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SUPREME COURT

25550. DE LA TOUR v. STATE. Marion County. *Affirmed.* Gemmill, J. April 3, 1929.

The alleged error in overruling the defendant's motion to quash the affidavit may only be presented by direct assignment of error after a motion to quash. No part of the trial on the merits can be presented for consideration upon appeal by a motion for a new trial. The question of the constitutionality of the habitual criminal statute was not properly presented under the specifications that the verdict of the jury is contrary to law.

24652. DRAKE v. STATE. Shelby County. *Affirmed.* Travis, J. Gemmill, J., and Martin, C. J., concur in conclusion. April 5, 1929.

Appellant was convicted of the offense of possessing, etc., intoxicating liquor. The overruling of the motion to quash the search warrant was harmless error in view of the admission by the defendant of the act of committing a felony and his voluntary exhibition of the still in operation and the ingredients of distillation. An assigned error, founded upon the proposition that the statute is unconstitutional, may not be presented for the first time on appeal.

25613. EDDLEMAN v. CITY OF BRAZIL. Clay County. *Reversed.* Martin, C. J. April 26, 1929.

A city ordinance is invalid which prescribes weight limitations in conflict with Sec. 10152, Burns 1926, which defines and prescribes the maximum weight of vehicles that must be used upon the highways. (Section 2401, Burns 1926.)

25640. GOODMAN v. DALY. Laporte County. *Affirmed.* Willoughby, J. April 5, 1929.

Writ of habeas corpus in the Laporte Superior Court directed against the warden of the state prison. No circuit court has supervisory power over the orders of another circuit court and writ of habeas corpus can not be used by one court to correct the errors of another of equal jurisdiction. If the decision of the committing court was wrong the appellant had a remedy by appeal and not by habeas corpus.

25234. GRASSELLI CHEMICAL CO. *v.* SIMON ET AL. Lake County. *Affirmed.* Gemmill, J. April 18, 1929.

This was an action to enjoin the enforcing or attempting to enforce an award of the Industrial Board and a court judgment rendered thereon; and also to vacate the judgment and to quiet title to real estate as against the "supposed lien of the judgment". See opinion for full statement of facts and discussion of legal points involved.

25242. HAWKINS v. STATE. Madison County. *Affirmed.* Travis, J. April 16, 1929.

The error alleged is the action of the lower court in overruling appellant's petition for writ of error *coram nobis.* The bill of exceptions of the evidence is not in the record for the reason that the date of the presentation of the original bill of exceptions to the judge is not stated in the bill of exceptions.

25242. HAWKINS v. STATE. Madison County. Petition for rehearing. *Petition denied.* Travis, J. April 26, 1929.

The opinion in this case holds that the bill of exceptions containing the evidence does not state at what time the bill was presented to the trial court for approval and that the bill of exceptions containing the evidence is not in the record. The petition for rehearing is supported by the return to a writ of certiorari which shows a *nunc pro tunc* record entry setting out that the bill of exceptions had been presented to the court within the time allowed in which to present it for approval, but the statute requires that the "date of the presentation shall be stated in the bill of exceptions" and the bill of exceptions is in the same condition it was before a record entry of the order *nunc pro tunc* was made, and it is not shown, by the bill itself, when it was presented to the judge.

24873. SULLIVAN ET AL. v. STATE. Daviess County. Petition for rehearing. *Petition denied.* Travis, J. April 26, 1929.

A question of law which is not presented for decision by the assignment of errors and the briefs can not be presented for decision by a petition for rehearing. (Rule No. 22 of the Supreme Court; 190 Ind. 281, 289; 192 Ind. 531, 546.)

25374. WEHNE v. DILLON. Dubois County. (Transferred from the Appellate Court under Sec. 1351, Burns 1926.) *Affirmed.* Myers, J. April 5, 1929.

The appellee was the owner of an undivided one-half interest in a farm and a life tenant in the other undivided one-half interest, the remainder of this half belonging in fee to a church. The court says the fair cash value of the life tenant's interest and that of the remainderman may be separately determined as accurately as if owned entirely by a single individual, and if one interest is taxable and the other is not, the public revenue is receiving all that may be properly demanded on that account from this land. Any obligation of the life tenant to pay taxes is to the remainderman and he is not under a duty of paying taxes on the interest of the remainderman when such interest is exempted property.

