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SUPREME COURT.

25296 BARKER v. STATE OF INDIANA. Marion Criminal Court. *Affirmed.* Willoughby, J. January 31, 1930.

Appellant was tried by court without a jury, was found guilty of the charge of unlawfully transporting intoxicating liquor in an automobile. The chief point involved is whether the charge of *transporting alcohol* comes within the provision of the statute which requires that the transported liquor shall be "reasonably likely or intended to be used as a beverage" etc. The court will take judicial notice that alcohol is a spirituous and intoxicating liquor and may be easily diluted so as to be capable of being used freely as a beverage.

25493 BOSS, ET AL. v. DEAK, ET AL. St. Joseph Superior Court No. 1. *Reversed.* Willoughby, J. January 29, 1930.

This appeal involves the proceedings initiated by a petition filed by the appellees before a Board of County Commissioners to vacate a portion of a certain public highway, to which petition the appellants and others filed remonstrance on the ground that the vacation of such a highway would not be a public utility. See opinion for statement, and the court's discussion, of instructions given and refused in regard to the public utility of the highway in question.

25287 DEERY v. STATE. Delaware Circuit Court. *Affirmed.* Willoughby, J. January 30, 1930.

The appellant was convicted on the charge of transporting intoxicating liquor unlawfully in an automobile. It is not error to overrule a motion to strike out evidence where a part of the evidence embraced in the motion is competent; the objection should be directed to the evidence claimed to be incompetent.

25861 DUNN v. DEITROIML. Allen Circuit Court. Transferred from the Appellate Court (No. 13203) under section 1357 Burns 1926 cl. 2. *Affirmed.* Martin, J. January 17, 1930.

This was an action to recover a balance alleged to be due on a building contract and for foreclosure of a mechanics' lien. Although it is usual and proper in mechanics' lien cases to make separate findings for the amount due the plaintiff under the contract and the amount due as reasonable attorneys' fees yet where there is nothing presented in the record to show that the trial court did not award attorneys' fees to the plaintiff, or that the same was not entered by the court as a part of the judgment, the reviewing court is bound to assume that the trial court followed the direction of the statute and that the *single amount* of the finding made, and the judgment rendered, included attorneys' fees. Uncontradicted expert opinion evidence as to value of attorneys' service is not conclusive upon a trial jury, and this is especially true in case of the court which is itself an expert as to the value of attorneys' services.

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

25378 FIRESTONE COAL MINING COMPANY v. BOOTZEL, ET AL. Warrick Circuit Court. *Reversed.* Myers, J. Martin, J. Absent. January 7, 1930.

This is an appeal from an interlocutory order of the Circuit Court appointing, without notice, a receiver for the appellant company. In accordance with statute provisions and the settled practice of the courts of this state, an appointment of a receiver upon an *ex parte* application other than in exceptional cases, will be sustained only when it is made to appear that the applicant has just cause to have an appointment made and, in addition, by specific facts incorporated in an affidavit, that such an emergency exists as would justify dispensing with notice. The facts before the trial court were insufficient to warrant the appointment of a receiver without notice.

25257 LIECHTY v. STATE OF INDIANA. Adams Circuit Court. *Affirmed.* Willoughby, J. January 9, 1930.

The defendant was convicted on the charge of rape on a female child under 16 years of age. Some of the instructions were open to the objection that they were not verbally accurate but there is not ground for reversal if, upon considering all the instructions together, it fairly appears that the law was stated with by substantial accuracy, so that the jury could not have been misled. The evidence sustains the verdict and the verdict is not contrary to law.

25737 MALICH v. STATE. Lake Criminal Court. *Affirmed.* Martin, J. January 18, 1930.

Appellant was convicted on the charge of unlawful possession of intoxicating liquor, the affidavit also charging two previous convictions for violation of the same act. While it is true that a person cannot be guilty of the crime of possessing intoxicating liquor unless he knows of such possession or is conscious thereof, and although the defendant's and one other person's testimony indicated that the defendant did not know of the presence of the intoxicating liquor on his premises, yet there is sufficient evidence to sustain the finding of the court.

24969 MOGUIRK v. STATE OF INDIANA, on the Relation of William F. Gottschalk. Clay Circuit Court. *Reversed.* Martin, J. absent. January 7, 1930. Per Curiam.

