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Recent Case Notes (and Indiana Docket)

RECENT CASE NOTES

CRIMINAL LAW—SEARCHES AND SEIZURES—INTOXICATING LIQUORS.—Conviction of possessing a still intended for use in violation of the Prohibition Laws (Laws, 197, c 4). Overruling appellant's motion for new trial is assigned as error. On May 21st the appellant's premises were searched under a search warrant. A copper can and a broken hydrometer were found. Only the latter was seized. The search was not interrupted or interfered with. May 27th the officers returned to the appellant's premises, in the absence of himself and family, with the same search warrant, which had not been returned. They found and seized a barrel of "mash" that was "working," a vessel which "had" contained whiskey, and a lid and coil which fitted the can found in the former search, and constituted a complete still. The lid and coil were found upon an adjoining farm, about thirty or forty yards from the appellant's barn. The articles seized were admitted in evidence over the appellant's objection. He offered an innocent explanation of everything except the lid and coil. The appellant contends that the adjoining premises, not being described in the search warrant, were illegally searched. That the second search, being made under a warrant which had already been served, was illegal and that the articles seized were improperly admitted in evidence. Held: Immunity from unreasonable search and seizure is a personal privilege, and a person cannot successfully object to a search of another's premises so long as it does not unlawfully invade his own privacy. The neighbor, whose land was searched, is the only one who can object to the search without a proper warrant. A search warrant which has been served by the proper officers on the occupant of the premises therein described, and used in making a complete search of the premises, cannot be used in making a subsequent search, and any articles seized in such a search are not competent evidence. For error in the admission of this evidence the judgment was reversed, with directions to sustain the defendant's motion for new trial. *Tongut v. State*, 151 N. E. 427, April 21, 1926.

The question of the defendant's guilt or innocence seems to have become of secondary importance in the adjudication of liquor cases in Indiana. The courts in their effort to protect the people from unreasonable searches and seizures have apparently lost sight of the purpose of the trial. Is the overzealous or corrupt officer a greater menace to society than the criminal? In this case the court has clearly stated that the defendant cannot successfully object to the admission of evidence secured in an unlawful search of a neighbor's premises. Yet it has apparently decided that the same articles should be excluded where the search of the neighbor's premises was under an illegal warrant. It would seem that an illegal warrant would be at least as effective as no warrant at all, and that the lid and coil, which were found on the adjoining premises, would be admissible. The court says that the defendant offered an innocent explanation of everything except the lid and coil. Therefore, he must have admitted that the other articles were found upon his premises. On the other hand, although the articles taken from the defendant's premises at the time of the second search were incompetent, yet the testimony of the officers as to the discovery of the copper can and the hydrometer on the first search together with the lid and coil found upon the adjoining

land, would be sufficient to show that the defendant had a complete still in his possession. Unquestionably the right of the people to be secure from unreasonable searches and seizures must be protected. But are the courts justified in taking it upon themselves to determine how that result shall be brought about? The constitutional rights of a citizen are violated by an illegal search, but there is no rule of law that illegally obtained evidence is inadmissible. Wigmore on Evidence, Sec. 2183. *People v. Defore*, (N. Y.) 150 N. E. 585; *Commonwealth v. Wilkins*, 243 Mass. 356, 138 N. E. 11. The courts, by judicial construction, are excluding such evidence, and instead of punishing both the officer and the criminal, they allow both to go free. By refusing to admit illegally secured evidence they have placed into the hands of the most humble peace officer the power to confer immunity upon the criminal by mere neglect, ignorance, or bad faith. It is true that the punishment of officers of the law is difficult and perhaps impossible, but it is not for the courts to say how officers shall be restrained from making such searches. The method of law enforcement, direct or indirect, is a question of policy for the legislature to determine. *People v. Defore*, (N. Y.) 150 N. E. 585. This case is a splendid example of the extent to which the doctrine of the suppression of evidence may go, and shows that there is an urgent need for a change in this field of the law.—R. E. M.