APPELLATE COURT

13203. AGNESS v. BOARD OF COMMISSIONERS OF GRANT COUNTY, ET AL. Blackford County. *Affirmed.* Remy, J. April 24, 1929.

Where a court has jurisdiction, the rendering of a judgment prematurely was but an irregularity and does not render the judgment void or subject to collateral attack.

13338. ARIENS v. ARIENS. Rush County. *Affirmed.* Per curiam. April 3, 1929.

Per curiam.

13586. BARLOW v. STATE. Delaware County. *Reversed.* Per curiam. April 19, 1929.

The appellant was charged with unlawfully receiving intoxicating liquor and of unlawfully maintaining and assisting in maintaining a common nuisance. There was a general verdict of guilty. The evidence is insufficient to sustain a conviction upon either count of the affidavit.

13608. BOSWORTH v. STATE. Johnson County. *Affirmed.* Lockyear, J. April 17, 1929.

Prosecution for the unlawful sale of intoxicating liquor. The court correctly stated the law in the instruction, "If the defendant in this connection was not a licensed pharmacist at the time charged in the affidavit, then he had no right under the law to sell for medicine or for medical purposes any drink or mixture containing as much as one-half of one per cent of alcohol by volume or any preparation of like alcoholic content, reasonably likely or intended to be used as a beverage."

13389. THE CONTINENTAL LIFE INS. CO. v. MALOTT, ADMX. Miami County. *Reversed.* Nichols, J. April 26, 1929.

The rule that an insurance policy is to be construed liberally for the benefit of an insured, etc., has no application to a policy where there is no ambiguity.

13680. CULP ET AL. v. STATE. Marshall County. *Affirmed.* Enloe, C. J. April 18, 1929.

Appellants were indicted on the charge of inducing a witness to leave the jurisdiction, the indictment being based on Sec. 2619, Burns 1926. The substantive allegation in the indictment charged the offense with sufficient certainty.

13589. CUMMINS v. STATE. Franklin County. *Reversed.* Lockyear, J. April 26, 1929.

Appellant was convicted on the charge of criminal libel. The evidence does not sufficiently connect the defendant with the publication of the alleged libelous article to justify a conviction.

13584. DE MUINCK ET AL. v. STATE. St. Joseph County. *Affirmed.* McMahan, P. J. April 17, 1929.

Appellants were convicted of violation of the liquor law. Officers are not required to have a search warrant in order to enter a bar room which is conducted as a public place. And it is not error to admit their testimony as to what they saw.

13610. EDMONSTER v. STATE. Delaware County. *Affirmed.* Neal, J. April 3, 1929.

Appellant was prosecuted by an affidavit in four counts which charged him with several violations of the liquor law. The court found the defend-

ant guilty but did not designate the particular count or counts upon which it based its decision. Since the minimum and maximum punishment provided by the law for the violation of each count is the same, judgment will not be reversed if there is evidence to sustain a finding of guilty upon one of the counts even though there is a want of evidence to sustain the conviction upon the other counts.

13631. FLEETWOOD v. STATE. Monroe County. *Affirmed.* Lockyear, J. April 4, 1929.

Prosecution on an affidavit charging unlawful possession of intoxicating liquor. Evidence sufficient to sustain the decision of the court.

13388. FREYN v. FREYN. Morgan County. *Affirmed.* Per curiam. April 19, 1929.

Per curiam.

13605. GOAR v. STATE. Henry County. Nichols, J. *Affirmed.* April 5, 1929.

No question is presented on the record.

13414. GRAHAM v. SINCLAIR ET AL. Sullivan County. *Affirmed.* Nichols, J. April 5, 1929.

Action by appellant to quiet title and involving construction of a deed. The deed made the appellant a tenant by entirety with her husband of a life estate; by reason of a subsequent divorce the appellant and her husband became tenants in common. A grant to the life tenants of a power to sell and dispose of the coal or other minerals did not vest any estate in the donees. The power of disposition is not an estate and does not imply ownership of an estate, nor does it enlarge a life estate into a fee.

13669. GREER v. STATE. Lawrence County. *Affirmed.* Remy, J. April 23, 1929.

Appellant convicted on the charge of possessing and transporting intoxicating liquor. It was not error to overrule the motion "to strike out the evidence given" where the objection to the evidence as set forth in the motion has no application to a large part of the testimony which was clearly competent. The court says that the admission of the allegedly incompetent evidence "could not have harmed appellant, for there was other competent uncontradicted evidence to sustain the decision."

