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Recent Case Notes (and Indiana Docket)

RECENT CASE NOTES

CRIMINAL LAW — INTOXICATING LIQUORS — SEARCHES AND SEIZURES — EVIDENCE.—The appellant was convicted of maintaining a nuisance as defined by section 20, acts 1917, p. 15, c. 4, and he assigns as error the overruling of his motion for a new trial. His premises, a soft drink parlor and living quarters above, were searched under a warrant describing same as the house, room, and premises of Frank Hess and Clara Hess at 214 and 214½ Wabash avenue. The search disclosed a pint bottle of white mule in a stove pipe under the rear steps of the premises. Appellant insists that this evidence is not admissible since the keeping of intoxicating liquor was not unlawful, and that same was not shown to belong to appellant. HELD: The warrant adequately identified the premises and the evidence was admissible. Judgment affirmed. *Hess v. State*, Supreme Court of Indiana, April 22, 1926, 152 N. E. 405.

The description of the premises in the warrant was sufficient to remove all ambiguity as to the building intended, and so satisfies the rule: "A description which points out or identifies the place to be searched with such reasonable certainty as will obviate any mistake in locating it is all the constitution or statute requires." This is as laid down in *State v. Moore*, 101 N. W. 732, 125 Iowa 749. The premises searched were connected by a passageway and occupied by Frank and Clara Hess, and additionally designating the place as 214½ in the warrant does not introduce an element of ambiguity. *Steel v. United States* (1925), 45 S. Ct. 414, 267 U. S. 498, 69 L. Ed. 757; *Commonwealth v. Intoxicating Liquors*, 22 N. E. 472, 195 Ind. 411. The contention that the liquor found was inadmissible since it was not unlawful to keep intoxicating liquors with intent to sell (*Darbyshire v. State* (Ind. Sup. ct. 1925), 149 N. E. 166; *Smith v. State* (1924), 194 Ind. 686, 144 N. E. 471); is overcome by valid evidence that transactions in intoxicating liquors were actually carried on in the premises. It is unlawful to manufacture, transport, sell, barter, exchange, give away, furnish, or otherwise dispose of such liquor, and the keeping of a place for such trade was declared a nuisance, Acts 1923, c. 23, p. 79, sec. 20. *Manley v. State* (Ind. Sup. ct. 1925), 149 N. E. 51. The affidavit on which the search warrant was issued properly set forth the present acts of violation and so stated facts sufficient to authorize the issuance of the warrant. Appellant's motion to strike from record all evidence pertaining to the liquors found in the stovepipe is likewise correctly overruled. The liquor was found on appellant's premises on a legal search, and the finding coupled with appellant's possession of the property is a circumstance properly to be considered and can be challenged only as to weight of evidence and not as to its admissibility. This is a question for the trial court and since the ruling of that court in admitting the evidence is sustained, the Supreme Court is not authorized to state that the finding is not sustained by evidence or for that reason contrary to law. G. R. R.

MASTER AND SERVANT—FINDING OF INDUSTRIAL BOARD ON CONFLICTING EVIDENCE IS CONCLUSIVE.—The appellant owned and operated a public garage and, at the time the appellee received the injury for which he seeks compensation, he was assisting in the construction of the framework of a toilet which was being erected as a part of the garage equipment. In the forenoon of the previous day he had dug the pit for the toilet, having been employed by the appellant, but he worked for another party in the after-

noon. Appellee testified that appellant asked him to return to assist in finishing the work next day but appellant denied any such request. On the day of the injury he began work early in the morning and continued until the accident. Appellee proceeded under the Workmen's Compensation Act and the Industrial Board made an award from which this appeal is taken. *Held:* The award was affirmed in this court. *Wagner v. Wooley.* Decided in Indiana Appellate Court, June 22, 1926. 152 N. E. 856.