EXTENT OF COURSE OF EMPLOYMENT.—Application before the Industrial Board of Indiana by appellant, as widow and sole dependent of John Fey, deceased, claiming compensation under "The Indiana Workmen's Compensation Act." The decedent had been employed in the appellee's butcher shop for some twenty years, and was recognized by appellee and other employees as having authority to direct operations in the lard and sausage room. When the decedent and Sparks, a co-employee, commenced their work on the morning of decedent's death there was no ill-feeling between them and the altercation in which they subsequently became involved grew out of decedent's attempt to direct the co-employee with reference to building a fire under a large kettle. Heated words passed between them, but there was no evidence of decedent's striking or threatening to strike the co-employee. The co-employee struck decedent with a lard ladle, and decedent's death ensued. This appeal is from the award on the foregoing finding against the appellant. Held: Award reversed. Where there is a disagreement or quarrel between co-employees arising out of the work in which they are at the time engaged, and as a result one assaults and injures the other, it will be inferred that the injury arose out of the employment and compensation will be authorized. *Fey v. Bobrink*, Indiana Appellate Court, May 14, 1926, 151 N. E. 705.

It may be said that an act is within the course of the employment if (1) it be something fairly and naturally incident to the business, and if (2) it be done while the servant was engaged upon the master's business and be done, although mistakenly or ill-advisedly, with a view to further the master's interest, or from some impulse or emotion which naturally grew out of or was incident to the attempt to perform the master's business, and did not arise wholly from some external, independent and personal motive on the part of the servant to do the act upon his own account. Meechem on Agency, Sec. 1960. It has been held that mere words, however abusive or insulting, do not make the person using the same an aggressor so as to prevent compensation under the Workmen's Compensation Law. *Knocks v. Metal Package Corp.*, 131 N. E. 741. When one

employee injures another in a quarrel over the manner of working together in a common employment, the accident arises out of the employment, if it is connected with the employer's work, and in a sense is his interest. *Rydecn v. Monarch Furniture Co.*, 148 N. E. 527. The death of a workman from a blow by a hammer thrown by a fellow-servant as the result of a disagreement arising out of the employer's work, was caused by an accident arising out of and in the course of his employment. *Mueller v. Klingsman*, 73 Indiana Appellate Court 136. All concur in the rule that the accident to be within the compensation act, must have had its origin in some risk of employment. No fixed rule to determine what is a risk of employment has been established. Where men are working together at the same work disagreements may be expected to arise about the work, the manner of doing it, as to the use of tools, interference with one another, and many other details which may be trifling or important. Infirmity of temper or words may be expected, and occasionally blows and fighting. Where the disagreement arises out of the employer's work in which two men are engaged and as a result of it one injures the other, it may be inferred that the injury arose out of the employment. *Pekin Cooperage Co. v. Industrial Corp.*, 120 N. E. 530.

The holding of this case seems to be in accordance with the weight of authority.—R. W. M.

INSURANCE—LIFE POLICY—PREMIUM BOND.—Appellee brought an action for the cash surrender value of a twenty-payment insurance policy, which had been reinsured by appellant. The policy contained a stipulation that if insured were living on due date for twentieth payment there would be paid him a share of the surplus then found by the company as apportionable to this policy, and the policy might then be surrendered and cash value plus surplus be drawn by the insured or his assigns. By a premium bond executed at the time of making the policy, the insured was to pay only 40 per cent of the annual premium and the remaining 60 per cent,, with 4 per cent interest, was to be secured by a lien on the policy. Appellee paid 40 per cent of the $158 annual premium for twenty years. The total payments made amounted to $1,264, in contrast with $3,160, which he would have paid had he made full payments. The appellee claimed that, since he was alive at the expiration of the twenty-year period, he was entitled to recover the surrender value as set out in the policy. Appellant denied such right, saying that it had a lien on the policy for the unpaid 60 per cent, with 4 per cent interest, and since this amounted to a sum in excess of the surrender value, the appellee was not entitled to recover. Held: A premium bond, requiring payment of only part of premium and giving lien for the difference, defeats the insured's right to the entire surrender value of the policy. *Federal Life Insurance Company v. Harding*, (App. Ct. of Ind. In Bane, June 22, 1926) 152 N. E. 844.

