THE

LAW NOTES

FOR THE USE OF THE STUDENTS

OF THE

INDIANA LAW SCHOOL

VOLUME ONE NUMBER TWO

DECEMBER, 1900

CONTENTS

INDIANAPOLIS
1900

INDIANA LAW SCHOOL

REQUIREMENTS AS TO THESES

Each candidate for graduation must present to the Faculty, on or before the second Wednesday in April, a thesis upon some legal topic approved by the Faculty. Such thesis must be printed by typewriter in black ink, on paper 8 x 10½ inches in size of page, leaving a margin of at least one and one-half inches at sides, and at top and at bottom. The thesis shall not be less than 2,000 nor more than 5,000 words in length, exclusive of citations of authorities. In citing cases, the names of the parties as well as the volume and page of the report must be given. Four copies of each thesis, three of which may be carbon copies, must be placed with the Faculty on or before the date above mentioned. Each thesis must have a title page containing the subject of the thesis in the exact wording of said subject as given below, the name of the writer in his own handwriting (to appear on the title page of the original only, not on that of the duplicates), the class and school. All title pages must be originals. The subject of the thesis to be repeated on the first page of the thesis.

The character of the thesis will be taken into account in determining whether the candidate is qualified to be recommended for graduation. All theses become the property of the Indiana Law School.

The subjects approved by the Faculty for the year 1913-1914 are as follows:

1. Does a part performance of a contract, which as a whole cannot be performed within a year, take the case out of the Statute of Frauds?
2. Old methods of trial in criminal prosecutions in England. When each available.
3. Is a special assessment rendering the owner of abutting property liable for street improvements, in excess of the value of the property, constitutional?
4. Can a plaintiff maintain an action on a cause revived by a written admission after the admission is lost?
5. Discuss, and annotate after the manner of Smith's Leading Cases, *Dartmouth College* v. *Woodward*, 4 Wheat. 518.

INDIANA LAW SCHOOL

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The character of the thesis will be taken into account in determining whether the candidate is qualified to be recommended for graduation. All theses become the property of the Indiana Law School.

The subjects approved by the Faculty for the year 1900-1901 are as follows:

1. Discuss the competency of subscribing witnesses to a will as experts on the question of the mental condition of the testator.

2. Discuss the right of action on a contract in favor of a person not a party thereto.

3. Explain the distinction between conditions and warranties in sales.

4. Discuss the legal relations existing between water companies and consumers. Is water property?

5. To what extent is a municipal corporation estopped by recitals in its bonds from setting up illegality as defense thereto.

THE LAW NOTES

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VOL. I. DECEMBER, 1900. No. 2.

THE ESSENTIAL ELEMENTS IN CRIME.

There are certain elements which exist in almost every set of facts constituting a crime. If these are wanting, no crime is committed. Generally the basis of criminality is in the will. The law does not recognize a mere wish. If it did, it could not discover the will. One man may be prejudiced against another, and wish to injure him, and express this wish to others, but the law takes no notice of his wish or thought; but as soon as he performs some act, or even if he purposes to commit the act at a time which he may deem suitable, he has passed beyond the wish to intention, which may be defined as "thinking upon an act as one that will be performed when a suitable time comes." The will then is fully exercised when the act is performed in pursuance of the intent. The existence of the intention and the exercise of the will are necessary ingredients of crime. Unless uttered aloud

the intent cannot be discovered in the absence of some act. The will executes the intent in the act, it gives to action intention, both may generally be seen in the act. In some acts we may find either or both absent; both, where one who in running away from inevitable death, overturns a plank, which falling upon another inflicts an injury from which he dies; and intent in case of an infant. The intention, to constitute criminality, must necessarily be a state of mind forbidden by law. "The act itself does not make a man guilty unless his intention were so," and "an act done by me against my will is not my act." Where the law prohibits the act, it is illegal to do the act, certainly willfully, and in some cases ignorantly. Wherever a violation of law occurs, the presumption is that it was intentional, and the legal maxim of *ignorantia juris non excusat* applies generally. The stranger in the land, as well as the native, is bound by it. Where one mistakes the law and carries away property which he believes himself entitled to, he may show his ignorance of the law as a part of his defense, and if the evil intent to steal be lacking, he is not guilty of larceny. Very different is the doctrine as applied to ignorance of fact. If without carelessness or negligence, or overlooking a duty imposed upon him, he mistakes the facts, he may offer the same as a matter of defense. Intent being the essence of crime, where one is misled by facts without any fault of his own, he is innocent. While the criminal law does not punish an intention, except in case of treason, yet it does punish an attempt. Thus it has been held in some states that if on the trial of an indictment, it shall appear that the offence charged was not completed, the jury may convict of the attempt. Wharton defines an attempt to be "such an intentional preparatory act as will apparently result, unless extrinsically hindered, in a crime which it was designed to effect." In the attempt, as well as in the completed crime, the intention and the act must concur. Preparations are not attempts. The preparations must

be put in such shape that they will produce the consequences in question, in the usual course of events, to be punishable.