It is suggested that because there had been no good-faith effort by the parties to reach an agreement the court was without jurisdiction. However the record shows that appellant filed an answer denying all liability and resisted the award of the Industrial Board solely on the ground of non-liability which is sufficient to show that the parties failed to reach an agreement before the claim was filed. Sec. 9503, Burns R. S. 1926; *In re Moore,* 79 Ind. App. 470; *Sillix v. Armour & Co.,* 99 Kans. 426; *Grasselli Chemical Co. v. Simon,* 150 N. E. 617. Appellant contended that the appellee was not in his employment at the time of the accident, but was a mere volunteer. However the evidence on this point was conflicting so the finding and award of the Industrial Board will not be reviewed by this court. *Zeitlow v. Smock,* 65 Ind. App. 643; *Raynes v. Staats-Raynes Co.,* 68 Ind. App. 37; *Re Uzzio,* 228 Mass. 331; *Board v. Shertzer,* 73 Ind. App. 589. Appellant also contended that the appellee was engaged in casual labor within the meaning of the Act and therefore the case did not come under the purview of the Act. The term employee shall include every person, including a minor, lawfully in the service of another under any contract of hire, written or implied, except one whose employment is both casual and not in usual course of the trade . . . of the employer according to the statute. Sec. 9521b, Burns. It would seem that the appellee would be able to proceed under the Act although he was a casual laborer on the theory that he was doing work in the usual course of the appellant's business. *Caca v. Woodruff,* 70 Ind. App. 93; *Domer v. Castator,* 146 N. E. 881. This case is distinguishable from a recent Indiana case having similar facts on account of the work in that case being on a private garage while in this case it was on an additional convenience for a public garage. *Bailey v. Humrickhouse,* 83 Ind. App. 497. It would seem from a review of the many cases on this subject that the courts have been liberal in their interpretation and application of the Workmen's Compensation Act in Indiana as well as other states. R. M. C.

PLEADING—MUNICIPAL CORPORATIONS—WATER COMPANY—LIABILITIES.—On —— of January, 1923, appellant's house in the corporate limits of Indianapolis became ignited, and in response to an alarm two units of the fire department reached his house in ample time to save it from material injury, but due to the fact that the nearest fire hydrant was three thousand feet distant and the fire department had only a limited supply of fire hose, the house was wholly consumed and destroyed by the fire. Appellant brought action against appellee water company and city of Indianapolis demanding judgment of $10,000.00. Appellant's counsel insist that sections 12787, 12789, Burns' Ann. St. 1926 impose a liability on appellees for failure to deliver water at appellant's residence with which to extinguish the fire that destroyed his property. Each defendant filed a demurrer and attached a memorandum of reasons why complaint should be held insufficient. Demurrer sustained. Plaintiff appealed, the rulings sustaining these demurrers being assigned as errors. *Held:* Judgment affirmed

for appellees on three grounds: (1) A judgment holding a complaint insufficient will not be reversed because of any defects in the demurrers which were sustained to it. (2) Sections 12787, 12789, Burns' Ann. St. 1926 do not create any greater liability against a city and its municipal water company than provided by common law. (3) At common law a municipal corporation is not liable to an owner of property destroyed by fire on account of the negligence of the municipality and its officers, nor is a water company liable whose only obligation to furnish water to extinguish such fires arises out of a contract between it and the city. *Larrimore v. Indianapolis Water Co. et al.* Supreme Court of Indiana, April 1, 1926, 151 N. E. 333.