13653. HINER v. STATE. Marion County. *Affirmed.* Nichols, J. April 5, 1929.

Appellant was convicted on an affidavit charging violation of the liquor law. The evidence is sufficient to sustain the decision of the court and the question of competency of evidence is not presented.

13679. HINER v. STATE. Marion County. *Affirmed.* Remy, J. April 18, 1929.

Appellant was convicted on the charge of possession and sale of intoxicating liquor. The uncorroborated testimony of one witness may be sufficient to sustain a conviction of one charged with a criminal offense.

13607. HOFFMAN v. STATE. Franklin County. *Reversed.* Enloe, C. J. April 26, 1929.

This is a companion case to the case of *Cummins v. State* (No. 13589).

13591. HOLTON v. STATE. Clark County. *Affirmed.* Neal, J. April 16, 1929.

Appellants convicted of operating a motor vehicle on the public highway under influence of intoxicating liquor. The evidence is sufficient to sustain the verdict.

13591. HOLTON v. STATE. Clark County. *Affirmed.* Neal, J. April 16, 1929.

The brief does not present the questions raised, but the court examined the record and found no showing of reversible error. There was no affirmative showing that the appellant was harmed, "notwithstanding the withdrawal of hearsay evidence by the court."

13326. INDIANAPOLIS GLOVE CO. v. FENTON. Marion County. *Affirmed.* Nichols, J. April 19, 1929.

Action by appellee to recover for damages for a personal injury claimed to have been sustained by reason of negligence of appellant. The trial court did not err in overruling demurrers to the paragraphs of the complaint.

13299. INLAND STEEL CO. v. BARBALIC ET AL. Industrial Board. *Affirmed.* Nichols, J. April 19, 1929.

This is an appeal from an award of the Industrial Board. It was unnecessary to consider the question raised pertaining to the want of authority of the attorney in fact since, after appellant's brief was filed a writ of certiorari was ordered on appellee's petition and the writ thereto brought to the Appellate Court a certified copy of the power of attorney in question.

13390. INTERSTATE PUBLIC SERVICE CO. v. HAND. Floyd County. *Affirmed.* Lockyear, J. April 26, 1929.

Answers to interrogatories must exclude every conclusion authorizing a recovery by the party in whose favor a general verdict is given in order to sustain a motion *non obstante.*

13674. KALSER v. STATE. Vanderburgh County. *Affirmed.* Remy, J. April 18, 1929.

Appellant was convicted of operating a motor vehicle on the public highway while under the influence of intoxicating liquor. The evidence is sufficient to sustain the verdict.

13626. JONES v. STATE. Vanderburgh County. *Affirmed.* McMahan, P. J. April 26, 1929.

Appellant is convicted of unlawfully possessing intoxicating liquor and of maintaining a nuisance. The appellant fails to present the questions involved in the contention that the verdict is contrary to law and that the

court erred in overruling the motion to direct verdict for appellant. The motion for a new trial specified that the court erred in permitting three named witnesses and "others" to testify and appellant's brief shows objections made to the testimony of two only of the named witnesses. There was no error in overruling the motion where the specification in the motion was joint as to several witnesses and when there was no showing of error in allowing one or more of them to testify.

13644. KRIVOKUCHA v. STATE. Lake County. *Affirmed.* McMahan, P. J. April 4, 1929.

The error alleged is the overruling of appellant's motion to suppress the evidence procured and learned by reason of the unlawful arrest and search. Although appellant sets out the evidence given on the motion to suppress, he does not set out any further evidence on the trial of the cause on the merits; and in an absence of a showing that the objectionable evidence was introduced the court can not say that the overruling of the motion to suppress was reversible error.

13147. LAFAYETTE STREET RY. INC. v. ULLRICH. Tippecanoe County. *Affirmed.* Nichols, J. April 26, 1929.

Action to recover damages for personal injuries. The verdict of the jury contained the written words "thirty-eight" and the figures "3800". After the court said to the jury, "you are now discharged," and after all the members of the jury but one had left the jury box and the court room, the court caused the bailiff to reassemble the jury in the jury box and then instructed the jury to retire and reconsider the verdict and return the same to the court. Judgment was then rendered upon the first verdict "as construed and perfected on appellee's motion." The court did not err in sustaining appellee's motion to correct and reform the verdict, nor in overruling appellant's motion for a venire de novo. There was no harmful error in the matter of giving instructions and the evidence is sufficient to sustain the verdict.

13649. LAMPKINS v. STATE. Delaware County. *Affirmed.* Nichols, J. April 5, 1929.

Affirmed on authority of *Scott v. State*, Ind. App. —, N. E. — . (This term.)

