proceedings, in this, to wit:-
1st:- That the verdict given by said Jury in said case is contra-
ry to law and against the weight of the evidence and excessive in amount.
2d. That the charge of the Court to the Jury in said case was erroneous,
and against the facts of the case and the law of the case.
3d:- That the Court erred in the trial of this case, in its charge
to the Jury as to the law of the same.
4th:- That said verdict was rendered for the defendant in error and
against the plaintiff in error, when by the law of the land, and the
facts of the case, the verdict and the judgment thereon, should have
been given for the plaintiff in Error and not for the defendant in Error.
Plaintiff in error therefore asks that said judgment be reversed, and the
plaintiff in error restored to all things he has lost by reason thereof.

Yoder & Porter, Attorneys for Plaintiff in Error.

181
Entry

E. N. Moore.
vs. Circuit Court of Union County, Ohio.
Lon Yoder by A. Yoder &c. Sept. 30th 1903.

This cause came on for hearing upon the petition
in error, the Transcript and the original papers and pleadings from the Court of
Common Pleas of Union County, and was argued by counsel. On consideration whereof,
the Court find that there is no error apparent on the record in said proceedings
and judgment. It is therefore considered by the Court, that the judgment aforesaid
be, and the same hereby is affirmed; and that the defendant in error recover from
the plaintiff in error his costs herein expended taxed at $, And the Court
being of opinion that there was reasonable ground for proceedings in error, allow
no penalty. It is further ordered that a special mandate be sent to the Common
Pleas Court of Union County, for execution upon this judgment.

Attest:- Chas. C. Denhorwood Clerk.
By Milton Haines, Deputy.

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Pleas continued and held at the Court House in Marysville within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Hons. Caleb H. Norris, James H. Day & William S. Mooney, Judges of said Court, for the September Term A.D. 1903. Be it remembered that heretofore to wit, on the 22" day of January 1903 the following petition in Error was filed with the Clerk of said Circuit Court to wit:

179. Petition

James S. Winters, Plaintiff in Error.
vs.
M. N. Hill, Defendant in Error.
Circuit Court, Union County, Ohio.

The said James S. Winters, Plaintiff in Error says: That at the Jany. Term, A.D. 1903, of the Court of Common Pleas within and for the County of Union, and State of Ohio, the defendant in error, recovered a judgment against him by the consideration of said Court, in an action then pending in said Court wherein plaintiff in Error was plaintiff in error, and the said M.N. Hill was defendant in error, the said action having been brought into said Court upon error from the docket of a Justice of the Peace within said County. A transcript of said judgment and proceedings before said Justice of the Peace and of the docket and journal Entries in said Court of Common Pleas, together with the original papers and pleadings are herewith filed. The plaintiff in error avers that there is error in said record and proceeding in this to wit:-

1-: The said Justice of the Peace had no jurisdiction to hear the evidence and make a finding and judgment in said action as the amount involved more than Three Hundred Dollars.

2-: The finding of the said Justice of the Peace, that the said James S. Winters was indebted to the said M.N. Hill in the sum of $655.20 was and is void for want of jurisdiction in said Justice of the Peace to find and determine it from the evidence.

3-: The said Justice of the Peace had no jurisdiction to render any judgment in said action, or to adjudicate the claims therein presented.

4-: The said Justice of the Peace erred in rendering judgment against the said James S. Winters for said sum of Three hundred Dollars and permitting the said M.N. Hill to withhold the balance of the sum found for a future action.

5-: The finding, proceeding and judgment of said Justice is erroneous and void.

6-: The Court of Common Pleas erred in affirming the judgment and proceedings of said Justice of the Peace.

Wherefore the plaintiff in error prays that the finding and judgment of the Court of Common Pleas, and of said Justice of the Peace may be reversed and held for naught, and the plaintiff in error restored to all things he had lost thereby. J. L. Cameron,
Attorney for Plaintiff in Error.

179. Waiver.

The issuing and service of summons in error is waived and the appearance of the defendant in error is hereby entered this 28" day of Jan. 1903.
John H. Miller, Attorney for Defendant in Error.

179
Entry

James S. Winters, Plaintiff in Error.
vs. In the Circuit Court of Union County, Ohio.
Morris W. Hill, Defendant in Error. Sept. 30" 1903.

This cause came on for hearing on the petition in error, the transcript, and the original papers and pleadings from the Court of Common Pleas of Union County, and was argued by Counsel; on Consideration whereof, the Court finds that there is no error apparent upon the record of said proceedings and judgment.
It is therefore considered by the Court, that the judgment of the said Common Pleas Court be, and the same hereby is, affirmed; and that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $.
And the Court being of the opinion that there was reasonable ground for proceeding in error, allow no penalty.
It is further ordered that a special mandate be sent to the said Common Pleas Court of Union County for execution upon said judgment.
To all which finding, judgment and order, the plaintiff in error hereby duly excepts.

Attest: Chas. C. Pinkerwood, Clerk.
By Milton Haines, Deputy.

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Pleas continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial Circuit, of the Circuit Court of the State of Ohio, before the Hons Caleb H. Norris, James H. Day and William S. Mooney, Judges of said Court for the February Term A.D. 1904. Be it remembered that heretofore to wit, on the 1st day of January, 1904, the following petition in error was filed with the Clerks of said Circuit Court to wit:-

187
Petition

Martha Liggett, Administratrix
of the estate of Gideon Liggett, deceased,- Plaintiff in Error.
vs. In the Circuit Court of Union County, Ohio.
Charles A Liggett and others
heirs of the estate of Gideon Liggett, deceased,- Defendants in Error.

The plaintiff in Error says:- That at the September Term of the Court of Common Pleas, A.D. 1903, in and for said County of Union, the defendants in error recovered a judgment by the consideration of said Court against the plaintiff in error, in a certain action, and proceeding then pending in said Court, wherein the said Martha Liggett, Administratrix of the estate of Gideon Liggett, deceased, is plaintiff and Charles A. Liggett, and others, as the heirs at law of said Gideon Liggett, deceased are defendants. A copy of the record, and the judgment and proceedings in said case, are herewith filed and made a part of this petition in error. And the said Martha Liggett avers that there is error in said record and proceedings in this to wit:-

1.- The judgment of the Court in said cause was against the evidence in the case.
2.- Said judgment of the Court was against the law of the case.
3.- The Court erred in overruling the motion of Martha Liggett for a new trial, in said cause.
4.- That the judgment was rendered for the heirs of said estate, when by the law of the land, the judgment should have been given for the said Martha Liggett.
5.- The said Martha Liggett therefore prays that said judgment and decision may be reversed and set aside, and that Plaintiff in Error be restored to all things she has lost by reason thereof. Porter & Porter, Attys. for Plaintiff in Error.

187
Waiver

We hereby waive the issuing and service of summons in error upon each and all of the defendants herein, and we enter our appearance in the above entitled case and waive all questions as to time.
W. W. Ayers, Attorney for Defendants.

187
Entry

Martha Liggett, Admr't.
vs. Circuit Court of Union County, Ohio.
The estate of Gideon Liggett et.al. Feb. 2nd, 1904.

This day this cause came on for hearing upon the petition in error, the transcript, and the original papers and pleadings from the Court of Common Pleas of Union County, and was argued by Counsel; on consideration whereof, the Court finds no error appearing on the face of the record in said proceedings and judgment.
It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is, affirmed with costs and execu-

tion is awarded,
And the Court being of opinion that there was reasonable grounds for proceedings in error, allow no penalty.
Ordered that a special mandate be sent to the Court of Common Pleas of Union County to carry this judgment into execution,
Ordered that a copy of this entry be certified to the Clerk of the Court of Common Pleas of said County for entry &c.
To all of which rulings, orders and judgments of the Court the plaintiffs by her Counsel then and there excepted.

Attest: Chas. C. Penhorwood, Clerk.
By Milton Haines Deputy.

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Pleas continued and held at the Court House in Marysville within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Hons. Caleb H. Norris, James H. Day and William T. Mooney, Judges of said Court for the September Term A.D. 1903. Be it remembered that heretofore to-wit, on the 2nd day of May, 1902 the following petition in error was filed with the Clerk of said Circuit Court to-wit:-

174 Petition

H. C. Hamilton, Plaintiff in Error.
vs.
Asbury Cheney, Admr. of the Estate of T. H. Biddle, deceased, Defendant in Error.
Circuit Court of Union County, Ohio.

Plaintiff in error says that at the March Term 1902, of the Court of Common Pleas of Union County, Ohio, T. H. Biddle, who has since said term of said Court died, and is now represented by the said Asbury Cheney who was appointed by the Probate Court of Union County, Ohio, as the administrator of the estate of said Biddle, deceased; and who duly qualified as said Administrator, and is now acting in that capacity, the defendant in error recovered a judgment by the consideration of said Court, against Plaintiff in Error in an action then pending therein, wherein the defendant in Error was plaintiff and the plaintiff in Error was defendant, a transcript of the Docket and Journal Entries whereof is filed herewith. There is error in said Record and Proceedings in this to wit:-

Said Court erred in overruling the motion of Plaintiff in Error for a new trial. Said Court erred in its charge to the Jury on the trial of said action. Said Court erred in refusing to give the charges as asked for by the Plaintiff in Error.

The facts set forth in the petition are not sufficient in law to maintain the said action against plaintiff in error.

The Court erred in ruling out the evidence of said plaintiff in Error, to which ruling said Plaintiff in Error objected.

Said Court erred in the admission of the evidence of said defendant in Error, to which the said Plaintiff in Error objected.

Said judgment was given for said Defendant in Error when it ought to have been given for said Plaintiff in Error.

Plaintiff in Error therefore prays that said judgment be reversed and that he be restored to all things he has lost by reason thereof.

W. S. Hoopes and D. N. Ayers, and S. H. Van Winkle
attorneys for Plaintiff.

State of Ohio, Union County } ss: H. C. Hamilton being duly sworn deposes and says, that the allegations in the foregoing petition are as he believes true.

H. C. Hamilton.

Sworn to and subscribed in my presence, this 2nd day of May, 1902.
(Seal)
Henry S. Stiles, Notary Public.

174 Waiver

I hereby waive the issuing of process and service by summons herein and enter my appearance in the above entitled action this 2nd day of May, 1902.
Asbury Cheney, Admr of T. H. Biddle, decd. By his atty. J. F. Miller.

174 Entry

A. C. Hamilton
vs.
Asbury Cheney, admr.

Circuit Court, Union County, Ohio.
Sept. 30" 1902.

This day by agreement of the parties hereto, this cause was continued by the Court.

174 Entry.

A. C. Hamilton, Plaintiff in Error.
vs.
Asbury Cheney, Admr. &c. Defendant in Error.

Circuit Court of Union County, Ohio.
Feb. 4" 1903.

This cause coming on for hearing this Fourth day of February, 1903. and the question having been raised as to the filing of the original papers, or any copies thereof, necessary to exhibit the error complained of, leave is granted the defendant in error to file a motion to affirm the judgment of the Common Pleas Court, and this cause continued for hearing.

174 Motion

A. C. Hamilton, Plaintiff in Error,
vs.
Asbury Cheney, Admr. &c. Defendant in Error.

In the Circuit Court of Union County, Ohio.
Feb. 4" 1903.

Now comes the Defendant in Error, having been granted leave, and moves the Court to affirm the judgment of the Court of Common Pleas, for the reason that neither a transcript of the final record, nor the original papers or any copies thereof, necessary to exhibit the errors complained of have been filed in this Court with the Petition in Error, and more than four months have elapsed since the rendition of said judgment.

J. H. Miller, Atty. for Defts. in Error.

174 Motion

A. C. Hamilton, Plaintiff in Error.
vs.
Asbury Cheney Admr.
of the Estate of
Thomas H. Biddle, decd

Circuit Court Union County Ohio.
Filed Sept. 26" 1903

The plaintiff in Error herein, now comes and for motion asks leave of this Court, to file the original papers in the above entitled action with the bill of exceptions now on file herein. And for cause says, that the same by mistake were not placed with the said bill of exceptions.
And in support of this motion, said plaintiff offers the affidavits of W. J. Hooper and D. W. Ayers now on file. S. N. Van Winkle,
W. J. Hooper and D. W. Ayers.

174 Entry.

A. C. Hamilton, Plaintiff in Error.
vs.
Asbury Cheney, Administrator
of the Estate of Thomas H. Biddle, decd. Defts. in Error.

Circuit Court, Union County, Ohio
Filed Sept. 30" 1903.

This day this cause came on to be heard on the motion of the Plaintiff in Error for leave to file the original papers in this action with the bill of exceptions now on file herein, for the reason claimed, that the same

by mistake were not filed with said bill of exceptions.
The Court, after hearing the evidence on said motion and the arguments of Counsel thereon, and being fully advised in the premises, find that D. W. Ayers, one of the attorneys for the Plaintiff in Error, delivered the bill of exceptions filed herein to Charles C. Penhorwood, Clerk of this Court, within the time the same was to be filed, both at the time being at the residence of said D. W. Ayers, in Marysville, Ohio, and away from said Clerk's office; that he then & there requested said Clerk of Courts to file in this Court the original papers in this cause with the bill of exceptions then delivered & now on file herein; and that said Clerk said "Allright." The said original papers in said case, were at all times on file in the office of the Clerk of the Court of Common Pleas and in the custody of said Penhorwood. The Court further find that said D. W. Ayers and W. S. Hoopes, plaintiffs in Error's attorneys herein, reside in Marysville, the County seat of said Union County; that they have ready, easy and free access to the office of said Clerk of Courts, to the records thereof, and to the papers thereon file; that they both avail themselves of such privileges frequently; that on or about the 29th day of January, 1903, being but a few days previous to the last term of this Court, said W. S. Hoopes came into the office of said Clerk of Courts and requested to be given the papers in the case of Thomas H. Biddle vs. H. C. Hamilton in the Common Pleas Court, being the original papers omitted to be filed herein; that said Clerk then and there in his view, climbed up a sliding ladder and took said papers from among the files of cases disposed of in said Common Pleas Court, and handed them to said W. S. Hoopes; that he took them into the law library room of the Court House and he and the said D. W. Ayers there retained and examined them for some time; that he brought them back into the office of said Clerk of Courts and said "we will not put them back up there, for we will want them again, & will just put them in here," or words to that effect, and thereupon he placed them in one of the file boxes of cases pending in the Common Pleas Court; that said D. W. Ayers and W. S. Hoopes each know the classification of the papers on file in the office of said Clerk, and especially the file box and its location for papers filed in the Circuit Court; that said original papers were never docketed or marked as filed in the Circuit Court; and that they never were placed among the files or in any manner filed in this the said Circuit Court.
The Court further find that no original papers or transcripts thereof necessary to exhibit the error complained of have been filed herein, as required by Section 6716, of the Revised Statutes of Ohio, and that more than four months have elapsed since the rendition of the judgment of the Common Pleas Court hereby sought to be reversed and since the overruling by said Court of Plaintiff in Error's motion for a new trial in this cause. The Court therefore disallows and overrules said motion of plaintiff in error for leave to file said original papers at this date.

And the Court coming now to consider said petition in error, find that with said Petition in Error, there were no original papers nor a transcript thereof at any time filed, and that neither said original papers or any part of the same were ever filed in this Court, or were ever a part of the files in this action.

The Court therefore, finding no error apparent upon the record of the proceedings and judgment of the lower Court as presented to this Court herein, affirms said judgment with costs, but without penalty; and orders that a special mandate be sent to the said Court of Common Pleas of Union County, for execution upon said judgment; to all of which findings, rulings, orders and judgments of this Court the Plaintiff in Error by his Counsel duly excepted at the time thereof.

Attest:- Chas. C. Penhorwood, Clerk.
By Milton Haines, Deputy.

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Olas continued and held at the Court House in Marysville, within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Hons. Caleb H. Norris, James H. Day and William S. Mooney, Judges of said Court for the February Term, 1903. Be it remembered that heretofore to wit, on the 30th day of December, 1902, the following Petition in Quo Warranto, was filed with the Clerk of said Circuit Court to wit:-

178 Petition

The State of Ohio on the relation of John M. Sheets, Attorney General of said State, — Plaintiff.

vs.

In the Circuit Court of Union County, Ohio.

S. S. Drake, William King, William Parrott, A. B. McLean, Frank Bunn and Harry Thomas - Defendants.

John M. Sheets, Attorney General of the State of Ohio, who sues for said State in this behalf, comes here before the Judges of the Circuit Court of Union County and State of Ohio, and gives the Court to understand and be informed; that on the 26th day of March, A.D. 1902, the General Assembly of the State of Ohio passed a special act, entitled, "An act to enlarge the village school district of Magnetic Springs, Union County, Ohio and to establish a special school district at Magnetic Springs, Union County, Ohio, to be composed of a part of Leesburg township, Union County, Ohio and to provide more satisfactory facilities for education of pupils in said townships." Which special act is found in Ohio Laws Vol. 95 on pages 718 & 719

That while said act purports to define the boundaries of a special district and to authorize the election of a board of education therein, and purports to empower such board to issue bonds and borrow money, erect school buildings and levy taxes, prescribe courses of study and conduct schools within such territory; said act is wholly ~~invalid~~, void and of no effect, because it violates the provisions of Section 2, Article 6, and Sec. 26, Article 2, and Section 1, Article 12, and other provisions of the constitution of the State of Ohio.

That acting under the provisions of said special act, but unlawfully a pretended election was held within the territory named in said act by which the defendants, S. S. Drake, William King, William Parrott, A. B. McLean, Frank Bunn, and Harry Thomas were chosen as members of a board of education for said special district, and organized among themselves by selecting S. S. Drake, President, William King as Clerk and William Parrott as Treasurer, and the said defendants usurp and claim all the rights, powers, privileges and authority of a legally constituted Board of Education, and the said defendants have assumed the power to issue and sell bonds as provided in said special act and have certified to the Auditor of said County of Union a levy of ten mills on the dollar valuation of property within the territory

named in said special act, and claim the right and usurp the power to employ teachers and make expense for school purposes the same as if they were legally constituted body.
The defendants assume to act as such board of education under no authority whatever, except the special act aforesaid, which act is illegal and void for the reasons herein given.
The defendants are not a legally authorized board of education and have no authority to act as such, and have no corporate powers, and no right to levy taxes or make expense, but all their acts in that behalf, are illegal and greatly to the damage and prejudice of state of Ohio, and against her dignity, Wherefore the advice of the Court is asked in the premises, and that the defendants be required to answer by what authority they claim to exercise and enjoy the position of members of the Board of Education of Magnetic Springs special school district, in Union County, Ohio, and that they and each of them be ousted therefrom, and for all proper relief.
J.L. Cameron of Counsel. John M. Sheets, Attorney General.

178 Answer.

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178 Precipe. To the Clerk: Issue summons for the defendants, directed to the Sheriff of Union County, Ohio, returnable according to law.
John M. Sheets, Attorney General for relators.

178 Summons. On the 30th day of December, A.D. 1902, the following summons to wit:-
The State of Ohio, Union County ss:- To the Sheriff of Union County, Greeting:-
You are commanded to notify S.S. Drake, William King, William Parrott, A.B. McLean, Frank Bunn, and Harry Thomas, that they have been sued by The State of Ohio, on relation of John M. Sheets, Attorney General of said State, in the Circuit Court of Ohio, and that they unless they answer by the 31st day of January, A.D. 1903, the petition of said Plaintiff against them, filed in the Clerk's Office of said Court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this summons on the 12th day of January A.D. 1903. Witness my hand and the seal of said Court this 30th day of December, A.D. 1902.
(Seal) Chas. C. Pemberwood, Clerk.

Sheriff's Return.
Received this writ Dec. 31st A.D. 1902, at 8 o'clock A.M. and pursuant to its command, on Janty. 3rd 1903, I served same by personally handing to William King, a true and certified copy of this writ with all the endorsements thereon.
S.F. Burnham, Sheriff.
And on January 7th, 1903, I personally handed to William Parrott, Frank Bunn and Harry Thomas true and certified copies of this writ with all the endorsements thereon, and left at the usual places of residence of S.S. Drake and O.B. McLean true and certified copies of this writ with all the endorsements thereon Jan. 7th 1903.
S.F. Burnham, Sheriff.
By Allen Haines, Deputy.

Fees: $4.35

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Answer.

The State of Ohio on the
relation of John M. Sheets,
Attorney General.
vs.
S. S. Drake Et others.

Circuit Court, Union County, Ohio.
Filed Jan. 20" 1903.

And now comes S. S. Drake, William King, William Parrott, O. B. Mc Lean, Frank Beem and Harry Thomas, and for answer to the Petition and Information herein exhibited against them by the Attorney General of the State of Ohio say:
That they admit that on March 26", 1902, the General Assembly of the State of Ohio, passed an act entitled " an act to enlarge the Village school district of Magnetic Springs, Union County, Ohio, and to establish a special school district at Magnetic Springs, Union County, Ohio, to be composed of a part of Leesburg township, Union County, Ohio, and to provide more satisfactory facilities for the education of pupils in said township." (95 Ohio L. 718.).
The defendants further admit that, acting under the provisions of said act, an election was held within the territory named in said act by which election the defendants, S. S. Drake, William King, William Parrott, A. B. Mc Lean, Frank Beem and Harry Thomas were chosen as members of a board of education for said special school district, and organized among themselves by selecting S. S. Drake as President, William King as clerk, and William Parrott as Treasurer. They further admit that they have assumed the power to issue and sell bonds as provided in said special act and have certified to the auditor of said County of Union on the Dollar valuation of property within the territory named in said special act, and claim the power to employ teachers and make expense for school purposes in said school district.
And the defendants deny each and every other allegation set forth and contained in said petition and Information.
The defendants further answering say that it is not true and they therefore deny that they, or either of them, have, without legal warrant, grant or charter, used or exercised or now use or exercise, the liberties, privileges or franchises named in said Petition and Information, or any of them, or that they have usurped or do now usurp any of said privileges or franchises, and they therefore deny that they, or either of them, ever used or exercised the rights, liberties, privileges or franchises named or charged in said Petition and Information, or any of them, without right.
Further answering, the defendants say that prior to the passage of said act of March 26, 1902, the territory therein described consisted of the Special School District of the village of Magnetic Springs, which was confined to the Territorial limits of said Village, and the Township school district lying north and south of said village, known as Buck Grove and Devil Half Acre School districts, and parts of Township school districts on the north and south of said village.
Further answering, the defendants say that acting under the authority conferred upon them, as a board of education, by said

act of March, 26" 1902, and relying upon the decision of the Supreme Court of Ohio. in the case of State ex rel. Attorney General v. Shearer, 46, Ohio St. 275, in which case a special act providing for the formation of a special school district was held to be a constitutional and valid enactment, they proceeded, as the board of education of Magnetic Springs Special School District, to do and perform the following acts and things, to wit:

They duly issued, sold and received the proceeds of the sale of Six Thousand Dollars of the bonds of said special school district.

Out of the proceeds of the sale of said bonds, they purchased and paid for lands for a site for a school house and grounds in the Village of Magnetic Springs. They levied a tax of ten mills upon each dollar of the valuation of the taxable property within said special school district for school purposes within said district and have certified the same to the auditor of said Union County for collection, and the same has been by said Auditor duly placed upon the tax duplicate of said county for collection; a large amount of the same has been paid and collected, and about six hundred dollars of said taxes have, under the general school laws of said state, been anticipated, advanced, utilized & expended by said board of education, for school purposes in said special school district. They have established, pursuant to said act of March 26, 1902, a high school course of instruction in the schools of said special school district, which is now being successfully conducted, and have employed a principal, a grammar and a primary school teacher for said schools, for the period of nine months, ending about the month of June, 1903. Said schools are now in full operation, with an enrolled attendance of school children, within said district of about one hundred and forty. They have, under the provisions of and authority conferred upon them, as the board of education of said special school district, under said act of March 26, 1902, provided by contract for a period of nine months, ending about June, 1903, for the transportation of the pupils attending said school to and from the school houses. Further answering, the defendants say that neither the board of education of the village of school district of Magnetic Springs, nor the township boards of education of the several townships districts out of which the territory described in said act of March 26, 1902, was carved, have levied any tax for school purposes in said territory, nor provided in any other way for the expense of conducting said school or schools within said territory, nor made any provision for the schooling or education of the school children within said territory.

Wherefore these answering defendants say that they or either of them do not usurp, nor without warrant or authority use or exercise any of said liberties, privileges, or franchises, and they ask that the said petition and Information be dismissed, that they recover their costs herein, and for such other and further relief as may be just and right in the premises.

George B. Okey & W. J. Hoopes, Attys. for Defendants.

The State of Ohio, Union County, } ss: William King one of the said defendants, of lawful age, being duly sworn according to law, deposes and says that the allegations set forth and contained in this his and his co-defendants answer, are true as he verily believes.

Wm King.

178. Reply.

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178. Motion

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178 Motion for new Trial

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Sworn to by the said William King and by him subscribed in my presence this nineteenth day of January A.D. 1903.
(Seal) Chas. C. Benhonwood, Clerk of Court.

178. Reply.

The State of Ohio ex rel.
of the Attorney General. - Plaintiffs.
vs.
S. S. Drake et. al. - Defendant.

Circuit Court, Union County, Ohio.
Filed Janry. 30" 1903.

Now comes the State of Ohio, by the Attorney General, and for reply to the answer of the defendants say:- That without admitting that said answer is a sufficient defense to the petition, the plaintiff says it is not true that at the time said answer was filed, the defendants had purchased a site for school purposes, but says that said site was not purchased until the 21st day of January, A.D. 1903, and that the deed therefor purports to be for the consideration of $300. The plaintiff says that if the defendants have sold bonds they still have the money produced by the sale of said bonds except the said sum of $300. which was voluntarily expended by the defendants after this action was brought, and that the defendants can return said money to the holders of the bonds if any were sold. The plaintiff further says before the contract for schools were made the defendants had or might have had notice that the act under which they claimed the right to transact business was invalid. That the case of The Attorney General vs. Shearer, 46 Ohio St. Rep. 275, cited by the defendants in their answer does not go so far as to uphold a law granting corporate powers, if such law be special and not general. That the Township Board of Education for Leesburg Township are ready and willing to take over the levy made by the defendants and conduct schools in said territory so as to avoid letting the scholars go without proper schooling. Wherefore the plaintiff prays as it has already prayed in the petition.
J. L. Cameron of Counsel for Plaintiff. John M. Sheets, Attorney General.

178. Motion

The State ex rel
Attorney General.
vs.
S. S. Drake et al.

Circuit Court, Union County, Ohio.
Filed Feb. 4" 1903.

Now come the defendants herein and move the Court for a further order staying the execution of judgment of ouster herein until the 30" day of June, 1903, and a complete stay of the execution of judgment of ouster herein until the aforesaid date. And in support of which motion these defendants submit the evidence and the facts admitted in the pleadings herein.

178 Motion for new Trial

The State ex rel.
vs.
S. S. Drake et al.

Circuit Court of Union County, Ohio.
Filed Feby. 4th 1903.

Now come the defendants herein and move the Court for a new trial herein for the following reasons to wit:-
1st:- The judgment of the Court is contrary to law and the evidence.
2-:- The finding and judgment of the Court is against the weight

of the evidence.
3rd: The court erred in overruling the motion of defendants for a further and complete stay of execution of the judgment of ouster.
4. For other errors apparent upon the record. George B. Okey, M. S. Sloopus and Edw. L. Hyneman, attys. for Defendants.

178 Entry.

The State ex rel. Attorney General,
vs.
S. S. Drake and others.

The Circuit Court, Union County, Ohio.

Feb. 4, 1903.

This cause coming on to be heard upon the petition, answer and reply, and the evidence and stipulations of counsel, the court upon consideration thereof, finds that the acts of the General Assembly of the State of Ohio, creating the Special school district of Magnetic Springs, Ohio, (95 Ohio L. 718), is invalid and in contravention of the Constitution of Ohio, and that the defendants are acting as the board of education of said special school district without authority of law, wherefore the court adjudges and decrees that the said defendants be and they are hereby ousted from so acting as the board of education of the said special district. And the court further finding that the said special school district was carved out of the school districts of Leesburg and Devils half acre of Leesburg Township, Union County, Ohio; that the boards of education of said Leesburg and Devils Half Acre school districts have levied and largely collected a tax of 7½ mills upon the taxable property within the present boundaries of their respective districts, for the purpose of conducting the schools now within their jurisdiction; that the defendants acting as the board of education of said special school district have levied and largely collected a tax of ten mills upon the taxable property within said special school district of which seven mills is for the purpose of conducting the schools within said special school district, and three mills is for a sinking fund to redeem certain bonds, in the principal sum of Six thousand dollars, theretofore sold by the defendants acting as such board of education of said special school district; that the defendants acting as such board of education of said special school district, have entered into contracts necessary to the conducting of the schools in said special district, which contracts are still subsisting and expire on the 29th day of June, 1903, and have expended about Six Hundred dollars of the moneys coming into their hands from the sale of the bonds aforesaid, for the purposes of purchasing a site for a school house, for paying the expenses incident to the sale of said bonds, and for drafting of plans and specifications for the new school house authorized by the aforesaid act of March 26th 1902, (95 Ohio L. 718), but have not commenced the erection of said school building; therefore, the court being of the opinion that the present execution of the judgment of ouster herein rendered, will give rise to a condition inimicable to the public interests, grants and orders that the execution of said judgment of ouster be, and the same is hereby stayed until the 29th day of June, 1903; and the court upon further consideration, orders and adjudges that the defendants be, and they are hereby perpetually enjoined from doing or performing any further act or thing as the board of education of said special school district in or in furtherance of the construction of the aforesaid school

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178 Entry

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178 Mandate

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building. To which judgment & order and decree of perpetual injunction, the defendants and each of them excepted.
And thereupon this cause coming on to be heard upon the motion of the defendants for a further stay of execution, the Court overrules the same, to which ruling defendants except. And thereupon this cause coming on to be heard upon the motion of defendants for a new trial herein, the Court overrules the same, to which the defendants except.