There seems to be little question that appellees' demurrers cannot be attacked on the ground that they were defective. Mere insufficiency in form of the demurrer to a pleading is not cause for reversing the judgment if pleading to which it was addressed was bad. *Kokomo, etc., Traction Co. v. Kokomo Trust Co.*, 137 N. E. 763. If a demurrer is rightfully sustained for any cause, the relator cannot consistently assert that such ruling was error. *State ex rel. Rabb V. Holmes et al.*, 147 N. E. 622. The sustaining of a demurrer, defective in form, to an insufficient pleading, is a harmless error. *Pattie v. State ex rel. Bennett*, 130 N. E. 421. In *Fitch v. Seymour Water Co.*, 37 N. E. 982, the law was definitely stated: A water company that agrees to furnish water to a city to extinguish fires is not liable to a private person whose property is destroyed by a failure to furnish water, as he is not a party to the contract, and unless made so by statute, a city is not liable for failing to protect the inhabitants against the destruction of property by fire. In *Trustees v. New Albany Water Works*, 140 N. E. 540, (1923), the court stated that all but three states of the United States have adopted the above rule. And in the same opinion the court stated that this common law rule was still in full force in Indiana, unchanged by any statute, as follows: Sections 12787, 12789 should so be construed as not to make any change in the common law beyond which it declares in express terms or by unmistakable implications, and in face of long line of decisions favoring the common law rule this statute can in no way be construed to enlarge the duty of a municipal corporation. In *Robinson v. City of Evansville*, 87 Ind. 334, the court held that a city authorized to maintain and maintaining waterworks and a fire department and collecting taxes for that purpose is not responsible for the negligence of its fire department in permitting the property of a citizen to be burned. Dillon in his authentic textbook on Municipal Corporations, 5th Ed. Sec. 1340, sums up the general law: A municipality is not liable for the loss and destruction of buildings of a property owner through the inadequacy of the municipal water supply to protect them, nor is a water company which contracts to furnish water to a municipality and its inhabitants chargeable with any greater liability than the city itself.

A. V. R.

PUBLIC CALLINGS—RAILROADS—DISTINCTION BETWEEN SPUR-TRACK AND EXTENSION.—Suit to enjoin the construction of an alleged extension of the defendant's railroad on the ground that the certificate of public convenience and necessity required by the Transportation Act, 1920, c. 91, § 402, 41 Stat. 456, 477-8, Par. (18) had not been secured from the Interstate Commerce Commission, and that the operation of the line will result in irreparable injury to the plaintiff. Par. (22) of the same act provides that

Par. (18) shall not apply to spur, industrial, team, switching or sidetracks. A territory known as the Industrial District is located between the main lines of the plaintiff and defendant railway companies. In it are cement works, oil refineries, and metal works. It is the richest freight-producing territory in Texas. Plaintiff is the only railroad that has direct connection with any of these industries. The proposed line of the defendant is to be 7½ miles long, besides spurs, siding and other subsidiary tracks which will be necessary to reach any of the industries. It will cost over $510,000 and was projected in order to reach six plants within the district, which furnish 80% of the traffic of the district and would divert from plaintiff freight revenues of over $500,000 a year. Defendant contends that the line is an industrial track because it is to be constructed solely for industrial purposes, that the general public is not to be served, and freight will be confined to carload lots for which no charge for switching service will be made. *Held:* The proposed line is an extension. The purpose of the Transportation Act of 1920 was to develop and maintain an adequate railway system for the United States. Congress recognized the waste of resources involved in competition of carriers, the burden of which fell upon the public, and established a policy of protecting and regulating monopolies. When Par. (18) and (22) are read in the light of this congressional policy, the terms extension and industrial track become clear. If the purpose and effect of the new trackage is to extend substantially the line of a carrier into new territory, and particularly where it extends into territory already served by another carrier, it constitutes an extension of the railroad within the meaning of Par. (18) regardless of its length or the character of the service contemplated. *Texas & Pac. Ry. Co. v. Gulf, Colo. & St. Fe Ry. Co.*, 270 U. S. 266.