Behind the intent we find frequently *Motive*. It is this which excites or stimulates the mind to action, and is of value as showing what is the intent, or at least throwing light upon the intent. While it frequently does exist, it by no means always preceeds the intent or act. Neither is the motive always proportionate to the wickedness of the crime. For example, the motive may be to steal, but the result of the act may be homicide.

Malice is known as the guilty intention or criminal state of mind, and it must be proved affirmatively either by direct proof or such a state of facts as will warrant its inference. But when the law expressly declares an act to be criminal the question of criminal intention or malice need not be considered in proving the case. It might be said that it practically may be regarded as synonymous with criminal intention. A depraved, wicked heart, regardless of social duty, and bent on mischief, as well as special malevolence, is held to be included within the term malice. Where one does wilfully that which he knows will injure another in person or property, we call it malice. And we define it to be either (1) *Specific*, where the means is intentionally used to effect a single purpose, and it is immaterial whether the means will effect the object with certainty or not; thus A strikes at B and injures C, the particular criminal intent against B makes the maiming of C a crime; (2) *General*, where the means selected may have two or more effects, of which he is aware; thus A shoots at a dog in a crowded street, here malice exists, but it is indirect malice, the means is aimed at the dog, but the final intent is general, he is disregardful of whom or what he may hit; (3) *Express*, where from the preceeding circumstances or the threats it is proved; thus A quarrels with B, and threatens to kill him, and subsequently he carries out his threat. Here we find the willful act, the completion of the criminal intent or malice;

(4) *Implied*, when from the facts surrounding and connected with the act the inference of malice is warranted. And in the absence of proof of excuse or justification, we infer a prior intention. In malice we find *premeditation*, and it is in some states made a condition to certain crimes. There is no duration of time which can be fixed at law as a measure of premeditation. It is not necessary to prove time. The facts existing which show a specific intent prior to the deed, the finding of premeditated malice is warranted. If there is a general evil intent, and evil is done, and the wrong resulting is one that was a probable result of the evil, and party having the general intent is to be regarded as having the specific one. Malice is always, however, a question of fact, and never to be ruled as a question of law.

Another element of crime is *Fraud*. This is closely connected with malice, and its constituent elements are "deceit, or an intention to deceive, or sometimes mere secrecy, and either injury or possible injury or an intent to expose some one to either by means of that secrecy or deceit." Here we find the motive to be personal advantage and the means to that end is the deceit orsecrecy. But generally wherever fraud is an element of the crime, it is really a part of the criminal intent.

Again we find in crime another element, *Negligence*, which we may regard as the very opposite of malice. This term means carelessness, heedlessness, being disregardful of matters which directly pertain to the acts engaged in, being such matters that ought and might have been noticed. It has, however, a much wider scope, thus in criminal law it means, also an omission to discharge a duty imposed by law. In cases coming under the last division, an indictment will lie for the non-performance of the imposed duty, or if the duty be performed negligently the same course may be pursued. Generally, to impute negligence, it must be the *misconduct* of the person charged, and must stand in casual relation with the negligent act. If negligence on the part

of A produces the same in B, and an injury happens from the latter's negligence, A cannot be held responsible, and this is true even if his negligence induces another to perform a criminal act, or to injure himself. But if he purposely upts another in a position to do a negligent act, he may be held responsible, because there may be malicious accessories to negligent acts. If there be compulsion, there can be no crime, rather every crime to be punishable must be the voluntary act of the person, free from compulsion. "No action can be criminal if it is not possible for a man to do otherwise. An unavoidable crime is a contradiction, whatever is unavoidable is no crime, and whatever is a crime is not unavoidable.

We find, therefore, that to constitute a crime there must be the *internal will*, the *external act* and the *casual relation* of the will to the act. The act without the will or intent is not a crime, nor is the intent without the act a crime. The intent is only discovered by the act or attempt to act; and the act may or may not be a crime, depending upon the existence or absence of intent.

James A. Rohbach

JUSTICE PRACTICE.