178 Entry

The State of Ohio ex rel. Attorney General.
vs.
S. S. Drake et al.

Circuit Court Union County, Ohio.
March 3" 1903.

Now come the defendants and present their bill of exceptions, which is allowed, signed and sealed by the Court, and is made a part of the record in this cause, but is not to be recorded or spread at large upon the Journal.

Mandate from the Supreme Court of the State of Ohio.

178 Mandate

S. S. Drake et al.
vs
The State of Ohio.
ex rel. Attorney General.

Error to the Circuit Court of Union County.

This cause came on to be heard upon the transcript of the Record of the Circuit Court of Union County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court, that the judgment of the said Circuit Court be, and the same is hereby affirmed; and it appearing to the Court, that there reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein.
It is further ordered that the defendant in error recover from the plaintiffs in error its costs herein expended taxed at $
Ordered that a special mandate be sent to the Circuit Court of Union County, to carry this judgment into Execution.
I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.
Witness my hand and the Seal of said Court, this 21st day of June, A.D. 1904.
(Seal)

Lawson E. Emerson, Clerk
By J. G. Obermeyer Deputy.

Attest: Chas. C. Penhorwood, Clerk.
By Milton Haines, Deputy.

Pleas continued and held at the Court House in Marysville, within and for the County of Union in the Third Judicial Circuit of the Circuit Courts of the State of Ohio, before the Honorables Caleb H. Norris, Silas E. Harris and Michael Donnelly, Judges of said Court, for the February Term, 1906, Be it remembered that heretofore to-wit, on the 12th. day of January A.D. 1905. the following Petition was filed with the Clerk of the Court of Common Pleas, to-wit:-

8393 Petition.

D. W. Van Winkle, Plaintiff,
vs.
Adam D. Hoover, Mary E.
Landon and Jonathan Spicer,

Court of Common Pleas,
Union County, Ohio.
Jan. 12th. 1905.
Petition.

The plaintiff says that Andrew A. Spicer, late of York Township, Union County, Ohio, who died testate in the year 1878, was in his lifetime seized in fee-simple, and in possession of the following described Real estate; Situate in York Township, Union County, Ohio, and being a part of Survey number 11346, and bounded and described as follows:- On the North by lands owned by L.C. Beem; on the East by York Township and Claibourne Township boundary line; on the South by the Summerville and Richwood Gravel Road, and the lands of Henry Shipley and William Shipley; on the West by a public road on the opposite side of which are the lands of J.W. Monroe, containing Seventy-three (73) acres, more or less.

That the will of the said Andrew A. Spicer, deceased, was duly admitted to probate by the Probate Court of Union County, Ohio, on the 17th day of August, A.D. 1878.

The plaintiff says that by the will of the said Andrew A. Spicer deceased, it was provided as follows; That Elizabeth, the wife of the said Andrew A. Spicer, deceased, should have a good support from the proceeds of said real estate, during her natural life; that $150.00 was bequeathed to his son William M. Spicer; that $80.00 was bequeathed to his daughter, Lorina J. Barbee; that $80.00 was bequeathed to his daughter, Clementine D. Godfrey; that $80.00 was bequeathed to his daughter Ruth Kinnear; that $100.00 was bequeathed to his daughter Ally Dickison; that $100.00 was bequeathed to Henry Lawrence, John Lawrence, Samantha Lawrence, Benoni Lawrence and Elmira Lawrence, children of his daughter Emily Lawrence, deceased; that $50.00 was bequeathed to his son Jonathan Spicer.

That at the death of the said Elizabeth, the said real estate should be sold, the above enumerated bequests paid and the balance of the estate divided equally among William M. Spicer, Lorina J. Barbee, Clementine D. Godfrey, Ruth Kinnear, Ally Dickinson, Henry Lawrence, John Lawrence, Benoni Lawrence, Samantha Lawrence, Elmira Lawrence and Arie L. Spicer, who were at the death of said Andrew A. Spicer, his only heirs-at-law, excepting Jonathan Spicer, Elsemas Spicer and Elmira Robinson, who were specially excepted from participation in said balance of said estate, by the provisions of said Will.

The plaintiff says that the debts of the said Andrew A. Spicer, deceased, were paid from the proceeds of the sale of his personal property, and that the said Elizabeth elected to take under the will and died

in February of the year 1903.

The plaintiff says that he is now seized in fee simple and entitled to the undivided five-elevenths (5/11) part of the said real estate which belonged to the said Henry Lawrence, John Lawrence, Samantha Lawrence, Benoni Lawrence and Elmira Lawrence, and that he is the owner of, by purchase, and entitled to the legacy of $105.00 bequeathed to the said Henry Lawrence, John Lawrence, Samantha Lawrence, Benoni Lawrence and Elmira Lawrence, in the said Will, and that he is entitled to the rents and profits accruing to the said Henry Lawrence, John Lawrence, Samantha Lawrence, Benoni Lawrence and Elmira Lawrence, from the use of said real estate since the death of the said Elizabeth; the said undivided 5/11 part of said real estate being subject to the payment of 5/11 of the said $650.00 as bequests according to the provisions of the said Will.

The Defendant, Adam D. Hoover, is seized in fee simple and entitled to the undivided six-elevenths (6/11) part of the said real estate which belonged to the said William M. Spicer, Lorina J. Barbee, Clementine D. Godfrey, Ruth Kinnear, Ally Dickinson and Orl L. Spicer, and owns and is entitled to the legacies of $495.00 bequeathed to the said William M. Spicer, Lorina J. Barbee, Clementine D. Godfrey, Ruth Kinnear and Ally Dickinson, and that he has been entitled to the use of the said undivided 6/11 part of said real estate since the death of the said Elizabeth; the said undivided 6/11 part of said real estate being subject to the payment of 6/11 of the said $650.00 as bequeathed according to the provisions of the said Will.

That the defendant Jonathan Spicer is entitled to the said legacy of $50.00 as bequeathed him by the said Will.

That the said Mary E. Landon, claims a mortgage interest in said real estate.

The plaintiff further says that the said Henry Lawrence died in the year, 1886, unmarried, intestate and without issue, and that his only heirs-at-law were the said John Lawrence, Samantha Lawrence, Benoni Lawrence and Elmira Lawrence.

That the said Benoni Lawrence died sometime in the year, 1900, unmarried, intestate and without issue, and that his only heirs-at-law were the said John Lawrence, Samantha Lawrence and Elmira Lawrence now married to one Charles E. Hughes.

That on the 16th day of November, A.D. 1904, at a time many years subsequent to the death of the said Henry Lawrence and Benoni Lawrence, the said John Lawrence and Eliza A. Lawrence his wife and Samantha Lawrence, and Elmira (Lawrence) Hughes, and Charles E. Hughes, her husband, did remise, release and forever quit claim and convey to the said plaintiff, his heirs and assigns forever, for a valuable consideration, the said real estate, including the rents and profits accruing to them since the death of the said Elizabeth and the legacy of $105.00 bequeathed to the said Henry Lawrence, John Lawrence, Samantha Lawrence, Benoni Lawrence and Elmira Lawrence, by the provisions of the said Will.

The plaintiff says that the defendant, Adam D. Hoover, has enjoyed the exclusive use of the said real estate since the death of the said Elizabeth, wife of the said Andrew A. Spicer, deceased, and that a reasonable rental value for the use of said real estate, would be Three

Hundred ($300) Dollars per year.

The plaintiff prays that the said defendant, Adam D. Hoover, be required to make an accounting of the rents and profits derived from the use of said real estate, since the death of said Elizabeth.

Plaintiff prays that the defendant, Mary E. Landon, be required to make answer, setting forth whatever claims she may have against said real estate or be forever barred therefrom.

Plaintiff prays, that out of the proceeds of said real estate he be paid said legacy of $105.00 conveyed to him by the children of Emily Lawrence, deceased.

Plaintiff prays that a partition of the said real estate above described, may be made by and under the direction of this Court between this Plaintiff and said Defendants, according to their respective rights and interests herein; that his interest in said real estate may be set off to him in severalty; that Commissioners be appointed by the Court for the purpose of making such partition; or in case a partition of said real estate can not be made without manifest injury to the value thereof, then that the said real estate may be sold, by and under the direction of this Court, free of the rights of all the persons, parties to this suit, and that the proceeds of the sale may be distributed to the parties entitled thereto in lieu of their respective parts and proportions of the estate according to their just rights therein, and that plaintiff may have such other relief as may be just and equitable.

S. M. Van Winkle and Jas. E. Robinson, attys. for Plaintiff.

State of Ohio, Union County, ss:-

S. M. Van Winkle, being first duly sworn, says that the facts stated and the allegations made in the foregoing Petition are true, as he verily believes.

S. M. Van Winkle.

Sworn to before me and subscribed in my presence this 12th. day of January, 1905.

(Seal). James E. Robinson, Notary Public.

On January, 12th. 1905 the following Summons was issued.

Summons. The State of Ohio, Union County.

To the Sheriff of Union County:

You are hereby commanded to notify Adam D. Hoover and Mary E. Landon, that they have been sued by S. M. Van Winkle, in the Court of Common Pleas of Union County, and must answer by the 11th. day of February, A. D. 1905, or the petition of the said plaintiff will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 23rd day of January, A. D. 1905.

Witness my hand and the seal of said Court, this 12th. day of January, A. D. 1905.

(Seal). Chas. S. Bankhurst, Clerk.

Sheriff's Return.

Sheriff's Return. The State of Ohio, Union County, ss.

Received this writ January, 13th. A. D. 1905 at Three o'clock P. M.

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and served same by personally handing a true and certified copy of this Writ, with all the endorsements thereon to Adam D. Hoover, Jan. 16th/05 and Mary E. Landon, January 19th. 1905.
Fees:- $3.20 D.S. Bolenbaugh, Sheriff.

Motion. On February, 11th. 1905, the following Motion was filed.
S. V. Van Winkle, Plaintiff, vs. Adam D. Hoover et. al. Defendants. } Court of Common Pleas, Union County, Ohio. Motion. Case No. 8393.

Now comes the defendant, Adam D. Hoover, by his Attorney, and moves the Court to order the plaintiff to make his petition more definite and certain in this, to wit:-
By separately stating and consecutively numbering, his causes of action.
James Mc Campbell, Attorney for said Defendant.

Entry. On February 20th. 1905, the following Entry was filed.
S. V. Van Winkle, Vs. Adam D. Hoover, et. al. } Court of Common Pleas, Union County, Ohio. Entry.

This day leave was granted by the Court to make John Lawrence, Eliza Lawrence and Samantha Lawrence, Charles E. Hughes and Elmira Hughes, parties defendant, and leave given them to answer herein within twenty days.

Entry. On February 20th. 1905, the following Entry was filed.
S. V. Van Winkle, Vs. Adam D. Hoover, et. al. Court of Common Pleas, Union County, Ohio. Feb. 20th. 1905.

This day this cause came on for hearing upon the motion of the defendant, Hoover, to separately state and number the separate causes of action in the petition stated, and was argued by Counsel and submitted to the Court; on consideration whereof the Court sustains said Motion; and grants leave to plaintiff to Amend petition within ten days; and leave to defendants to plead within 20 days thereafter.

Amended-Petition. On March, 2nd. 1905, the following Amended-Petition was filed.
S. V. Van Winkle, Plaintiff. vs. Adam D. Hoover, Mary E. Landon and Louis S. Bunn- Defendants } Court of Common Pleas, Union County, Ohio. Amended-Petition. Case No. 8393.

For a first cause of action, plaintiff says, that on the day of 1878, one Andrew A. Spicer, died testate, seized in fee of the following described real estate, situated in the County of Union, State of Ohio and Township of York, and being a part of Survey No. 11346, and bounded as follows, on the North by lands owned by L. S. Bunn, on the East by the York Township and Claibourne Township boundary line, on the South by the Summerville and Richwood Gravel Road and the lands of Henry Shipley and William Shipley, and on the West by a public road at the opposite side of which are the lands of J. W. Monroe, containing 73 acres of land more or less.

That by the last will and testament of said Andrew A. Spicer, deceased, it was provided that his widow, Elizabeth Spicer, should have a good support from the proceeds of said real estate during her natural life, that $150.00 be paid to William M. Spicer, $80.00 to Ruth Kinnear, $80.00 to Lorina J. Barbee $80.00 to Clementine D. Godfrey, $105.00 to Allie Dickison, $105.00 to Henry Lawrence, John Lawrence, Samantha Lawrence, Benoni Lawrence and Elmira Lawrence, children of Emily Lawrence, deceased, and $50.00 to Jonathan Spicer. That at the death of said Elizabeth Spicer, the said real estate be sold, the above enumerated bequests paid, and the balance of the estate divided equally among William M. Spicer, Lorina J. Barbee, Clementine D. Godfrey, Ruth Kinnear, Ally Dickison, Henry Lawrence, John Lawrence, Benoni Lawrence, Samantha Lawrence, Elmira Lawrence and Arie L. Spicer.

That said will was duly probated on the 17th. day of August, 1878, in the Probate Court of Union County, Ohio.

That said Elizabeth Spicer, deceased, elected to take under said will.

That said Elizabeth Spicer, deceased, died on the day of February, 1903. — That the debts of said Andrew A. Spicer were all paid from the proceeds of his personal estate.

That all said specific bequests have been paid except such as have been assigned to the parties hereto.

That on the day of , 1886, said Henry Lawrence died, intestate, unmarried, and without issue, leaving as his only heirs-at-law, the said John Lawrence, Samantha Lawrence, Benoni Lawrence and Elmira Lawrence.

That on the day of , 1900, the said Benoni Lawrence died intestate, unmarried and without issue, leaving as his only heirs-at-law the said John Lawrence, Samantha Lawrence and Elmira Lawrence, now married to Charles E. Hughes.

That on the 16th. day of November, 1904, at a time subsequent to the death of said Elizabeth Spicer and subsequent to the deaths of said Benoni Lawrence and Henry Lawrence, the said John Lawrence and Eliza A. Lawrence, his wife said Samantha Lawrence, said Elmira Hughes and Charles E. Hughes, her husband, did, for a valuable consideration, remise, release and forever quit claim and convey to the said plaintiff, his heirs and assigns forever, their undivided interest, under the said will of the said Andrew A. Spicer, deceased, in said real estate herein before described.

That by virtue of said conveyance said plaintiff is the owner in fee of the undivided 5/11 of said real estate herein before described and is a tenant in common with the defendant, Adam D. Hoover who is the owner in fee of the undivided 6/11 of said real estate by purchase from William M. Spicer, Lorina J. Barbee, Clementine D. Godfrey, Ruth Kinnear, Ally Dickison and Arie L. Spicer and assigns.

For a second cause of action, plaintiff says, that on the 16th. day of November, 1904, the said John Lawrence, Samantha Lawrence and Elmira Hughes, for a valuable consideration, assigned to him the said legacy of $105.00 which said will of said Andrew A. Spicer, deceased, bequeathed to them and said Henry Lawrence, and said Benoni Lawrence, both now deceased.

That said Henry Lawrence and Benoni Lawrence each died intestate, unmarried and without issue, prior to the date of

said assigniment, leaving the said John Lawrence, Samantha Lawrence and Elmira Hughes as their only heirs at law.

That said plaintiff is now the owner of said legacy, no part of which has been paid.

For a third cause of action, plaintiff says, that said defendant, Adam D. Hoover has been in possession of all of said real estate, and has enjoyed the use benefit and profit of same ever since the death of said Elizabeth Spicer, to-wit from the day of February, 1903, to the present time.

That on the 16th. day of November, 1904, said John Lawrence and Eliza A. Lawrence his wife, said Samantha Lawrence, said Elmira Hughes and Chas. E. Hughes, her husband, assigned to said plaintiff all their right and title to the rents and profits of said real estate since the death of said Elizabeth Spicer, and on said day conveyed to said plaintiff absolutely their undivided interest in said real estate, under the said will of said Andrew A. Spicer, deceased.

That the said Henry Lawrence and Benoni Lawrence died intestate, unmarried and without issue prior to said assigniment, leaving the said John Lawrence, Samantha Lawrence and Elmira Hughes as their only heirs at law.

That by virtue of said assigniment and conveyance plaintiff is entitled to 5/11 of said rents and profits since the death of said Elizabeth Spicer, from said defendant, Adam D. Hoover, that no part of same have been paid.

Plaintiff further says that the defendant, Mary E. Laudon, claims a Mortgage interest in said real estate; and that the defendant Louis S. Beem, claims a right of way over and across said real estate.

Wherefore plaintiff prays that the said Mary E. Laudon and the said Louis S. Beem be required to answer and set up their respective interests in said real estate or be forever barred.

That said plaintiff be adjudged the owner of said legacy of $105.00 and that the same be adjudged a lien on said real estate prior to any and all other liens, and that plaintiff be paid out of the proceeds of said real estate said sum of $105.00 with interest from the day of February, 1903.

That the said defendant, Adam D. Hoover, be required to make an accounting of the rents and profits derived from the use of said real estate since the day of February, 1903, and that the plaintiff have a judgment for the amount so found to be due him, and that the same be paid out of the proceeds of said real estate.

And that the plaintiff may have a judgment confirming the shares of the parties as above set forth, and for a partition of said real estate, according to the respective rights of the parties interested therein, or if the same can not be equitably divided, or if the same can not be divided without manifest injury to same, that said premises be sold and the proceeds thereof be divided between the parties according to their respective rights, and for such other relief as equity may require.

S. M. Van Winkle and James E. Robinson,
Attorneys for Plaintiff.

The State of Ohio, Union County, ss:-
S. N. Van Winkle, being first duly sworn, says the facts stated and the allegations made in the foregoing petition are true, as he verily believes.

S. N. Van Winkle.

Sworn to before me and subscribed in my presence this 28th. day of February, 1905.

(Seal). Henry S. Stiles, Notary Public.

Answer of Adam D. Hoover.

On March 22nd. 1905, the following Answer of Adam D. Hoover, was filed.

S. N. Van Winkle, Plaintiff.
Vs.
Adam D. Hoover, et. als. Defendants.

Court of Common Pleas,
Union County, Ohio.
Case No. 8398.

Adam D. Hoover, a defendant herein, now comes and, answering the petition of plaintiff, says:-

That he admits the death, testacy, and seizin of lands, of Andrew A. Spicer, as alleged; That he admits the specific testamentary bequests of money alleged, and he admits that the payment of said bequests was charged by said testator upon said lands. But,- by way of matter defensive, this defendant says:-

First ground of defense: As a first ground of defense, responsive to the first cause of action stated, this defendant denies the allegation that said testator gave the balance of his property, equally to William M. Spicer, Lorina J. Barbee, Clementine D. Godfrey, Ruth Kinnear, Ally Dickinson, Henry Lawrence, John Lawrence, Benoni Lawrence, Samantha Lawrence, Elmira Lawrence, and Arie L. Spicer:

On the contrary, this defendant avers that said testator intended to, and did, give said balance of property, in the proportion of one-seventh each, to William M. Spicer, Lorina J. Barbee, Clementine D. Godfrey, Ruth Kinnear, Ally Dickinson, and Arie L. Spicer, testator's children; and one-seventh, for equal division, to Henry Lawrence, John Lawrence, Benoni Lawrence, Samantha Lawrence, and Elmira Lawrence, as the children of testator's deceased daught. Emily Lawrence. Therefore, this defendant denies the further allegation that said children of Emily Lawrence, deceased, were, under said will, the owners of five-sevenths of said lands; and denies that said children of Emily Lawrence, deceased, or the survivors of them, conveyed to plaintiff five-sevenths of said lands; and denies plaintiff's alleged title to five-sevenths of said lands by virtue of a conveyance from said Lawrence children, or the survivors of them, or from any other source whatever.

On the contrary, this defendant avers that the said children of Emily Lawrence, deceased, under said will, were the owners in common of one-seventh of said lands only; and avers that he (this defendant) is the bona fide owner in fee simple of the other six-sevenths of said lands, by virtue of a plain and connected chain of duly authenticated deeds thereof, of record in the Recorder's Office of said County of Union, from the said children of said testator, residuary devisees and legatees as aforesaid.

Second ground of defense: As a second ground of defense, responsive to the third cause of action stated, this defendant says:-

That he has had the possession, use, and benefit, of said lands as alleged; and that the reasonable rental value of the whole of said lands is $4.75-

per acre, or $400.06 for the whole thereof, per annum.
But, this defendant denies that plaintiff is the assignee of five-sevenths of the rents claimed in said cause of action, or any specific fractional thereof; and denies that plaintiff is the assignee of, or entitled to, any portion of said rents in excess of one-seventh thereof.
Third ground of defense: As a third ground of defense to said petition, this defendant says; that the said Andrew A. Spicer, deceased, by his last will, did, in fact dispose of his residuary estate as follows, to-wit:-
To William M. Spicer, Lorina J. Barbee, Clementine D. Godfrey, Ruth Kinnear, Ally Dickinson, and Arie L. Spicer, his children, one-seventh each; and to Harry Lawrence, John Lawrence, Benoni Lawrence, Samantha Lawrence, and Elmira Lawrence, one-seventh, for equal division, as the heirs of said testators deceased daughter, Emily Lawrence; That said will of said testator was admitted to probate and record in said County of Union on the 17th. day of August, A.D. 1878; That it was the intention of said testator, expressed to his family before, and at the time of, his death, that the fractional division aforesaid should govern in the distribution of his estate; That, both before and after the date aforesaid, it was commonly understood, and acquiesced in, by said residuary legatees that the division aforesaid was expressed in said will; That, in accordance with such understanding, and after said Probate of Will, the said children of said testator, who are the source of this defendants title to six-sevenths of said lands, sold and conveyed their said respective interests pursuant to said fractional division; That the said children of Emily Lawrence, deceased, the alleged source of plaintiffs title, understood, and acquiesced in, said division of said testators property, and still so understood said division, and acquiesced therein, at the time of their alleged conveyance to plaintiff - claiming, and thereby intending to convey, one-seventh of said lands and no more; That plaintiff understood said division of property, and acquiesced therein, in his negotiations for, and purchase of, the said interest of said Lawrence children, and had full notice and knowledge that said children of said testator had conveyed their several interests as aforesaid, and well knew that said residuary legatees had acquiesced in said division for over thirty-six years, to-wit, since the probate of said will, and well knew that this alleged grantors intended by their deed to vest in plaintiff the title to one-seventh of said lands and no more. Therefore this defendant avers that plaintiffs claim, under his alleged deed, of more than one-seventh of said lands is null and void and is made for the sole purpose of unconscionable gain. Therefore, this defendant pleads that by reason of the facts, and conduct of parties, in this defense aforesaid alleged, the plaintiff is estopped to claim in this action any fraction of said lands in excess of one-seventh thereof.
Fourth ground of defense: As a fourth defense, and by way of counter-claim to plaintiffs claim and in his second cause of action stated, this defendant says:-
That the said Andrew A. Spicer, deceased, made specific bequests of money, in his last will, amounting, in the aggregate, to the sum of $650.00;
That the lands described in the petition were charged by said testator with the payment of said legacies; That this defendant

is the owner by assignment for value, of all said legacies, except the legacy of $105.00 claimed by Plaintiff; That the share of Henry Lawrence, John Lawrence, Benoni Lawrence, Samantha Lawrence, and Elmira Lawrence, devisees and legatees of said testator, in said lands, to-wit; one-seventh thereof, was charged with the payment of its ratable proportion of the said sum of said legacies, to-wit, with the payment of the sum of $92 86/100; which sum, still unpaid, this defendant presents and pleads as a counter-claim, as far as the same will go to pay plaintiffs said demand of $105.00.

Fifth ground of defense: As a fifth ground of defense, and by way of counter-claim, this defendant says:-

That since the death of Elizabeth Fryman, widow of Andrew A. Spicer, deceased, and testamentary life tenant of the lands in the petition described, to-wit; since the 23rd. day of February, A.D. 1903, This defendant has paid taxes on said lands, the same charged thereon since said date, in the sum of $54 94/100, one-seventh of which, to-wit, the sum of $7.85, this defendant claims, with interest thereon, pursuant to law, as a lien and charge upon plaintiffs one seventh interest in said lands, and, therefore, presents and pleads the same as a counter-claim in the premises.

Sixth ground of defense: As a sixth ground of defense, and by way of further counter-claim, this defendant says:-

That since the death of Elizabeth Fryman, widow of said Andrew A. Spicer, deceased, and testamentary life tenant of the lands in the petition described, to-wit; since the 23rd. day of February, A.D. 1903, and before the commencement of plaintiffs action herein, this defendant, being in possession of all said lands and the owner of the undivided six-sevenths thereof, in good faith, and for the general benefit of said lands, made lasting and valuable improvements thereon, at an aggregate cost of $836.00 to this defendant, to-wit; Four tons fertilizer $70.00; Nine bushels clover seed $54.00; One Hundred rods tile $75.00; Repairs on barn $25.00; One Hundred and twenty-five rods wire fence, posts therefor, and erection thereof $75.00; Addition to, and repair of residence building $450.00 and hardware used in barn and house $35.00; Labor on said improvements generally, hired by Defendant at $1.00 per day, $30.00; One water pump $5.00; and fire insurance paid on said buildings $17.00; by reason of which improvements and expenditures the value of said lands has been permanently and greatly inhanced, to-wit, in the sum of $10.00 per acre, or $730.00 for the whole thereof.

Wherefore, this defendant claims a lien and charge upon plaintiffs undivided one-seventh of said lands for the sum of $104.25, as defendants compensation on account of the said inhancement of plaintiffs said interest by reason of said improvements and expenditures; and, therefore, this defendant presents and pleads the same as a counter-claim to plaintiffs demands in the premises.

Wherefore, this defendant prays that he may be adjudged the owner in fee of the undivided six-sevenths of the lands in the petition described, and his title thereto quieted; That his said counter-claims for legacy charge, taxes and improvements, respectively, may be allowed, and, respectively, made liens upon the said interest of Plaintiff in said lands for the payment thereof; That on partition of said lands, if the same be ordered, the interest of defendant aforesaid, be set off to

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him in severalty; and that this defendant be awarded such other relief in the premises as equity may require.

James McCampbell, Attorney for Adam D. Hoover, a Defendant.

The State of Ohio, Union County, ss:-

Adam D. Hoover, a defendant herein, being sworn, on his oath, says, that the facts stated and allegations made in his foregoing Answer, are, as he believes true.

Adam D. Hoover.

Subscribed and sworn to before me by Adam D. Hoover, this 25th. day of March, A. D. 1905.

(Seal). Chas. S. Penhorwood, Clerk.

On April, 10th. 1905, the following Entry was filed.

8393 Entry. S. W. Van Winkle, Vs. Adam D. Hoover, et. al. Court of Common Pleas, Union County, Ohio. April, 10th. 1905.

This day the Court grants leave for the heirs of Emily Lawrence, to file answer and Cross-Petition herein in 30 days.

On April 17th. 1905, the following Entry was filed.

8393 Entry. S. W. Van Winkle, Vs. Adam D. Hoover, et. al. Court of Common Pleas, Union County, Ohio. April, 17th, 1905.

This day leave was granted Mary E. Landon to file answer and Cross-Petition herein in 25 days.

On May 10th. 1905, the following Answer and Cross-Petition was filed.

Answer S. W. Van Winkle, plaintiff, Vs. Adam D. Hoover, et. al. Defts. } Court of Common Pleas, Union County, Ohio. Answer and Cross-Petition of Elmira Hughes, Charles E. Hughes and Samantha Lawrence.