The appellee's contention was based on the decision in *Fed. Life Ins. Co. v. Sayre*, 195 Ind. 7, 142 N. E. 223, where insured was permitted to recover the surrender value of a policy, even though he was required to pay only a stated per cent of the annual premium. The cases differ, however, in that no lien for the unpaid portion was accorded by the policy or bond in the Sayre case. The effect of the premium bond in the present case has been to give appellee insurance for the face of the policy for twenty years at a very minimum rate, one at which the company is not able to build up a surplus to finance their loan and surrender programs under the entire policy. This minimum rate insurance was not inclusive of all privileges

under the policy, but restricted the options by the primary lien that the insurer held against any claim on the policy. For release from the full premium payment the appellee has agreed, by the bond, to relinquish these options and privileges set forth in the policy and should therefore not be allowed to enforce the terms of the policy, regardless of the bond, on the insurer. *Federal Life Insurance Co. v. Kemp et al.*, 257 Fed. 265; *Frances v. Prudential Insurance Co.*, 243 Pa. St. 380, 90 Atl. 205.

The result reached in this case is in conformance with the general contract law that an agreement will be interpreted in the light of surrounding circumstances and the evident intent of the parties so as to protect each from an unjust consequence, not anticipated or contracted for. This does not vitiate a foolishly made contract which by its literal enforcement will work hardship on one of the parties, and is not in conflict with cases *supra*, and others where no lien or claim is reserved by the insurer.

G. R. R.

NEGLIGENCE—LAST CLEAR CHANCE.—Appellant owned and operated a street railroad on Columbia street in Evansville. The sidewalk parallel to the car line was being repaired and sand for that purpose was piled in the street between the car line and the curb. Appellee, walking between the sandpile and car line, in passing the place being repaired, was struck by one of appellant's cars. Evidence clearly shows appellee looked once when she started around the pile, saw the car coming a block or so away, then negligently continued. The distance from the sandpile to the outer rail was about five feet. But the evidence also clearly established that the motorman saw appellee start around the pile when he was three hundred or four hundred feet away from her; that he was running two or three miles an hour at Fourth avenue, 342 feet west of appellee,; that he rang the gong to attract her attention; that he was about ten feet from her when he saw there was danger; that her back was toward him, and that there was nothing in her conduct to indicate she knew the car was coming. Appellee recovered a judgment against appellant for personal injuries under instructions of the court, applying the last clear chance rule. Held: Judgment for appellee affirmed. *Southern Indiana Gas and Electric Company v. Harrison*, Appellate Court of Indiana, May 12, 1926, 151 N. E. 703.

Appellant claimed the negligence of appellee, shown by the evidence, proximately contributed to her injury and so bars a recovery. But the court held, "In making this contention, appellant ignores the rule of last clear chance." The last clear chance doctrine as generally stated is that, "though the plaintiff may have been guilty of negligence, and although that negligence may, in fact, have contributed to the accident, yet if the defendant could in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him." *Radley et al. v. London and N. W. Ry. Co.*, (1876) House of Lords, 1 App. Cas. 754.

The doctrine is generally accepted as stated above. Yet Indiana and a few other states qualify it to the extent that the doctrine is applicable only where the defendant had actual knowledge of plaintiff's peril. See case note in issue of January, 1926, for discussioon of this interpretation, and for the general scope of the doctrine.