The usual conception of a spur-track, so far as physical characteristics are concerned, is a stub, or sidetrack, connecting only at one end with the main line or branch of a railroad and constructed by or for the carrier owning or operating the railroad. *Operation of Line By Coal River & Eastern Ry. Co.*, 94 I. C. C. 389 at 394. The term "side-track" has a well-known signification. It means connection with some railroad affording communication with market. *Southern Pine Fibre Co. v. North Augusta Land Co.*, 50 Fed. 26. Webster defines a spur-track as a short branch line of track, especially a sidetrack connected with its main line by a single switch. In 36 Cyc. 810, it is declared to be a short track leading from a line of railway, and connected with it at one end only. The Indiana Supreme Court has declared that the terms "siding", "switch", and "turnout", relate to short tracks at the side of a railroad, lying parallel to the main track or nearly so, and do not include a track approximately at right angles to the main track, extending a distance of about 350 feet, such track being an extension or lateral road. *Indiana Railways & Light Co. v. City of Kokomo et al.*, 183 Ind. 543. The U. S. District Court for Michigan stated that the difference between new lines or extensions, on the one hand, and spurs, industrial, team, switching, or sidetracks on the other, as the terms are used in the Transportation Act of 1920, is that the former are tracks over which there are to be train movements in the sense that such movements are a part of the actual transportation haul from the shipper to the consignee, while the latter named tracks are for use in loading, reloading, storing, and switching. *Detroit & M. Ry. Co. v. Boyne City, G. & A. Ry. Co.*, 286 F. 540.

The courts have tried to distinguish between an extension and a spur-track on the ground of length, use, direction, number of persons using it, the class of freight hauled over it, the purpose of its location, and various other methods, all of which are more or less indefinite and arbitrary. Although the court in the principal case is defining the terms in the light of the Transportation Act of 1920, nevertheless, it has given us a clear and concise definition of an extension of a railroad track which not only is in accord with the spirit and intention of the act, but also is a sensible and well defined rule to be applied in the future. A proposed railroad line is an extension if its purpose and effect is to extend into new territory.

R. E. M.

INDIANA DOCKET*

SUPREME COURT

24653. BRILES v. STATE.. Orange County. *Affirmed.* Travis, J. January 4, 1927.

Evidence is not necessarily incompetent when it is introduced without objection at the trial.

24943 CAMPION v. STATE. Marshall County. *Affirmed.* Travis, J. January 14, 1927.

The defendant need not be present when the special judge in the case is selected. Under the prohibition law of 1923, it is not necessary to allege the price paid for liquor under a charge of the illegal sale of liquor.

25351 COWAN TENT CO. NO. 61, ET AL v. TREESH. Dekalb County. Cause transferred from Appellate Court and Judgment Affirmed. Willoughby, J. January 25, 1927.

Where a resident householder has no property other than the mortgaged property and is entitled to a $600 exemption the mortgagor of this property may foreclose it upon default in payment of the debt and the property is not subject to the lien of a judgment creditor.

25905 DAFOFF v. STATE. Marion County. Petition for rehearing denied. Willoughby, J. January 7, 1927.

Where there is evidence upon which the trial court could reasonably make a finding of fact, then the finding of the trial court will not be disturbed on appeal.

25198 DILLY v. STATE. Marion County. *Affirmed.* Gemmill, C. J. January 26, 1927.

Where an officer can smell the intoxicating liquor which flowed from a broken bottle that had just been held by the defendant, this is sufficient evidence for the officer to make a search on the basis that a crime had been committed in his presence.

25138 GAVIN v. STATE. Marion County. *Reversed.* Willoughby, J. January 26, 1927.

Where the defendant has been convicted on separate counts charging violation of the prohibition laws and the evidence does not support conviction on one of these counts, there must be a reversal.

24814 KEIFER v. STATE. Howard County. *Reversed.* Myers, J. January 25, 1927.

It is error for a person to state in testimony before a jury over the objection of the defendant that he believes the deceased was not standing at the time of the fatal shot when he does not show special knowledge to justify this testimony and there is nothing to indicate that the jury could not draw its own inferences from the evidence.

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*These opinions are secured through the courtesy of Charles L. Biederwolf, Clerk of Supreme and Appellate Courts of Indiana.