The relator filed an information in *quo warranto,* against the appellant, seeking to oust him from the office of township trustee and to recover the office and the salary for himself. The information did not state facts sufficient to constitute the cause of action. An office is not vacant when there is a *de facto* incumbent, and the appellant was either an officer *de jure* or *de facto;* consequently the appointment of the relator as trustee was not a valid one, and he had no special interest peculiar to himself in the office when he filed his information.

25860 NATIONAL SURETY CO. v. FLETCHER SAVINGS & TRUST CO., ET AL. Marion Circuit Court. Transferred from the Appellate Court. *Reversed. Per Curiam.* January 15, 1930.

The appellees as receiver, brought this suit against the appellant surety company on two fidelity bonds, by the terms of which the appellant surety

company agreed to indemnify against loss by reason of the fraud, dishonesty, etc., of the treasurer of the now insolvent company. See opinion for full statement of the allegations in the complaint and reasons of the court for sustaining in part, and reversing in part, the action of the lower court.

25750 THE PUBLIC SERVICE COMMISSION OF INDIANA, ET AL v. THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL. Marion Superior Court, Room 1. *Reversed.* Martin, J. January 16, 1930.

This action was brought by 23 railroad companies to set aside as "arbitrary, unjust, unreasonable and illegal," an order of the Public Service Commission of Indiana making reductions in certain freight rates on scrap iron and steel moving in intra-state commerce. The trial court granted a restraining order and a temporary injunction pending final hearing. Appellees failed to introduce sufficient evidence to show that the order of the commission was either arbitrary, injust, unreasonable, or illegal, or which would overthrow the presumption of reasonableness which exists in favor of the action of the commission.

THE APPELLATE COURT

13809 BAKER ET AL. v. EADES. Posey Circuit Court. *Reversed.* McMahan, J. January 29, 1930.

Action in ejectment by appellee against appellants, the action being brought to enforce a forfeiture under a contract of purchase. Where a party, by his indulgence, has waived the provision of a contract making the time of payment of money of the essence of the contract and temporarily suspends the right to declare forfeiture, such right can be resumed only by giving a definite and specific notice to that effect.

13789 BARNARD, RECEIVER OF TUXEDO STATE BANK v. BLACK. Marion Probate Court. *Affirmed.* Nichols, J. January 31, 1930.

Action based upon an intervening petition filed by appellee in the receivership proceedings, the purpose of the petition being to establish a preferred claim out of the assets of the insolvent bank. When a bank is hopelessly insolvent and is known to be in such condition by the officials thereof, the receipt of general deposits constitutes such a fraud as to impress such deposits with a constructive trust, and if such deposits augment the assets of the bank and can be traced into the hands of the receiver a preferred claim will be established.

13536 BEDRON ET AL. v. BARAN. Lake Superior Court. *Affirmed.* Neal, P. J. January 29, 1930.

This appeal involves the correctness of the trial court's action in the matter of amending and correcting the record, and the effect of a decision of the Appellate Court in the former appeal in this case, the appellants contending that the Appellate Court had previously adjudicted the subject matter pertaining to this cause. (85 Ind. App. 649, 155 N. E. 611). The decision of the Appellate Court in the former appeal, reversing the judgment of the lower court as to its ruling on the demurrer, did not establish the validity

of the averments of the complaint, but merely adjudicated that the plaintiff would be entitled to recover if he should prove the material facts therein stated. Since the evidence discloses that the transcript of all the proceedings had in the city court, together with the bond, were filed with the clerk of the court as provided by law, it was within the power of the court on proper application to direct and order the clerk's record in the entry docket corrected to speak the truth.

13775 BOURNE ET AL. v. CONRAD. Franklin Circuit Court. *Affirmed. Per Curiam.* January 30, 1930.

Per Curiam.

13793 BRET v. MOENKHAUS. Spencer Circuit Court. *Affirmed.* Nichols, J. January 10, 1930.

Action by appellee against appellants on a note, to secure the payment of which appellants had executed a mortgage on real estate. Where one of two joint obligors has discharged the obligation, the liability of his co-obligor to contribute one half of the sum constitutes sufficient consideration to support note and mortgage executed by the non-contributing obligor in favor of the obligor who discharged the entire sum, the note being given for the purpose of securing the obligation of the non-contributing obligor.

13829 BURDICK, ET AL. v. HACKMAN. Dearborn Circuit Court. *Reversed under agreement.* January 31, 1930.

The cause is remanded to the Circuit Court for further action in accordance with the terms of the compromise agreement, and the judgment is reversed in accordance with the agreement.