In *Evansville and Southern Indiana Traction Co. v. Spiegel* (1912), the court said, "This doctrine (the last clear chance doctrine) has been frequently recognized and applied by our courts. *Grass v. Fort Wayne, Etc.*,

Traction Co., (1908) 42 Ind. App. 395; *Indianapolis St. Ry. Co. v. Schmidt*, (1905) 35 Ind. App. 202; *Citizens St. Ry. Co. v. Hamer*, (1902) 29 Ind. App. 426; *Krenzer v. Pittsburg, Etc., Ry. Co.*, (1893) 151 Ind. 587; *Indianapolis Ry. Co. v. Pitzer*, (1887) 109 Ind. 179; *Indianapolis St. Ry. Co. v. Bolin*, (1906) 39 Ind. App. 169." And in the case at bar the court concluded, "if it be conceded that she (appellee) was negligent, that would not necessarily prevent a recovery. The complaint and evidence were sufficient to sustain a verdict in her favor under the rule of last clear chance."

The case is rightly decided in accordance with general and extensive authority. It is unimportant except that it shows that the doctrine of last clear chance has become a settled doctrine of the law, closely adhered to by the courts of Indiana. B. B. C.

INDIANA DOCKET

SUPREME COURT.

12497 ANDREWS v. PALMER. Sullivan County. *Reversed.* Remy, J. November 24, 1926.

It is error to state the rule of contributory negligence in this manner; that it consists of doing or failing to do an act which a person of ordinary care would do or omit doing, and if it caused or contributed to the injury, that the person guilty of contributory negligence could not recover.

24901 BRACKEEN v. STATE. Lake County. *Affirmed.* Willoughby, J., Myers, J., concurs in results. November 23, 1926.

Where in a trial court plea of guilty was entered when the plea of not guilty should have been entered, but the actual trial was held on the plea of not guilty, appellant cannot complain on the ground that she was tried without any plea, since the record shows a plea.

24900 BRACKEEN v. STATE. Lake County. *Affirmed.* Willoughby, J., Myers, J., concurs in conclusion. November 23, 1926.

Where no allowance of time was made for filing a bill of exceptions the bill must be filed in the same term of court in order to be part of the record on appeal.

25197 BRIESE v. STATE. St. Joseph County. *Affirmed.* Ewbank, J. November 24, 1926.

As a finding of fact a person may help to maintain a liquor nuisance where the sale of liquor is part of the nuisance, although he himself does not sell the liquor.

25183 DINEFF v. STATE. Marion County. *Affirmed.* Gemmill, J. November 19, 1926.

The court found that the verdict in the trial court was amply sustained by the evidence in keeping with Section 2740 Burns, 1926.

25046 HAMMOND, WHITING & EAST CHICAGO RAILWAY COMPANY v. STATE HIGHWAY COMMISSION ET AL. Lake County. Petition for rehearing denied. Ewbank, J., Myers, J., and Travis, J. Dissent. November 23, 1926.

Under a franchise the court held that the company operated its railway subject to the relocation of its tracks upon change in the highway, and hence when the highway was legally changed by elevation the company could not complain if required to move its tracks.

24575 HUDSON v. STATE. Marion County. *Reversed.* Travis, J. November 16, 1926.

Where appellant was convicted under the prohibition law of 1923 of "possession with intent," it was not illegal transportation to move liquor about in appellant's house and a conviction for such "possession with intent" cannot be founded upon indirect evidence that the liquor was transported to the house unless there was direct evidence that appellant herself was the one who moved the liquor from the vehicle to the house, where appellant denies ownership of the liquor or knowledge of its presence.

24643 KIMMEL v. STATE. Allen County. *Reversed.* Ewbank, J., November 18, 1926.

In a charge for manslaughter, if the allegation that a driver drove his car in violation of the traffic regulation, and so inadvertently killed the deceased, or if the allegation that in violation of the regulation he recklessly killed the deceased (without giving the facts supposed to constitute such recklessness), neither charge is good on motion to quash.

25142 LINDLY v. STATE. Delaware County. *Reversed.* Ewbank, J. November 3, 1926.

In keeping with *Lindley v. State* (25906 decided in October), it is error for a court to give oral instruction when requested to give written instructions.