Now comes the defendants, Elmira Hughes, Charles E. Hughes and Samantha Lawrence, and by way of answer and Cross-petition to the plaintiffs Amended-petition, say:-

First defense:- As a first defense to each and all the causes of action in said Amended-petition stated, they say: That on or about the 16th. day of November, 1904, the plaintiff came to the home of the defendants, Elmira Hughes and Charles E. Hughes, in the City of Muncie, Indiana, where the defendant Samantha Lawrence was then and there present, and to induce their confidence falsely represented to them that he was settling up their deceased grand-father, Andrew A. Spicer's estate; and that under the terms of the will of said decedent the said Elmira Hughes, Samantha Lawrence and their brother, the defendant John Lawrence, were entitled to an undivided one-seventh interest only in seventy-three acres of land in Union County, Ohio; that said land was unimproved, sterile, and greatly impoverished and of little value; that there were no buildings or improvements on it of any consequence; that by the will of said decedent said land was to be sold and the proceeds thereof equally divided among six of his children and the heirs of his deceased daughter, Emily Lawrence, said heirs to receive their mothers share, which was one-seventh;

said that these three defendants last named, being the only surviving heirs of said Emily Lawrence, were entitled to an undivided one-seventh interest, and no more in said land. Said representations and statements of plaintiff were false and fraudulent, as plaintiff well knew at the time, and were made with the fraudulent intention of deceiving these answering defendants and to induce them to part with their interest in said land for a wholly inadequate consideration, plaintiff then and there well knowing that said last named defendants were jointly entitled to an undivided five-sevenths of said land of the value of $1650.00 at least. Plaintiff thereupon proposed to purchase the interest of said defendants in said real estate for the sum of Two Hundred Dollars, and to pay each of them the sum of $66.66 to convey to him by quit-claim deed, their interest therein; and stated that the other devisees under said will had each so conveyed and re-leased their one-seventh interest in said real estate for a less consideration. These defendants, being wholly uninformed as to said matters and being distant therefrom and without the means of informing themselves at the time, relied fully upon the said statements and representations of plaintiff, the more confidently because that he was an Attorney-at-Law and was being trusted as they believed by the other devisees in the settlement of said estate, as he represented, and they were induced by his said representations and statements to execute and deliver to him their certain quit-claim deed purporting to release and quit-claim to him all their interest in said real estate, the rents due them on account thereof, and their interest in the legacy of $105.00 under the will of said Andrew A. Spicer, deceased, for a consideration of $133.32, which was paid in equal portions to said Elmira Hughes and Samantha Lawrence; and thereupon these answering defendants executed and delivered to plaintiff the said deed alleged in his Amended-Petition conveying the real estate therein described.

These defendants have made no assignment to plaintiff of their interest in the rents of said real estate or in the said legacy of $105.00 except their said purported deed to him as hereinbefore mentioned, which deed is void and of no effect for the facts herein stated. The defendants Elmira Hughes, Samantha Lawrence and John Lawrence, are the rightful owners of an undivided five-sevenths part of said real estate by the provisions of said will of said Andrew A. Spicer, deceased, disposing of the same, and are entitled to the rents thereof claimed by plaintiff and to the legacy of $105.00 bequeathed to them by said Andrew A. Spicer, deceased.

Plaintiff has been tendered and has refused to accept a full return of said consideration money and interest thereon for a reconveyance to these defendants of their interest in said lands.

Second Defense:- As a second defense to each and all the causes of action in said Amended-Petition stated, these defendants say:- That the decedent, said Andrew A. Spicer, devised said real estate described in said Amended-petition to be divided equally among all his Heirs, excepting his children Jonathan, Elymas and Elmira. His said heirs consisted of six children and five grand-children the latter all being the children of his daughter Emily Lawrence, who died before his decease. Since then five of said grand-children

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have died intestate and without issue, leaving the defendants John Lawrence, Samantha Lawrence and Elmira Hughes his their only heirs at law, who are jointly entitled to an undivided five-eleventhes part of said real estate. The said six children of said decedent each claimed an undivided one-seventh part of said real estate and executed a deed for such portion; and the defendant Adam D. Hoover claims to hold title to six-seventhes thereof because of said deeds; all of which was unknown to these defendants until they were informed thereof by plaintiff on or about said 16th. day of November, 1904.

Plaintiff had full knowledge of all the facts therein stated at the time of his alleged purchase of said defendants interest in said real estate which interest he purchased for less than the value of one-seventh of said lands; the amount conceded to belong thereto by all parties adversely interested, with the speculative purpose of litigating a claim thereunder to a five-elevenths interest in said land. Wherefore said deed of conveyance is null and void, because it is based upon a transaction opposed to public policy.

Wherefore these defendants pray that said deed of conveyance and the assignment of rents and of said legacy therein contained may be declared null and void and set aside, and that they be restored to all their rights purported to be conveyed and assigned thereby; and that said real estate be sold and the said defendants Elmira Hughes, Samantha Lawrence and John Lawrence, be each decreed one-third the five-elevenths of the proceeds thereof, after first paying the plaintiff therefrom the sum of Two Hundred Dollars with interest thereon from the 16th. day of November, 1904; and for all proper equitable relief.

J. F. Millar, attorney for
Answering Defendants.

State of Indiana, Delaware County, ss:-

Elmira Hughes, being first duly sworn, says that she is one of the defendants, pleading in the foregoing answer and Cross-petition and that the facts stated and allegations therein made are true as she verily believes.

Elmira Hughes.

Sworn to before me and subscribed in my presence by the said Elmira Hughes, this 17th. day of April, 1905.
(Seal).

Clarence W. Dearth,
Notary Public.

On May 10th. 1905, the following Answer and Cross-Petition of John Lawrence, et. al. was filed.

8393. Answer.

D. M. Van Winkle, Plaintiff,
vs.
Adam D. Hoover, et. al. Defendants.

Court of Common Pleas, Union County, Ohio.
Answer and Cross-Petition of John Lawrence and Eliza A. Lawrence.

Now come the defendants John Lawrence and Eliza A. Lawrence, and by way of answer and Cross-Petition to the plaintiff's Amended-Petition, say:-

First Defense:- as a first defense to each and all the causes of action in said Amended-Petition stated, they say: That on or about the second day of January, 1903, the plaintiff came to their home in the city of Canton, Ohio, and to induce their confidence falsely represented to them, that he was setting up the estate of one

Andrew A. Spicer, the deceased grand-father of said John Lawrence; that he, said John Lawrence, had a small interest in said estate under the will of said decedent; that it was not much and was only sufficient in amount to justify plaintiff in hunting him up; that he had seen his sisters, the defendants Elmira A. Hughes and Samantha Lawrence, and had settled with them for $66.66 paid to each of them, and that they were fully satisfied therewith; that said amount was a fair equivalent to this defendant, John Lawrence's, interest in said estate under said will; that unless the matter was settled amicably with him it would have to be settled by proceedings in Court, and that the amount was too small to justify the costs and delay and that by the will of said decedent the children of Emily Lawrence were given a legacy of One Hundred and Five Dollars, and nothing more.

Said representations and statements were false and fraudulent, as plaintiff well knew at the time, and were intended by him to induce said John Lawrence to sell to him his interest in said estate for a wholly inadequate consideration, plaintiff then and there well knowing that said defendant was entitled to one-third of an undivided five-eleventhis part under the will of said decedent, Andrew A. Spicer, in the seventy-three acres of land described in said Amended Petition, which fact plaintiff concealed from said defendant knowing him to be ignorant of it. Plaintiff thereupon produced a quit-claim deed, prepared to convey to himself all the title and interest of said Elmira Hughes, Samantha Lawrence and John Lawrence in said land for a consideration of Two Hundred Dollars, which deed had been executed by said Elmira A. Hughes and Samantha Lawrence, and stated to this defendant that he had paid each of said grantors $66.66 in consideration therefor; and thereupon proposed to pay this defendant, John Lawrence, said amount in cash if he and his wife, said Eliza A. Lawrence, would sign said deed. These defendants, being wholly uninformed and without the means of informing themselves at the time as to said matters, and being ignorant of the fact that the signatures of said grantors to said deed had been procured by fraud and misrepresentation, relied fully upon the said statements and representations of plaintiff, the more confidently because that he was an attorney-at-law and was being trusted as they believed by the other devisees in the settlement of said estate and he represented, and they were induced by his said representations and statements to execute and deliver to him the said quit-claim deed purporting to release and quit-claim to him all their interest in said real estate, the rents due them on account thereof, and their interest in the legacy of $105.00 under the will of said Andrew A. Spicer, deceased, not knowing that they or either of them had title to any specific part or undivided portion of said real estate, which fact plaintiff concealed from them, but believing the effect of said deed was simply to clear the title of said real estate of any cloud on account of said legacy, which they had been indirectly informed was somewhat larger than $105.00.

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their interest in the rents of said real estate or in said legacy, except in the said purported deed to him, which deed is void and of no effect on account of the facts therein stated; and the said John Lawrence is entitled to one-third of said legacy and to one-third of an undivided five-elevenths part of said real estate and to reasonable rents therefor since the month of February, 1903.

Plaintiff has been tendered and has refused to accept a full return of said consideration money and interest thereon for a reconveyance to these defendants of their interest in said lands.

Second Defense. As a second defense to each and all the causes of action in said Amended-petition contained, these defendants say:- That the decedent, said Andrew A. Spicer, devised said real estate described in said Amended-Petition to be divided equally among all his heirs, excepting his children Jonathan, Polymas and Edwin Q. His said heirs consisted of six children and five grand-children, the latter all being the children of his daughter Emily Lawrence, who died before his decease. Since then two of said grandchildren have died intestate and without issue, leaving the defendants John Lawrence, Samantha Lawrence and Elmira Hughes as their only heirs at law, who are jointly entitled to an undivided five-elevenths part of said real estate. The said six children of said decedent each claimed an undivided one-seventh part of said real estate and executed a deed for such portion; and the defendant Adam D. Hoover, claims to hold title to six-sevenths thereof because of said deeds; all of which was unknown to these defendants until they were informed thereof by plaintiff on or about the said 16th. day of November, 1904.

Plaintiff had full knowledge of all the facts herein stated at the time of his alleged purchase of said defendants' interest in said real estate, which interest he purchased for less than the value of one-seventh of said lands, the amount conceded to belong thereto by all parties adversely interested, with the speculative purpose of litigating a claim thereunder to a five-elevenths interest in said lands. Therefore said deed of conveyance is null and void, because it is based upon a transaction opposed to public policy.

Wherefore these defendants pray that said deed of conveyance and the assignment of rents and of said legacy therein contained may be declared null and void and set aside, and that they be restored to all their rights purported to be conveyed and assigned thereby; and, that said real estate be sold and the said defendants Elmira Hughes, Samantha Lawrence and John Lawrence be each decreed one-third of the five-elevenths of the proceeds thereof, after first paying the plaintiff therefrom the sum of Two Hundred Dollars, with interest thereon from the 16th. day of November, 1904; and for all proper equitable relief.

J. F. Millar. Atty. for Defts. pleading.

State of Ohio, County of Stark, SS:-

John Lawrence, being first duly sworn, says that he is one of the defendants pleading in the foregoing answer and cross-petition and that the facts stated and allegations made therein are true, as he verily believes.

John Lawrence.

Sworn to before me and subscribed in my presence by the said

John Lawrence, this 27th. day of April, 1905.
(Seal). Charles S. Upham, Notary Public,
Stark County, Ohio.

8393, Answer and Cross-Petition. On May, 11th. 1905, the following Answer and Cross-Petition was filed.

D. H. Van Trinkle, Plaintiff.
Vs.
Adams D. Horrr, Mary E. Landon, and Louis C. Benn - Defendants.

Court of Common Pleas, Union County, Ohio,-
Answer and Cross-Petition.

Defendant for answer to the petition of plaintiff says that she admits that Andrew A. Spicer died testate, and that at the time of his death he was seized of the said real estate described in plaintiffs petition;

And this defendant admits the provisions, conditions and legacies set out in plaintiffs petition, in so far as such provisions are a true transcript of the will of said Andrew A. Spicer, but no further,

This defendant not having any knowledge or information other than is offered by said petition, of the death of Henry Lawrence and Benoni Lawrence, and the conveyance of a supposed Five-Eleventhis interest of said real estate or any supposed interest in said real estate, do plaintiff in said petition mentioned, cannot therefore admit, but, on the contrary, does deny that he is the owner of said supposed interest in said real estate;

Second Cause of Action; Defendant for answer to the second cause of action in said petition contained, herein denies each and every allegation therein contained.

Third Cause of Action: Defendant for answer to the alleged "Third Cause of Action" set out in the petition having no knowledge or information other than is afforded by said petition, cannot therefore admit, but, on the contrary, does deny, each and every allegation in said cause of action set forth, and ending with the words, "been paid," at the end of the eighteenth line in said "Third cause of Action."

This defendant admits, that the said Mary E. Landon, claims, and holds a subsisting mortgage interest in said real estate described in plaintiffs' petition.

This defendant for her Answer and Cross-Petition, says:
That on the 27th. day of July, 1887, Peter Hill, the then owner of said lands described in plaintiffs' petition, executed and delivered to her his promissory Note for the sum of One Thousand and Fifty Dollars, ($1050.00) payable Five years after date, of which the following is a copy, with all credits and Endorsements thereon; to-wit;-

$1050.00 Marysville, O. July, 27th. 1887.

Five years after date I promise to pay to the order of Mary E. Landon, One Thousand and Fifty Dollars - Value received with interest at the rate of Eight per cent. per annum after maturity, payable semi-annually.
That on Feb. 3rd. 1893, Peter D. Hill, purchased the said real estate described in the petition herein, of Martha Hill, Administratrix of Peter Hill, deceased, and assumed the payment of the said Mortgage indebtedness herein, to said Mary E. Landon, and entered into the

following contract, which is indorsed on the back of said above described Note, to-wit:-

"P. S. Hill, assumes payment of this note and delinquent interest amounting to $250.24, paying interest on said sum at the rate of 8 per cent. payable semi-annually on the 27th. of January and 27th. of July each year."

There are no further or other endorsements on said note.

That to secure the payment of said note said Peter Hill, on said day executed and delivered to said Mary E. Landon, a mortgage deed and thereby conveyed to said Mary E. Landon the following described real estate situated in the County of Union, and State of Ohio, and in the Township of York, and part of Military Survey No. 11346.

Bounded and described as follows; Beginning at a stone (three sugar trees) North East corner to Survey No. 3468; Thence with the east line of said Survey, S. 8 deg. W. 68 poles to a stone (Beech) North West corner to W. W. Shipleys land; Thence with the North line of the Shipley farm, S. 83 deg. E. 151 poles to a stake in the center of the Richwood, Sommerville and York Center Gravel Road; Thence with the center of said road N. 62 deg. 30 min. E. 41.72 poles to a stake in the Westerly line of Survey No. 6301; Thence with the said line N. 18 deg. W. 162 poles to a stone (three Beeches); Thence N. 82 deg. W. 162 poles to the beginning; Containing 72. 1/4 acres, be the same more or less."

Which deed contains the following condition, to-wit;

"Provided Always, and these presents are upon this condition, that if the said Peter and Martha Hill or either of them shall pay or cause to be paid unto the said Mary E. Landon, the sum of One Thousand and Fifty Dollars, and interest thereon, as stipulated in a certain promissory note, signed by Peter Hill, and described as follows:- "$1050.00, Marysville, O. July 27th, 1887, Five years after date I promise to pay to the order of Mary E. Landon "One Thousand and Fifty Dollars. with interest at the rate of Eight per cent. per annum after maturity, payable semi-annually, And the interest thereon evidenced by ten Coupons thereto attached, and subject to the conditions thereof, all dated Marysville, O. July, 1887- "Ten Coupons of $42, each and due January 27th. and July 27th. 1888-1889-1890-1891 and 1892 respectively.

Then these presents to be void, otherwise to be and remain in full force and virtue in law forever."

That said mortgage was duly delivered for record on the 8th. day of August, 1887, at five o'clock P. M. to the recorder of said County, and on the 17th. day of August, 1887, recorded in Book Vol. 24, at page 393, of the record of mortgages of said County.

That by conveyance from Peter S. Hill, to P. S. Elliott, from P. S. Elliott to Nancy S. Hoover, and from Nancy S. Hoover to the defendant herein, Adam D. Hoover, who is now in possession of the said real estate described in plaintiffs petition, and who has assumed the payment of the said note and mortgage, herein set up.

, and who claims title to said premises through Nancy C. Hoover, through the several grantees to Martha Hill, Administratrix of Peter Hill, deceased.

That the defendant has not paid the amount secured by said Mortgage as required by the condition thereof, whereby said mortgage

died has become absolute, and there is now due upon said indebtedness the sum of Twelve Hundred and Fifty Dollars, and 24/100 ($1250.24) with interest from the 27th. day of January, 1905, at the rate of Eight per cent. per annum, payable semi-annually.

This defendant therefore prays, judgment against the defendant Adam D. Hoover, for the sum of $1250.24 with interest from the 27th. day of January, 1905, at the rate of Eight per cent. per annum, payable semi-annually, and that her said mortgage claim may be declared to be a valid and subsisting lien on said premises, and that the same may be sold and the proceeds arising therefrom applied to the payment of said judgment, interest and costs, and for such other relief as may be just and equitable.

McCrory & Cameron.

The State of Ohio, Union County, ss:-

Mary Es. Landon, being duly sworn says, that she is one of the defendants named in plaintiffs petition, and that the facts stated and allegations made in this her answer and Cross-Petition are as she believes true.

Mary Es. Landon.

Sworn to before me and subscribed in my presence this 10th. day of May, A. D. 1905.

(Seal). Robt. McCrory, Notary Public.

8393 Entry.

On July, 1st. 1905, the following Entry was made

S. W. Van Winkle. vs. Adam D. Hoover, et. al.

Court of Common Pleas, Union County, Ohio. July, 1st. 1905.

This day leave was granted by the Court for Adam D. Hoover to plead to answer and Cross-petitions filed herein by August 1st. 1905.

8393 Motion.

On September, 8th. 1905, the following Motion was filed.

S. W. Van Winkle, Plaintiff. vs. Adam D. Hoover, et. al. Defendants,

Court of Common Pleas. Union County, Ohio. September, 8th. 1905. Motion.

Now comes the defendant, John Laurence, and moves the Court that the following matter be stricken out of the answer and Cross-petition of the defendant, Adam D. Hoover, as redundant and irrelevant, to-wit, "that it was the intention of said testator expressed to his family before and at the time of his death that the fractional division aforesaid should occur in the distributions of his estate", said matter being contained on page two in the third ground of defense in said answer and cross-petition.

Al. S. Eggert, Attorney for Defendant John Laurence.

On September, 13th. 1905, the following Entry was filed.

8393 Entry.

S. W. Van Winkle, vs. Adam Hoover, et. al.

Court of Common Pleas, Union County, Ohio. Sept. 13th. 1905.

This day on motion leave was granted the defendants,

8393 Reply.

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8393 Motion.

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John Lawrence, et. al. do file answer to the answer and Cross-Petition of Adam Hoover herein, and the same was filed.

On September, 13 th. 1905, the following Reply was filed.

8393 Reply.

S. V. Van Winkle, Plaintiff. vs. Adam D. Hoover, et. al. Defendants.

Court of Common Pleas, Union County, Ohio. Sept. 13th. 1905.

Reply of Defendants, John Lawrence, Samantha Lawrence and Elmira Hughes to Answer and Cross-Petition of Defendant, Adam D. Hoover.

Now come the defendants, John Lawrence, Samantha Lawrence and Elmira Hughes, and for reply to the Answer and Cross-Petition of the defendant, Adam D. Hoover, say that they admit that the said Adam D. Hoover, did make lasting and valuable improvements in the manner and sums set forth in the sixth ground of defense in his said Answer and Cross-Petition, but deny that he is entitled to have said sums therein set forth, set off against the interests of these defendants and further deny each and every other allegation in said defendants answer and Cross-petition not herein specifically admitted or denied.

Al. S. Eggert.
Atty. for Replying Defendants.

The State of Ohio, Union County, ss:-

Al. S. Eggert, being first duly sworn, says that the defendants herein, John Lawrence, Samantha Lawrence and Elmira Hughes, are non-residents of said County of Union; that he is their Attorney duly authorized in the premises; and that the facts stated in the foregoing reply are within his personal knowledge and are true as he verily believes.

Al. S. Eggert.

Sworn to by the said Al. S. Eggert and by him subscribed before me this 13th. day of September, 1905.

(Seal). Clive E. Penhorwood, Deputy Clerk.

On September, 25 th. 1905, the following Motion was filed.

8393 Motion.

S. V. Van Winkle, Plaintiff. vs. Adam D. Hoover, et. al. Defendants.

Court of Common Pleas, Union County, Ohio. Motion.

Now come the defendants, Elmira Hughes, Charles E. Hughes and Samantha Lawrence, and move the Court to dismiss their answer and Cross-Petition filed herein, and that an Entry be so made.

Samantha Lawrence, Elmira Hughes, Charley E. Hughes.

On September, 25 th. 1905, the following Entry was filed.

8393 Entry.

S. V. Van Winkle, vs. Adam D. Hoover et. al.

Court of Common Pleas, Union County, Ohio. Sept. 25 th. 1905.

This day this cause came on for hearing upon the motion of the defendants, Samantha Lawrence, Elmira Hughes and Charley E. Hughes, asking the Court to dismiss their answer and Cross-petition filed herein, and said motion was sustained by the Court, and the answer and Cross-Petition of said defendants was dismissed.

8393
Agreement.

On November, 4th. 1905, the following Agreement was filed.

No. 8393.

S. W. Van Winkle.
Vs.
Adam D. Hoover, et. al.

Court of Common Pleas,
Union County, Ohio.

It is hereby agreed between the plaintiff, S. W. Van Winkle, and the defendant, Adam D. Hoover, that the item of use benefit and profit set forth in the third cause of action of the plaintiffs' Petition, and the item of taxes, including the June and Dec. 1905 taxes and the items of improvements and increase in value set forth in the fifth and sixth grounds of defense of said defendants Answer shall offset each other, and the same are therefore eliminated from this case.

Dated this 4th. Nov. 1905.

S. W. Van Winkle,
By James E. Robinson, His Attorney.
Adam D. Hoover,
By James McCampbell, His atty.

8393
Entry.

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On November, 8th. 1905, the following Motion was filed.

8393
Motion.

S. W. Van Winkle, Plaintiff.
Vs.
Adam Hoover, et. al. Defendants.

Court of Common Pleas,
Union County Ohio
Nov. 8th. 1905. — Motion.

Now comes John Lawrence, defendant herein, by his Attorney and moves the Court to dismiss the answer and Cross-Petition of said defendant, John Lawrence, for the reason, that the parties have adjusted and settled their claims out of Court; and that said Answer and Cross-Petition be dismissed and withdrawn without record.

Al. S. Eggert, Attorney for Defendant John Lawrence.

On November 8th. 1905, the following Reply was filed.

8393
Reply.

S. W. Van Winkle, Plaintiff.
Vs.
Adam D. Hoover, et. al. Defendants.

Court of Common Pleas,
Union County, Ohio.
Case No. 8393.

Now comes the plaintiff and denies that Andrew A. Spicer, by his last will gave the balance of his property in the proportion of one-seventh each to William M. Spicer, Lorina J. Babbee, Clementine D. Godfrey, Ruth Kinnear, Alley Dickinson and Eric L. Spicer, and one-seventh to the children of Emily Lawrence, for equal division among them; and denies that the defendant Adam D. Hoover is the owner of Six-Sevenths of the land described in plaintiffs petition; and denies that the defendant Adam D. Hoover is the owner by assignment or otherwise of any of the Specific Legacies of Andrew A. Spicer and denies each and every allegation contained in the Third Ground of defense of said defendants answer.

And by way of reply to the Answer and Cross-petition of Mary L. Landon, this plaintiff denies that she has a Mortgage lien on any part of the lands described in plaintiffs petition, other than upon the interest of the defendant Adam D. Hoover.

James E. Robinson & S. W. Van Winkle,
Attorneys for Plaintiff.

8393
Appeal
Bond.

The State of Ohio, Union County, ss:-
S. W. Van Winkle, being first duly sworn, says the facts stated

and the allegations made in the foregoing Reply, are true as he verily believes.

S. W. Van Winkle.

Sworn to before me and subscribed in my presence this 8th. day of November, 1905.

(Seal). Chas. S. Penhorwood, Clerk.

On February, 1st. 1906, the following Journal Entry was filed.

8393 Entry. S. W. Van Winkle, Plaintiff, Court of Common Pleas,
Vs. Union County, Ohio,
Adam D. Hoover, et.al. Defts. Case No. 8393, Journal Entry.

And now this cause coming on to be heard upon the petition, and the separate Answers and Cross-Petitions of defendants, Adam D. Hoover, and Mary Ee. Landon, and the evidence, the Court finds that all of the defendants have had due legal notice of the pendency and demand of the said petition.

Thereupon, the Court further finds that the plaintiff and said Adam D. Hoover, defendants, are tenants in common in the Estate described in the petition; That the plaintiff, S. W. Van Winkle, has a legal right to five-elevenths thereof, and that the defendant, Adam D. Hoover, has a legal right to six-elevenths thereof; and that the plaintiff is entitled to have partition of said estate as prayed in his petition.

It is, therefore, ordered, adjudged, and decreed by the Court, that partition of said Estate be made to said S. W. Van Winkle, and Adam D. Hoover, respectively, in the proportions aforesaid found.

And thereupon, came the defendant, Adam D. Hoover, by his counsel, and then and there excepted to the judgments and orders aforesaid, and declared and gave notice of his intention to appeal therefrom to the Circuit Court of said County, and prayed the Court to fix his bond in the premises.

And thereupon the Court fixes the Appeal Bond herein at One Hundred Dollars, and directs that the same be made payable to the said plaintiff, and cause adjourned for further orders, appointing Commissioners, and ordering writ.

On February, 2nd. 1906, the following Appeal Bond was filed.

8393 Appeal Bond. Appeal Bond. Common Pleas Court to Circuit Court.

Know all men by these presents, That we, Adam D. Hoover and Oscar L. Murphy, are held and firmly bound unto S. W. Van Winkle in the sum of One Hundred ($100.00) Dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Signed by us, and dated this 2nd. day of February, A. D. 1906.

The condition of the above obligation is such, that, whereas, the said Adam D. Hoover, has taken an appeal from a certain judgment and decree rendered against him in favor of the said S. W. Van Winkle, in the Court of Common Pleas within and for the County of Union, in the State of Ohio, at the January Term thereof, 1906, in Case No. 8393, S. W. Van Winkle, Plff. -Vs- Adam D. Hoover, et.al. for the partition of lands in said County, to the Circuit Court, within and for the County aforesaid.

Now, if the said Adam D. Hoover, shall abide and perform the order and judgment of said Circuit Court, and shall pay all money, costs and damages which may be required of or awarded against him by said Circuit Court; then this obligation to be void; otherwise to remain in full force and virtue in law.

Adam D. Hoover.
Oscar L. Murphy.

I approve the above bond with the sureties thereto, this 2nd. day of February, 1906.

(Seal.). Chas. S. Pankhurst, Clerk.

Case No. 195. Journal Entry.

On February, 15th. 1906, the following Journal Entry was filed in the Circuit Court.

S. V. Van Winkle, Plaintiff. } In the Circuit Court of Union County, Ohio.
vs. } February, 15th. 1906. Case No. 195. On Appeal.
Adam D. Hoover, et.al. Defts. } Journal Entry.

And now this cause coming on to be heard in this Court, on appeal from the Court of Common Pleas of said County, upon the pleadings and the evidence, the same was argued by Counsel, and submitted to the Court. Thereupon, the Court, being fully advised in the premises, find that all of the defendants, have had due legal notice of the pendency and demand of the petition herein.

The Court further find that the plaintiff and said Adam D. Hoover, defendant, are tenants in Common in the real estate described in the petition; That the plaintiff, S. V. Van Winkle, has a legal right to one-seventh of said Estate, and that the defendant, Adam D. Hoover, has a legal right to six-sevenths thereof as claimed in the 1st. ground of Defense set forth in his Answer and Cross-petition.

It is, therefore, ordered, adjudged, and decreed by this Court, that partition of said real estate be made to said S. V. Van Winkle and Adam D. Hoover, respectively, in the proportions aforesaid found; and Evan L. Jones John Cartmell and William Sidle, three judicious and disinterested freeholders of the vicinity, are hereby appointed Commissioners to make such partition.

And it is further ordered by the Court, that a writ of partition issue to the Sheriff of Union County, Ohio, commanding him that by the oaths of the Commissioners aforesaid named he cause to be set off and divided to each of the above named parties the part and portion of said estate to which they are severally above found entitled. And it is further ordered that if said Estate be found entire and not divisible by metes and bounds without manifest injury to the value thereof, such fact be reported by the said Commissioners, with a just valuation of said lands.

And of this proceedings herein, said Sheriff is ordered to make due return to the Court of Common Pleas of said County of Union.

And it is further ordered and adjudged by the Court that the plaintiff S. V. Van Winkle, pay the costs incurred in contesting the said Adam D. Hoover's title, so as aforesaid found, taxed at $; and that the remainder of the costs on partition be paid by said S. V. Van Winkle in the proportion of one-seventh, and by said Adam D. Hoover in the proportion of six-sevenths, thereof.

It is further ordered that this cause be remanded to the

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said Court of Common Pleas for execution, and for all further proceedings.

And, thereupon, the said plaintiff moved the Court for a new trial in the premises, which motion, the Court, on consideration thereof, did overrule.

To all of which findings, orders, and judgments of this Court in the premises, the said plaintiff, by his Counsel, excepts; and the Statutory time for Bill of Exceptions is allowed.

Attest: Chas. S. Pendorwood, Clerk.
By Olive E. Pendorwood, Deputy.

Continued on Page 77 of this Record.

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Hons. Caleb H. Norris, Silas E. Hurin and Michael Donnelly, Judges of said Court for the February Term, A.D. 1906, Be it remembered that heretofore to-wit,- on the 17th. day of August, 1905, the following Appeal Bond was filed with the Clerk of said Circuit Court, to-wit.-

192
Appeal Bond.

John K. Borrger
Vs.
The Evangelical Lutheran St. Johns Church.

Circuit Court, Union County, Ohio.
Bond.

Know all men by these presents, that we, Casper Rausch, George Streng, Justus Scheiderer, and Adam Vollrath, are held and firmly bound unto the plaintiff, the said John K. Borrger, in the sum of One Hundred Dollars, to the payment of which sum, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Signed by us, and dated this 15th. day of August, A.D. 1905.