13747 CROWDER, AS RECEIVER OF CITIZENS TRUST COMPANY v. STORY. Sullivan Circuit Court. *Affirmed.* Nichols, J. January 10, 1930.

This is an appeal from a judgment upon a claim filed in a receivership proceeding and determining that a claim was preferred. The claim arose out of the conversion of certain bonds deposited with the bank. Under the facts the relation between appellee and Trust Company was that of bailor and bailee and the appellee was entitled to the return of the bonds, or to recover the value of the bonds from the receiver of the bank when the proceeds of a wrongful sale, or funds with which such proceeds have been commingled, have come into the hands of the receiver.

13852 DELAWTER v. DELAWTER. Miami Circuit Court. *Affirmed.* Neal, P. J. January 8, 1930.

This appeal involves the interpretation of a provision in a will, the material provision being as follows: "Each third of said farm to be held for said three last named heirs severally. Each his own one-third during his life time and at their death to become the property in fee-simple of their respective heirs." The language brings the devise squarely within the rule in Shelley's case and vests the fee-simple in the named children of the testator; and does not create a fee-simple in the grandchildren of the testator subject to a life estate in favor of the children of the testator.

13550 DUVALL V. THE RANSON AND RANDOLPH CO. Jasper Circuit Court. *Affirmed.* McMahan, J. January 15, 1930.

This is an action by appellee against appellant on nine promissory notes and on an account, the chief contention on appeal that the court erred in sustaining demurrer to appellant's set-off. Since the set-off claims arose out of the same transactions as the obligations for which the notes were given, and since the notes are negotiable instruments and were given subsequently to the transactions, it will be presumed that they were given for payment of the obligations involved in the transactions; and since there are no allegations in the paragraph of set-off sufficient to overcome the presumption of payment the demurrers to the paragraph are properly sustained.

14010 EACRET V. STATE OF INDIANA. Jenning Circuit Court. On application to be let to bail. *Dismissed.* Remy, C. J. January 29, 1930.

Under section 2387 Burns supp. 1929 (Acts 1929 p. 424) an applicant for bail pending an appeal to the Appellate Court has an election to make his application to the trial court or to the Appellate Court, and when the application is made to the trial court, the appellant can not present the same question to the Appellate Court *except by appeal.*

13412 EPPERT V. LOWISH. Marion Superior Court. On petition for rehearing. *Rehearing Denied.* Remy, C. J. January 31, 1930.

This is an action for alleged conversion of certain pledged bonds. In an action for conversion the complaint need not show by direct averment that the plaintiff owned the property; it is sufficient, if in the complaint facts are well pleaded from which ownership at the time of the conversion is necessarily inferred. Where it appears from the averments of a complaint for conversion that the defendant at the time of the alleged conversion held the property under a contract of bailment entered into between him and the plaintiff, an allegation as to the ownership of the property at the time of the bailment is unnecessary.

13713 THE FIRST NATIONAL BANK OF SEYMOUR, INDIANA, HACKLEMAN, DOWNS AND FIRST NATIONAL BANK OF BROWNSTOWN V. RUST. Washington Circuit Court. *Affirmed.* Nichols, J. January 31, 1930.

Action by appellant against appellee, husband and wife, to set aside an alleged fraudulent conveyance of real estate made by the husband to his wife. See opinion for full statement of facts and discussion of conclusions.

13428 THE FIRST NATIONAL BANK OF VINCENNES V. GREGG, ET AL. Greene Circuit Court. *Reversed.* Lockyear, J. January 29, 1930.

This appeal arises out of the action of trial court in refusing the appellant permission to file a claim upon six promissory notes with the receiver of the maker of the notes. A court of equity has the right to control the administration of receiverships, and while the orders of the court will not be disturbed unless an abuse of discretion is clearly shown, the reviewing court is of the opinion that it was an abuse of discretion on the part of the trial court to deny the right of the appellant to file its claim. There

is no statute in Indiana requiring the court of equity handling a receivership to make an order fixing a time limit for filing claims, barring thereby any person who has a legitimate claim against any estate.

13352 FLEMING v. BISHOP. Elkhart Superior Court. *Affirmed.* Remy, C. J. January 15, 1930.

This is an action to recover the commission alleged to be due under a contract authorizing the plaintiff to sell certain land. There was no error in sustaining demurrer to the complaint since, under the complaint as interpreted by the terms of the contract, there could be no recovery if every fact therein was established by the evidence.