24483 MORAN ET AL. v. MILLER, STATE FIRE MARSHAL, ET AL. Elkhart County. Appeal dismissed. Per curiam.

Where one contests the order of the Fire Marshal in condemning his buildings he cannot question the validity of the law itself on appeal if he uses that law to give the court jurisdiction on his appeal.

24995 PIERCEFIELD v. STATE. Monroe County. *Reversed.* Gemmill, J. November 17, 1926.

Where a still is found on appellant's land, 150 feet from her house, and there is no direct evidence that she placed it there or had any connection with it, proof of the mere presence of the still at the place is not sufficient to sustain a conviction of possession of a still.

25302 SCOFES ET AL. v. HELMAR ET AL. Lake County. Bond approved, writ issued. Per curiam. November 5, 1926.

Where a restaurant owner refuses to sign an agreement with a labor union providing for increased wages and other matters; and in consequence, the union places pickets before the restaurant in the peaceful way bearing a sign, "This restaurant is unfair to organized labor," such action is an alleged interference with the restaurant's business and will be enjoined by the court.

24669 SHERMAN SMITH v. STATE. Randolph County. *Affirmed.* Myers, C. J. November 5, 1926.

In a criminal proceeding, if it is alleged that the defendant had a still and distilling apparatus, this was sufficient definition of the crime to make the defendant's conviction under the statute good on appeal.

25202 SAM SMITH v. STATE. Warrick County. *Affirmed.* Ewbank, J. November 23, 1926.

Where there is no showing in the bill of exceptions or the certificate of the Judge that the bill of exceptions contains all the evidence, it cannot be shown by any extraneous documents whatever that in fact this bill of exceptions did contain all the evidence.

25086 SPEYBROECK v. STATE. St. Joseph County. *Affirmed.* Gemmill, C. J. November 23, 1926.

The constitutional protection against unreasonable searches and seizures is a personal one; and where the jury found the appellant guilty of the charge under the prohibition act he cannot set up this objection where he denies ownership of the property where the liquor was found and the jury found that he was such owner.

24481 THE STRAUS BROTHERS COMPANY ET AL. V. FISHER ET AL. Allen County. *Reversed with instructions.* Ewbank, J. November 19, 1926.

Where the Board of Commissioners finds that a drain is insufficient it was error for them to overrule a petition for an enlarged drain because of appellee's two-third's remonstrance.

25016 TAYLOR V. STATE. Rush County. *Affirmed.* Gemmill, J. November 17, 1926.

Where it is not shown that the order in which evidence was committed injured the appellant and no objection was made at trial there is no reversible error on appeal.

25182 VILSCOFF V. STATE. Marion County. *Affirmed.* Ewbank, J. November 4, 1926.

Here the court found that the evidence was sufficient on appeal to uphold a conviction under the prohibition law.

25060 WAGLER, TRUSTEE, ET AL. V. STATE EX REL. Fulton County. *Affirmed.* Ewbank, J. November 16, 1926.

Even though a demurrer is erroneously sustained by the trial court, this matter cannot be considered on appeal unless an exception to such ruling by the court appears in the record.

APPELLATE COURT

12443 BAGGERLY V. SUPREME TRIBE BEN HUR ET AL. Orange County. *Affirmed.* Nicholas, J. November 5, 1926.

Where under the provision of a fraternal insurance company certain persons are not permitted to be beneficiaries, the fact that the deceased, after divorce, indicated that he wished the same beneficiary in his policy to continue, will have no effect, if the terms of the insurance policy preclude the beneficiary from taking.

12433 BIRD TRANSFER CO. V. MASSACHUSETTS BONDING AND INSURANCE COMPANY. Morgan County. *Affirmed.* Nicholas, J. November 5, 1926.