It is well known to our readers that the little digests of each case are given to identify the case only and do not purport to be an adequate summary of the points of law involved.

25199 KRUPA v. STATE. Lake County. *Affirmed.* Gemmill, C. J., January 6, 1927.

It is within the discretion of the trial court to grant a continuance or not and the action of the trial court will not be changed upon appeal unless an absence of this discretion is proven.

24989 LINDLEY v. STATE. Delaware County. *Reversed.* Travis, J. January 25, 1927.

Where the charge that an offense under the prohibition law was a second offense had been withdrawn by the prosecution it was error for the court to give an instruction dealing with this. The Supreme Court also "disapproves" the practice of the trial court in admonishing the jury about the importance of upholding laws in general.

24970 MALEY v. STATE. Union County. *Affirmed.* Myers, J. January 7, 1927.

The fact that the time granted for filing a bill of exceptions was extended beyond the term can be shown only by an order book entry and not by a recital in the bill itself.

24711 OSBORN v. STATE. Greene County. *Affirmed.* Myers, J., January 28, 1927.

A jury should not convict on circumstantial evidence unless it is satisfied beyond a reasonable doubt that the evidence conclusively indicates the guilt of the defendant. It is not for an appellate court however to enforce this rule. If there was sufficient evidence from which a jury might reasonably conclude beyond a reasonable doubt that the defendant was guilty, then the verdict must stand.

25082 TISDALE v. STATE. Pike County. *Affirmed.* Gemmill, C. J. January 13, 1927.

An Appellate Court will not weigh the evidence where there is no evidence reasonably to assist the findings of the lower court.

APPELLATE COURT

12560. ATLASS v. BORINSTEIN. Marion County. *Affirmed.* Enloe, J. January 28, 1927.

In alleging an accord in satisfaction it is sufficient if the party sets forth the facts from which he deduces that an accord in satisfaction had occurred in discharge of the claim.

12705. BEGEMAN, EXECUTRIX, v. SMITH. Sullivan County. *Affirmed.* McMahan, C. J. January 11, 1927.

Where a court improperly takes jurors from amid the bystanders and authorizes them to sit in a certain case when they were not members of the jury panel it is proper for either party to challenge these particular jurors but where part of the jurors were properly chosen it was also proper for the court to overrule an objection to the array.

12614 BELTON ET AL. v. MYERS ET AL. Hamilton County. *Affirmed.* McMahan, C. J. January 4, 1927.

Where one is given property for life with a qualified power of sale, this does not amount to absolute enjoyment under the Indiana statute and so is not the acquiring of a fee.

12564 BURCH, ET AL. v. SMOCK. Marion County. *Reversed.* Nichols, J. January 6, 1927.

The trial court has no right to grant a continuance conditioned upon an agreement by the parties that they will not ask for a change of venue.

12556 BUSBY v. INDIANA BOARD OF AGRICULTURE. Marion County. *Affirmed.* McMahan, C. J. January 27, 1927.

The Indiana State Board of Agriculture is a public institution organized solely for the service of the state. Thus it is not liable for its own torts committed in the course of the exercise of its regular business unless that liability is expressly provided for.

12641 CHICAGO & ERIE RY. CO. v. RANS. Kosciusko County. *Affirmed.* J. January 27, 1927.

Where the injured party claims disability in an action for personal injuries and received damages on that basis and it appears in the hearing for a new trial that before the trial this party had applied for employment as a mail carrier alleging that he was physically fit for the position, it is for the trial court to determine whether there was sufficient newly discovered evidence to justify a new trial.

12677 CROSS v. GRAHAM. Hancock County. *Affirmed.* Per Curiam. January 28, 1927.

Per Curiam.

25114 CSZLLO AND SZABO v. STATE. St. Joseph County. *Affirmed.* Willoughby, J. January 5, 1927.

Section 4 of the Acts of 1925 entitled "An Act Concerning Intoxicating Liquor" is constitutional. It is constitutional to provide that the possession of liquor as covered in that act shall be a crime regardless of the intention of the defendant to commit a crime.