13732 HALSTEAD v. HALSTEAD. Jasper Circuit Court. *Affirmed.* McMahan, J. January 10, 1930.

This case involves a claim against an estate, which had been settled about eight years prior to the filing of the claim. It was not necessary to determine whether certain written acknowledgments and promises to pay were sufficient to avoid the statute of limitations since the claim was filed more than two years after legal notice of administration had been given and after the filing of the final report.

13687 HARTFORD LIVE STOCK INSURANCE COMPANY v. EVERETT. Jackson Circuit Court. *Reversed.* Lockyear, J. January 8, 1930.

This was a suit on the insurance policy covering the life of a horse owned by the appellees, the appellant contending that the policy had been avoided by reason of the performance of an operation during the life of the policy "without the written consent of the company for the operation to be performed" etc. The process of "firing," as described in the trial, is an operation, within the meaning of the policy clause, and was performed without the consent of the appellant.

13736 HIBBEN, HOLLWEG & CO. v. WESTERN & SOUTHERN LIFE INS. CO. ET AL. St. Joseph Superior Court No. 2. *Affirmed.* McMahan, J. January 30, 1930.

This appeal involves the question of power or right of the superior court to vacate a judgment, the contention being that the action of the court in vacating the same was a nullity. Appellant was not a party to the action in which the motion to vacate was sustained and was not interested in the matter, or in a position to object or except to the ruling of the court; and if it be conceded that the motion did not state any good or sufficient reason for vacating the judgment, still the action of the court in sustaining motion to vacate would have been simply erroneous and not void.

13519 HILL v. CAMPBELL & FETTER. Noble Circuit Court. *Affirmed.* Nichols, J. Enloe, J. not participating. January 31, 1930.

This is an action on a promissory note, the defense being that the note in suit, having been given for a security in violation of the Blue Sky Law of 1920 as amended in 1921, was void in the hands of the holder in due course. Even though it be conceded that the note in suit was given for a

security in violation of the Blue Sky Law of 1920 as amended in 1921 still it was not void, and may be enforced by the holder thereof in due course. In so far as the defendant relies upon failure of consideration the burden is upon him to aver and prove that the plaintiff took the note with notice of such defense; in order to raise the issue of conditional delivery there must be a verified answer of *non est factum*, for delivery is but a step in the execution of a note.

13724 HOOK DRUG CO. v. KENDIS BROTHERS. Marshall Circuit Court. *Affirmed.* Nichols, J. January 16, 1930.

Action by appellant to enjoin appellees from the use of a certain floor space claimed by appellees under a lease. Where the language of a contract is uncertain or ambiguous, and the parties have by their acts and conduct given it a certain construction, the courts give great, if not controlling influence to such interpretation in arriving at the true intention of the parties; and such construction does not render the lease contract a parol agreement and, therefore, void under the statute of fraud.

13464 CITY OF INDIANAPOLIS, AS ETC. v. RAMSEY, ET AL. Hendricks Circuit Court. *Dismissed.* Enloe, J. January 16, 1930.

This was an action by a city in its corporate capacity, by the city as trustee for holders of bonds and by two individuals as resident householders, freeholders, taxpayers, and holders of bonds issued by the city. The judgment herein is not a final judgment from which appeal will lie since the record shows that final judgment on demurrer was rendered against the city, both in its corporate capacity and as trustee, but fails to show any judgment against the individual plaintiffs. A judgment on demurrer against some only of the parties is not ordinarily regarded as a final judgment, nor can it be so regarded for the purpose of an appeal or writ of error without violating the rule that cases cannot be appealed piecemeal. (2 Elliott Gen. Prac. Sec. 1003)

13500 KLEIN v. NEIZER & Co. Dekalb Circuit Court. *Reversed.* Remy, C. J. January 29, 1930.

Suit for possession and damages, the suit being against the sublessee and lessee. The only question raised on appeal was the sufficiency of evidence to sustain the decision that the lessee had been released by the lessor from liability on the lease contract. The mere assignment of a lease, or the sub-letting of leased premises by lessee with the knowledge and consent of the lessor, and payment of the rent to lessor by assignee or sublessee does not release the lessee from his obligation to pay rent; and there is no evidence in the record to show a meeting of the minds of the parties on a contract to release the lessee.

13844 KLEPFER v. KLEPFER. Marion Superior Court. *Reversed.* Nichols, J. January 10, 1930.

Action for divorce. Section 1097, Burns 1926, relative to the residence of the plaintiff in a divorce action, is mandatory, and unless the affidavit of residence is properly executed in accordance with the statutory provision, the court acquires no jurisdiction of the cause; the affidavit of residence

must account for the plaintiff's residence up to the time of filing the complaint.