Where a supersedeas bond is granted to two appellants and a joint indemnifying agreement is signed by the appellants in consideration of this bond and agreement, then the appellant is bound by the bond and the agreement. If on appeal the judgment is affirmed as to one of the appellants but reversed as to the other, there is liability on the bond.

12054 BOARD OF COMMISSIONERS OF MARION COUNTY V. HARCOURT, Admrx. Marion County. *Affirmed. Per Curiam.* November 19, 1926. *Per Curiam.*

12334 CHICAGO, INDIANAPOLIS AND LOUISVILLE RY. CO. V. BLANKENSHIP. Newton County. *Reversed.* Enlow, C. J. Remy, J. Dissents. November 19, 1926.

Where no statute or ordinance requires a railroad to keep a sign or a bell at its crossings, failure to keep such sign or bell is not direct evidence of negligence.

12406 THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY v. BEMENT-REA COMPANY. Sullivan County. *Reversed.* McMahan, C. J. November 23, 1926.

Where sugar was damaged by water but still had a considerable market value the buyer has no right to refuse to accept the damaged sugar at all.

12550 DAVIS v. DOTY ET AL. Marion County. *Appeal.* Dismissed. McMahan, P. J. November 5, 1926.

Where an appeal is taken prior to a final disposition of the case as to all the parties in the trial court, the appeal must be dismissed.

12520 GARRISON ET AL *v.* CHRISTMAS ET AL. Vanderburg County. *Affirmed. Per Curiam.* November 18, 1926. *Per Curiam.*

12663 GRACE CONSTRUCTION CO. v. FOWLER. Industrial Board. *Affirmed.* Enlow, C. J. November 4, 1926.

Where there was evidence that the applicant was an employee of the appellant and engaged in his employment at the time of his accident and where appellant did not allege within the allotted time at the trial that the accident was due to violation of city ordinances, there is no ground for reversal of a judgment on appeal.

12102 GROUR v. BLISH ET AL. Jackson County. Appellant's petition for rehearing denied. Enlow, C. J., dissents. November 19, 1926.

The dissenting opinion contends that new matter is read into the contract involved in this case, and that this new matter is used to sustain the case.

12516 HASKAMP v. SWENGER. Franklin County. *Reversed.* Remy, J. November 4, 1926.

Where the Indiana statute requires a child to support a parent for derogation of the common law and is criminal in character; no recovery by parent in a civil action to be had under it.

12531 HATFIELD v. HATFIELD. Marion County. *Affirmed. Per Curiam.* November 19, 1926.
Per Curiam.

12397 HERRING MOTOR COMPANY v. AETNA TRUST & SAVINGS CO., Receiver. Marion County. *Affirmed.* Nichols, J. November 19, 1926.

Where appellant bought certain automobile accessories from an insolvent corporation and then returned some of them for cause with the understanding that others would be set aside in substitution for the defective ones, there is ground for filing a general claim when the company goes into bankruptcy, but there is no ground for a special claim.

12515 HOOSIER FINANCE CO. v. CAMPBELL ET AL. Gibson County. *Affirmed.* Remy, J. November 17, 1926.

Where appellant had a mortgage on an automobile and appellee sued the owner of the car and recovered judgment for repairs, and it was later agreed that appellee would store the car and waive his judgment until appellant should sell the car on the mortgage, then the lien for repairs and mortgage, upon due notice, is good as being in accord with the claims of the appellant.

12578 HUNTINGTON COUNTY STATE BANK, TRUSTEE, v. MASON. Wabash County. *Affirmed.* Nicholas, J. November 19, 1926.

Where a sheriff and other officers tell an elderly lady who does not have legal or business experience that if she does not sign the requested

notes for her nephew with a mortgage on her farm for security, the nephew will be imprisoned, this is sufficient evidence of duress to sustain a judgment on appeal.

12748 KRENZ v. FERGUSON COAL COMPANY. Industrial Board. *Reversed.* Nichols, J. November 23, 1926.

Where appellant was suffering from an internal injury he was entitled to compensation if in an accident in the course of his work this injury were unusually aggravated.