The condition of the above obligation is such, that, said defendant, the said The Evangelical Lutheran St. Johns Church, shall abide by, and perform the order and judgment of the appellant Court, and shall pay all money, costs, and damages which may be required of, or awarded against said defendant by said Court.

Now if the said Casper Rausch, George Streng, Justus Scheiderer and Adam Vollrath, shall pay said sum of One Hundred Dollars, according to the order of said appellate Court, in case it should become due, then this obligation to be void; otherwise to remain in full force and virtue in law.

Executed in Presence of
E. W. Porter
Chas. Rausch.

Casper Rausch
George Streng
Justus Scheiderer.
Adam Vollrath.

Approved August, 17th. 1905.

Chas. S. Pemberwood, Clerk.

On August 17th. 1905, the following Certified copy of Journal Entry was filed.

192
Certified copy of Journal Entry.

John K. Borrger.
Vs.
The Evangelical Lutheran St. Johns Church and Congregation.

This cause came on to be heard upon the pleadings and evidence and was argued by Counsel and submitted to the Court; on Consideration whereof, the Court being fully advised in the premises finds that in the year 1878 there were four Lutheran Churches in Union County, two in Marysville, and two in the Country South of Marysville; that said Churches had two cemeteries, both located in the County, one in Paris Township, and the other in Darby Township; that in said year a re-arrangement of the Churches was had, the Churches in Marysville consolidating and the one in the Country nearest Marysville abandoned, the name of the one in the Country being St. Johns and the one in Marysville, Trinity Church.

That an arrangement was made between said churches, whereby Trinity Church should control and keep in repair the cemetery located at the abandoned church in Paris Township; and that St. Johns

Church should own and control the other Cemetery at its Church, and that a member of either Church owning a lot in either cemetery should continue to hold the same and should have the privilege of burial therein and the use of the Cemetery vault.

That in the year 1882, the plaintiff being a member of St. Johns Church purchased the privilege of a lot in the cemetery thereto and took possession of the same and caused his wife to be buried thereon, and erected on said lot a family monument, reserving room for the burial of his body on said lot beside his wife and has ever since kept up said monument and burial lot and reserved the same for his place of sepulcher at death.

That in the year 1898, and since the burial of his wife, the plaintiff withdrew his membership from St Johns Church and became a member of Trinity Church, that the plaintiff has been informed and notified by the defendant, that in the event of his death, his body cannot be buried in said cemetery lot beside his wife, and that by reason thereof his title and easement and rights in said burial lot have been and are disquieted.

The Court further finds that Trinity Church has kept and performed its part of said reciprocal agreement and has not denied the right of burial in its cemetery to members of St. Johns Church nor has it consented to an abridgement of the rights of its members to burial in St. Johns Church cemetery.

The Court finds the equity of the case to be with the plaintiff, and that so long as he remains a member of Trinity Church and continues to care for his lot in the defendant cemetery he is entitled to sepulcher therein. It is therefore considered, ordered and decreed by the Court that the plaintiff's rights, title, easement and possession of said burial lot be and the same is hereby quieted as against the defendant and all claiming through, or under it, and the defendant and all persons claiming under it are hereby enjoined from interfering with the plaintiff in his said right of sepulcher and burial in said Cemetery lot, conditioned however upon the plaintiff continuing to be a member of said Trinity Church.

It is further ordered and decreed that the plaintiff pay the costs of this proceeding made by him and that the defendant pay the costs made by it, and in default of payment that execution be awarded therefor; to all of which the defendant then excepted and gave notice of its intention to appeal. Bond fixed at $100.00.

The State of Ohio, Union County, SS:-

I, Chas. P. Cushenwood, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records, of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original Entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House, in Marysville, in said County, this 17th. day of August, A.D. 1905.

(Seal) Chas P. Cushenwood, Clerk.

On September, 16th. 1905, the following Motion was filed.

192
Motion.

John K. Boerger- Plaintiff.
Vs.
The Evangelical Lutheran St. Johns
Church and Congregation, Defendant.

Circuit Court, of Union County, Ohio.

The plaintiff John K. Boerger moves the Court for an order dismissing the appeal in this cause and for grounds of his motion says:-

The Court of Common Pleas of Union County, Ohio, from which the appeal is taken was adjourned without day on the first day of July, A. D. 1905 and the decree rendered in this case was made and entered of that date but no Bond for appeal was filed until the 17th. day of August A. D. 1905 and being more than 30 days from entry of said decree as shown by the records of said Court of Common Pleas.

J. L. Cameron, Attorney for Plaintiff.

On October, 3rd. 1905, the following Entry was filed.

192
Entry.

John K. Boerger,
Vs.
The Evangelical Lutheran
St. Johns Church and Congregation.

Circuit Court of Union County, Ohio.
October, 3rd. 1905.

This day this cause came on for hearing upon the motion of the plaintiff by his Attorney to dismiss the appeal of this case to this Court; and was argued by Counsel and submitted to the Court; on consideration whereof, the Court overrules said Motion, to which plaintiff by his Attorney then and there excepted; and the Court allow the Statutory time for filing a Bill of Exceptions thereto.

On February, 15th. 1906, Motion for New Trial filed.

192
Motion for New Trial.

John K. Boerger- Plaintiff.
Vs.
The Evangelical Lutheran St. Johns
Church and Congregation - Defendant.

In the Circuit Court of Union County, Ohio.
Motion for New Trial.

Now comes the defendant herein, and moves the Court for a new trial in this cause, for the following reasons and causes affecting materially the substantial rights of said defendant, to-wit:-

First - That the Court erred in overruling defendant's demurrer to the petition herein, to which ruling the defendant at the time excepted.

Second - That the Court erred in overruling defendant's motion for a judgment on the pleadings, to which ruling exception was taken at the time.

Third - That the Court erred in overruling defendant's objection to the introduction of any testimony under the petition, to which ruling the defendant then excepted.

Fourth - That the Court erred in admitting incompetent and irrelevant testimony against the objection of the defendant, which was objected to at the time.

Fifth - Other errors of the Court occuring at said trial.

Sixth - The defendant also moves the Court, that a finding of

the facts in said cause be found according do law.
E. P. Schuraun and E. W. Porter,
Attorneys for defendant.

On February, 15th. 1906, the following Entry was filed.

192 Entry. John K. Borger- Plaintiff. Circuit Court, Union County, Ohio.
vs.
The Evangelical Lutheran St.
Johns Church and Congregation- Defendant.

This cause came on to be heard upon the pleadings and evidence and was argued by Counsel and submitted to the Court.

On consideration whereof, the Court being fully advised in the premises, finds that in the year 1878 there were four Lutheran Congregations in this County; two of said Congregations being at Marysville, and two in the Country south of Marysville; said Churches had two Cemeteries both located at the Churches in the Country, one being in Paris Township and the other being in Darby Township; that in said year a re-arrangement of the Churches was had, the Churches in Marysville consolidating, and the one in the Country nearest to Marysville was abandoned, the congregation going over to the other church in the Country. For the name of the Church in Marysville it was styled Trinity Church, and the one in the Country was and is called the St. Johns Church, that an arrangement was made between said Churches whereby Trinity church should control and keep in repair the Cemetery located at the abandoned church in Paris Township and that St. Johns church should own and control the other cemetery at its church and that a member of either church, owning a lot in either cemetery, should continue to hold the same, and should have the privilege of burial therein and the use of the cemetery vault. That in the year 1882 the plaintiff being a member of the defendant church, purchased the privilege of a lot in the cemetery thereto and took possession of the same and caused his wife to be buried thereon and erected on said lot a family monument reserving room for the burial of his body on said lot beside his wife and has ever since kept up said monument and burial lot and reserved the same for his place of sepulcher at death. That in the year 1898 the plaintiff withdrew his membership from the defendant church and became and now is a member of said Trinity Lutheran church, that the plaintiff has been informed and notified by the defendant that in the event of his death his body cannot be buried in said Cemetery lot beside his wife, and that by reason thereof his title and easement and rights in said burial lot have been and are disquieted. The Court further find that said Trinity church has kept and performed its part of said reciprocal agreement and has not denied the right of burial in its cemetery to members of defendant church nor has Trinity church consented to an abridgment to the rights of its members to burial in defendants cemetery.

The Court finds the equity of the case with the plaintiff, and that so long as he remains a member in good standing of the Lutheran church and continues to care for his lot in defendants cemetery he is entitled to sepulcher therein.

It is therefore considered, ordered and decreed by the Court that the plaintiffs right, title and easement and possession of said Burial lot be, and the same is hereby quieted as against the defendant and all persons claiming through or under it, and the defendant and all persons claiming under it are hereby enjoined from interfering with the plaintiff in his said right of sepulcher and burial in said Cemetery lot conditioned however upon plaintiff continuing to be a member in good standing of the Lutheran Church.

It is further ordered and decreed by the Court that the plaintiff recover of the defendant his costs herein expended, and that defendant pay its own costs, and execution is awarded therefor, Defendant moved the Court for a New Trial, and the motion was overruled by the Court, to which judgment and ruling, the defendant then and there excepted.

Attest:- Chas. S. Penhorwood, Clerk.
By Olive E. Penhorwood, Deputy.

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195. P.S.
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Mandate

On June, 20th. 1906, the following Mandate was filed.

Mandate from the Circuit Court.

State of Ohio, Union County, ss. Circuit Court, Union County, Ohio.

At a term of the Circuit Court, within and for the County of Union, in the State of Ohio, began and held before Hon. Caleb H. Norris, Hon. Silas E. Hunter, Hon. Michael Donnelly, Presiding Judges, at Marysville on the 15th. day of February, A.D. 1906, among other proceedings then and there had by said Court, as appears by its Journal, were the following, viz:-

D. W. Van Winkle No. 195.

Vs.

Adam D. Hoover, et. al.

And now this cause coming on to be heard in this Court, on appeal from the Court of Common Pleas of said County, upon the pleadings and the evidence, the same was argued by Counsel and submitted to the Court.

Whereupon the Court being fully advised in the premises find that all the defendants have had due legal notice of the pendency and demand of the petition therein.

The Court further find that the plaintiff and said Adam D. Hoover, defendants are tenants in common in the real estate described in the petition; that the plaintiff D. W. Van Winkle has a legal right to one-seventh of said estate, and that the defendant Adam D. Hoover has a legal right to six sevenths thereof, as claimed in the first ground of defense set forth in the answer and cross-petition.

It is therefore, ordered, adjudged and decreed by this Court that partition of said real estate be made to said D. W. Van Winkle and Adam D. Hoover respectively, in the proportions aforesaid found; and Evan J. Jones, John Cartmell and William Sidle, three judicious and disinterested freeholders of the vicinity are hereby appointed Commissioners to make such partition.

And it is further ordered by the Court that a Writ of Partition issue to the Sheriff of Union County, Ohio, commanding him that by the oaths of the Commissioners aforesaid named, the cause to be set off and divided to each of the above named parties, the part and portion of said estate to which they are severally above found entitled.

And it is further ordered that if said estate be found entire, and not divisable by metes and bounds without manifest injury to the value thereof, such fact be reported by the said Commissioners with a just valuation of said lands.

And of this proceedings therein, said Sheriff is ordered to make due return to the Court of Common Pleas of the said County of Union.

And it is further ordered and adjudged by the Court that the plaintiff, D. W. Van Winkle, pay the costs incurred in contesting the said Adam D. Hoovers title, so as aforesaid found taxed at $; and that the remainder of the costs on partition be paid by said D. W. Van Winkle in the proportion of one-seventh, and by said Adam D. Hoover in the proportion of six-sevenths thereof.

It is further ordered that this cause be remanded to the said Court of Common Pleas for execution and for all further proceedings.

And thereupon the said plaintiff moved the Court for a new trial in the premises, which motion the Court on consideration thereof do overrule.

To all of which findings, orders and judgments of this Court in the premises, the said plaintiff by his Counsel excepts; and the Statutory time for a Bill of Exceptions is allowed.

I, Chas. P. Pentonwood, Clerk of the Circuit Court of Ohio, within and for Union County, do hereby certify that the foregoing Entry is truly taken and correctly copied from the Journal of said Court.

Witness my hand and the Seal of said Court, this 20th. day of June, A.D. 1906.

(Seal) Chas. P. Pentonwood, Clerk Circuit Court.

196
Petition in Error.

8393
Entry.

On June, 21st. 1906, the following Entry was filed.

S. W. Van Winkle,
vs.
Adam D. Hoover, et. al.

Court of Common Pleas,
Union County, Ohio.

Entry.

This cause coming on for Execution upon the Mandate of the Circuit Court of this County and it appearing to the Court from the statement of Counsel for plaintiff and defendant that the parties have agreed upon the sale of the plaintiffs 1/7 of the real estate described in plaintiffs petition, to the defendant Adam D. Hoover, for the sum of $704.00 the said Hoover to pay all taxes and assessments on said land; and it further appearing to the Court that the parties hereto have settled the matter of the legacy claimed by the plaintiff, by the defendant Adam D. Hoover, agreeing to pay to the plaintiff the sum of $76.00 therefor, and that the said parties have further agreed that the costs in this action be paid according to the order of said Circuit Court.

It is therefore ordered and decreed that upon the payment of said sum of $780.00 to the plaintiff by the said Adam D. Hoover the said plaintiff execute a deed to the said Adam D. Hoover for said 1/7 of said real estate free from all incumberance except taxes and assessments; that the costs of contesting the defendants' title to the 6/7 of said real estate taxed at $5.35 be paid by the plaintiff; that the costs of the partition, including a counsel fee of $128.55 to Hoopes & Robinson for their services herein taxed at $143.26 be paid as follows; 6/7 by the defendant, Adam D. Hoover and 1/7 by the plaintiff

Attest: Chas. P. Pentonwood, Clerk.
By Deputy.

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Pleas continued and held at the Court House in Marysville, within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorables Caleb H. Norris, Silas E. Hurin and Michael Donnelly, Judges of said court for the October term 1906.

Be it remembered that heretofore to wit, on the 26th day of February 1906 the following Petition in Error was filed in Common Pleas:

Circuit Court of Union County, Ohio

Orrin Walk ——— Plaintiff

Vs.

The State of Ohio ——— Defendant.

196
Petition in Error.

Plaintiff in error says that at the January term, 1906 of the Court of Common Pleas of said County, defendant in error recovered a judgment by the consideration of said court, against the plaintiff in error, in an action then pending therein, wherein defendant in error was plaintiff and plaintiff in error defendant; a transcript of the docket, record and journal entries whereof, together with the original papers and pleadings and the bill of exceptions is filed herewith

There is error in said record and proceedings in this to-wit:

1st. Said Court erred in overruling the motion to quash the indictment

2d. Said Court erred in not sustaining the motion to quash the indictment.

3d. Said court erred in overruling the demurrer to the indictment

4th " Said court erred in not sustaining the demurrer to the indictment

5th " There was error of law occuring at the trial.

6th " Said Court erred in his charge to the jury.

7th " Said Court erred in not permitting evidence offered by plaintiff in error to go to the jury, which was excepted to at the time.

8th " Said Court erred in ruling out evidence offered by the plaintiff in error, which was excepted to at the time.

9th " Said court erred in permitting evidence to be given to the jury by the defendant in error against the objection of the plaintiff in error and which was excepted to at the time.

10th " Said Court erred in refusing to withdraw from the jury evidence offered by the defendant in error over the objection of the plaintiff in error and which was excepted to at the time.

11th " Said Court erred in permitting the prosecuting attorney and his assistant to argue to the jury that the plaintiff in error was guilty of a crime with the commission of which he had never been charged, tried nor convicted, and which was in no way connected with nor similar to the crime with the commission of which plaintiff in error was charged and being tried, which was excepted to at the time.

12th " Said Court erred in permitting the assisting prosecuting attorney to argue to the jury the effect of testimony offered.

by the defendant in error and ruled out by the court, which was excepted to at the time.
13th. Said Court erred in not sustaining the motion for a new trial.
14th. Said Court erred in overruling the motion for a new trial.
15th. The verdict of the jury is not sustained by the and the evidence and is contrary to the law and the evidence.
16th. The Court erred in rendering judgment against the plaintiff in error, when it should have been given in favor of the plaintiff in error.
17th. There are other errors apparent upon an inspection of the record.

Plaintiff in error therefore prays that said judgment may be reversed and that he may be restored to all things he has lost by reason thereof.

Orin Walk.
By- Hoopes and Robinson,
his Attorneys.

196
Transcript of Journal entries.

State of Ohio, Plaintiff. vs. Orin Walk, Defendant.
Court of Common Pleas, Union County, Ohio.
Case No. 1278.

Transcript of Journal entries.

On January 29th 1906 the following Journal Entry was filed in the above entitled case:—
And now this cause coming on for hearing the defendant being brought into court, upon the motion of the defendant by his Attorneys to quash the said Indictment, the court being fully advised in the premises overrules the same, to which ruling and judgment of the court the defendant by his counsel then and there excepted.

On January 29th 1906 the following Journal Entry was filed in the above entitled cause.
And now this cause coming on for hearing, the defendant being brought into Court, upon the Demurrer of the Defendant to the Indictment herein, the Court being fully advised in the premises, overrules the same, to which ruling and judgment of the Court the Defendant by his counsel, then and there excepted.

On January 29th 1906 the following Journal Entry was filed in the above entitled case.
And now this cause coming on for hearing the Defendant being brought in to court, upon the motion of the Defendant to require the Prosecuting Attorney to elect upon which of the two crimes charged in the Indictment, he desires to present for hearing, the Court being fully advised in the premises sustains the same; And thereupon the Prosecuting Attorney elects to try the defendant upon the 1st and 2nd. counts as found charged in Indictment filed herein.

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On January 29th 1906 the following Journal Entry was filed in the above entitled case:—

Entry — Now comes the Prosecuting Attorney on behalf of the State of Ohio, and the Defendant being brought into court in custody of the Sheriff and arraigned upon said Indictment for plea thereto saith he is not guilty; and thereupon this cause came on for hearing and trial by Jury.
Also came the following named persons as jurors to-wit: Alfred Carr, J. N. Robertson, Lemuel James, C. W. Southard, J. B. Poling, John T. Wilkins, J. H. Bell, J. W. Field, Philip Bishop, John C. Price, Wilber McGood, and James Baldwin; who were duly impaneled and sworn according to law.
And the said Jury having heard the testimony adduced in this case in part the court adjourned the further hearing hereof until tomorrow morning at 9 O. Clock.

On January 30th 1906 the following Journal Entry was filed in the above entitled case:—

Entry — This day again, came the Prosecuting Attorney, on behalf of the State of Ohio, and the Defendant with his counsel; also came the Jury, heretofore impaneled and sworn, and the trial proceeded.
And the said Jury having heard the testimony adduced in this case in part only, the Court adjourned the further hearing of this case, until tomorrow morning at 9 O Clock.

On January 31st 1906 the following Journal Entry was filed in the above entitled case.

Entry — This day again came the Prosecuting Attorney on behalf of the State of Ohio, and the Defendant with his counsel; also came the Jury, heretofore impaneled and sworn, and the trial proceeded.
And the said Jury having heard the testimony adduced in this case and the argument of counsel, the Court adjourned the further hearing of this case, until to-morrow morning at 9 O clock.

On February 1st the following Journal Entry was filed in the above entitled case:

Entry — This day again came the Prosecuting Attorney on behalf of the State of Ohio, and the Defendant with his counsel; also came the Jury heretofore impaneled and sworn, and the trial proceeded.
And the said Jury having heard all the testimony

adduced in this case, the argument of counsel, and the charge of the Court, retired to their room, in charge of the Sheriff for deliberation.
And afterward came the Jury, conducted into court by the Sheriff, and returned the following verdict in writing signed by their foreman, to wit:—

Verdict — We the Jury in this case, find the Defendant, Orrin Walk, guilty in manner and form as he stands charged in the Indictment.

Wilbur De Good, Foreman.

Whereupon on request of the Defendant by his Attorneys, the Court ordered that the Jury be polled. And upon each juror being called by name, and inquired of, if the verdict just read was his verdict, each for himself separately answered. "It is I."
And thereupon the Defendant by his counsel filed herein a motion for a new trial, and the Court, after full consideration overrule the same, to which ruling and judgment of the Court, the Defendant by his counsel, then and there excepted.

Sentence — And thereupon the Defendant being inquired of if he had any thing to say why judgment should not be pronounced against him, and showing no good and sufficient cause why judgment should not be pronounced;
It is therefore adjudged by the Court that the said Defendant, Orrin Walk, be imprisoned and confined in the Penitentiary of this State and Kept at hard labor, but without any solitary confinement for the period of two years; and that he pay the costs of this prosecution; for which execution is awarded.

196 Entry

On February 21st 1906, the following Journal Entry was filed in the above entitled case:—

Entry — Now comes the Defendant, Orrin Walk, and presents to the Court his certain bill of exceptions herein, which being found by the Court to be true, is settled, allowed, and signed, and on motion, is hereby made a part of the record of this case.

In the Circuit Court of Union County, Ohio.
Orrin Walk — — — Plaintiff in Error.

Vs.

The State of Ohio — Defendant in Error

Motion — Now comes the plaintiff in Error, Orrin Walk, and moves this honorable Court to suspend the execution of the sentence of the Court of Common Pleas in this cause pending the hearing of this cause upon the Petition in Error — Orrin Walk
by Hopes and Robinson

Notice — Waiver

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Orrin Walk
vs.
The State of Ohio

In the Circuit Court
of Union County, Ohio.

196 Entry

On motion of the Plaintiff in error in that behalf and it appearing that a Petition in Error, Bill of exceptions and the original papers having been duly filed in the above entitled cause in the office of the Clerk of the Circuit Court of Union County, Ohio,
It is ordered that the execution of the judgment and sentence heretofore imposed by the Court of Common Pleas of Union County, Ohio, against Plaintiff in error, Orrin Walk, be and the same is hereby Suspended until the next term of and until the further order of the Circuit Court, of Union County, Ohio.
This upon condition that the Plaintiff in error execute his recognizance conditioned according to law with security to the approval of the Clerk of the Circuit Court of Union County, Ohio, in the sum of One Thousand Dollars.— Said suspension of sentence shall take effect only after said recognizance is duly executed and filed with said Clerk.
Done at Chambers Bellfontaine, Ohio. February 28th 1906.

Seal

Caleb H. Norris
Silas C. Hurin
Michael Donnelly

Judges of the Circuit Court of Union County, Ohio.

Notice

In the Circuit Court of Union County, Ohio.
Orrin Walk - Plaintiff in Error - vs - The State of Ohio - Defendant in Error.
To the Prosecuting Attorney of Union County, Ohio.
You are hereby notified that on Wednesday the 28th of Feb. 1906, the Plaintiff in error herein will submit a motion in the above entitled cause to the Circuit Court of this County at Chambers at the Court House at Bellefontaine, Ohio, at 9 O'clock A.M. or as soon thereafter as he can get the ear of said Court, to suspend the execution of the sentence of the Court of Common Pleas of Union County, Ohio, against him in this cause in said Court wherein Plaintiff in error herein was defendant, and defendant in error herein was plaintiff.

Hoopes and Robinson.
Attorneys for Plaintiff in Error.

Service of the above notice acknowledged this 26th day of Feb. 1906.
Frank J. Ballinger - Prosecuting Attorney of Union Co. Ohio.

Waiver

In the Circuit Court of Union County, Ohio.
Orrin Walk - Plaintiff in Error - vs - The State of Ohio - Defendant in Error.
Now comes F. J. Ballinger Prosecuting attorney of Union County, Ohio in behalf of the Defendant in error and waive the issuing and service of a summons in this cause and voluntarily enters the appearance of the Defendant in Error herein.
Frank J. Ballinger - Prosecuting Atty. of Union County, Ohio.

In the Circuit Court of Union County, Ohio.

Orrin Walk ——— Plaintiff in error,

Vs.

The State of Ohio ——— Defendant in error.

Entry

This cause came on for hearing upon the petition in error, the transcript and bill of exceptions, the original papers and pleadings from the Court of Common Pleas of Union County, Ohio, and was argued by counsel; and, on consideration thereof, the Court find that there is error apparent upon the record in the proceedings of said court, to the prejudice of the plaintiff in error; in this, to-wit, that the said Court of Common Pleas refused to the Plaintiff here a new trial on his motion therefor: and in this, to wit; that the said Court of Common Pleas permitted evidence to go to the Jury in chief as to the facts upon which it was claimed Plaintiff's in error ill feeling toward the prosecuting witness, Frank Mc Daly arose. And in this, to wit, that said Court of Common Pleas permitted counsel for the State to argue to the jury that Plaintiff in error was guilty of other crimes than the one for which he was on trial: and in this, to wit, that said court of Common Pleas permitted counsel for the State to comment to the Jury upon evidence not admitted by the Court: and in this, to wit, that the Court of Common Pleas charged the Jury as follows; "But if the evidence fails to prove every material averment to your satisfaction as reasonable jurors, then it is your duty to acquit the Defendant." which charge should have been so worded as to exclude reasonable doubt.

It is therefore considered by this court that the motion for a new trial be sustained, that the judgment rendered by the Court below be reversed and held for naught, and that the verdict rendered by the Court below be set aside, and that a new trial be granted to the said Orrin Walk in said Court: and that the Plaintiff in error recover his costs herein expended from the Defendant in error: and that a special mandate be sent to the Court of Common Pleas of Union County, Ohio, for the execution of this judgment.

Attest Charles Parrott
Clerk

Continued on Page 92.

197 Petition in Error

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Pleas continued and held at the Court House, in Marysville, within and for the County of Union, in the Third Judicial Circuit, of the Circuit Court of the State of Ohio, before the Honorables, Caleb H. Norris, Silas E. Hurin and Michael Donnelly Judges of the said Court for the October term of 1906.

In the Circuit Court of Union County, Ohio.
Edward A Schambs — Plaintiff in Error.
Vs.
George W. Worden — Defendant in Error.

197 Petition in Error

Plaintiff in Error says that at the April term A. D. 1906 of the Court of Common Pleas of Union County, Ohio, defendant in error recovered a judgment, by the consideration of said Court, against plaintiff in error, in an action then pending in said court wherein the said George W. Worden was plaintiff, and the said Edward A. Schambs was defendant, a transcript of the docket and journal entries whereof is herewith filed, together with the original pleadings and papers in said case.
There is error in said record and proceedings, in this, to wit,
1st, The said Court erred in ruling out evidence offered by the said Edward A. Schambs in said cause;
2d, The Court erred in permitting evidence to be given by the said George W. Worden, and which was objected to at the time by the plaintiff in error;
3d, There was error of law occurring at and during the trial of said cause;
4th, The Court erred in refusing to charge the jury as requested by the plaintiff in error;
5th, The Court erred in its charge to the jury.
6th, The Court erred in overruling the motion of the said Edward A. Schambs for a new trial in said cause.
7th, The verdict of the jury was against and contrary to the weight of the evidence, and said verdict is not supported by sufficient evidence.
8th, The verdict and judgment was in favor of the said George W. Worden when it should have been in favor of the said Edward A. Schambs.
There are other errors apparent upon inspection of the record.
Plaintiff in error therefore prays that said judgment may be reversed, and that he may be restored to all things he has lost by reason thereof.

Al. C. Eggert and J. L. Cameron
Attorneys for Plaintiff in Error.

George W. Worden — Plaintiff. | Court of Common Pleas
vs. |
Edward A. Schambs — Defendant | Union County, Ohio.

8463. Original Petition.

The Plaintiff says that by the terms of a contract made and entered into by and between him and the defendant on or about the 25th day of July 1905, the plaintiff was to assist the defendant in the sale of the Electric Light Plant at Richwood, Ohio, and that he the plaintiff was to receive for said assistance and service the sum of (2) two per cent of the selling price of said plant if sold for $20,000, one and one fourth (1¼) per cent if sold for $19,000, or one half (½) per cent if sold for $18,000. That in the month of August 1905 the defendant sold the said plant to a company organized for that purpose by and with the assistance of the plaintiff for $20.000, That there is due the plaintiff from the defendant for said assistance and services the sum of Four Hundred Dollars (400.) with interest from the 1st day of September 1905.

That the plaintiff has made repeated demands upon the defendant for the payment of said $400.00 but no part thereof has been paid, and it is still due and unpaid.

Plaintiff prays that he may recover judgment against the defendant for the sum of $400.00 with interest from the 1st day of September 1905, and for costs of suit.

S. W. Van Winkle
Attorney for Plaintiff.

The Plaintiff George W. Worden makes oath and says that the facts set forth in the above pleading are true as he verily believes.

George W. Worden

Sworn to before me this 4th day of October, 1905, by the said George W. Worden.

Olive Penhorwood,
Deputy Clerk.

8463 Certified Copy of Journal Entries.

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George W. Worden – Plaintiff
Vs.
Edward A. Schambs Defendant } April 1906

8463 Certified Copy of Journal Entries.

On January 8th, 1906, the following entry was filed in the above cause:—
"This day leave was granted defendant to file answer instanter and the same was filed."