13652. LARSON v. STATE. Delaware County. *Affirmed.* Nichols, J. April 5, 1929.

Prosecution on affidavit charging appellant with the unlawful possession of intoxicating liquor. The rule respecting the legality of the search warrant and the suppression of evidence, etc., was harmless error since on the trial the search warrant and the return were not introduced in evidence and the record shows no objection to any evidence of the discovery made in the search.

13730. LAUTEN v. STATE. Gibson County. *Affirmed.* Nichols, J. April 19, 1929.

Appellant was convicted on the charge of unlawful possession of intoxicating liquor. The court did not err in overruling appellant's motion to

quash the affidavit, the search warrant, and the evidence obtained by the search thereunder.

13703. LEE ET AL. v. STATE. Vanderburgh County. *Appeal dismissed.* Lockyear, J. April 2, 1929.

On petition by attorney general the appeal is dismissed for failure to file transcript within sixty days after the appeal was taken.

13311. LEWIS v. PENNSYLVANIA RAILROAD CO. Johnson County. *Affirmed.* Nichols, J. April 5, 1929.

Action by appellant for damages because of injuries suffered by appellant resulting from the alleged negligence of appellee. See opinion for full discussion of the facts and rulings of the court.

13702. MANERO v. STATE. Lake County. *Affirmed.* Enloe, C. J. April 2, 1929.

The time granted for filing briefs having expired June 11, 1926, and no briefs ever having been filed, the judgment is affirmed.

13643. MARTIN ET AL. v. STATE. Allen County. *Reversed.* Lockyear, J. April 5, 1929.

This was a prosecution of appellants on an affidavit charging cohabiting together as man and wife when not married. The evidence in the case was insufficient to make out a case of "living together as husband and wife".

13704. MCKINNEY v. STATE. Gibson County. *Appeal dismissed.* Neal, J. April 5, 1929.

Appeal dismissed on the authority of *Dudley v. State*, 161 N. E. 1.

13672. MILLER v. STATE. Dekalb County. *Affirmed.* McMahan, P. J. April 23, 1929.

Appellant was convicted on the charge of unlawful possession of intoxicating liquor. The evidence shows that sufficient facts were shown under oath to establish probable cause.

13645. MUELLER v. STATE. Marion County. *Reversed.* Neal, J. April 23, 1929.

The court having sustained a motion to quash the search warrant and suppress certain evidence obtained thereunder, there was not sufficient other evidence to support the finding of guilty.

13655. NEECE v. STATE. Gibson County. *Affirmed.* Enloe, C. J. April 16, 1929.

Appellant is convicted upon the charge of unlawful possession of intoxicating liquor. The evidence discloses that the premises described in and searched under the authority of the search warrant were neither owned nor possessed by the appellant and he is therefore in no position to complain of the illegality of the search warrant.

13601. OVERMYER v. STATE. Blackford County. *Reversed.* Enloe, C. J. April 5, 1929.

The appellant was tried and convicted upon an indictment which charged the unlawful sale of intoxicating liquor, etc. It is the settled law of this state that an indictment charging the unlawful sale of intoxicating liquor must name the person to whom this sale was made, if known, and if it be not known, the indictment must so allege.

13716. PAPA v. STATE. Elkhart County. *Affirmed.* Nichols, J. April 5, 1929.

Appellant was convicted and charged of violation of the liquor law. The evidence was sufficient to sustain the conviction. Other alleged errors are not properly presented.

13625. PAYNE v. STATE. Vanderburgh County. *Affirmed.* Lockyear, J. April 3, 1929.

Prosecution upon affidavit charging the unlawful possession, etc., for the unlawful manufacture of liquor. There is ample evidence in the record to support the court's finding and judgment.

13431. PENNSYLVANIA RD. CO. ET AL. v. MACLENNAN. Lake County. *Reversed.* Nichols, J. April 5, 1929.

Action for property damage sustained by appellee by reason of a collision between a train and appellee's automobile at a railway crossing, on which the auto had stalled. There is no evidence of any negligence on the part of the train crew. Certain instructions were not applicable to the evidence and should not have been given.