12126 MARYLAND MOTOR CAR INSURANCE COMPANY v. HARRIS. Lake County. *Affirmed.* Thompson, P. J. November 24, 1926.

On the facts here an insurance company was held liable for the theft of an automobile when the automobile was not owned by the insured, although the policy provided that there should be no liability unless the title were in the insured.

12472 MYERS ET AL. v. SPARKS. Monroe County. *Affirmed.* Remy, J. November 19, 1926.

Where one sues for money had and received in a brief paragraph and the issues are fully covered in another paragraph of the complaint there is no error in refusing a motion to make the complaint more specific if the appellee was not in fact surprised.

12849 O'CONNOR & COMPANY v. O'CONNOR. Marion County. *Appeal dismissed. Per Curiam.* November 16, 1926.

Where a party to divorce proceedings was ordered to turn over shares in a certain company under an order for alimony the company itself has no interest in the proceedings to contest the matter on appeal on the ground that the party to the divorce did not have ownership of the shares.

12436 THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RD. CO. v. EDWARDS. Howard County. *Affirmed. Per Curiam.* November 23, 1926.

Per Curiam.

12580 SCHWENK v. KENNEDY, ADMINISTER. Cass County. *Affirmed.* Nichols, J. November 5, 1926.

The sole question was as to whether the evidence at trial was sufficient to support the judgment on appeal. It was held sufficient.

12571 STOWE, GUARDIAN, v. KRAMER, GUARDIAN. Marion County. *Affirmed.* Nichols, J. November 19, 1926.

Where two guardians for the same ward are appointed, the first guardian to duly qualify will be recognized as the legal guardian.

12688 SUMNER SOLLITT COMPANY ET AL. v. SHEELY ET AL. Industrial Board. *Affirmed.* McMahan, P. J. November 19, 1926.

Where appellee is ordered by the Indiana Board to pay a certain fixed sum each week separately to the widow and child and the widow re-marries, appellee may be ordered to continue payment of the widow's amount until the child is of age.

12687 STEVENS v. GRAVES. Industrial Board. *Reversed.* Thompson, J. November 16, 1926.

A single member of the Industrial Board received a receipt from the injured party for compensation and there was no dispute as to liability.

There was still ground for appeal to the full Board on the question of the period under which compensation should continue.

12743 UDELL v. LEEDY MFG. CO. Industrial Board. *Affirmed.* Thompson, J. November 4, 1926.

Here the court finds that the evidence was sufficient to uphold the rule of the full board on appeal.

12504 UNION TRACTION COMPANY v. WYNKOOP. Hendricks County. *Affirmed.* Nichols, J. November 19, 1926.

For an automobile driver to drive at an excessive rate of speed in violation of city ordinance is in itself negligence, and if a causal connection can be proved from which the injury followed, a judgment awarded the damages will be sustained.

12713 UNION TRACTION COMPANY OF INDIANA v. DOLLARHIDE. Marion County. *Per Curiam.* November 16, 1926.

12447 UNION TRACTION COMPANY OF INDIANA v. MCCULLOUGH. Clinton County. *Affirmed.* November 16, 1926.

Although an employer operates outside the workmen's compensation law so that he is not liable for the negligence of a fellow servant, he may be liable under a common jury to provide adequate facilities which would affect the work of fellow servants.

12535 WELCH v. PAGE. Sullivan County. *Reversed.* Nichols, J. November 19, 1926.

In a case of malpractice in which two physicians were involved, it was reversible error to refuse an instruction to the effect that the first physician would not be liable for negligence of the second and that it was not the burden of the first physician to prove that subsequent injury was due to the second physician.

12662 ZEIDLER ET AL. v. PRUEHER. Industrial Board. *Reversed.* Remy, J. November 23, 1926.

Where appellant does casual repair work on a house at the request of the owner, who is not in the building or renting business, such work does not bring him within the Workmen's Compensation Act.