On April 23d, 1906 the following Entry was filed in the above cause:—
"This day came the parties herein by their Attorneys; also came the following named persons as jurors, to wit: Robert Seig, Sylvanus Bellville, James Shirk, James A. Reed, W. B. Jones, C. J. Reams, George Longbrake, J. L. Richey, J. A. Gatchell, J. E. Southard, J. L. Sellers, and H. B. McChord, who were duly impanelled and sworn according to law; and thereupon the case came on for hedring on the pleadings and the evidence. And the said jury having heard the testimony adduced in part in this case, the Court continued the further hearing of this cause until tomorrow morning at 9 O clock."

On April 24th 1906 the following Entry was filed in the above cause:—
This day again came the parties by their Attorneys, and also came the Jury heretofore impaneled and sworn, and the trial proceeded. And the said jury having heard the remaining testimony, the argument of counsel, and the charge of the Court, retired to their room, in charge of the Sheriff for deliberation. And now comes said jury into open court with their verdict in writing signed by their foreman, and say:- We the Jury, being duly impaneled and sworn find the issues in this case in favor of the plaintiff and assess the amount due to the plaintiff from the defendant Edward A. Schambs, at the sum of $ 207.77.
Dated April 24th 1906 — John L. Sellers,
Foreman.

On May 4th 1906, the following Entry was filed in the above cause:—
"This cause coming on for hearing on the motion of the defendant to set aside the verdict, and for a new trial herein, the Court on consideration thereof overrule the same to which the defendant by his counsel excepts.

It is therefore considered by the Court that the said plaintiff George W. Worden recover from the said defendant E. A. Schambs, the said sum of $207.77 as heretofore by the verdict of the jury, found due him with interest from April 2, 1906, together with his costs herein expended, and execution is awarded."

8463 Motion. On June 15th 1906, the following Motion was filed.

George W. Worden,
vs
Edward A. Schambs.

Motion for New Trial.

Now comes the defendant and moves the Court to set aside the verdict of the jury rendered in this cause and grant a new trial, and for grounds of his motion, says:

1st. The verdict of the jury is not sustained by sufficient evidence, and is against and contrary to the weight of the evidence.

2nd. The verdict is contrary to law.

3rd. For errors of law occuring at and during the trial and excepted to by the defendant.

4th. The Court erred in admitting evidence to be given against the objection of the defendant.

5th. The Court erred in admitting evidence against the objection of the defendant.

7th. The Court erred in overruling the motion of the defendant to arrest the testimony from the jury, and render judgment in favor of defendant.

8th. The Court erred in refusing to charge the jury as requested by defendant.

9th. The Court erred in its charge given to the jury.

10th. There were other errors occuring at and during the trial, to the prejudice of the defendant.

11th. The verdict was in favor of the plaintiff, when it should have been in favor of the defendant, according to the law of the land.

12th. The Court erred in overruling the challenge of defendant to the juror Reed, and there was irregularity in the proceedings of the Court and jury, by which the defendant was prevented from having a fair trial.

A. C. Eggert
J. L. Cameron
attorneys for Defendant.

Summons On June 15th, 1906, the following Summons was filed.

George W. Worden,
vs
Edward A. Schambs.

No. 8463

The State of Ohio, Union County.

To the Sheriff of Union County:

You are hereby commanded to notify Edward A. Schambs that he has been sued by Geo. W. Worden, in the Court of Common

Sheriff's Return.

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Pleas of Union County, and must answer by the 4th day of November A.D. 1905, or the petition of the said plaintiff will be taken as true, and judgment rendered accordingly.

You will make due return of this Summons on the 16th day of October, A.D. 1905.

Witness my hand and the seal of said Court, this 4th day of October, A.D. 1905

Chas. C. Pechenwood, Clerk.
(Seal) By Olive E. Pechenwood, Deputy.

Sheriffs Return. The State of Ohio, Union County, ss.

Received this writ Oct. 4th A.D. 1905 at 7 o'clock P. M. and served same by leaving at the usual place of residence of the within named Edward A. Schaubs, a true and certified copy of this writ with all the endorsements thereon, this 14th day of Oct. 1905.

D. C. Bolenbaugh, Sheriff.
By Allen Staines, Deputy.

Answer. On June 15th 1906, the following Answer was filed. No. 8463.

George W. Worden, Plaintiff
vs
Edward A. Schaubs, Defendant.

The State of Ohio, Union County, ss.

Now comes the defendant and for answer to plaintiffs petition says:

That he denies that he made and entered into a contract or agreement with said plaintiff as set forth in said petition and denies that said plaintiff sold, or in any way assisted in the sale of the said Electric Plant, at Richwood, Ohio; and further denies each and every other allegation in said petition set forth, not herein specifically admitted or denied.

Al. C. Eggert,
J. L. Cauterow
Attorneys for Defendant.

The State of Ohio, Union County ss.

Edward A. Schaubs, Defendant herein, being first duly sworn according to law, says that the facts stated and allegations contained in his foregoing answer, are true, as he verily believes.

Edward A. Schaubs.

Sworn to and subscribed by the said Edward A. Schaubs before me this 1st day of Jan. 1906.

(Seal) Al. C. Eggert.
Notary Public.

197 Erbry

On October 3rd, 1906, the following Erbry was filed.

Edward A. Schaubs, Plaintiff in Error,

vs

George W. Worden, Defendant in Error,

Circuit Court,
Union County, Ohio
October 3rd, 1906.

This cause came on for hearing upon the petition in error, the transcript and bill of exceptions, the original papers and pleadings from the Court of Common Pleas of Union County, Ohio, and was argued by counsel; on consideration whereof, the Court find there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is, affirmed; and that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $—.

To which finding the plaintiff in error excepts.

197 C.C. 8463 C.P. Record Mandate

On October 3rd, 1906, the following Mandate was filed.

Mandate from Circuit Court — In Error.

The State of Ohio,

Circuit Court of Union County. October Term, A.D. 1906.

At a term of the Circuit Court, within and for the County of Union, in the State of Ohio, begun and held at Marysville Ohio, on the 2nd day of October, A.D. 1906, before Hon. Caleb H. Norris, Presiding Judge, and Hon. Silas E. Sturin and Hon. Michael Donnelly, Judges, among other proceedings then and there had by and before said Court, as appears by its Journal, is the following, to-wit:

Edward A. Schaubs, Plaintiff in Error,

vs. 197

George W. Worden, Defendant in Error.

The said parties appeared by their attorneys, and this cause came on to be heard upon the Petition in Error of the said Edward A. Schaubs, Plaintiff in Error, herein, together with the original papers and pleadings and a duly certified Transcript of the Orders and Judgment of the Court of Common Pleas of Union County, Ohio, filed thereinto in the said Circuit Court of Union County, Ohio, wherein Edward A. Schaubs is Plaintiff, and George W. Worden is Defendant, mentioned and referred to in said Petition in Error, and was argued by counsel; Upon consideration whereof, the Court find that there is no Error manifest upon the face of the Record, in said Orders and Judgment of said Court of Common Pleas.

It is thereupon considered, ordered and adjudged by this Court, That the Judgment and proceedings of the said Court of Common Pleas, in said Case in favor of the said Defendant in Error and against the said Plaintiff in Error be, and the same are hereby in all things affirmed; there being, however, in the opinion of the Court, reasonable ground for this proceeding in Error.

It is further considered and ordered, That the Plaintiff in Error pay the costs of this proceeding in Error, taxed at $110.89, and

in default thereof that execution issue therefor.

Ordered, That a Special Mandate be sent to the Court of Common Pleas, of Union County, to carry this Judgment into execution.

I, Charles Parrott, Clerk of the Circuit Court of Union County, Ohio, do hereby certify that the foregoing Entry is truly taken and correctly copied from the Journal of said Circuit Court.

Witness my hand and the seal of said Court, at Marysville, Ohio, this 6th day of October A.D. 1906.

Charles Parrott, Clerk.

(Seal) By Oliver E. Packwood, Deputy.

The State of Ohio, Circuit Court of Union County.

To the Honorable Court of Common Pleas,

Within and for the County of Union, Greeting:

We do hereby command you, that you proceed without delay, to carry the within and foregoing Judgment of our Circuit Court of Union County, in the case of Edward A. Schaubs vs George W. Worden into execution, the Petition in Error herein and heretofore filed, to the contrary, notwithstanding.

Witness my signature as Clerk of our said Circuit Court, and the seal thereof, at Marysville, Ohio, this 6th day of October, A.D. 1906.

Charles Parrott, Clerk.

(Seal) By Oliver E. Packwood, Deputy.

Attest: Charles Parrott, Clerk.
By Stuler McCrory, Deputy.

196 C.C. On October 6th, 1906, the following Mandate was filed.

Mandate from Circuit Court - In Error.

Mandate The State of Ohio,

Circuit Court of Union County, October Term, A.D. 1906.

At a term of the Circuit Court, within and for the County of Union in the State of Ohio, begun and held at Marysville, on the 2nd day of October, A.D. 1906, before Hon. Caleb H. Norris, Presiding Judge, and Hon. Silas E. Hurrin, and Hon. Michael Donnelly, Judges, among other proceedings then and there had by and before said Court, as appears by its Journal, is the following, towit:

Orrin Walker, Plaintiff in Error,

No. 196. vs

The State of Ohio, Defendant in Error.

The said parties appeared by their attorneys, and this Cause came on to be heard upon the Petition in Error of the said Orrin Walker, Plaintiff in Error, herein, together with the original papers and pleadings and a duly certified Transcript of the orders and Judgment of the Court of Common Pleas of Union County, Ohio, filed thereinto in the said Circuit Court wherein Orrin Walker is Plaintiff, and the State of Ohio is Defendant, mentioned and referred to in said Petition in Error, and was argued by counsel; upon consideration whereof, the Court find that in the record and proceedings aforesaid, there is error manifest upon the face of the Record to the prejudice of the Plaintiff in Error, in this, towit; that the said Court of Common Pleas refused to the Plaintiff here a new trial on his motion therefor; and in this, towit; that the said Court of Common Pleas permitted evidence to go to the Jury in chief as to the facts upon which it was claimed Plaintiff's in Error ill feeling toward the prosecuting witness, Frank McVay, arose; and in this, towit, that said Court of Common Pleas permitted Counsel for the State to argue to the Jury, that plaintiff in error was guilty of another crime than the one for which he was on trial; and in this, towit, that said Court of Common Pleas permitted Counsel for the State to comment to the Jury upon evidence not admitted by the Court; and in this, towit, That the Court of Common Pleas charged the Jury as follows; "But, if the evidence fails to prove every material averment to your satisfaction as reasonable Jurors, then it is your duty to acquit the defendant"; which charge should have been so worded as to exclude reasonable doubt.

It is therefore considered, ordered and adjudged by this Court, That the Judgment and proceedings of the said Court of Common Pleas, in said County in favor of the said Defendant in Error and against the said Plaintiff in Error, be, and the same hereby are, set aside, reversed and held for naught, and that the said Plaintiff in Error be restored to all things which he has lost by occasion of the said Judgment;

That the said action be, and it hereby is, remanded to said Court of Common Pleas of Union County, Ohio, to be proceeded in according to law; and the rights of said parties;

That the said Defendant in Error pay the costs of this proceeding in Error to be taxed, and in default thereof that an execution issue therefor: And

That a Special Mandate and Writ of Procedendo be sent to the said Court of Common Pleas, to carry this Judgment and order for costs into execution.

I, Charles Parrott, Clerk of the Circuit Court of Union County, Ohio, do hereby certify that the foregoing Entry is truly taken and correctly copied from the Journals of said Circuit Court,

Witness my hand and the seal of said Court, at Marysville, Ohio, this 6th day of October, A.D. 1906.

Charles Parrott, Clerk,
By Olive E. Penhorwood, Deputy.

(Seal)

The State of Ohio, Circuit Court of Union County.
To the Honorable Court of Common Pleas,
Within and for the County of Union, Ohio, Greeting:

We do hereby command you, that you proceed without delay, to carry the within and foregoing Judgment of our Circuit Court of Union County, in the case of Orrin Walker vs The State of Ohio into execution, and to proceed to final Judgment between the said parties, according to law, the Petition in Error herein and heretofore filed, to the contrary, notwithstanding.

Witness my signature as Clerk of our said Circuit Court, and the seal thereof at Marysville, Ohio, this 6th day of October, A.D. 1906.

Charles Parrott, Clerk.
By Olive E. Penhorwood, Deputy.

(Seal)

Attest: Charles Parrott, Clerk,
By Hester McCrory, Deputy.

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorables Caleb A. Norris and Frank Taggart, Judges of said Court, for the February Term, A.D. 1907. Be it remembered that heretofore, towit, on the 23rd day of November, 1906, the following Transcript of Journal Entries was filed with the Clerk of said Court, towit:-

200 Transcript Journal Entries.

Dora Elliott, Plaintiff.
Vs.
George R. Williams, et al, Defendants.

In the Circuit Court of Union County, Ohio, November 23rd, 1906.

The following Entry was filed September 18th, 1905.

This day leave was granted defendant to file answer instanter, and the same was filed.

The following Entry was filed November 8th, 1905.

This day the Court grants leave to withdraw the answer and cross-petition of Charles L. Chapman.

The following Entry was filed January 8th, 1906.

This day leave was granted plaintiff to amend petition instanter, and the same was done accordingly.

The following Entry was filed January 15th, 1906.

This day this cause came on for hearing upon the motion of the plaintiff to require the defendant to make the answer filed herein more definite and certain, and was argued by counsel, and submitted to the Court; on consideration whereof the Court overruled said motion, to which ruling and judgment of the Court the plaintiff by her counsel at the time excepted.

The following Entry was filed April 2nd, 1906.

This day this cause came on to be heard upon the motion of the Plaintiff filed herein January 8th, to require Defendants to make their answer more definite and certain, and to strike out certain portions thereof; and upon agreement of counsel in open Court, that the second defense of Defendants' answer not bring good under the reformed petition of the Plaintiff, it is hereby stricken from the files. The remaining part of motion to require Defendants to make their answer more definite and certain as argued by counsel and submitted to the Court for decision. Whereupon, the Court doth find that part of the said motion requiring the Defendants to make their answer more definite and certain not to be well taken and doth accordingly overrule said part of said motion. To which decision of the Court, Plaintiff by her Counsel excepts.

The following Entry was filed October 18th, 1906.

This day this cause came on to be heard upon the petition of the plaintiff, the answer of the defendants, George R. Williams, and Elizabeth Williams, and the answer of the defendants, Madison Williams, Ola Williams, Louisa Williams, John Elliott, Laurence Williams, Mollie Williams, Chester M. Williams, Margaret Williams, Letitie E. Fulton, Albert M. Fulton, Victoria Gregg, and Benjamin Gregg, and the testimony adduced by the parties respectively, and was argued by Counsel, On consideration whereof, and the Court being fully

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advised in the premises, doth find that said conveyance of said real estate, as set forth, and described in the petition was made by the said Henry Williams to said George R. Williams, in order to create a trust in said real estate, with said George R. Williams as the trustee thereof; and the Court doth further find that said trust according to the terms and conditions thereof was to terminate at the death of said Henry Williams, and that upon said event, said real estate was to be divided amongst all the children and heirs of said Henry Williams; and the Court doth further find that said conveyance was accepted by said George R. Williams, under the trust agreement aforesaid, and that he holds said real estate solely as a trustee aforesaid.

And the Court doth also further find that there is due the plaintiff, Dora Elliott, together with the defendants, (according to their respective rights), Ola Williams, Madison Williams, Laurence Williams, Chester M. Williams, Letitie E. Fulton, and Victoria Gregg, from the defendant, George R. Williams, the sum of Five hundred dollars as rent of said premises for the years 1905 and 1906.

Therefore, it is ordered and adjudged by the Court that said conveyance from said Henry Williams to said George R. Williams be and the same is hereby set aside as against the heirs of said Henry Williams, and that said trust be and the same is hereby terminated, and the rights and equities of the respective parties as set forth in the petition be and the same hereby are confirmed.

The Court doth also further find that all and every one of said defendants have been duly notified of the pendency and demand of said action against them as required by law, and that said plaintiff hath a legal right and estate in the premises described in the petition and as therein set forth, and no sufficient reason appearing why partition should not be made, as prayed for in said petition, it is ordered by the Court, on motion of J. W. Willis, attorney for said plaintiff, that by the oaths of judicious, disinterested freeholders of the vicinity, upon actual view of the premises, partition be made of said lands in the following proportions, to-wit:

To the said Dora Elliott, the plaintiff, one equal fifth part thereof; and to the said Ola Williams, Madison Williams and George R. Williams, each the one fifth part thereof; and to the said Laurence Williams, Chester M. Williams, Letitie E. Fulton and Victoria Gregg, each the one twentieth part thereof; if the same can be done without manifest injury to the value thereof, and if not, that said premises be appraised at the true value thereof in money.

And it is also further ordered by the Court that the interest of said George R. Williams in said real estate, be and the same is hereby charged with the payment of said sum of five hundred dollars as found to be due said Dora Elliott, Madison Williams, Ola Williams, Laurence Williams, Chester M. Williams, Letitie E. Fulton, and Victoria Gregg, from the said George R. Williams, and judgment is hereby rendered accordingly.

And no order or judgment is made or rendered as to the costs herein made and incurred pending the disposition of the partition

proceedings herein.

And thereupon the Defendant, George R. Williams, gave notice of appeal and asked the Court to fix the amount of the undertaking for such appeal and it is accordingly ordered that such appeal be allowed upon the execution of an undertaking by said Defendant with sufficient surety to the satisfaction of the Clerk of the Court in the sum of Three Hundred Dollars, conditioned according to law.

200 Stipulation

On January 25th, 1907, the following Stipulation was filed.

Dora Elliott, Plaintiff.
vs.
George R. Williams, et al, Defendants.

In the Circuit Court of Union County, Ohio, January 25th, 1907.

It is hereby agreed between the Plaintiff, Dora Elliott, the defendants, Louisa M. Williams, Madison Williams, Oba Williams, John Elliott, Laurence Williams, Mollie Williams, Chester M. Williams, Margaret Williams, Lettie E. Fulton, Albert M. Fulton, Victoria Gregg and Benjamin Gregg, and the Defendants, George R. Williams, and Elizabeth Williams, that upon the trial of this cause when the same shall be tried in this Court that it may be tried and submitted upon the transcript of the testimony taken upon the trial thereof in the Court of Common Pleas of said County, and reserving to each party the right to object to any portion of said testimony in the same manner as might be done at the trial thereof for incompetency.

J. H. Willis,
Attorney for the Plaintiff.

and for the defendants, Louisa M. Williams, Madison Williams, Oba Williams, John Elliott, Laurence Williams, Mollie Williams, Chester M. Williams, Margaret Williams, Lettie E. Fulton, Albert M. Fulton, Victoria Gregg, and Benjamin Gregg.

Louis D. Johnson,
J. R. Williams,
Attorneys for Defendants George R. Williams & Elizabeth Williams.

200 Entry.

On February 13th, 1907, the following Entry was filed.

Dora Elliott, Plaintiff.
vs.
George R. Williams, et al. Defendants.

In the Circuit Court of Union County, Ohio. February 13th, 1907.

This day this cause came on to be heard upon the pleadings and exhibits and evidence introduced by the parties and was argued by Counsel and submitted to the Court for decision.

Whereupon the Court finds upon the issues joined in favor of Defendant, George R. Williams, and against the Plaintiff, and finds that the deed executed and delivered by Henry Williams to George R. Williams set up and referred to in the petition, conveyed the title to the premises described in the petition absolutely and in fee simple as averred by said Defendant in his Answer and not in trust for Plaintiff or any of the other children of Henry Williams, as averred in the petition.

It is accordingly considered by the Court and is ordered,

adjudged and decreed that the said Petition be dismissed and that Defendant, George R. Williams recover of Plaintiff, Dora Elliott, his costs herein expended, taxed at the sum of Dollars. To which finding and decision of the Court, Plaintiff by her counsel excepts, and asks time to reduce said exceptions to writing which is accordingly allowed and Plaintiff is given twenty days to reduce her said exceptions to writing and to present a Bill of Exceptions to the Court for allowance and signature. And this case is remanded to the Court of Common Pleas for execution in accordance with the above judgment and decree.

Attest: Charles Parrott, Clerk.
By Hester McCroy, Deputy.

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorables Caleb H. Norris and Frank Taggert, Judges of said Court, for the February Term A.D. 1907,
Be it remembered that heretofore to-wit on the 31st day of August A.D. 1906, the following Petition in Error was filed with the Clerk of said Circuit Court.

C. C. 20, 199

8433 Entry

In the Circuit Court, of Union County, Ohio.
F. O. Penney - Plaintiff in Error.
Vs
Clarence M. Sanders et al, - Defendants in Error.

8433 Entry

Petition in Error.

Plaintiff in Error says, that at the April Term of the Common Pleas Court, of Union County, Ohio, defendants in Error recovered a judgment by the consideration of said court against plaintiff in error in an action then pending therein, wherein Plaintiff in error was plaintiff and defendants in error were defendants, a transcript of the docket and journal entries whereof is filed herewith.
There is error in the said record and proceedings in this to-wit:
1st. Upon the facts found by the court, said Court erred upon its findings of the law.
2. Upon the facts found by the court said court erred in rendering judgment for the defendants in error, when it should have been rendered for the plaintiff in Error.
Plaintiff in error therefore prays that said judgment may be reversed and that he may be restored to all things he has lost by reason thereof and for such other relief as is just and equitable.

F. O. Penney,
By Hoopes and Robinson his attorneys.

8433 Entry

Waiver

The issuing and service of summons in the above cause is hereby waived and the appearance of the defendants is hereby entered.

J. L. Cameron,
Attorney for Defendants.

On Oct. 3rd-1906 the following entry was filed,

Transcript of Journal Entries Filed August 31st 06.

Court of Common Pleas, Union County, Ohio.
F. O. Penney
Vs
Clarence M. Sanders et al.
This day this cause came on for hearing upon the demurrers of the defendants to the petition filed herein, and was argued by counsel, and submitted to the Court; on consideration whereof, the Court sustains said demurrer, to which ruling and judgment of the Court, the plaintiff by his counsel then and there excepted: and the Court grants leave to plaintiff to amend petition in 30 days.

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On November 8th 1905, The following entry was filed.
Court of Common Pleas, Union County, Ohio.
F. O. Penney
Vs
Clarence M. Sanders et al,

8433 Entry

This day leave was granted defendants to plead herein in 30 days, and cause continued.

On January 22d 1906, The following entry was filed.
Court of Common Pleas, Union County, Ohio.

8433 Entry

F. O. Penney
Vs.
Clarence M. Sanders et al.
This day leave was granted plaintiff to file amended petition in 20 days; and cause was continued at plaintiff's costs for the term.

On May 1st 1906, The following entry was filed.
Court of Common Pleas, Union County, Ohio.
F. O. Penney
Vs

8433 Entry

Clarence M. Sanders et al.
This day on motion of the plaintiff, the Court grants leave to file Reply in this case, and the same is filed.

On June 20th 1907, The following Entry was filed.
Court of Common Pleas, Union County, Ohio.
F. O. Penny
Vs
Clarence M. Sanders.
This day came the parties and submitted this cause to the Court upon the pleadings and the evidence, and on consideration whereof the Court being fully advised in the premises finds.
1st: That from the 11th, of November, 1904 to the 6th day of December 1904, one George A. Baker was carrying on what is termed a "bucket shop" in the property mentioned, under the style of, The George A. Baker Company.
2d: That during all that time, and until the 25th of May 1905 John M. Sanders, Percy H. Sanders, and Jesse S. Kagay were the owners of the property in which said business, and of which they had Knowledge, was being carried on.
3d: That George A Baker was not the tenant of the then owners but had subleased the room from Carl Algover, the tenant.
4th: That on the 3d day of May 1906 the plaintiff recovered a judgment against said George A. Baker for the sum of $776.25 for money by him lost in said bucket shop venture, carried on by Baker.
5th: That this action was begun on the first day of July 1905 and that prior thereto, to-wit on the 25th day of May 1905 the defendants Clarence M. Sanders and James H. Sanders.

purchased said real estate for value without knowledge of plaintiff's claim of a lien thereon.

From the foregoing facts the Court decides as matter of law that the said premises having been sold and conveyed to innocent purchasers before this action was brought they are not subjected to the lien claimed by the plaintiff, and that the judgment in favor of the plaintiff, against said George A. Baker was not such a lien upon the said premises as could be enforced against the said Clarence M. Sanders and James H. Sanders, they having purchased before this action was brought.

8233 Entry

Wherefore it is adjudged and decreed by the Court that this action be and the same is dismissed at the costs of the Plaintiff. And that the defendants recover of the plaintiff their costs herein expended and that plaintiff pay his own costs and execution is awarded therefor.

To all of which findings and judgment of the Court, the Plaintiff by his counsel then and there excepted.

Plaintiff gave notice of his intention to appeal this cause to the Circuit Court and the Court fix the bond for appeal at $100.00.

On December 29th 1906, The following entry was filed.

199. Entry

In the Circuit Court of Union County, Ohio.
F.O. Penney, Plaintiff in Error
Vs
Clarence M. Sanders et alo - Defendants in Error.
Continued for entry by agreement of parties.

On February 13th 1907, The following entry was filed.

199 Entry

In the Circuit Court of Union County, Ohio.
F.O. Penney - Plaintiff in Error.
Vs.
Clarence M. Sanders et al - defendants in error.

It appearing to the court that since the commencement of this action the plaintiff in error, F.O. Penney, has become insane and that Sarah S. Penney has been appointed and has qualified as the Guardian of his estate, it is ordered that this action be prosecuted in his behalf in the name of said Sarah S. Penney as guardian of the estate of said Frank O. Penney, a lunatic.

On February 13th 1907 The following entry was filed.

199 Entry

In the Circuit Court of Union County, Ohio.
Sarah S. Penney as guardian of the Estate of F.O. Penney, a lunatic — Plaintiff in error.
Vs.
Clarence M. Sanders et al. — defendants in error.

This cause came on for hearing upon the petition in error, the transcript, and the original papers and pleadings from the Court of Common Pleas of Union County, Ohio, and was argued by counsel; and, on consideration thereof the court find that there is error apparent upon the record in the proceedings of said court, to the prejudice of the plaintiff in error, in this, to-wit; said court having found as a matter of fact.

1st. That from the 11th of November, 1904, to the 6th day of December, 1904, one George A. Baker was carrying on what is termed a "bucket shop" in the property mentioned, under the style of, the George A. Baker Company.

2d. That during all that time, and until the 25th of May, 1905, John M. Sanders, Percy H. Sanders and Jesse S. Kagay were the owners of the property in which said business, and of which they had knowledge, was being carried on.

3d. That George A. Baker was not the tenant of the then owners, but had subleased the room from Carl Algower, the tenant.

4th. That on the 3d day of May, 1905, the plaintiff recovered a judgment against said George A. Baker for the sum of $776.25, for money by him lost in said bucket shop venture.

5th. That this action was begun on the first day of July, 1905, and that prior thereto, to-wit; on the 25th day of May, the defendants Clarence M. Sanders and James H. Sanders purchased said real estate for value without knowledge of plaintiff's claim of a lien thereon., found as a matter of law that said premises having been sold and conveyed to innocent purchasers before this action was brought they are not subject to the lien claimed by the plaintiff, and that the judgment in favor of plaintiff against said George A. Baker was not such a lien upon the said premises as could be enforced against the said Clarence M. Sanders, and James H. Sanders, they having purchased before this action was brought, which said finding as to the law was error. And said court erred in dismissing said action and rendering judgment against the said T. O. Penney for costs.

It is therefore considered and adjudged by this court that the judgment rendered by said court of common pleas be and the same hereby is reversed and held for naught. And the court further proceeding to render such judgment as the said court of Common Pleas ought to have rendered, find, from the finding of facts of said court of common pleas, that the judgment which the said T. O. Penney recovered against the said George A. Baker, in said Court of Common Pleas, on the 3 day of May, 1905, for the sum of $776.25 with interest from the 6th day of December 1904, and $_____ costs, was a valid and subsisting lien on the premises described in plaintiff's second amended petition, in said Court of Common Pleas, at the time said premises were purchased by the said Clarence M. Sanders, and James H. Sanders, to wit; on the 25th day of May, 1905, and is still a valid and subsisting lien on said premises

in favor of the plaintiff in error to the amount of said judgment, interests and costs, superior to any interest therein which the said Clarence M. Sanders and James H. Sanders may have acquired by reason of said conveyance.

It is therefore adjudged and decreed that unless the defendants in error Clarence M. Sanders and James H. Sanders, shall within five days from the entry of this decree, pay, or cause to be paid, to the clerk of this court the costs of this case, and to the plaintiff in error herein the sum so found due as aforesaid to wit; the sum of $776.25 with interest from the 6th day of December, 1904, and $____ costs, that said premises be sold, and that an order of sale issue therefor to the Sheriff of Union County, Ohio, directing him to appraise, advertise, and sell said premises as upon execution, and report his proceedings thereunder to the court of common pleas of said county for further order.

It is further ordered that a special mandate be sent to said common pleas court for the execution of this judgment and decree.

To all of which findings, ruling, orders and decree of this court the said defendants in error then and there excepted.

Attest Charles Parrott,
Clerk of Circuit Court,

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Petition in Error.

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Pleas continued and held at the Court House in Marysville, within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorables Silas E. Hurin and Michael Donnelly, Judges of said Court for the February Term A. D. 1908. Be it remembered that heretofore, viz: on the 26th. day of December, 1907, the following Petition in Error was filed with the Clerk of said Circuit Court, to-wit:

205
Petition in Error.

The Barber Asphalt Paving Company,
Vs.
The Village of Marysville.

