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Indiana Docket

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INDIANA DOCKET*

SUPREME COURT

25240. HUMBER v. STATE. Delaware County. *Affirmed*. Willoughby, C. J. February 17, 1928.

Where there is a common law presumption that property in the home is in the possession of the husband, nevertheless in a prosecution for violation of the liquor laws there may be evidence which will overcome this presumption from which the wife would be held guilty of possession of liquor.

25073 and 25077. PARRETT v. STATE and SHINE, ET AL. v. STATE. Vanderburgh County. *Affirmed*. January 31, 1928.

Under the Indiana statute all the defendants may be indicted as principals for rape and no distinction need be made between the principals and accessors.

25566. PIERSON v. THE REPUBLIC CASUALTY Co. Marion County. *Reversed*. Travis, J. February 15, 1928.

Where a supersedeas bond is given by the defendant in a proceeding to stay the sale of corporate property and the defendant is a shareholder in the corporation involved, there must be no liability on the bond in keeping with the interests of all the shareholders and creditors of the corporation and not merely with respect to the personal interest of the shareholder who files the bond. The Writ of Supersedeas in this instance issues for the protection of the corporation itself, not for that of the individual shareholder only.

APPELLATE COURT

12871. BAUERMEISTER v. SULLIVAN. Vermillion County. *Reversed*. Remy, C. J. February 17, 1928.

An option for the purchase of real estate will be enforced even though the consideration is nominal.

12941. S. BREAKSTONE AND Co. v. THE GENERAL PARTS CORP., ET AL. Howard County. *Affirmed*. Remy, C. J. February 16, 1928.

While a bill of sale and the payment of the purchase price may pass title to everything covered therein, still a segregation of a part of the goods so sold may be shown to prove that the bill of sale did not purport to cover segregated articles.

12816. DIAMOND v. CLEARY. Lake County. *Affirmed*. Enloe, J. February 1, 1928.

Unless it appears that the defendant is injured by the court's failure to require that the complaint be made more specific, there is no reversible error. Where an employer in Indiana has not come under the Employees Compensation Act, the employee may elect to sue at common law.

13195. GUARANTY DISCOUNT CORP. v. BECK, ET AL. Marion County. *Affirmed*. Remy, C. J. February 14, 1928.

Affirmed on authority of *Rodefer v. Fletcher*, 89 Ind. 563.

* The brief digests given here are intended merely to identify the cases.

12814. INDIANA SERVICE CORPORATION v. DAILY, ADMR. Grant County. *Affirmed*. Nichols, J. February 1, 1928.

The answers of jury to interrogatories do not overcome a general verdict unless they are inconsistent with every allegation of the complaint from which a general verdict could be given.

12853. KEPP'S EXPRESS AND VAN Co. v. BOYD. Lake County. *Reversed*. Thompson, J. February 14, 1928.

If statements are to be admitted as part of the *res gestae* they must occur so close to the time of the incident that it will appear that they are caused from the incident itself and that they could not have been thought out or invented afterwards.

12957. MCCARDE, ET AL v. AKRON TELEPHONE Co. Fulton County. *Re-hearing denied*. McMahan, J. February 16, 1928.

Where the Public Service Commission required a telephone company to connect a private line with its service, this may be a mere regulatory order and not involve any appropriation of the company's property to a private use.

12736. MCCOY v. BUCK. Knox County. *Petition denied*. Nichols, J. February 16, 1928.

In a malpractice suit the fact that bad results developed after treatment is not necessarily evidence that there was negligence in the treatment itself.

12950. MCDORMAN, ET AL. v. CITY OF TERRE HANTE, INDIANA. Vigo County. *Petition denied*. Nichols, J. February 17, 1928.

In a proceeding before a Board of Public Works where the Board passes on the question of damages, there is no appeal, but where the Board refuses to pass on the question at all, there is an appeal under the law.

12912. NORTHERN INDIANA GAS & ELECTRIC Co. v. MERCHANTS IMPROVEMENT ASS'N. Lake County. *Affirmed*. Nichols, J. February 16, 1928.

Where an alley is abandoned for purposes of public user by express action of the City Council, the City Council may also waive the rights of a company to maintain its poles in the alley, since the maintenance of these poles also is a phase of the public easement.

13069. PIKE COUNTY COLLIERIES Co. v. RICHESON. Industrial Board. *Affirmed*. Thompson, J. Enloe J. dissents. February 17, 1928.

Where an employee is shot during his employment and it does not appear that the employer is in any way responsible for the shooting, nevertheless the employee may recover under the Workman's Compensation Act since the purpose of the Act is to compensate the employee for injury occurring in the course of his employment.

12878. THE RAILROADMEN'S BLDG. & SAVINGS ASSN. v. RIFNER. Marion County. *Reversed*. Nichols, J. February 16, 1928.

Where one is in open possession of property and is paying off a mortgage on it in the belief that the mortgage is the only claim against the property, then the purchaser of the property at a foreclosure sale cannot recover money paid with his knowledge to the vendor.