12752 EUREKA COAL CO. ET AL. v. MELCHO. Industrial Board. *Affirmed.* Enloe, J. January 12, 1927.

Where there is a finding of the Indiana State Board of total disability during a certain period it is proper for the Board to find a partial permanent disability upon new evidence.

12829 GROVE v. GROVE ET AL. Industrial Board of Indiana. *Affirmed.* Remy, J. January 11, 1927.

Per Curiam.

12660 GVOZDIC v. INLAND STEEL COMPANY. Industrial Board. *Affirmed.* Nichols J. Dissenting. Per Curiam. January 14, 1927.

Where an employee is awarded compensation for temporary disability and later earns in excess of $24 a week it is not illegal for the employer to discontinue paying the total disability compensation.

12369 HARDESTY v. DODGE MFG. CO. St. Joseph County. *Affirmed.* Nichols, J. January 6, 1927.

Where one is employed by the government and has some authority in letting government contracts he cannot then agree to secure contracts from the government for a private concern and if he does make such an agreement, it is void.

25091 KINLEY v. STATE. Jay County. *Affirmed.* Travis, J. January 5, 1927.

Where an indictment for violation of the prohibition laws alleges that the defendant sold liquor, it is not necessary to allege the precise price paid.

12552 LAKE ERIE & WESTERN R. R. CO ET AL. v. FANTZ ET AL. Madison County. *Reversed.* Nichols, J. January 27, 1927.

Where coal is delivered by the Railroad Co. to one other than the assignee and the coal is accepted and used, the vendor is entitled to the market value of the coal at the time of delivery.

12478 LINN GROVE LIGHT & POWER CO. v. FENNING. Adams County. *Affirmed.* McMahan, C. J.

Under the Indiana statutes wires carrying electricity must be insulated and where one is injured by wires that are not insulated the question of the practical advantage of insulating was not involved.

12568 MICHIGAN CENTRAL R. R. CO. v. STATE. Marion County. *Affirmed.* Remy, J. January 25, 1927.

Where coal of a higher price than contracted for was delivered to the state penitentiary and used by it, the state is liable for the coal used on the basis of its increased value to the user, not to the original consignee.

12426 MITZNER ET AL. v. THE FIDELITY AND CASUALTY CO. ET AL. LaPorte County. *Affirmed.* Enloe, J. January 28, 1927.

Where an automobile owner is insured against all damages "growing out of the operation of the automobile" and the said policy says that the insurer will not be liable when the automobile is run by one under the age of 16 years, then the insurer is not liable if a third person under 16 years of age runs the automobile in violation of his orders and injury results.

12281 NATIONAL SURETY CO. v. FLETCHER SAVINGS & TRUST CO. ET AL. Marion County. *Affirmed.* January 4, 1927.

Where the breaches of contract involve greater loss than was actually compensated under the judgment on a surety bond, no error which does not qualify this result can be ground for reversal.

12603 NORTH DAKOTA REALTY AND INVESTMENT COMPANY v. ABEL ET AL. Martin County. *Reversed.* Nichols, J. January 27, 1927.

Where a foreign corporation, not authorized to do business or own lands in Indiana, buys a single tract of land in Indiana and holds it incidental to its business operations in another state, that does not constitute "doing business" under the Indiana law and this corporation may use the local courts to enforce their property rights.

12586 PAGE v. CINCINNATI, INDIANAPOLIS & WESTERN R. R. ET AL. Shelby County. *Affirmed.* Per Curiam. January 6, 1927.

Per Curiam.

12512 PARRISH v. BOARD OF COMMISSIONERS OF SHELBY COUNTY. Decatur County. *Affirmed,* McMahan, C. J. January 28, 1927.

Where a claimant against a company combines both liquidated and unliquidated claims in one action and the company allows part of the total claim, then the claimant is barred from bringing another action for the part disallowed.