(The following outline is intended for the use of students in connection with the study of Practice in courts of Justices of the Peace in Indiana. The references are to the Revised Statutes of 1881, unless otherwise indicated; the same references may be found in Burn's Revision of 1894 by taking the sections in parenthesis. It is not intended to make the citations exhaustive, reference being made to the statute alone when there is a statute, and when none, only one case in point is cited. The student will be required to make practical applications of his knowledge gained in the course, as the course is developed, by preparing all necessary pleadings).

BOOKS OF REFERENCE.

Revised Statutes of Indiana.
Iglehart's Treatise.
Schroeder's McDonald's Treatise.
Work's Practice and Pleading.
Thornton's Practice Forms.
Elliott's General Practice.
Woollen's Trial Procedure.

ORIGIN OF JUSTICE OF THE PEACE.

In the reign of Edward III, officer first called justice of the peace.

Am. and Eng. Ency. of Law, Vol. XII, p. 393.
I Blackstone's Commentaries, 349.

CIVIL PROCEDURE.

I. Procedure is Limited.

Given alone by statute; at common law, a justice was only a conservator of the peace; all civil jurisdiction is conferred upon justices by statute; the justice's court is a court of special and limited jurisdiction.

Justices' Act, R. S. Secs. 1418-1571.
Willey v. Strickland, 8 Ind. 453.
(See R. S., Sec. 1456 for procedure in all cases not otherwise provided for; governed by the practice and usages of Circuit Courts and the rules of common law).

II. Jurisdiction.

1. LIMITATIONS.

a. *As to territory.* In general the jurisdiction is limited to the township; but it is extended to the adjoining township when there is no Justice in the township; it is extended throughout the county in suits upon capias; also extended throughout the county in actions against tenants holding over and in forcible entry and detainer; and it is extended to corporate limits in a prosecution for the violation of a town ordinance; suits

for trespass to real and personal property may be brought either in the township where the defendant resides or where the trespass was committed; and jurisdiction in attachment is co-extensive with the county.

R. S., Secs. 1431, 1432, 1441, 1551, 3347, 5225, 5237, 1443, 1445.

b. *As to amount.*—Not to exceed $200, except there may be a confession of judgment for any sum not exceeding $300. In some cases the amount is unlimited.

R. S., Sec. 1433

c. *As to person.*—In general, residents of the State can be sued only in the township of their residence; may be sued out of the township when suit upon capias; when no Justice in the township who is competent to act; when action by landlords against tenants to recover possession; and in bastardy proceedings. If a justice is related to either of the parties within the sixth degree he has no jurisdiction.

R. S., Secs. 1441, (1433, 240 subdiv. 11), 1443.

d. *As to subject matter.*

(1) By express statute—No jurisdiction in action of slander, malicious prosecutions, breach of marriage contract, in any action wherein the title to lands shall come in question.

R. S., Secs. 1433, 1434.

(2) By implication—No jurisdiction to try liens against realty, nor in matters of arbitration, nor to foreclose chattel mortgages, no jurisdiction over executors or administrators, nor in divorce proceedings.

Ainsworth v. Atkinson, 14 Ind., 538.
Richards v. Reed, 39 Ind., 330.
Snell v. Mohan, 38 Ind., 494.
Palmer v. Fuller, 22 Ind., 115.
Doyle v. The State, 61 Ind., 324.

(3) Some cases of exclusive jurisdiction—When injury done by railroad to animals does not exceed fifty dollars and in preliminary bastardy proceedings.

R. S., Secs. 4026, 978.
Stone v. The State, 33 Ind., 538.

2. PLEADING AS TO JURISDICTION.

a. *If lack of jurisdiction* affirmatively appear, may dismiss on motion.

Kiphart v. Brennemen, 25 Ind., 152.

b. *Plea in abatement* if does not affirmatively appear.

Tyler v. Bowlus, 54 Ind., 333.

III. Parties.

1. PLAINTIFF.—Must in general be the real party in interest. But an executor, administrator, a trustee of an express trust, or a person expressly authorized by statute may sue without joining with him the person for whose benefit the action is prosecuted.

R. S., Secs. 1456, 251, 252.

Infants must appear by next friend, to be appointed by the Justice; married women may sue in most instances as if feme sole; plaintiff must proceed against the executor or administrator of an estate in the circuit court.

R. S., Secs. 1457, 254, 5131, 2310.

2. DEFENDANT.—Any person who claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination of the question.

R. S., Secs. 1456, 268.

3. PLEADING.

a. *Demurrer*—If a defect of parties is apparent on the face of the complaint.