13321. PENNVILLE BANK ET AL. v. GEMMILL. Jay County. *Affirmed.* Lockyear, J. April 19, 1929.

Suit by appellee to recover the amount of money alleged to be due and owing by appellant bank on account of the sale of certain shares of stock of which she claimed to be the owner by reason of the appellee bank's having taken over the business and assets of a private bank in which the appellant owned stock under an agreement to issue to the stockholders of the private bank share for share in the new bank. There was no error in overruling appellant's demurrer and the finding and decision of the trial court was sustained by sufficient evidence and not contrary to law.

13231. PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RD. CO. v. VERBERG, ADMR. Jefferson County. *Reversed.* Remy, J. April 19, 1929.

This is a suit by administrator with will annexed to recover for the destruction by fire of buildings located upon land which by the terms of the will had been devised to children of the testator. Before the beginning of this suit the court had ordered the real estate to be sold to pay the debts of the estate. The appellee as administrator has an interest in the real estate to the extent of the debts of the estate, and he may maintain the action for damages caused by the fire if the real estate can not be sold for a sum sufficient to satisfy the claims of creditors. Since it does not appear that the land can not be sold for sufficient to pay all debts of the

estate, the administrator can not maintain the action to recover damages to the real estate caused by the fire.

13345. POSTLEWAITE v. HASSE. Porter County. *Reversed.* Nichols, J. April 19, 1929.

This case involves the authority of the State Board of Tax Commissioners relative to the question of ordering re-assessments of real estate and improvements in particular taxing units. See opinion for full discussion.

13594. REESE v. STATE. Delaware County. *Affirmed.* Enloe, C. J. April 4, 1929.

Appellant was prosecuted under two separate affidavits, one of which charged him with being intoxicated in a public place, and the other charged him with operating an automobile upon a public highway while in a state of intoxication. The fact that appellant pleaded guilty to the charge of "appearing in a public place in a state of intoxication" and paid his fine will not bar the subsequent prosecution upon the "driving" charge. The offense for which he paid his fine was complete when he appeared in a public place in a state of intoxication; the other offense was not complete until being in such condition he drove the automobile upon the public highway. These offenses under our statute are separate and distinct.

13647. RESETER v. STATE. Lake County. *Affirmed.* Remy, J. April 3, 1929.

Appellant was charged by affidavit in three counts: (1) sale, (2) possessing intoxicating liquor, and (3) maintaining a common nuisance. The evidence, when all taken together, is sufficient to sustain the verdict of guilty on the three counts.

13642. ROBARDS v. STATE. Marion County. *Appeal dismissed.* Enloe, C. J. April 19, 1929.

Appellant had been tried and found guilty of the offense of assault and battery. The transcript not having been filed within the statutory time limit, the appeal is dismissed.

13614. ROBERTSON v. STATE. Delaware County. *Affirmed.* Lockyear, J. April 4, 1929.

Appellant convicted on the charge of violation of the liquor law. By reason of failure to comply with the rules of the court no question is presented on appeal.

13455. ROBINSON, ADMX., v. STANDARD OIL CO. OF INDIANA. Lake County. *Reversed.* Nichols, J. April 19, 1929.

Action to recover damages for the death of appellant's decedent, the death was alleged to be caused by the negligence of appellee. See opinion for full discussion of the question of proximate cause involved.

13619. RYAN v. STATE. Marion County. *Affirmed.* Enloe, C. J. April 5, 1929.

Conviction on the charge of being unlawfully possessed of intoxicating liquor. Where the evidence discloses that the appellant, just prior to his

arrest, told the officer that he was then and there violating the law by having intoxicating liquor on his person, the officer, upon such admission being made, had authority to make the arrest and to search the person of the defendant. The motion to suppress evidence thus obtained was properly overruled.

13651. SANDERS v. STATE. Vanderburgh County. *Affirmed.* Nichols, J. April 5, 1929.

Prosecution upon indictment charging appellant with the offense of compounding a prosecution as defined in Sec. 2605, Burns 1926. Each of the counts is clearly within the provision of the statute and a motion to quash was properly overruled. A proof of an oral announcement is not sufficient evidence upon which to base an order for a nunc pro tunc entry at an after term.

13654. SCHROEDER v. STATE. Marshall County. *Reversed.* Remy, J. April 26, 1929.

Appellant was convicted of the charge of attempting to influence a witness, the prosecution being pursuant to Sec. 2719 Burns 1926, Acts 1913, p. 611. Since the facts disclose that on the date of the alleged attempt of appellant to influence witness the witness was not under valid subpoena to appear and testify before any court or grand jury of the state of Indiana, the verdict is not sustained by sufficient evidence and is contrary to law.