12561 PENNSYLVANIA R. R. CO. v. THE WINAMAC CEMENT PRODUCTS CO. Starke County. *Affirmed.* Nichols, J. January 13, 1927.

Where an action is tried on an agreed statement of facts and these facts as proven show the applicant negligent, then the import of said evidence will not be considered on appeal.

12600 RODEBAUGH ET AL. v. RODEBAUGH. Allen County. *Affirmed.* McMahan, C. J. January 7, 1927.

Where a child provides for the support of his dependent parent and there is enough evidence of a legal promise for remuneration to overcome the presumption that the support is gratuitous, then the appellate court will not disturb the trial court's findings which allow compensation.

12652 SARTOR v. HART ET AL. Sullivan County. *Affirmed.* Per Curiam. January 27, 1927.

Per Curiam.

12196 SCHAFFNER ET AL. v. PRESTON OIL COMPANY. Gibson County. *Reversed.* Enloe J. January 13, 1927.

Where an action is brought for breach of contract, it is not proper to give damages because of acts incidental to the contract which involved negligence.

12747 SILVEY v. PANHANDLE COAL CO. No. 5. Industrial Board. *Reversed.* Dausman, J. January 12, 1927.

Where a workman has been injured and a period under which his disability may continue is uncertain, it is the duty of the Indiana Board to award disability compensation until there is actual evidence that the workman may return to his previous work or to other lighter work which is adapted to his needs and which his employer can supply.

12666 SISTERS OF MERCY OF JEFFERSONVILLE v. HOURFF ET AL. Floyd County. *Affirmed.* Thompson, J. January 6, 1927.

The transcript of a court of record proceedings carry a presumption that the proceedings were signed.

25283 STATE OF INDIANA EX REL HOGAN v. SIMMONS as Judge of the Blackford Circuit Court. Original Action. Per Curiam. January 5, 1927. Mandamus denied.

12631 STOVER v. HARLAN ET AL. Fountain County. *Affirmed.* Nichols, J. January 27, 1927.

A covenant in a deed to build and maintain fences runs with the land and is binding on the assignees where it is an independent covenant.

12659 SWIFT & CO. v. BOBICH. Industrial Board. *Affirmed.* Dausman, J. January 14, 1927.

Where the question before the board is one of fact and the finding of the board could be reached by a reasonable man, then there is no ground for reversal upon appeal.

12414 UNION TRACTION COMPANY AND ARTHUR W. BRADY, RECEIVER FOR UNION TRACTION COMPANY v. CAMERON. Johnson County. *Reversed.* McMahan, C. J. January 14, 1927.

Where there is no evidence that appellant's wife would be likely to need further medical attention because of her injuries in the accident, then it was

error for the court to instruct the jury that it might estimate further expenses for medical care and give damages to cover these.

12610 WABASH R. R. Co. v. WHITCOMB. Wabash County. *Affirmed.* Nichols, J. January 27, 1927.

There may be recovery for damages under the Federal Employer's Liability Act on the ground that an employee has been injured in Interstate Commerce where a fireman is killed on a train in a collision when his train had just collected material for transportation in interstate commerce.

13471 WEYMUELLER v. HANNEBOHN ET AL. Porter County. *Reversed.* Nichols, J. January 13, 1927.

There can be no oral transfer of land where the transferor continues to live on the land until his death and there is no transfer of possession to the transferee.

12831 WYATT LUMBER & COAL CO. ET AL. v. HARTFORD ACCIDENT & INDEMNITY CO. ET AL. Industrial Board. *Reversed.* McMahan, C. J. January 12, 1927.

Where an indemnity company enters into an agreement with an employer to take care of the liability of an employee, who is alleged to have been injured in their employ, this agreement cannot be set aside by the Industrial Board on the ground of mistake unless there is some showing of fraud or that the parties were not familiar with the controlling facts when they made the agreement.