Circuit Court, Union County, Ohio.
December 26th, 1907.

Plaintiff in Error says that at the September term, 1907, of the Court of Common Pleas of Union County, Ohio, a judgment was rendered by said court in an action then pending therein where plaintiff in error was plaintiff and defendant in error was defendant, a transcript of the docket and journal entry whereof, with the original papers, is filed herewith.

There is error in the said record and proceedings in this, to-wit:

First, said court erred in over-ruling the demurrer of plaintiff to the answer of defendant.

Second, that the court erred in overruling the motion of plaintiff for leave to file an amended petition.

Third, the court erred in the construction put by it upon the contract between the plaintiff and defendant in finding that by the proper construction of said contract the defendant village was not liable for the sum of Eight Hundred and Nineteen Dollars ($819.00) for excavation, "for the reason that according to the terms of the contract all excavation necessary was included in the total charge of $1.75 per square yard for Concrete Pitch Lake Sheet Asphalt Pavement, as by virtue of said contract in words and figures set forth as follows, to-wit: "for completed Trinidad Pitch Lake Sheet Asphalt Pavement per square yard, including all excavation necessary for the same, with Portland cement concrete foundation - material 90 cents per square yard; labor 85 cents per square yard; total $1.75 per square yard."

Fourth, the court erred in finding that at the time it entered judgment there was due the plaintiff the sum only of Seven Thousand One Hundred and Thirty-seven Dollars and Eighty-five cents ($7137.85) with six (6) per cent interest per annum from said date, whereas the court should have found that there was due the plaintiff at the time it entered said judgment the sum of Seven Thousand Nine Hundred and Fifty-six Dollars and Eighty-five cents ($7956.85) with interest at six (6) per cent. per annum from the date of said judgment.

Fifth, other errors apparent upon the face of the record.

Plaintiff in Error therefore prays that said judgment may be reversed as to the matters complained of in this petition in error and that it be restored to all things it has lost by reason thereof.

D. J. Mauck & D. B. Sharp.
Attorneys for Plaintiff in Error.

205
Waiver.

On December 26th, 1907, the following Waiver was filed:-

The Barber Asphalt Paving Company,
Vs.
The Village of Marysville.

Circuit Court, Union County, Ohio.
December 26th, 1907.

The defendant in error hereby waives the issuing and service of summons in error and enters its appearance herein.

8098
Transcript of Journal Entries.

The Village of Marysville,
By J. W. Kilbrade, its atty.

On December 26th. 1907. the following Transcript of Journal Entries was filed:-

Circuit Court, Union County, Ohio.
December 26th. 1907.

The Barber Asphalt Paving Company,
Vs.
The Village of Marysville,

On January 23rd 1907. the following Entry was filed:

On this 23" day of January, 1907. this cause was submitted to the Court upon the demurrer of Plaintiff to the answer of Defendant and upon consideration thereof, the Court overrules said demurrer, to which overruling the Plaintiff by its atty. excepted.

On May 4th. 1907. the following Entry was filed:-

This cause being heard on the motion of the Plaintiff for leave to file an amended petition, the Court, on consideration over-rules the same, to which ruling the plaintiff, by its attorneys, excepted.

On September 23rd. 1907. the following Entry was filed.

This cause coming on this day for hearing, the Court having heretofore found for the defendant upon demurrer to answer and upon motion, and neither party desiring to plead further this cause was submitted to the Court upon the pleadings and the evidence, and on consideration thereof, the Court finds upon the issues joined for the defendant.

The Court coming to put construction upon the contract between the Plaintiff and defendant finds that the proper construction of said contract that the defendant village is not liable for the sum of $819.00 for excavation, for the reason that according to the terms of the contract all excavation necessary was included in the total charge of $1.75 per square yard for completed Pitch Lake Sheet Asphalt pavement as by virtue of said contract in the words and figures set forth, as follows, towit:- "For completed Trinidad Pitch Lake Sheet Asphalt pavement, per square yard, including all excavation necessary for the same, with Portland cement, concrete foundation, material 90¢ per square yard, labor 85¢ per square yard, total $1.75 per square yard."

The Court therefor finds that there is due to the Plaintiff from the defendant as admitted in defendants answer the sum of $7,930.95, of which sum the defendant by the terms of said contract is entitled to hold and retain 10% thereof under a certain clause of said contract as guaranty for repairs &c.

That the Plaintiff is now entitled to recover from the said defendant village the said sum of $7,930.95, less said 10% to be retained under the terms of said contract, towit, the sum of $7,137.85, for which said sum of $7,137.85, the Court awards judgment with interest at 6% per annum from this date. The Court finds that defendant should not be charged with interest prior to this date because of laches of Plaintiff herein. It is further ordered by the Court that the Plaintiff pay the costs of this action taxed at $.

To all of which ruling the plaintiff by its attorney excepted.

205
Entry.

On February 12th. 1908. the following Entry was filed:

Circuit Court, Union County, Ohio
February 12th. 1908.

The Barber Asphalt Paving Company,
Vs.
The Village of Marysville.

This cause came on for hearing upon the petition in error, the Transcript and the original papers and pleadings from the Common Pleas Court of Union County, Ohio, and was argued by counsel and in consideration thereof the Court find that there is error apparent upon the record in the proceedings of said Court to the prejudice of the plaintiff in error in overruling motion and in refusing leave to file amended petition.

It is therefore considered by this Court that the judgment rendered by said Court below be reversed and held for naught, and that the Plaintiff in error recover from the defendant in error his costs herein expended taxed at $. It is further ordered that this cause be remanded to the Common Pleas Court for Union County, Ohio, for further proceedings according to law. To all of which ruling of the Circuit Court the defendant then and there excepted.

Attest: Charles Parrott, Clerk,
By Hester McCrory, Deputy.

2014 C.C. 8495 C.P. Transcript of Journal Entries.

Pleas continued and held at the Court House in Marysville, within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorables Silas E. Burin and Michael Donnelly, Judges of the said Court, for the February Term, A.D. 1908. Be it remembered that heretofore, towit, on the 7th. day of October, 1907, the following Petition in Error was filed with the Clerk of said Circuit Court, towit:-

2014 Petition in Error.

Malin Wright, Pl'ff in Error,
vs.
Rebecca Margaret Ogan, Def't in Error.

Circuit Court, Union County, Ohio,
October 7th. 1907.

Plaintiff in Error says that at the April Term of the Common Pleas Court of Union County, Ohio, the defendant in error recovered a judgment by the consideration of said Court, against plaintiff in error in an action then pending therein wherein plaintiff in error was defendant and defendant in error was plaintiff, a transcript of the docket and journal entries therein is filed herewith. There is error in said record and proceedings in this, towit:

First: Said Court erred in overruling the motion of plaintiff in error to set aside the verdict and for a new trial.

Second:- Said Court erred in its charge to the jury.

Third:- Said Court erred in the admission of evidence offered by the defendant in error and admitted over the objection of plaintiff in error in the trial of said cause.

Fourth:- Said Court erred in refusing to admit evidence offered by defendant in error in the trial of said cause.

Fifth: Said Court erred in permitting the defendant in error to open and close said cause both in the adducing of evidence and the argument of counsel to the jury.

Sixth:- Said Court erred in not permitting the plaintiff in error to open and close said cause both in the adducing of evidence and the argument of counsel to the jury.

Seventh:- Said Court erred in rendering judgment for the defendant in error when it should have been rendered for the plaintiff in error.

Eighth:- There is other error apparent upon an inspection of the record.

Plaintiff in error therefore prays that said judgment may be reversed and that he may be restored to all things he has lost by reason thereof.

Malin Wright
By Hoopes & Robinson, His Attorneys.

2014 Waiver.

On October 7th, 1907, the following Waiver was filed;

Malin Wright, Pl'ff in Error,
vs.
Rebecca Margaret Ogan, Def't in Error.

Circuit Court, Union County, Ohio,
October 7th, 1907.

The issuing of summons and service of same is hereby waived and the appearance of the defendant in error is hereby entered this 7th. day of October, 1907.

H. U. Spicer,
Attorney for Defendant in Error.

2074 C.C.
8495 C.P.
Transcript of Journal Entries.

On October 7th, 1907, the following Transcript of Journal Entries was filed:-

Court of Common Pleas,
Union County, Ohio.
No. 8495.

Rebecca Margarrt Ogan, Plaintiff.
vs.
Malin Wright, Defendant.

The following Entry was filed April 2nd, 1906,

Rebecca Margarrt Ogan.
vs.
Malin Wright.

Court of Common Pleas, Union County, Ohio.

This day the Court grants leave for defendant to answer in 10 days.

The following Entry was filed June 20th, 1906.

Rebecca Margaret Ogan,
vs.
Malin Wright.

Court of Common Pleas, Union County, Ohio.

This day this cause came on for hearing upon the demurrer of defendant to the petition filed herein, and was argued by counsel and submitted to the Court.

On consideration thereof, the Court sustains said demurrer, to which ruling and judgment of the Court the plaintiff by her counsel excepts. And the Court grants leave for the plaintiff to amend petition by interlineation, which is accordingly done; and on motion the defendant has leave to answer herein by August 1st, 1906.

The following Entry was filed September 10th, 1906.

Rebecca Margarrt Ogan, Plaintiff.
vs.
Malin Wright, Defendant.

Court of Common Pleas, Union County, Ohio.

This day leave is granted defendant to file answer and the same is filed instanter.

Rebecca Margaret Ogan, Plaintiff.
vs.
Malin Wright, Defendant.

Court of Common Pleas, Union County, Ohio.

The following Entry was filed September 24th, 1906.

This day the motion of plaintiff to make the answer of the defendant more definite and certain came on to be heard this day on argument of counsel, and after due deliberation of the Court, the Court sustains the motion and gives the defendant 20 days in which to amend by interlineation the defects thereof.

The following Entry was filed April 2nd, 1907.

Rebecca Margarrt Ogan, Plaintiff.
vs.
Malin Wright, Defendant.

Court of Common Pleas, Union County, Ohio.

This day came the parties herein by their attorneys; also came the following named persons as Jurors; C.C. Taggart, Fred Lockley, Lafe Thompson, J.P. Evans, L.D. Scott, Charles Diehl, L. W. McAllister, Cyrus Coons, Frank Huffman, J.E. Horner, L.L. McAllister and George A. Rausch, who were duly impaneled and sworn according to law; and thereupon the case came on for hearing on the pleadings and evidence and after hearing the evidence, argument and charge of the Court, the Jury retired to their room in charge of the sheriff for deliberation.

the Jury retired to their room, in charge of the sheriff, for deliberation.

And now comes said Jury into open Court with their verdict in writing, signed by their foreman, and say. "We, the Jury, being duly impanneled and sworn and affirmed, find the issues in this case in favor of the plaintiff, and assess the amount due the Plaintiff from the Defendant at the sum of Three Hundred and Forty Five + 64/100 dollars. ($345.64).

Dated April 2nd. 1907. (Signed) L. W. McAllister, Foreman.

The following Entry was filed June 8th, 1907.

Rebecca Margaret Ogan, Plaintiff.

Vs.

Malin Wright, Defendant.

Court of Common Pleas, Union County, Ohio.

Entry.

This cause now coming on for hearing on the motion of the defendant for a new trial, the Court, on consideration overrules the same.

It is therefore considered by the Court that the said plaintiff, Rebecca Margaret Ogan, recover from the said defendant, Malin Wright, the sum of Three Hundred and Forty Five, and 64/100 dollars, as heretofore found due her, by a duly impanneled Jury, April 2nd, 1907, and interest since paid date at 7%, together with her costs herein expended, to all of which the defendant excepted at the time.

204 Entry.

On February 12th, 1908, the following Entry was filed:-

Malin Wright, Plaintiff in Error,

Vs.

Rebecca Margaret Ogan, Defendant in Error.

Circuit Court, Union County, Ohio.

February 12th, 1908.

This cause came on for hearing upon the petition in error, the transcript and the original papers and pleadings from the Court of Common Pleas of Union County, and was argued by counsel, on consideration whereof, the court find there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the court that the judgment aforesaid be, and the same hereby is, confirmed; and that the defendant in error recover from plaintiff in error said judgment and costs; and costs herein expended, taxed at $.

It is further ordered that a special mandate be sent to the Common Pleas Court of Union County for execution upon this judgment. To all of which the plaintiff in error excepted at the time.

Attest: Charles Parrott, Clerk.

By Hester McBroom, Deputy.

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Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorables Caleb N. Norris, Silas E. Curtis and Richard Donnelly, Judges of the said Circuit Court, for the October Term, A. D. 1907. Be it remembered that heretofore, towit, on the 31st. day of July, A.D. 1907, the following Petition in Error was filed with the clerk of said Circuit Court, towit:

202. Petition in Error.

William Stahl, Plaintiff in Error,

Vs.

A. F. Bixler, Defendant in Error.

Circuit Court, Union County, Ohio.
July 31st. 1907.

William Stahl, plaintiff in error, says that at the April Term of the Court of Common Pleas, A.D. 1907, for said County of Union, said A. F. Bixler, defendant in error, recovered a judgment, by the consideration of said court, against him, in an action then pending in said court, wherein William Stahl was plaintiff in error, and A. F. Bixler was defendant in error, a copy of the record of the judgment and proceedings in which case together with the original papers is filed herewith.

Said William Stahl, avers that there is error in said record and proceedings, in this, towit:

1. Said court erred in retaining said cause for trial and judgment, as in case of appeal, after having reversed the record judgment of the justice of the peace.

2. Said court erred in not remanding said cause back to the justice of the peace court for execution after he had reversed the record judgment of the justice of the peace.

Plaintiff in error therefore prays that that part of the judgment of the court below which retains said cause for trial and judgment, as in case of appeal, may be reversed and that he may be restored to all things he has lost by reason thereof.

William Stahl
By Hoopes & Robinson, Attorneys for
Plaintiff in error.

202 Waiver

On July 31st. 1907, the following Waiver was filed:

William Stahl,

Vs.

A. F. Bixler,

Circuit Court, Union County, Ohio
July 31st. 1907.

Service of a summons in the above entitled case is hereby waived and the appearance of the defendant in error is hereby entered in said cause.

McCrory & Cameron,
Attorneys for the defendant in error.

202 C.C. 8606 C.C.

On July 31st. 1907, the following Transcript of Journal Entries was filed:

On January 23, 1907, the following Entry was filed:-

Court of Common Pleas, Union County, Ohio.

William Stahl, Plaintiff in Error

Vs.

A. F. Bixler, Defendant in Error.

Entry.

On application of the plaintiff in error herein, it is hereby ordered that execution of the judgment of the Justice of the Peace Court of N. M. Hubbard, of York Township, Union County, Ohio, for the reversal of which the petition in this case was filed, be stayed until the final hearing of the cause in this court, upon

plaintiff in error giving bond to A. J. Bixler, defendant in error, in the sum of fifty dollars, to the effect that the plaintiff in error will pay the condemnation money and costs, if the said judgment be affirmed in whole or in part, with sureties to the approval of the clerk of this court.

On may 2nd. 1907, the following Entry was filed:-

This cause came on for hearing upon the petition in error and the transcript of the proceedings and judgment of N. M. Hubbard, a justice of the peace of this said county; on consideration whereof, the court find that there is error in said proceedings and judgment, in this said justice of the peace, after having rendered a judgment in said cause on the 10th. day of January 1907, on the 14th. day of January, 1907, reversed said judgment on his own motion and rendered a different judgment, said judgment is therefore reversed at the cost up to the present time of the defendant in error; and execution is awarded therefor.

It is further ordred that this cause be retained for trial, and judgment as in case of appeal.

To all of which the defendant in error excepted at the time, and to the retaining of said cause for trial and judgment, as in case of appeal, the plaintiff in error excepted at the time.

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before Honorable Caleb F. Norris, and Silas E. Hurin, Judges of the said Circuit Court, for the September Term, A.D. 1908, Be it remembered that heretofore to-wit on the 26th day of August 1908, the following Petition in Error was filed with the Clerk of said Circuit Court to-wit:

The State of Ohio exrel
M. F. Leonard.
vs.
The Village of Richwood and
J. L. Horn D. E. Ogan, L. G. Peet,
Edward McCombs, V. F. Hurtsbaugh
and L. L. Roebuck as councilmen
of said village, C. S. Norris as
Mayor of said village, and Ray
L. Jordan as Clerk of said village.

In the Circuit Court of Union County, Ohio.

Petition in Error 209.

Plaintiff in error says that at the April Term, 1908, of the Common Pleas Court of Union County, Ohio, said defendants in error, recovered a judgment, by the consideration of said court, against said plaintiff in error, in an action then pending in said court, wherein said plaintiff in error was plaintiff and said defendants in error were defendants, A copy of the record of the judgment and proceedings, the docket and journal Entries and the original papers are filed herewith. Said Plaintiff in error avers that there is error in said record and proceedings in this to-wit:

1st. That said Court erred in sustaining the demurrer of the Plaintiff in error to the answer of the defendants in error as a demurrer to the petition,

2. That said Court Erred in not sustaining said demurrer to said answer.

3. That said judgment was given for the defendants in error when it should have been given for the plaintiff in error.

Plaintiff in error therefore prays that said judgment may be reversed, and that he be restored to all things lost by reason thereof.

M. F. Leonard
By Hoopes & Robinson his Attorneys.

Entry 8762.

The issuing and service of a summons in the foregoing cause is hereby waived and the appearance of the defendants in error is hereby waived.

John H. Kinkade, H. O. Spicer, A. C. Eggert & Hughes Attorneys for the Village of Richwood, and J. L. Horn, D. E. Ogan, L. G. Peet, Edward McCombs V. F. Hurtsbaugh and L. L. Roebuck as councilmen of said Village, C. S. Norris as Mayor of said Village, and Ray L. Jordan as Clerk of said Village. Defendants in Error.

Waiver 209.

Entry 8762

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On August 26th 1908, The following Transcript of Journal Entries was filed.

On May 6th 1908, The following entry was filed.

The State of Ohio, ex rel. M. T. Leonard.
Vs.
The Village of Richwood, and J. L. Horn, D. E. Ogan, L. G. Peet, Edward McCombs, T. F. Hurtsbaugh and L. L. Roebuck as Councilmen of said Village, C. S. Norris as Mayor of said Village and Ray L. Jordan as Clerk of said Village,

Entry
8762.

} Court of Common Pleas, Union County, Ohio.

Now came the relator, and made application for the allowance of a writ of mandamus herein; and, on consideration thereof the Court allow an alternative writ to issue against all of said defendants, returnable to this Court on the 16th day of May, 1908, at 9 O'Clock, A. M.

And it is ordered that the said The Village of Richwood, and J. L. Horn, D. E. Ogan, L. G. Peet, Edward McCombs, T. F. Hurtsbaugh and L. L. Roebuck as councilmen of said village, and C. S. Norris as Mayor of said village, and Ray L. Jordan as Clerk of said Village, do immediately upon the service of this writ accept the bond filed by the said M. T. Leonard and the Bankers Surety Co. on the 4th day of May, 1908, with said defendants and sign and execute the contract filed by said M. T. Leonard with them on the 4th day of May, 1908, both pertaining to the improvement of Franklin Street in said village as described in plaintiff's petition, or prepare and execute another contract to said M. T. Leonard in pursuance to the ordinances plans and specifications and bids, of said M. T. Leonard pertaining to said improvement; or that at the time and place of the return of this writ they show cause why they have not done so.

On June 6th 1908, The following Entry was filed.

The State of Ohio ex rel
M. T. Leonard,
Vs.
The Village of Richwood, Ohio, et als.

Entry
8762

} In the Court of Common Pleas, Union County, Ohio.

This case being heard on the general Demurrer, filed by the relator the same being taken by the counsel in argument, and by the Court on consideration as a general demurrer to the petition on the grounds that a general demurrer searched the records, the Court sustains the same as a demurrer to the petition and dismisses the relators petition, as mandamus would not lie to compel the award of the contract where the Council had the exercise

of discretion, as long as the contract itself was not executed.
That the relator had no vested rights and that it was within the province of the council to rescind the resolution awarding the contract to the relator. It is therefore ordered and decreed by the Court that the petition be dismissed and that the relator shall pay the costs herein expended, taxed at.
That the respondents go hence without day.
To all of which rulings, decrees and orders of the Court the relator then and there excepted and gave notice of appeal from the finding and judgment of the Court and the bond of appeal was thereupon fixed at $300.00.

On September 29th, 1908. The following Entry was filed.

The State of Ohio, Union County, ss.

W. F. Leonard,
vs.
The Village of Richwood et al,
} In the Circuit Court of Union County, Ohio.

This cause came on for hearing upon the petition in error, the transcript, the original papers and pleadings from the Court of Common Pleas, Union County, Ohio, and was argued by counsel; on consideration whereof the Court find that there is no error apparent on the record in said proceedings and judgment.
It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is, affirmed. and that the Defendant in Error recover from the Plaintiff in Error his costs herein expended taxed at $
It is further ordered that a special mandate be sent to the Common Pleas Court of Union County, Ohio, for execution upon this judgment.
To all of which finding and judgment plaintiff in error except at the time.

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Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of Ohio, before the Honorable Caleb F. Norris and Silas Hurin, Judges of the said Circuit Court for the September Term A.D. 1908, Be it remembered that heretofore to-wit on the 1st day of September, A.D. 1908, the following Petition in Error was filed with the Clerk of said Circuit Court.

Milo L. Myers as Trustee of the estate in Bankruptcy of William H. Weaver, Plaintiff in Error

Vs.

The John Church Company, Defendants in Error

} In the Circuit Court of Union County, Ohio.

210

The Plaintiff in error says, that at the April Term A.D. 1908, of the Court of Common Pleas of Union County, Ohio, defendant in error recovered a judgment by the consideration of said Court against Plaintiff in error in an action then pending therein, wherein defendant in error was plaintiff and plaintiff in error was defendant; a transcript of the Docket and Journal Entries is filed herewith together with the original pleadings and papers.

There is error in said record and proceeding in this to wit:

1st. Said Court erred in overruling the motion of plaintiff in error for a new trial.

2d. The finding and judgment of the said court of common Pleas was not sustained by the evidence, but was against and contrary to the evidence.

3d. The judgment and decision of the said court of common pleas is against and contrary to law.

4th. There was error of law occurring at the trial of said cause.

5th. The decision and judgment was given in favor of the John Church Company, when it should have been given in favor of the said Milo L. Myers as Trustee of the estate in Bankruptcy of William H. Weaver.

6th. There are other errors apparent upon the face of the record.

Plaintiff in error therefore prays that the said judgment may be reversed and that he may be restored to all things he has lost by reason thereof.

McCrory and Cameron and J.H. Kinkade.
Attorneys for plaintiff in error.

On September 1st, 1908, the following Transcript of Journal Entries was filed.

On January 6th, 1908, the following entry was filed.

The John Church Co.
vs.
D. C. Bolenbaugh, as Sheriff of Union County, Ohio. } Court of Common Pleas, Union County Ohio.

Entry 8694

This day this cause came on to be heard on the motion of Milo L. Myers, as Trustee in Bankruptcy for the creditors of William W. Weaver, bankrupt, to be made a party defendant in the place of D. C. Bolenbaugh, sheriff in the above entitled action, and the Court being fully advised in the premises do find that said Milo L. Myers is the duly appointed and qualified Trustee for the creditors of said William W. Weaver, bankrupt, and as such is entitled to be substituted as defendant in place of said D. C. Bolenbaugh, Sheriff, and it is ordered by the Court that he be made the party defendant herein and that he be granted 3 days from the date hereof in which to file answer herein.

On May 2, 1908, the following Entry was filed.

Entry 8694

This cause having on a former day of this Court been submitted to the Court upon the pleadings and evidence, without the intervention of a jury, the same having been waived, and the Court having found on the issue joined for the plaintiff, and that at the commencement of this action the plaintiff was entitled to the possession of the goods and chattels described in the plaintiff's petition, and that the defendant unlawfully detained the same, and having assessed damages to the plaintiff by reason of the premises, at $1.00; and the defendant having filed a motion for a new trial, on consideration thereof the Court overrules said motion. It is therefore considered and adjudged by the Court, that at the commencement of this action the plaintiff was entitled to the possession of the goods and chattels described in the plaintiffs petition, and that the defendant unlawfully detained the same, and that the plaintiff recover from Milo L. Myers as trustee in bankruptcy of the estate of William Weaver, heretofore substituted for said D. C. Bolenbaugh, as defendant, the said sum of $1.00 together with its costs herein expended. To all of which findings, order and judgment of said Court, the said Milo L. Myers, as Trustee, aforesaid, by his attorneys excepted at the time.

Entry 210

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On September 29th 1908, the following Entry was filed.

In the Circuit Court of Union County, Ohio.

Nilo L. Myers, Trustee &c.
Plaintiff in Error.
Vs.
The John Church Co.
Defendant in Error

Entry
No. 210

This cause came on for hearing upon the petition in error, the Transcript and the original papers and pleadings from the Court of Common Pleas of Union County, Ohio, and was argued by Counsel; On consideration whereof, the Court find there is no error apparent upon the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is, affirmed; and that the defendant in error recover from the plaintiff in error its costs herein expended.

It is further ordered that a special mandate be sent to the Common Pleas Court of Union County, Ohio, for execution upon this judgment.

To which findings and judgment of the Circuit Court aforesaid the plaintiff in error excepts.

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Caleb F. Norris and Silas Ee. Huron, Judges of the said Circuit Court for the September Term, A.D. 1908. Be it remembered that heretofore, towit, on the 18th. day of January, 1908, the following Petition was filed with the Clerk of said Circuit Court, towit,

207 Petition.

The State of Ohio, on relation of Frank J. Ballinger, Prosecuting Attorney, Plaintiff.

vs.

Gilbert R. Hosier, Defendant.

In the Circuit Court
Union County, Ohio,
January 18th, 1908.

Now comes Frank J. Ballinger, Prosecuting Attorney in and for Union County, Ohio, and makes known to the court that the village of Milford Center, in Union Township in said County of Union, Ohio, is and for more than thirty years last past has been a duly incorporated village and having a duly organized municipal government, among the officers of which is, or should be, six village councilmen. That the defendant, Gilbert R. Hosier, is now and ever since the first day of January, A.D. 1908, has been unlawfully and illegally usurping and holding the office of councilman in and for said village. That the defendant has, since the first day of January A.D. 1908 been meeting with said village council and taking part in its deliberations and voting upon all measures that come before said council, and threatens to continue to usurp and hold said office for the term of two years from January 1st, A.D. 1908.

Your relator further informs the court that said defendant usurps and claims the right to hold said office of village councilman by reason of his having been elected to said office at the election held in said Village in November A.D. 1907; but your relator says that before and at the time of said November election A.D. 1907 and ever since said election the said defendant was and has been holding the office of Trustee of Union Township in said County of Union, Ohio. That said defendant for more than eight months last past has been a duly elected, qualified and acting trustee of said Township of Union, and that the defendant is still holding and enjoying said office of trustee of said Union Township, performing the duties and having the emoluments of said office. Your relator avers, that the said defendant having and holding said office of trustee, which is an elective office created by law, was not, and is not eligible to the office of councilman of said village, and could not be legally inducted into said office.

That by reason of the premises, the pretended election of said defendant to said office of village councilman, and his induction into said office was, and is, wholly illegal and void, and the said Gilbert R. Hosier has no right or title to said office of village councilman, but illegally usurps and holds the same.

Wherefore the relator prays the court that the said defendant be ousted from said office of village councilman for the said village of Milford Center, Ohio, and for all such other relief as the nature of the case may require.

Frank J. Ballinger,
Prosecuting Attorney.

J.N. Kinkade & J.L. Cameron of
Counsel for Relator.

207 Precipe.

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207 Precipe.

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The State of Ohio, Union County, ss.

Frank J. Ballinger, being first duly sworn says that the facts stated in his foregoing petition are true, as he verily believes.

Frank J. Ballinger.

Sworn to before me and signed in my presence this 18th. day of January, A.D. 1908.

(Seal) Charles Parrott,
Clerk of Circuit Court.

207 Precipe.

On January 18th, 1908, the following Precipe was filed:-

Circuit Court
Union County, Ohio,
January 18th, 1908.

The State of Ohio, on relation of Frank J. Ballinger, Prosecuting Attorney, Plaintiff,
vs.
Gilbert R. Hoover, Defendant.

To the Clerk of said Court:-

Issue Summons in the above entitled case, directed to Sheriff of Union County returnable according to law.

F. J. Ballinger,
J. H. Kilbade & J. L. Cameron,
Plaintiff's Attorney.

207 Summons.

On January 18th, 1908, the following Summons was issued:-

Circuit Court
Union County Ohio,
January 18th, 1908.

The State of Ohio, on relation of Frank J. Ballinger, Prosecuting Attorney, Plaintiff,
vs.
Gilbert R. Hoover, Defendant.

To the Sheriff of Union County, Greeting:-

You are commanded to notify Gilbert R. Hoover that he has been sued by The State of Ohio on relation of Frank J. Ballinger, Prosecuting Attorney, in the Circuit Court of Union County, and that unless he answer by the 15th. day of February, A.D. 1908, the petition of said Plaintiff against him filed in the Clerk's office of said Court, such petition will be taken as true, and judgment rendered accordingly.