13640. SCOTT v. STATE. Delaware County. *Affirmed.* McMahan, P. J. April 16, 1929.

Appellant is convicted for having possession of intoxicating liquor in violation of statute. Where there was a motion to suppress evidence found by virtue of a search warrant but neither affidavit for search warrant nor the search warrant, nor the officer's return was introduced in evidence, and the officers were permitted to testify without objection that they found intoxicating liquor in appellant's possession, the overruling of the motion to suppress, if error, is not reversible error.

13673. SICHICK v. STATE. Lake County. *Affirmed.* Neal, J. April 17, 1929.

Appellant was convicted on the charge of maintaining a liquor nuisance. Although the court would be justified under the rules in affirming the decision, the court considers, as presented, the question of an alleged inconsistent verdict of the jury. The fact that appellant was acquitted of the charge of the first and second counts does not render the verdict of guilty on the third count inconsistent or repugnant where the evidence is sufficient to sustain conviction on the third count.

13590. SKILES v. STATE. Steuben County. *Affirmed.* McMahan, P. J. April 3, 1929.

A specification in the motion for a new trial that "the verdict is contrary to the evidence" presents no question, since the specification does

not state a statutory cause for a new trial. Questions related to the admission of evidence and to the giving of a certain instruction by the court of its own motion are not properly presented.

13638. STADIA v. STATE. Marion County. *Affirmed.* McMahan, P. J. April 23, 1929.

Appellant, a married woman, was charged in an affidavit containing five counts and upon a general finding of guilty as charged appellant was sentenced by the court. The common law presumption that a married woman committing a crime in the presence of her husband is acting under coercion from her husband is a rebuttable presumption and the evidence was sufficient to justify the trial court in finding that the appellant was not coerced by her husband.

13582. STEVENS ET AL. v. STATE. Elkhart County. *Affirmed.* Enloe, C. J. April 2, 1929.

The appellants were convicted on a charge of maintaining a liquor nuisance. The only alleged error properly presented is the overruling of their separate motions for separate trials. The statute declares that the offense in question is a misdemeanor; and in misdemeanor cases it is within the discretion of the trial court to allow, or to refuse to allow, separate trials. There was no error in refusing separate trials in the absence of a showing of abuse of discretion.

13723. SYLVIA v. STATE. Decatur County. *Affirmed.* Lockyear, J. April 24, 1929.

Defendant was convicted of violation of the liquor law. The affidavit is in the language of the statute and sufficiently charges the offense. The evidence is sufficient to sustain the conviction.

13664. TERRELL v. STATE. Morgan County. *Affirmed.* Remy, J. April 16, 1929.

Appellant convicted on the charge of unlawful possession and sale of intoxicating liquor. The court was without authority to order an amendment of the verdict since the motion to amend involved material matter and was filed after the jury had been discharged and had served. The evidence does not bring the case within the entrapment rule.

13656. THOMAS ET AL. v. STATE. Morgan County. *Affirmed.* Lockyear, J. April 24, 1929.

The appellants were prosecuted on separate affidavits charging the failure to bury hogs as required by the statute. The constitutional provision requiring subject of statute to be expressed in the title permits including in an act any means reasonably adapted to secure the object indicated by the title. Although the title of the act in question recited that it was "an act concerning the prevention, spread and control of infectious diseases among swine," etc., the act could validly require that a "carcass should be cared for in a particular manner whether they died from an infectious disease or not."

13681. THOMPSON v. STATE. Vanderburgh County. *Affirmed.* Lockyear, J. April 24, 1929.

Appellant was convicted on an affidavit charging the maintenance of a liquor nuisance. The facts stated in the affidavit and the search warrant were sufficient to show probable cause and the evidence found as the result of the search was properly admitted.

13634. TOTH v. STATE. Knox County. *Affirmed.* Nichols, J. April 5, 1929.

The appellant was convicted of possession, etc., of intoxicating liquor. Although in the matter of giving instructions there was error, it was harmless, because the conviction was clearly sustained by the facts established and "the jurors could not, without disregardnig their oaths, have done otherwise than to find appellants guilty". (Quoted by the court from 170 Ind. 195.)

13662. WALKER v. STATE. Lawrence County. *Affirmed.* McMahan, P. J. April 18, 1929.

Appellant was convicted of violating the prohibition law. The affidavit was sufficient to withstand the motion to quash. No question is presented as to the overruling of motion for a new trial because the evidence is not in the record, the bill of exceptions containing the evidence having been filed before it had been signed by the judge.