13815 CITY OF KOKOMO v. CULP. Howard Circuit Court. *Affirmed.* Nichols, J. January 16, 1930.

Affirmed on the authority of *Adams v. Shamrock Oil Co.*, 84 Ind. App. 169, 150 N. E. 398 AND OF BAKER v. STEHLE, 187 Ind. 468, 119 N. E. 4.

13771 KOSOVAC v. STATE OF INDIANA. Lake Criminal Court. *Affirmed.* Lockyear, J. October 2, 1929.

The appellant was convicted on the charge of unlawful possession of intoxicating liquor; the unlawful sale of intoxicating liquor and the maintaining or assisting in maintaining a nuisance. The appellant's testimony construed with other evidence is sufficient to sustain conviction, the jury being justfied in concluding that the party in charge was not a tenant, but an agent of the appellant.

13534 KUHR v. WILLIAM. Clay Circuit Court. *Reversed.* McMahan, J. January 8, 1930. This is an appeal involving the action of the trial court in overruling a motion to modify judgment entered in accordance with a decision of the Industrial Board, as provided for in section 9507, Burns 1926. A judgment rendered on an award of the Industrial Board is not a judgment for damages; it is a judgment for compensation; and the court must accept the final award of the board and has no authority to modify the award or change its effect.

13765 KUK v. BORYEZKO. LaPorte Superior Court. *Affirmed.* Nichols, J. January 31, 1930.

Action on a foreign judgment rendered in the state of Illinois. The only question involved in the appeal is whether the judgment taken against appellee in Illinois is dischargeable in bankruptcy, the appellant contending that the judgment was not dischargeable for the reason that it was founded on fraud. When a cause of action grows out of a contract where fraud is but an incident and not the creative power thereof, judgment based on such an action is dischargeable in bankruptcy.

13823 LADOGA CANNING COMPANY v. BURGAN. Boone Circuit Court. *Per Curiam. Affirmed.* January 10, 1930.

Per Curiam.

13690 LAPORTE DISCOUNT CORPORATION v. BESSINGER. LaPorte Circuit Court. Affirmed. *Per Curiam.* January 7, 1930.

Per Curiam.

13568 OHIO TOWNSHIP v. LIPKING. Warrick Circuit Court. *Reversed.* Nichols, J. January 31, 1930.

Action by appellee against appellant to recover on an account for work and labor alleged to have been performed by appellee as a road supervisor and for money alleged to have been advanced by appellee as such road supervisor. The demurrer to the complaint should have been sus-

tained, since there are not sufficient facts alleged to bring the acts of the township trustee within his statutory authority.

13812 PALLARDY V. ROARK. Boone Circuit Court. *Affirmed. Per Curiam.* January 10, 1930.

Per Curiam.

13820 PARR V. SCHRUM, Washington Circuit Court. *Affirmed. Per Curiam.* January 10, 1930.

Per Curiam.

13804 PAYNE V. PAYNE. Clark Circuit Court. *Reversed.* Neal, P. J. January 9, 1930.

Petition for divorce. The affidavit of residence required by the statutes in a divorce proceedings is mandatory, and when not filed the trial court is without jurisdiction. Before the trial court has authority to entertain a petition for the interlocutory order as provided by section 1109 Burns 1926, it is mandatory that a petition for a divorce be filed and that the petition with proper allegations as to residence be sworn to or an affidavit be filed with the petition as required by section 1097, Burns 1926.

13689 SASSE ET AL V. NEWBURG LIGHT & WATER CO. Posey Circuit Court. *Affirmed.* Enloe, J. January 31, 1930.

Action by the appellee to enjoin the appellants from interfering with the appellees' setting poles and stringing wires along a certain public highway. Since the case involves simply the resetting of a line of poles the court must presume, in the absence of a showing to the contrary, that the original setting was lawful, and in view of this presumption the complaint is good against a demurrer. The fact that servants of appellee had "mutilated, cut, and destroyed" a number of valuable trees would not justify the appellants' interference with the setting of the poles. See opinion for full statement of the facts as set out in the complaint.