You will make due return of this summons on the 27th. day of January, A.D. 1908.

Witness my hand and the seal of said Court, this 18th. day of January, A.D. 1908.

(Seal) Charles Parrott, Clerk.

Sheriff's Return.

The State of Ohio, Union County, ss.

Received this writ Jan. 20th A.D. 1908, at 9 o'clock A.M., and pursuant to its command, on Jan. 24th 1908, I served same by personally handing to the within named Gilbert R. Hoover a true and certified copy of this writ with all the endorsements thereon.

N.C. Bolenbaugh, Sheriff.

207
Entry.

On September 29th, 1908, the following Entry was filed:-

The State of Ohio, on relation of
Frank J. Ballinger, Prosecuting
Attorney, Plaintiff,
Vs.
Gilbert R. Houser, Defendant.

In the Circuit Court
Union County, Ohio,
September 29th, 1908.

This cause being heard on the petition of the plaintiff, the defendant being in default for answer or demurrer;

The Court, on consideration, find that the defendant before and at the time of the election in November, 1907, was and had been holding the office of Trustee of Union Township, Union County, Ohio, and that, by reason thereof, the election of said Houser to the office of Councilman of the Village of Milford Center, Ohio, at said time was void and of no effect and that the said defendant was guilty of intruding into the office of Councilman of the Village of Milford Center, Ohio, and of unlawfully holding and exercising the same.

It is therefore ordered, adjudged that the said Gilbert R. Houser be, and he hereby is, ousted and altogether excluded from said office and from all the franchises, privileges and emoluments thereof, and that the said relator, Plaintiff, recover from the said defendant his costs therein expended, taxed at $.

Attest: Charles Parrott, Clerk,
By Frater McCrory, Deputy.

206
Petition in Error.

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Plea continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Silas E. Kinney and Michael Donnelly, Judges of said Circuit Court, for the February Term, A.D. 1908.

Be it remembered that heretofore, towit, on the 27th. day of December, 1907, the following Petition in Error was filed with the clerk of said Court, towit:

206 Petition in Error.

In the Circuit Court,
Union County, Ohio.
December 27th. 1907.

Jamie Rockwell and Sarah A. Cornell, an insane person, by her Guardian, William Rockwell,
Plaintiffs in Error.
Vs.
William L. Blaney and A. Lee Surley, as Executors of the Last Will and Testament of Samuel Ryan, deceased; Abraham Rayfole; Protection Lodge No. 219, Independent Order of Odd Fellows of Jerome, Union County, Ohio; Urania Lodge No. 311, Free and Accepted Masons of Plain City, Ohio, and the Board of Education of Jerome Special School District,
Defendants in Error.

Plaintiffs in error say, that at the September Term, A.D. 1907, towit, on the twelfth day of October, A.D. 1907, of the Court of Common Pleas, of Union County, Ohio, the defendant in error received a judgment by the consideration of said court, against these plaintiffs in error, in an action then pending therein, towit, in Cause No. 8570, wherein these plaintiffs in error were plaintiffs, and these defendants in error were defendants, a transcript of all the docket and journal entries therein, together with all the original papers in the case, are filed herewith.

The said plaintiffs in error claim that there is manifest error prejudicial to them in the record and proceedings of the Common Pleas Court of said County, in this, towit:

First. Because said court erred in setting aside and vacating its order made April 23rd, 1907, substituting parties plaintiff, it appearing by proof that both of said plaintiffs had died since this action was commenced.

Second. Because the court erred, in striking from the files the amended-answer, filed May 14th, 1907, of said William C. Rockwell, Arthur V. Rockwell and Myrtle Leach, after the case had been revived, and amended answer filed by leave of the court.

Third. Because the court erred in overruling the motion and application, filed October 12th, 1907, by said William C. Rockwell, Arthur V. Rockwell and Myrtle Leach, for leave to be substituted as parties plaintiff.

Fourth. Because the court erred in sustaining the motion of the defendant, The Board of Education of Jerome Special School District, filed November 10th, 1906, to strike out parts of the petition.

Fifth. Because the court erred in sustaining the motion of defendants for leave to withdraw their answer from the files, as shown

by entry filed October 9th, 1907, and in Journal 21, page 68.

Sixth. Because the court erred in dismissing said action.

Seventh. Because of other errors manifest in said record and proceeding, to the prejudice of these plaintiffs in error.

Wherefore, the plaintiffs in error pray that the judgment and order of said court may be reversed, and that they may be restored to all things that they have lost by reason thereof.

T. E. Powell and E. W. Porter.
Attorneys for Plaintiffs in Error.

206 Waiver. On December 27th, 1907, the following Waiver was filed:-

Fannie E. Rockwell, et al,
Plaintiffs in Error,
Vs.
William L. Blaney, et al,
Defendants in Error.

In the Circuit Court,
Union County, Ohio;
December 27th, 1907.

The issuing and service of summons in error is hereby waived by the following Defendants in Error, to-wit: William L. Blaney, A. Lee Berley, as executors of Samuel Ryan, and the Board of Education of Jerome Special School District.

McCorry & Cameron, & J. L. Cameron,
Attorneys for above named Defts. in error.

206 Transcript of Journal Entries. On December 27th, 1907, the following Transcript of Journal Entries was filed:

On January 7th, 1907, the following Entry was filed:-

"Fannie E. Rockwell and Sarah A. Colwell, an insane person, by her Guardian, William Rockwell, Plaintiffs,

Vs.

William L. Blaney, and A. Lee Berley, as executors of the last will and testament of Samuel Ryan, deceased, Abraham Rapole, Protection Lodge 219 Independent Order of Odd Fellows of Jerome, Union County, Ohio, Urania Lodge 311 Free and Accepted Masons of Plain City, Ohio, and The Board of Education of Jerome Special School District, Defendants.

This day Plaintiff was required to give security for costs in 30 days.

Entry. On February 26th, 1907, the following Entry was filed:-

"This day this cause came on to be heard on the motion of the defendant, The Board of Education of Jerome Special School District, to strike out certain portions of the petition herein, and the Court being fully advised in the premises, finds that said matter is incompetent, irrelevant and incumbers the record, and that the same should be struck from said petition and this is ordered to be done and the plaintiffs are given 15 days from this date to file an amended petition herein.

Dated February 26th, 1907.

Entry. On April 13th, 1907, the following Entry was filed:-

"On motion by defendant, and it appearing to the court that plaintiffs are non-residents of this county and that the security for costs already given is not sufficient, it is ordered by the court that the plaintiffs make an additional deposit with the Clerk of $40. or file a security bond by

Friday, April

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Friday, April 19th. 1907.

Entry. On April 23rd, 1907, the following Entry was filed:-

"Now comes Thomas E. Powell, attorney for the plaintiffs in the above entitled action, and suggests to the Court that Sarah A. Conrill, one of the plaintiffs, died intestate on or about August the 10th, 1906, leaving the plaintiff, Fannie Rockwell, as her only heir at law and next of kin, and that on or about January the 28th, 1907, said Fannie Rockwell departed this life testate, leaving William C. Rockwell, Arthur G. Rockwell and Myrtle Leach as her only children and next of kin, and sole legatees and devisees of all her estate of every kind and nature under and by terms of her last will and testament, and said William C. Rockwell, Arthur G. Rockwell and Myrtle Leach now move the court for leave to become party plaintiffs to this action and to continue the same, and the court finding said suggestion to be true, grants said motion, and said William C. Rockwell, Arthur G. Rockwell and Myrtle Leach are accordingly made party plaintiffs in this action and the action proceeds.

Entry. On September 7th, 1907, the following Entry was filed:-

"This day this cause came on to be heard upon the motion of the Board of Education of Jerome Special School District, one of the defendants herein, to set aside an entry made at this term of court, in the above entitled cause, in Journal No. 20 and on page 562 under date of April 23rd. 1907.

And it appearing to the court that said entry was caused to be placed upon the said Journal without having been approved by the court or opposing counsel, and without proof that the parties named therein are the legatees and devisees of the original plaintiffs herein, and without proof that said original parties are dead; the court sustains said motion.

It is therefore considered and adjudged by the court that the said entry placed upon said Journal No. 20 on page 562, under the date of April 23rd, 1907, be, and the same is hereby set aside and annulled. And it is further ordered and adjudged that the application of said William C. Rockwell, Arthur G. Rockwell and Myrtle Leach to be made parties hereto, be, and the same is, continued.

Entry On October 9th, 1907, the following Entry was filed:-

"Answer of Defendants withdrawn by leave of the Court.

Entry. On October 12th, 1907, the following Entry was filed:-

"This day came William C. Rockwell, Arthur G. Rockwell, and Myrtle Leach and made their motion and application to this court for leave to be substituted as parties herein, it appearing that both said Fannie Rockwell and Sarah A. Conrill have died since this action was commenced. Said motion and application is refused by the court upon the grounds that it does not appear that either the said William C. Rockwell, Arthur G. Rockwell, or Myrtle Leach had any interest in the estate of said Samuel Ayau at the time said will was probated and that they are not proper parties hereto.

And it appearing to the court that both the said Fannie E. Rockwell and Sarah A. Cornell died since this action was brought, and there being no other person who was interested in said will or estate at the time said will was probated, who desired to contest said will, it is ordered by the court that this action be, and the same is, dismissed. To all of which rulings and decisions of the Court, the said William C. Rockwell, Arthur T. Rockwell, and Myrtle Leach, by their attorneys, except.

206 Entry.

On June 9th, 1908, the following entry was filed:-

Fannie Rockwell, et. al,
Plaintiffs in Error,
vs.
William L. Blaney, et. al.
Defendants in Error.

Circuit Court
Union County, Ohio,
June 9th, 1908.

This cause came on for hearing upon the petition in error, the transcript and the original papers and pleadings from the court of Common Pleas of Union County, and was argued by counsel; on consideration whereof, the court find that there is error therein apparent upon the record, to the prejudice of the plaintiffs in error, in this, court: that there is error in setting aside entry of substitution, and in striking the amended petition of plaintiffs from the files, and in dismissing the action.

It is therefore considered by the court that the judgment aforesaid be reversed and held for naught, and that the plaintiffs in error recover from the defendants in error their costs herein expended, taxed at $.

It is further ordered that this cause be remanded to the said Common Pleas Court of Union County for further proceedings; and that a special mandate be sent to the said court to carry this judgment into execution.

To all of which findings, orders, judgment and decree, the defendants in error, except.

Attest: Charles Parrott, Clerk,
By Hester McElroy, Deputy.

208 Petition in Error.

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Anna E. F
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Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Caleb F. Norris and Silas E. Kurtz, Judges of said Court, at the September Term, A.D. 1908.

Be it remembered that heretofore, towit, on the 18th day of April, 1908, the following Petition in Error was filed with the Clerk of said Court, towit:

208
Petition in Error.

In the Circuit Court,
Union County, Ohio.
April 18th, 1908.

Anna E. Smith and
Robert E. Robinson, Plaintiffs
in Error,
Vs.
Oscar Bodley and Charles Bodley
as Executors of the estate of Preston
N. Robinson, deceased; and Jennie
Franke, Jacob Franke, Oscar Bodley,
Charles Bodley and Nancy Robinson,
Defendants in Error.

Anna E. Smith and Robert E. Robinson, Plaintiffs in Error, say that at the January Term of the Court of Common Pleas, A.D. 1908, for said County of Union, said Oscar Bodley and Charles Bodley, as executors of the estate of Preston N. Robinson, deceased, and Jennie Franke, Jacob Franke, Oscar Bodley, Charles Bodley and Nancy Robinson, defendants in error, recovered a judgment, by the consideration of said court, against them, in an action then pending in said court, wherein the plaintiffs in error herein were plaintiffs and the defendants in error herein were defendants, a copy of the record of the judgment and proceedings in which case, together with a transcript of the evidence and a Bill of Exceptions, duly allowed and certified, is filed herewith.

Said Plaintiffs in error aver that there is error in said record and proceedings in this, towit:

1. That said court erred in not sustaining the motion of the plaintiffs in error, at the close of the defendants' in error case, to arrest the case from the jury and direct a verdict that the paper writing, purporting to be the last will and testament of Preston N. Robinson, deceased, was not his last will and testament.

2. That said court erred in overruling said motion.

3. That said court erred in the instructions given to the jury on the trial of said action.

4. That said court erred in not sustaining the motion of the plaintiffs in error for a new trial,

5. That said court erred in overruling said motion for a new trial.

6. That there are other errors, prejudicial to the plaintiffs in error, manifest upon the face of the record.

Wherefore the plaintiffs in error ask that said judgment and proceedings be reversed, with costs, and they be restored to all things they have lost thereby.

Anna E. Smith and
Robert E. Robinson
by Hoopes & Robinson,
their attorneys.

208
Waiver.

On April 18th, 1908, the following Waiver was filed:-

Anna E. Smith, et al,
Plaintiffs in Error,
Vs.
Oscar Bodley, et al,
Defendants in Error.

Circuit Court,
Union County, Ohio,
April 18th, 1908.

The issuing and service of a summons herein is hereby waived and the appearance of the defendants in error are entered herein, this 16th. day of April, 1908.

James McCampbell, of Counsel
for the Defendants in error.

208
Transcript of Journal Entries.

On April 20th, 1908, the following Transcript of Journal Entries was filed:-

On February 3rd, 1908, the following Entry was filed.

Anna E. Smith, and
Robert E. Robinson, Plaintiffs,
Vs.
Oscar Bodley, et al, Defendants.

Case No. 8669.
Monday, February 3rd, 1908.
Contest of Will.

This cause coming on this day to be heard, pursuant to assignment, thereupon came the parties, by their respective counsel, and also came the following named persons as jurors, to-wit: W.L. Beaury, O.B. McLean, Frank Edwards, W.C. Gray, E.M. Gibson, Charles Jones, Thomas Conner, Calvin Guy, W.A. Jones, James Shirk, Edson G. Lott and J.L. Beagle, who were duly impaneled and sworn according to law; and, thereupon this cause came on for hearing on the pleadings and the evidence.

Whereupon the Defendants introduced in evidence the original paper-writing purporting to be the Last Will and Testament of Preston H. Robinson, deceased, together with the original Order of Probate thereof, admitting the same to probate and record in Union County, Ohio, and thereupon, the said defendants rested their case in chief.

Whereupon, the said plaintiffs, by their counsel, moved the Court to direct a verdict in their behalf upon the grounds, to-wit: That said paper-writing purporting to be the last will and testament of Preston H. Robinson, deceased, is not the last will and testament of the said decedent, for the reason that the same contains an unreasonable blank space between the last dispositive clause and the place of signature, and that the same is not signed at the end thereof, as required by law. And forthwith, the said motion was argued by counsel and submitted to the Court. Whereupon the Court, on consideration thereof, over-ruled the said motion; to which ruling and judgment of the Court, the said plaintiffs, by their counsel, then and there excepted. And thereupon the Court adjourned the further hearing of this case until tomorrow morning at 9 o' clock.

208
Entry.

Entry.

In the Court of Common Pleas of Union County, Ohio.

Anna E. Smith and
Robert E. Robinson, Plaintiffs,
Vs.
Oscar Bodley, et al. Defendants.

Case No. 8669.
Thursday, February 4th, 1908.
Journal Entry.
Contest of Will.

This day again came the said parties, by their respective counsel, and also came the jury heretofore impaneled and sworn, and this cause being called by the Court for further progress in the trial thereof, the said

plaintiffs, by their counsel, declined to introduce further testimony in said cause and submitted the same accordingly.

Whereupon, the Court charged and directed the jury herein that the paper-writing introduced in evidence herein, purporting to be the last will and testament of Preston N. Robinson, deceased, is the valid last will and testament of the said decedent, and directed the said jury to return its verdict accordingly; to which charge and direction of the court, the said plaintiffs, by their counsel, then and there excepted.

And thereupon, the said jury retired to its room, in charge of the sheriff, for deliberation.

And now comes the said jury into open court with its verdict in writing, signed by its foreman, and says:

"We, the jury, on the issues joined, find the paper-writing here shown to us and admitted to probate in the Probate Court of Union County, State of Ohio, on the 29th. day of December, 1906, purporting to be the last will and testament of Preston N. Robinson, deceased, is the valid last will and testament of the said Preston N. Robinson, deceased".

Thomas Connor, Foreman.

And thereupon the said plaintiffs, by their counsel, moved the Court for a new trial in the premises, which motion coming on to be heard forthwith, the Court, on consideration thereof, overruled the same. To which ruling and judgment of the Court upon said motion for a new trial, the said plaintiffs, by their counsel, then and there excepted.

It is, therefore, in accordance with said verdict, considered and adjudged by the Court that the paper-writing produced in this case, and offered in evidence, purporting to be the last will and testament of Preston N. Robinson, deceased, is his valid last will and testament.

And it is further ordered and adjudged by the Court that the said defendants go hence without day and recover of the said plaintiffs their costs in this behalf expended, taxed at $.

To all of which orders and judgments of the Court the said plaintiffs, by their counsel, except.

208 Entry.

On September 29th, 1908, the following Entry was filed:

In the Circuit Court,
Union County, Ohio,
September 29th, 1908.

Anna E. Smith et. als.
Plaintiffs in Error,
vs.
Oscar Bodley, et. al.
Defendants in Error.

This day this cause came on to be heard upon the petition in error, the transcript and the original papers and pleadings from the Court of Common Pleas of Union County, Ohio, and was argued by counsel and submitted to the Court. Whereupon, the Court, on consideration thereof, find: that there is no error apparent on the record in said proceedings and judgment.

It is, therefore, considered and adjudged by the Court that the orders and judgments aforesaid, by the Court below made and entered, be, and the same hereby are, affirmed; and that the defendants in error recover from the plaintiffs in error their costs herein expended, taxed at $ and execution is awarded therefor.

It is further considered and ordered by the Court that a special

mandate be sent to the Court of Common Pleas of Union County, Ohio, for execution upon this judgment.

To all of which findings, orders and judgments of this Court in the premises, the said plaintiffs in error, by their counsel, except.

Attest: Charles Parrott, clerk,
By Hester McBrry, Deputy.

Appeal Bond

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Transcript of Docket Entries.

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Pleas continued and held at the Court House in Marysville, within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Silas E. Hunt, M. Donnelly and W. H. Kinder Judges of said Court at the September Term A. D. 1909. Be it remembered that heretofore to-wit on the 14" day of September the following Appeal bond was filed

Appeal Bond.

Common Pleas Court to Circuit Court.

Appeal Bond

Know all men by these presents, That we, Alexander Hatcher and Frank A. Kirby are held and firmly bound unto James Hatcher in the sum of One Hundred Dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Signed by us and dated this 19" day of January, A. D. 1909.

The Condition of the above obligation is such, that, Whereas, the said Alexander Hatcher has taken an appeal from a certain judgment rendered against him in favor of the said James Hatcher in the Court of Common Pleas, within and for the County of Union in the State of Ohio, at the January Term thereof, 1909, setting aside a certain deed and for the sum of Thirty Nine and 27/100 Costs to the Circuit Court, within and for the County aforesaid.

Now if the said Alexander Hatcher shall abide and perform the order and judgment of said Circuit Court, and shall pay all money, costs and damages, which may be required of or awarded against him by the said Circuit Court; then this obligation to be void; otherwise to remain in full force and virtue in law.

A. Hatcher.
F. A. Kirby.

I approved the above bond with the sureties thereto, this 19" day of January, 1909.
Seal

Charles Parrott, Clerk.

On January 20" 1909, The following Docket Entries was filed.

Transcript of Docket Entries.

James E. Hatcher, Plaintiff
Vs.
Alexander Hatcher et al Defendants
} Common Pleas Court, Union County, Ohio.

October, 30" 1908, -- Petition filed
October 30" 1908, -- Precipe filed.
October 30" 1908, Summons Issued.
December 4" 1908, Entry filed.

December, 12" 1908, Answer filed,
December, 22" 1908, Reply filed,
January, 12" 1908, Entry filed,
January, 19" 1908, Appeal Bond filed,
January, 20" 1909, Transcript of Journal Entries filed.
January, 20" 1909, Transcript of Docket Entries filed.

On January 20" 1909, The following Transcript of Journal Entries was filed.

On December 4" 1908, The following Entry was filed.

211
8832 James E. Hatcher, Plaintiff
Vs.
Alexander Hatcher et al, Defendants } Court of Common Pleas, Union County Ohio

This day leave is given to defendants to answer by December 12" 1908.

On January 12" 1908. The following entry was filed.

James E. Hatcher - Plaintiff
Vs.
Entry Alexander Hatcher et al, Defendants } Court of Common Pleas, Union County, O.

This day came the Plaintiff and Alexander Hatcher, one of the defendants came also, the defendant J. F. Wood being in default of demurrer or answer and said Wood not making any claim of lien or interest in the premises in the petition described, it is ordered and decreed, that he be forever barred from asserting any interest therein.

Thereupon this cause was submitted to the Court upon the petition of the Plaintiff and the answer of said Alexander Hatcher, and reply of the Plaintiff to said Answer, together with the exhibits and testimony.

On consideration whereof, the Court being fully advised in the premises finds upon the issues joined, in favor of the plaintiff and against the said Alexander Hatcher; And, that said Deed in the petition, set forth was procured by the said Alexander Hatcher, without consideration, and that said plaintiff at the time of making said Deed was the son of said Alexander Hatcher, and that he had only recently became of age, and that the transaction was unfair and unreasonable and against the interest and welfare of the plaintiff, and that Plaintiff was influenced and imposed upon by the said Alexander Hatcher, and that by reason thereof the said Deed is void and of no effect and virtue in law.

It is therefore adjudged and decreed by the Court that the said Deed be and the same is set aside and held for naught, and the said Plaintiff restored to all his right

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Entry 211

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and title to the premises the same as if said Deed had not been made.

It is further adjudged and decreed that the plaintiff recover of said Alexander Hatcher, his costs herein expended taxed to $\$$ — to all of which the defendant Alexander Hatcher, excepts.

Said Alexander Hatcher gave notice of his intention to appeal this case to the Circuit Court, and the Court fixed the bond at $\$100.^{00}$.

On September 28" 1909, The following Entry was filed.

In the Circuit Court of Union County, Ohio.

James Hatcher - Plaintiff

Vs.

Alexander Hatcher et,al. Defendants,

Entry 211

This cause coming on this day for hearing, was submitted to the Court upon the petition of the plaintiff, the answer of the defendant, Alexander Hatcher, and the reply of the Plaintiff, the evidence and the agreement of Counsel for Plaintiff and the defendant, Alexander Hatcher, and in consideration thereof, the Court find on the issue joined for the defendant, Alexander Hatcher.

It is therefore considered by the Court that the said Defendant, Alexander Hatcher, go hence without day and recover from the plaintiff his costs herein expended.

Approved J. L. Cameron, Attorney for Plaintiff.

Approved Hoopes and Robinson Attorneys for Alexander Hatcher

Attest Charles Parrott
Clerk.

Pleas continued and held at the Court House in Marysville within and for the County of Union, in the third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Silas E. Hurin, Michael Donnelly and William H. Kinder. Judges of said Court at the October Term, A.D. 1910. Be it remembered that heretofore to-wit on the 10" day of May, A.D. 1910, the following Appeal Bond was filed with the Clerk of said Circuit Court.

Appeal Bond.
Common Pleas Court to Circuit Court.

Appeal Bond 216

Know all men by these Presents, That we Gimri Webb and Robert Elliott are held and firmly bound unto the said William W. Kinney, Executor of the estate of Indiana Webb, deceased, in the sum of Three Hundred Dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.
Signed by us, and dated this 30" day of April, A.D. 1910.
The condition of the above Obligation is such, that,
Whereas, the said Gimri Webb has taken an appeal from a certain decision rendered against him in favor of the said Wm. W. Kinney, Executor, in the Court of Common Pleas, within and for the County of Union in the State of Ohio, at the April Term thereof, 1910, to the Circuit Court, within and for the County aforesaid.
Now if the said Gimri Webb shall abide and perform the order and judgment of said Circuit Court, and shall pay all money, costs and damages which may be required of or awarded against Gimri Webb, by said Circuit Court; then this obligation to be void; otherwise to remain in full force and virtue in law.

Gimri Webb.
Executed in presence of Robert Elliott.

I approve the above bond with the sureties thereto, this 30" day of April, 1910.

Charles Parrott,
Clerk.

On September 30" 1910. the following Transcript of Journal Entries was filed.

On January 31" 1910. The following Entry was filed.

216.

William W. Kinney, as Executor of Indiana Webb, deceased, Plaintiff
Vs.
Gimri Webb. et al, Defendants.
} Court of Common Pleas, Union County, Ohio. 8970

This day this cause on to be heard upon the motion of the plaintiff to strike out the answer of Gimri Webb from the files for reasons in the motion stated, and was argued by Counsel

and submitted to the Court:
On consideration whereof, the Court being fully advised in the premises, sustains said motion and it is ordered that the said answer be stricken from the files. To which ruling the plaintiff excepts. Thereupon the said Zimri Webb, by his Counsel asked and had leave of the Court to file another answer by February 7" 1910.

John M. Brodrick, Judge.

On February 18" 1910. The following Entry was filed.

William W. Kinney, Executor of the estate of Indiana Webb, deceased. Plaintiff. vs. Zimri Webb. Defendant. } Court of Common Pleas, Union County, Ohio. 8970.

This day leave was granted Defendant Eliza Jones, to file motion to strike Defendant Zimri Webb's answer from the files, and granted and same filed.

On April 5" 1910. The following Entry was filed.

Wm. W. Kinney, Exc. etc. Plaintiff. vs. Zimri Webb. Defendant } In the Court of Common Pleas, Union County, Ohio.

Journal Entry on Motion.

This day this cause came on to be heard upon the motion of Eliza Jones, a defendant, to strike the second amended answer of the defendant, Zimri Webb from the files, and the same was argued by Counsel and submitted to the Court.

Whereupon the Court, on consideration thereof, sustains the said motion and orders that the said answer be, and the same is hereby, stricken from the files of this case as an improper pleading in the premises. And, thereupon the said Zimri Webb, by his Counsel excepts to the order aforesaid.

On the 20" day of April, 1910. The following Entry was filed.

Wm. W. Kinney, as executor of the estate of Indiana Webb, deceased. Plaintiff. vs. Zimri Webb, Crafton Jones, Anna B. Golding, Rosa May Left, Lemuel Jones, Eliza A. Left, Phoebe A. Johnson, Izella M. Arnold, Carrie Bohnsadt, Benjamin Jones, Addie Chase, Stella B. Jones, Louis Jones, Leroy Jones, A. H. Jones, Guy Jones, Myrtle Riggs, William Riggs, Clifford Riggs, Erwin Riggs, Jerusha Brothers, Nancy Johnson, Morgan Johnson, Ross Baker Johnson, Lemuel C. Johnson, John Jones, Eliza Jones, W. H. Hedges, Ida Johnson, Florence Jones, Olive Estella Moore, Eugene E. Moore and Bessie C. Moore, Defendants.

Entry Construing Will.

Entry 216

And now this cause came on to be heard upon the petition of of the plaintiff, praying for a construction of the Will of said Indiana Webb, and for advice and direction from the Court as to his duties as such executor in administering said estate.

The defendants Gimri Webb, Eliza Moore, W. H. Hedges, Olive Estella Moore, Eugene E. Moore and Bessie V. Moore represented by Counsel, who together with counsel for plaintiff, submitted briefs and arguments as to the true construction to be placed upon said will, and the manner in which said estate should administered.

And the Court being fully advised in the premises finds that a true copy of said will is set forth in the petition, and that all the defendants to this action have been duly and legally notified, by proper process of the filing and pendency of the petition, and that the defendant Gimri Webb, widower of said Indiana Webb, has elected not to take under said will.

And the Court finds and declares the true meaning and construction of said will to be as follows: That the testatrix did not die intestate as to her personal estate, but that she intended by said will to dispose of her entire estate both real and personal.

In further construing said Will and advising the plaintiff as to his duties as such executor, the court makes answers to the various questions propounded by the plaintiff as follows:

Answer to Question 1: The testatrix intended to include her personal as well as the proceeds of her real, estate in the monies mentioned in Item 4 of her will, and she did not die intestate as to her personal estate.

Answer to Question 2: Eliza Jones takes a one-sixth interest under said will.

Answer to Question 3: The heirs of Lemuel Jones, Ross Jones, Gideon Jones and Rachael Ann Johnson mentioned in Item 4 of said will, take per stirpes and not per capita; and in like manner the children of any such heirs as may be deceased.

Answer to Question 4: W. H. Hedges, as the only heir of Morgan Hedges, named in Item 4 of said Will takes a one-sixths interest under said will.

Answer to Question 5: The testatrix intended that her debts, funeral expenses and costs of administration should be paid out of her personal estate.

To all of which the defendants accepts.

The defendants Gimri Webb, Olive Estella Moore, Eugene E. Moore, and Bessie V. Moore each give notice of an intention to appeal this cause to the Circuit Court and the bond for appeal, for each of said defendants is fixed at $300.00.

On October 3rd 1910, The following Entry was filed.

Entry

William W. Kinney, as Executor of the estate of Indiana Webb, deceased. Plaintiff, vs. Gimri Webb, et al. Defendants, } In the Circuit Court of Union County, Ohio

216

And now this cause came in to be heard upon the petition of the plaintiff, praying for a construction of the will of said Indiana Webb, and for advice and direction from the Court as to his duties as such executor in administering said estate.