13931 SAVICH V. STATE. Lake Criminal Court. *Affirmed.* Lockyear, J. January 16, 1930.

The appellant was found guilty on two counts charging unlawful possession of intoxicating liquor and unlawfully maintaining and assisting in maintaining a nuisance. Evidence of the finding of liquor on the premises of appellant on one or more occasions by an officer, and that the reputation of appellant's premises for two years previous was that of a place where persons resorted to for purposes of drinking intoxicating liquor is sufficient to establish a nuisance charge. Appellant fails to set out in his brief what objections, if any, were interposed to questions bearing on the reputation of appellant's premises.

13448 SCHEMMEL V. HILL. Henry Circuit Court. *Affirmed.* Petition for re-hearing granted. McMahan, J. Nichols, J. Not participating. January 16, 1930.

Action to rescind and set aside a deed from the defendant to the plaintiff and to recover the purchase price. (See 167 N. E. 625 for original

opinion.) See opinion for full statement of facts and discussion thereof. The claim for rescission is based upon the theory that the appellee brought about the purchase of the property by the bank through an improper use of his position as an official in the bank.

13571 SCOTT v. DEWITT, ET AL. Orange Circuit Court. *Affirmed. Per Curiam*, January 14, 1930.

Per Curiam.

13821 STEWART v. STEWART AND INSURANCE CO. Pike Circuit Court. *Affirmed.* Nichols, J. January 16, 1930.

This is an action on a life insurance policy issued by appellee assurance society, the other appellee and appellant each claiming as beneficiary under the policy. Where a policy gives to the insured the right at any time to make a change in his beneficiary, without requiring the consent of such beneficiary, the change of beneficiary is a mere direction to the insurer which it is bound to obey, and where the insured makes his election to change his beneficiary and has in proper manner requested the insurer to make such change, and has mailed such request, the court will give effect to the intention of the insured by holding that the change of beneficiary has been accomplished, even though the insured dies before the application has reached the home office of the insurer, and before the insurer has any notice of the proposed change.

13825 TALGE MAHOGANY CO. v. BEARD. INDUSTRIAL BOARD. *Reversed.* McMahan, J. January 15, 1930.

This is an appeal from the action of the Industrial Board. It is not necessary for an employer to file a special answer to an application of compensation in order to entitle him to introduce evidence to show that the injury did not arise out of the employment. A special answer to an application for compensation is only required under Rule 10 when the employer confesses or admits that the injury arose out of and in the course of the employment. It was error for the Industrial Board to proceed upon the theory that evidence tending to show that appellee's injury was caused by a fight, not arising out of employment, was not admissible without a special answer.

13840 WILLIAMS v. STATE OF INDIANA. Jennings Circuit Court. *Reversed.* Neal, P. J. January 29, 1930.

Appellant was found guilty on the charge of commiting the crime of arson. Appellant contends that the verdict of the jury is not sustained by sufficient evidence and that the verdict is contrary to law. An appellate tribunal will not disturb the verdict of the jury when the evidence is circumstantial and of such a character that two conflicting inferences may be reasonably drawn by the jury, one favorable to or tending to prove the guilt of the accused and the other favorable to his innocence; but mere suspicion of guilt arising from the proved circumstances cannot take the place of a reasonable inference. The evidence is of such a character that no reasonable inference of guilt arises from the circumstances proved.

13711 TERRE HAUTE, INDIANAPOLIS AND EASTERN TRACTION CO. v. ANGELO. Vigo Superior Court No. 2. *Affirmed.* Nichols, J. January 10, 1930.

Action by apellee to recover damages for personal injury sustained by reason of alleged negligence of appellant in operation of its interurban car. When a car stops for only a few seconds and a passenger has no opportunity to select the place of boarding it, and has to act quickly, as in an emergency, such person is not chargeable with contributory negligence even though he knows the steps are unreasonably high and yet attempts to board the car. The court distinguishes from *Indianapolis Traction and Terminal Co. v. Pressell,* (39 Ind. App. 472, 77 N. E. 357) where the car was stopped at the regular stop in the city and where the defect was in the street over which the company had no control.

13807 THE WABASH RAILWAY COMPANY v. EVANS. Huntington Circuit Court. *Affirmed.* Nichols, J. January 10, 1930.

Action by appellee to recover damages for personal injuries received at a time when appellee was attempting to cross appellant's line of railway. There was no error in overruling appellants motion for judgment on answers to interrogatories, there being no conflict between the answers and the general verdict, which was amply sustained by the evidence.

13717 WOOLBRIGHT v. STATE. Marion Juvenile Court. *Affirmed.* Remy, C. J. January 31, 1930.

Appellee was convicted upon the charge of neglect to her own minor children and the only question presented is the sufficiency of evidence.