The defendants Gimri Webb and other defendants being represented by counsel who submitted briefs and arguments as to the construction to be placed upon said will and the manner in which said estate should be administered.

And the Court being fully advised in the premises finds that the copy of said will attached to said petition is a true copy thereof, and that all the defendants have been duly and legally notified of the filing and pendency of the petition, and that the defendant Gimri Webb, widower of said Indiana Webb, has elected not to take under said will.

And the Court finds and declares the true meaning and construction of said will to be as follows: That the testatrix did not die intestate as to her personal estate, but that she intended by said will to dispose of her entire estate both real and personal.

That the testatrix intended that her debts and costs of administration should be paid out of her personal estate; and that any balance of her personal estate, that might be left after the payment of her debts and costs of Administration, should be disbursed, as provided in item four of her will.

That Eliza Jones, sister of said testatrix under the distribution to be made as provided in item four of the will, is to have a one sixth part thereof.

That W. H. Hedges, only heir of Morgan Hedges, is entitled to a one sixth part, under the provision of said item four of said Will. That the heirs Lemuel Jones, Ross Jones, Gideon Jones and Rachael Ann Johnson mentioned in item four of said will take per stirpes and not per capita and in like manner the children of any such heirs as may be deceased.

That the plaintiff be and he is directed to administer said estate in accordance with the provisions of said will as herein construed.

Thereupon the defendant Gimri Webb and the other defendants made their motion for a new trial herein which is overruled.

To all of which rulings, findings and directions of the Court the said Gimri Webb and other defendants then and there excepted.

It is ordered by the Court that the costs of this proceeding be paid by said executor out of the funds of said estate.

Attest - Charles Parrott, Clerk.

Pleas continued and held at the Court House in Marysville within and for the County of Union in the Third Judicial Circuit of the circuit court of the State of Ohio, befor the Honorables, Silas E. Hunn Michael Donnelly and W. H. Kinder, Judges of said Court for the February Term, A. D. 1910. Be it remembered that heretofore to-wit on the 1st day of November, 1909, the following Petition in error was filed with the Clerk of the Common Pleas Court to-wit:—

In the Circuit Court of Union County, Ohio.

Petition in Error 212

Robert McCrory, as Executor of the estate of Rosetta Holycross, deceased,
Vs. Plaintiff in Error,
Martha A. Crary, Robert C. Holycross, Nancy C. Jordan, Tobitha Burroughs, A. M. Jenkins, W. L. Jenkins, Lydia Dunlap, Jane Dunlap, Lillie Smith, Mattie Girrard, Nellie Hensel, Maud Clinger, Christs Hospital of Cincinnati, Ohio, The Methodist Episcopal Church of North Lewisburg, Ohio, The Darby Methodist Episcopal Church, The Home Missionary Society of the Methodist Episcopal Church of North America, Rosina Beltz, Willis Epps and George Jordan,
Defendants in error.

The Plaintiff in error says, that at the September Term, A. D. 1909, of the court of common pleas of Union County, Ohio, defendants in error Martha A. Crary, Robert C. Holycross, Nancy C. Jordan, Tobitha Burroughs, P. T. Holycross, A. M. Jenkins, W. L. Jenkins, John A. Jenkins, Lydia Dunlap, Jane Dunlap, Lillie Smith, Mattie Girrard, Nellie Hensel, and Maud Clinger, recovered a judgment by the consideration of said Court against the plaintiff in error, in an action then pending therein, wherein, the defendants in error last above named, were plaintiffs and the plaintiff in error and Christs Hospital of Cincinnati, Ohio, The Methodist Episcopal Church of North Lewisburg, Ohio, The Darby Methodist Episcopal Church of North America, Rosina Beltz, Willis Epps, and George Jordan were defendants. A transcript of the Docket and Journal Entries in which case, together with the original pleadings and papers and bill of exceptions is filed herewith.

The Plaintiff in error, Robert McCrory, says that he is the duly appointed and qualified executor of the estate of Rosetta Holycross, deceased and that judgment was rendered against him in said action, as such executor and that none of the other original defendants are willing to join with him in this proceeding in Error and he therefore makes them defendants in error herein.

The plaintiff in error says that there is error in the said record and proceeding in this to-wit:
1st. Said Court erred in overruling the motion of plaintiff in error for a new trial.
2d. The facts set forth in the petition are not sufficient in law to maintain the said action against plaintiff in error.
3d. The Court erred in the admission of evidence against the objection of the plaintiff in error.
4th. The Court erred in ruling out evidence offered by the plaintiff in error.
5th The court erred in admitting the parol evidence of Jr.H. Willis and Mary Smith, to contradict the express terms of the will of said Beamer Holycross.
6th. The finding and decision of the Court was against and contrary to the law and evidence, and is not sustained by sufficient evidence.
7th The finding and judgment of the Court was in favor of the plaintiffs in said action when it should have been in favor of this plaintiff in error.
Plaintiff in error therefore prays that said judgment may be reversed and that he be restored to all things he has lost by reason thereof.

Cameron and Cameron,
Attorneys for Plaintiff in error.

On November 1st 1910, the following Transcript of Journal Entries was filed.

On December 30th 1908, The following entry was filed.

Martha A. Crary, et al, Plaintiffs, vs. Robert McCrory et al, &c. Defendants } Entry, 8816.

This day leave was granted plaintiff to file amended petition and same filed.

On April 6th 1909, The following entry was filed.

Martha A. Crary, et al vs Robert McCrory as Executor &c et al. } 8816.

This day came this cause on to be heard upon the motion of the plaintiff to strike out certain parts of the answer, and the court being fully advised in the premises, orders that the following allegation be stricken from said answer, to-wit: "The said Rosetta nursed and cared for Beamers parents and treated them with great kindness while they lived."
As to all other matters said motion is overruled, to which the

plaintiff excepts; therefore plaintiff asked and had leave of the Court to file reply in ten days.

On September 28th 1910, The following entry was filed.
Court of Common Pleas, Union County, Ohio.

Martha A. Cray, et al.
Vs. Plaintiffs.
Robert McCrory as Executor
&c, et al. Defendants.
} 8816
Entry

Entry

This day this cause came on to be heard upon the Amended Petition of the Plaintiffs, the separate answer of Robert McCrory, as Executor of the estate of Rosetta Holycross, deceased, and Christs' Hospital of Cincinnati, Ohio, defendants, and the reply thereto of the plaintiffs, and upon the testimony, and was argued by Counsel; On consideration whereof the Court doth find upon the issues joined in favor of the plaintiffs, to-wit: Martha A. Cray, Robert C. Holycross, Nancy C. Jordan, Tobitha Burroughs, C. F. Holycross, A. M. Jenkins, Lydia Dunlap, Jane Dunlap, Lillie Smith, Mattie Gerrard Nellie Hensel, and Maud Clinger, and against the defendants; And that the said plaintiffs at the death of Rosetta Holycross became the owner in fee simple of the following described real estate, to-wit:
Situated in the County of Union and State of Ohio, and Township of Allen, and bounded as beginning at low water mark on Darby Creek and corner to Robert C. Holycross' land; thence N. 33½° E. 210 poles to a stone in the line of Alfred Reams' land; thence N. 34½° W. 53 poles to the center of the Epps and Holycross Gravel Road; thence S. 33½° W. 202. 88 poles to the low water mark of Darby creek; thence with said Creek to the place of beginning, containing 68 acres of land, more or less.
It is therefore ordered, adjudged and decreed that the title of said plaintiffs in and to said real estate, be and the same hereby is forever quieted against any claim of the said Robert McCrory, as Executor of the estate of Rosetta Holycross, deceased, Christs' Hospital of Cincinnati, Ohio, The Methodist Episcopal Church of North Lewisburg, Ohio, The Darby Methodist Episcopal Church, The Home Missionary Society of the Methodist Episcopal Church of North America, Rosina Belty, Willis Epps, and George Jordan, and that each of them be and hereby is forever restrained and enjoined from asserting or setting up any claim to said real estate or any interest therein; and it is further ordered, adjudged and decreed that the said Robert McCrory, as executor of the estate of Rosetta Holycross, deceased, within thirty days, make, execute and deliver a deed of conveyance in due form of law to pass title to said real estate, and that in default of the execution of such deed of conveyance by him within said thirty days, this decree shall operate as such conveyance; and it is further ordered and adjudged that the said Robert McCrory, as such executor, pay the costs of this action.
To all of which the said defendants, Robert McCrory, as executor of the estate of Rosetta Holycross, deceased, and Christs Hospital of Cincinnati, Ohio, excepted at the time;
Thereupon the defendant, Christs' Hospital, of Cincinnati, Ohio,

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filed its motion for a new trial herein, which motion is heard and overruled by the Court, to which the said defendant then and there excepted; and the defendant Robert McCrory as executor of said Rosetta Holycross filed his motion for a new trial herein, which motion is heard and overruled by the Court, to which said Robert McCrory as such executor excepted.

The defendant Christs' Hospital of Cincinnati, Ohio, gave notice of its intention to appeal this cause to the Circuit Court and the Court fixed its bond for appeal at $300.00.

The said Robert McCrory as such executor, defendant, gave notice of his intention as such executor to appeal this cause to the Circuit Court, and it appearing to the Court that said Robert McCrory as such executor has executed his bond in the sum of $7800.00 in the probate court of this county and the said bond has been approved and filed by said probate court, no further bond for appeal is required of him as such executor defendant.

On October 23, 1909, The Following Entry was filed.

Martha A. Crary, et als, — Plaintiffs,
Vs.
Robert McCrory, executor &c, et al.
Defendants.

8816.

This day came the said Robert McCrory, as executor of the estate of Rosetta Holycross, and presented to the Court his Bill of Exceptions which is allowed and signed by the Court, and ordered to be made part of the record in this case.

On November 11" 1909, The following waiver of service was filed.

In the Circuit Court of Union County, Ohio.

212. Robert McCrory as executor of the estate of Rosetta Holycross, Plff. in Error,
Vs.
Martha A. Crary, et als,
Defendants in Error

Waiver of Summons in Error.

The Home Missionary Society of the Methodist Episcopal Church of North America, waives the issuing and service of summons in error herein and enters its appearance as defendant in error.

On November 20" 1909, The following waiver of service was filed.

212

In the Circuit Court of Union County, Ohio.

Robert McCrory, as executor of the estate of Rosetta Holycross, deceased, — Plaintiff in error,
Vs.
Martha A. Crary, et als, Defendants in error.

Waiver of Summons in error.

Now comes Christs' Hospital of Cincinnati, Ohio, and waives the issuing and service of summons in error upon it, and enter its appearance herein as a defendant in error.

On February 3rd 1910, the following entry was filed.

212 Entry.

Robert McCrory as Executor of the Estate of Rosetta Holycross, deceased. Vs. Martha A. Crary, et al. } In the Circuit Court of Union County, Ohio.

This cause came on for hearing upon the Petition in Error, the Transcript, the original papers and pleadings from the Court of Common Pleas, Union County, Ohio. And was argued by Counsel; Whereupon the Court took the same under advisement for decision, and adjourned this cause therefor.

July 5th 1910, The following Entry was filed.

Entry 212

In the Circuit Court of Union County, Ohio.

Robert McCrory, as Executor of the estate of Rosetta Holycross, deceased, Plaintiff in Error.

Vs.

Martha A. Crary, Robert C. Holycross, Nancy C. Jordan, Tabitha Burroughs, P. T. Holycross, A. M. Jenkins, W. L. Jenkins, John A. Jenkins, Lydia A. Dunlap, Jane Dunlap, Lillie Smith, Mattie Elrod, Nellie Bensel, Maud Clinger, Christ Hospital of Cincinnati, Ohio; The Methodist Episcopal Church of North Lewisburg, Ohio; The Darby Methodist Episcopal Church; The Home Missionary Society of the Methodist Episcopal Church of North America; Rosina Beltz, Willis Hyre; and George Jordan.

Defendants in error.

This cause came on to be heard upon the petition in error, bill of exceptions, original papers and pleadings, and the transcript of the docket and journal entries in the Court of Common Pleas, and was argued by counsel; upon consideration whereof, this court finds that there was error in the proceedings and judgment of the Court of Common pleas, prejudicial to the plaintiff in error, in this to-wit: That the finding and decree of the Court of Common pleas is not sustained by, and is contrary to the evidence, and contrary to the law of the case.

It is therefore considered, ordered and adjudged, that said finding and decree of the Court of Common Pleas, be, and the same is hereby set aside and held for naught, and a new trial granted at the costs of the defendants in error.

It is further ordered and adjudged that the plaintiff in error recover of the defendants in error, his costs herein expended, and execution for such costs is hereby awarded, and this cause is remanded to said court of common Pleas, for execution and for a new trial and further proceedings in accordance with law.

To all of which findings and judgment, the defendants in error, excepts. Attest Chas. Parrott, Clerk.

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Pleas continued and held at the Court House in Marysville within and for the County of Union, in the third judicial Circuit of the Circuit Court of the State of Ohio, before the Honorables Silas E. Hurin, Michael Donnelly and William H. Kinder, Judges of said Court for the January Term, A.D. 1911. Be it remembered that heretofore to-wit, on the 19th day of August, A.D. 1910, the following Petition in Error was filed with the Clerk of this Court, to-wit:

In the Circuit Court of Union County, Ohio.

213 George W. McGhee, Plaintiff in Error
Vs. } Petition in Error.
E. R. Holsenpiller, et al.
Defendants in Error

Plaintiff in error says, that at the April Term of 1910 of the Court of Common Pleas of Union County, defendants in error recovered a judgment by the consideration of said Court against plaintiff in error in an action then pending therein, wherein plaintiff in error was plaintiff and defendants in error were defendants, case No. 8511, a transcript of the docket and journal entries whereof is filed herewith. That there is error in the said record and proceedings, in this to-wit:

1st. Said Court erred in overruling the motion of the plaintiff in error for a new trial.

2nd. Said court erred in its charge to the jury on the trial of said action.

3rd. Said Court erred in refusing to give the charges asked for by plaintiff in error.

4th. Said court erred in the admission of the evidence of said E. R. Holsenpiller and Frances E. Holsenpiller, to which the said George W. McGhee objected.

5th. Said Court erred in ruling out the evidence offered by said George W. McGhee.

6th. Misconduct of Counsel for defendants during the trial and objected to by plaintiff's counsel at the time.

7th. Said judgment was given for said E. R. Holsenpiller and Frances E. Holsenpiller, when it ought to have been given for said George W. McGhee.

8th. Other manifest errors appearing upon said record and proceedings.

Plaintiff in error therefore prays that said judgment may be reversed and that he be restored to all things he has lost by reason thereof.

DeWitt and Hubbard and
George Haight, Attorneys for
Plaintiff in error.

Summons in error waived and the appearance of the defendants entered herein.

Hoopes, Robinson and Hoopes.
Attorneys for Defendants in error.

On August 20" 1910, The following transcript of Journal Entries was filed

On April 5" 1910. The following was filed.

Entry 8511

George W. McGhee. Plaintiff,
Vs.
Edwin Hotsenpiller, et al Defendants
} Court of Common Pleas, Union County, Ohio.

This day came the parties herein, by their attorneys, also came the following named persons as jurors, to-wit:- George Rigel, J.J. Maddex, William Turner, James Field, George Taylor, Joseph Gabriel, A.W. Beard, M.K. Baugn, Albert S. White, J.W. Mitchell, W.A. Herd, and Murry Hamilton, who were duly impaneled and swor according to law; and thereupon this cause came on for hearing on the pleadings and evidence, and the said jury having heard the evidence adduced in part, the Court took a recess until to-morrow morning at 9 O'clock,

On April 6" 1910, The following entry was filed.

Entry 8511.

George W. McGhee, Plaintiff
Vs.
Edwin K. Hotsenpiller et al Defendants
} Court of Common Pleas of Union County, Ohio.

This day again came the said parties, by their attorneys, and also came the jury heretofore impaneled and sworn, and the said jury having heard further evidence in the case, this cause was continued until to-morrow morning at 9 O'clock.

On April 7" 1910, The following Entry was filed.

Entry 8511.

George W. McGhee, Plaintiff,
Vs.
Edwin K. Hotsenpiller, et al. Defendants
} Court of Common Pleas, Union County, Ohio

This day again came the said parties, by their attorneys, and also came the jury heretofore impaneled and sworn, and the said jury having heard further evidence in the case, this cause was continued until to-morrow morning at 9 O'clock.

On April 8" 1910, The following Entry was filed.

Entry 8511.

George W. McGhee, Plaintiff,
Vs.
Edwin K. Hotsenpiller, Defendant
} Court of Common Pleas, Union County, Ohio.

This day again came the said parties, by their attorneys, also came the jury heretofore impaneled and sworn, and the said Jury having heard the remainder of the evidence, and argument of Counsel in part, said Court took recess until to morrow morning at 9 O'clock.

Entry 8511

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Affidavit 215

George
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On April 9" 1910, The following entry was filed.

Entry 85/11

George W. McGhee. Plaintiff
Vs.
Edwin R. Hotsenpiller et al. Defendants,
} Court of Common Pleas, Union

This day again came the said parties, by their attorneys also came the jury heretofore impaneled and sworn, and the jury after hearing the remainder of the argument of Counsel, and the charge of the Court, retired to their room in charge of the Sheriff for deliberation, and now comes said Jury into open Court with their verdict in writing and say, "We the jury, being duly impaneled and sworn, find the issue in this cause in favor of the defendant."

M. K. Baughn.
Foreman.

On September 30" 1910, The following Motion was filed.

215. George W. McGhee. Plaintiff
Vs.
Edwin R. Hotsenpiller, and Frances E. Hotsenpiller. Defendants.
} In the Circuit Court of Union Co. Ohio.

And now comes the plaintiff, George W. McGhee, for the purpose of this motion only, and expressly disclaiming any and all intentions or purpose of making or entering an appearance upon the merits of this case, and for any other purpose save that contained in this motion, and here moves the Court for a continuance of this case until the next term of this Court, and for the following reasons, to-wit:
1." Because the Plaintiff herein unexpectedly, and without any fault upon his part, finds himself, within one week of this term, without any attorney to represent him before the Court in this cause.
2° Because this case is of such magnitude, and general importance, that it is absolutely impossible for any new attorney coming into this case, to properly become familiar with the issues, and to prepare and to present them with efficiency in the limited time left for that purpose.
3. Because a hearing at this time, in view of the above facts would be highly prejudicial to the plaintiff herein.

G. W. McGhee.

On September 30" 1910, The following Affidavit was filed.

Affidavit 215 George W. McGhee, Plaintiff, Vs. Edwin R. Hotsenpiller and Frances E. Hotsenpiller Defendants
} In the Circuit Court of Union County, Ohio. Affidavit in support of motion for continuance.

George W. McGhee, the plaintiff herein, being by me first duly

sworn, makes oath, and says:

I am the plaintiff in the above entitled case, and was represented in said Court by Mr Dewitt, of Columbus, Ohio, and was in good faith preparing for the hearing set for the term commencing October 4" next. That without any previous intimation therefor, and without any apparent cause, and without any fault on the part of affiant, said Dewitt informed affiant that he had withdrawn from the case, and stated that another attorney had better be engaged to take his place. That this information only came to affiant on last Sunday evening, September 25", only one week before said hearing. That said Dewitt gave no reason as to why he withdrew from said case, but said that it would be better to employ another attorney, and that affiant could lay the blame on said Dewitt for the condition arising therefrom.

Affiant further says, that it is impossible for him to engage counsel to take the place of said Dewitt, who could become familiar with the issue in said cause, and to prepare and present them to the court with efficiency in the few days remaining until the beginning of said term.

And affiant further says, that because of the facts herein stated he can not safely go to trial, and that a hearing at this time would be highly prejudicial to him, and further affiant sayeth not.

George W. McGhee.

Sworn to by said George W. McGhee before me, and signed by him in my presence this 28" day of September, 1910.

Eleanor L. Nash.
Notary Public, Cook Co. Ill.

On October 4" 1910. The following entry was filed.

George W. McGhee.
Vs.
Edwin R. Hotsenpiller, et al. } In the Circuit Court, Union County, Ohio.

Entry 215 Continued on motion and application of the plaintiff in error, supported by affidavits, and at costs of Plaintiff in error.

On October 4" 1910, The following motion was filed.

Motion 215 George W. McGhee
Vs Plaintiff.
Edwin R. Hotsenpiller, et al.
defendants } In the Circuit Court of Union County, Ohio.

And now comes the defendants and move the Court for an order striking from the files of this Court the purported bill of exceptions filed by the Plaintiff herein, and for ground of this motion the defendants say that said purported bill of exceptions was transmitted by the Clerk of the Court of Common Pleas of this County to the trial judge before the expiration of

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George W
Vs
E. R. Hotsen

Entry 215

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the time for the filing of objections and amendments by the defendants, and the same was allowed and signed by said trial judge, and filed in said Court of Common Pleas befor the expiration of said time for filing said objections and amendments as aforesaid, the consent for such transmission and said allowing and signing and filing not having been indorsed by the defendants or said purported bill of exceptions.

On February 1st 1911, The following Entry was filed.

Entry

215

George W. McGhee.
vs. Plaintiff in Error. } Circuit Court of Union County, Ohio.
E. R. Holsenpiller, et al.
Defendants in Error.

This Cause came on for hearing upon the petition in error, the transcript, the bill of exceptions, the original papers, and the proceedings from the Court of Common Pleas of Union County, was argued by counsel; and on consideration thereof, the Court find that there is error apparent upon the record in the proceeding of said Court, to the prejudice of the plaintiff in error.

It is therefore considered by this Court, that the judgment rendered by said Court below, be reversed and held for naught and that the verdict rendered by the Court below be set aside on the ground that the judgment below is against the weight of the evidence.

And the Court further proceeding to render such judgment as the said court of Common Pleas ought to have rendered, find that the defendants herein Frances E. Holsenpiller as guardian of Edwin R. Holsenpiller and Frances E. Holsenpiller are indebted to the plaintiff herein George W. McGhee in the sum of Five hundred ($500.00). Dollars.

It is therefore considered by the Court, that the plaintiff herein, George W. McGhee, recover from said defendants, Frances E. Holsenpiller as guardian of Edwin R. Holsenpiller and Frances E. Holsenpiller the sum of Five hundred ($500.00) Dollars and his costs herein expended, taxed at $ —, for which execution is awarded.

It is further ordered that a special mandate be sent to the Court of Common Pleas for the execution of this judgment.

The plaintiff excepts to all that part of said findings and judgment wherein this Court after reversing the Court below proceeded to make such findings and to render such judgment as it considered the said Court of Common Pleas ought to have found and rendered in this case.

And the defendants herein excepts to all of said findings and judgment

Attest Charles Perott, Clerk.

Pleas continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio. Before the Honorable Silas E. Hunn, Michael Donnelly and W. H. Kinder, Judges of said Court, at the January Term, A. D. 1911. Be it remembered that heretofore to-wit on the 6th day of December, A. D. 1910, the following Appeal Bond was filed with the Clerk of said Court, to-wit:

Entry

Appeal Bond
Common Pleas to Circuit Court.

Know all men by these presents, that we George Smith H. J. Brooks and I. J. McCoy, are held and firmly bound unto S. A. McNiel, Administrator, et al, in the penal sum of One Hundred Dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators, signed by us, and dated this 29th day of November A. D. 1910.

The condition of the above obligation is such, that whereas, the said George Smith, heir-at-law of Robert Smith, deceased, has taken an appeal from a certain judgment rendered against him in the construction of the will of Robert Smith, deceased, in favor of the said Administrator, Mary Smith. J. W. Beem, and F. W. Beem, in the Court of Common Pleas within and for the County of Union, in the State of Ohio, at the September Term thereof, 1910, ordering distribution made to Mary Smith, F. W. Beem and J. W. Beem, to the Circuit Court within and for the County aforesaid.

Now if the said George Smith shall abide and perform the order and judgment of said Circuit Court, and shall pay all moneys, costs and damages, which may be required of or awarded against him by said Circuit Court, then this obligation to be void; otherwise to remain in full force and virtue in law.

Signed. George Smith.
H. J. Brooks.
I. J. McCoy.

I approve the above Bond with the sureties thereto, this 3rd day of December, 1910.

Charles Parrott, Clerk.

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On December 6" 1910, The following Transcript of Journal Entries was filed

S. A. McNiel, Administrator with the Will annexed of the estate of Robert Smith, deceased. vs. George Smith, Mary Smith, J. W. Beem Mary Beem, Guardian of J. W. Beem, Defendants

No. 9074.

In the Court of Common Pleas of Union County, Ohio. Filed. December 6" 1910. Transcript of Journal Entries

Entry

This cause coming on this day for hearing upon the pleadings and was submitted to the Court on the evidence and the argument of Counsel.

The Court finds that the defendant, Mary Beem, who is the wife of J. W. Beem, one of the Devisees and Legatees named in said Will of Robert Smith, deceased; that said J. W. Beem is insane and has been insane for more than a year last past, and is confined in the State Hospital at Columbus, Ohio.

The Court further finds that the testator, Robert Smith, did not die intestate as to all or any part of his estate; that the proper devisees and legatees, to whom distribution of said estate should be made are Mary Smith, Mary Beem, guardian of J. W. Beem and J. W. Beem, to each one equal one third part left for distribution on the final settlement of testator's estate, and finds that the policy of insurance held by the testator in the Knights Templars and Masonic Mutual Aid Association, in which the wife, Minnie Smith, is the beneficiary, reverted to the testator on the death of said beneficiary Minnie Smith, prior to the death of the testator, and said policy of insurance therefore becomes and is a part of the testator's estate, passing by and under the provision of his said will to the residuary legatees above named.

It is therefore considered, ordered and adjudged that said Will of Robert Smith, deceased, be construed that Robert Smith did not die intestate as to all or any part of his estate; that the proper devisees and legatees to whom distribution shall be made are Mary Smith, Mary Beem, guardian of J. W. Beem and J. W. Beem, to each one equal one-third part of said estate left for distribution on the final settlement of said Robert Smith's estate, and that the policy of insurance held by the testator, Robert Smith, in the Knight Templars and Masonic Mutual Aid Association, in which his wife, Minnie Smith, was named as the beneficiary, reverted to the testator on the death of the said Minnie Smith, the beneficiary, prior to the death of the testator's estate, and that the same passes under the provisions of said will to said residuary legatees above named.

It is further considered ordered and adjudged by the Court that the costs of this action, taxed at $, be paid by the plaintiff out of the assetts of said estate.

To all of which rulings, findings and decree of the Court the plaintiff and George Smith then and there excepted.

And the plaintiff and George Smith gave notice of their

intention to appeal this cause to the Circuit Court and the Court fixed the bond for appeal as to George Smith at $100.00; the plaintiff not required to give bond, as he has already given sufficient bond as Administrator with will annexed.

On February 1st 1911. The following Entry was filed

Entry

217

S.A. McNiel, Administrator with the will annexed of the estate of Robert Smith, deceased. Plaintiff

Vs.

George Smith, Mary Smith, J.W. Beem, Mary Beem, guardian of J.W. Beem. Defendants.

} In the Circuit Court of Union County, Ohio.

This cause coming on this day for hearing upon the pleadings and was submitted to the Court on the evidence and the argument of Counsel, the Court finds that the defendant, Mary Beem, who is the wife of J.W. Beem, has been duly appointed guardian of J.W. Beem, one of the devisees and legatees named in said will of Robert Smith, deceased; that said J.W. Beem is insane and has been insane for more than a year last past, and is confined in the State Hospital at Columbus, Ohio.

The Court further finds that the testator, Robert Smith, did not die intestate as to all or any part of his estate; that the proper devisees and legatees to whom distribution of said estate should be made are Mary Smith, Mary Beem, guardian of J.W. Beem, and J.W. Beem, to each one equal one third part left for distribution on the final settlement of testator's estate, and finds that the policy of insurance held by the testator in the Knights Templars and Masonic Mutual Aid Association, in which the wife, Minnie Smith, is the beneficiary, reverted to the testator on the death of said beneficiary Minnie Smith, prior to the death of the testator, and said policy of insurance therefore becomes and is a part of the testator's estate, passing by and under the provisions of his said will to the residuary legatees above named.

It is therefore considered, ordered and adjudged that said will of Robert Smith, deceased, be construed that Robert Smith did not die intestate as to all or any part of his estate; that the proper devisees and legatees to whom distribution shall be made are Mary Smith, Mary Beem, guardian of J.W. Beem, and J.W. Beem, to each one equal one third part of said estate left for distribution on the final settlement of said Robert Smith's estate, and that the policy of insurance held by the testator, Robert Smith, in the Knight Templars and Masonic Mutual Aid Association, in which his wife, Minnie Smith, was named as the beneficiary, reverted to the testator on the death of the said Minnie Smith, the beneficiary, prior to the

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death of the testator, and that the same passes under the provisions of said will to said residuary legatees above named.

It is further considered, ordered and adjudged by the court that the costs of this action, taxed at $, be paid by the plaintiff out of the assets of said estate.

To all of which findings, decree and judgment of the Court the plaintiff S.A. McNeil, Administrator, of the estate of Robert Smith, deceased, excepts.

Attest, Charles Parrott, Clerk.