R. S., Sec. 339, subdiv. 4.
Thomas v. Wood, 61 Ind., 132.

b. *Plea in abatement*—If not apparent on face.

Stinton v. Steamboat, 46 Ind., 476.

c. *Motion*—May be simply a motion to dismiss.

Gilbert v. Allen, 57 Ind., 524.

IV. Joinder of Parties.

In general, those who are united in interest must be joined as plaintiffs or defendants.

R. S., Secs. 1456, 269.

1. WHEN UNNECESSARY TO JOIN ALL.—When consent of one who should have been joined as plaintiff can not be obtained, he may be made a defendant, or where parties are numerous, one or more may sue or defend for the benefit of the whole.

R. S., Secs. 1456, 269.
Hill v. Marsh, 46 Ind., 218.
Tate v. R. R. Co., 10 Ind., 174.

2. PLEADING.—(See under Parties above).

V. Joinder of Causes of Action.

All founded on contract may be joined in one complaint; all founded on tort may be joined in like manner; but the contract and tort shall not be joined.

R. S., Sec. 1459.

1. PLEADING.—The misjoinder is reached by demurrer or motion to separate the causes of action.

R. S., Sec. 339, sub div. 6.
Burrows v. Holderman, 31 Ind., 412.
Baker v. McCoy, 58 Ind., 215.

VI. Security for Costs.

Justices shall require security for costs from plaintiffs living out of the county.

R. S., Sec. 1449.
See Thalman v. Barbour, 5 Ind., 187.

VII. Suits—How Instituted.

1. SUITS MAY BE INSTITUTED BY AGREEMENT.

R. S. Sec. 1450.

2. SUITS MAY BE INSTITUTED BY PROCESS.
R. S., Sec. 1450.

a. *By summons*—Process is generally by summons, specifying a time of not less than three nor more than thirty days from the date, and a place at which the defendant shall appear.

R. S., Secs. 1451, 1280, 397.

(1) Manner of Service—Summons must be served at least three days before trial, by reading it to the defendant or leaving a copy of it at his last usual place of residence.

R. S., Secs. 1452, 1453, 1454.

(2) Exceptions as to Time—In suits for injury to animals by railroad, summons must be served at least ten days before trial, and in suits for possession when tenant holds over, and in suits for forcible entry and detainer, summons must be served not less than five nor more than ten days before trial.

R. S., Secs. 4026, 5227.

b. *Capias ad respondendum.*—When it appears by affidavit that a person is about to leave the state or county, taking with him property subject to execution, a plaintiff having a legal demand then due against such person, may have a Justice issue a capias ad respondendum against such person; which shall be returnable forthwith and may be served any where in the county where issued.

R. S., Secs. 1551, 397. (See as to females, R. S., Sec. 805.)

VIII. Pleadings.

1. FORM OF ACTION.—There is but one form of action and it is called a complaint.
R. S., Sec. 1458.

2. THE COMPLAINT.—The filing of a statement of the grounds of the suit, or the filing of the written instrument which is the foundation of the suit is a sufficient complaint.
R. S., Sec. 1461.
Metropolitan Life Insurance Co. v. Bowser, 20 App., 557.

a. *Statement of grounds.*—If there is not a written instrument, there must be a statement of the grounds filed; in complaints founded on open accounts, all claims then due on account must be embraced or the plaintiff must pay the costs of any subsequent suit on claims not so embraced.

R. S., Secs. 1461, 1465.

b. *Written instrument.*—The filing of a written instrument is a sufficient complaint.

R. S., Sec. 1461.
Baldwin v. Webster, 68 Ind., 133.
Adleur v. Kuffel, 71 Ind., 543.

(1) Exception—In actions against officers on their official bonds, in addition to a certified copy of the bond, an informal statement of the breach and of the damages claimed, must be filed.

R. S., Sec. 1461.

c. *Complaint on transcript*—The filing of a transcript of a judgment from another Justice's docket is a sufficient complaint without other statement.

R. S., Sec. 1466.

3. ANSWER—DEFENSES.

a. *All matter of defense*, with four exceptions, may be given in evidence without a plea.

R. S., Sec. 1460.
Gates v. Todd, 22 App. 148.

b. *When defense must be filed.*

(1) When statute of Limitations is pleaded.
R. S., Sec. 1460.

(2) When a set-off is pleaded.
R. S., Secs. 1460, 1462.

a. A set-off is allowed only in actions for money demands upon contract, and must consist of matter arising out of debt, duty or contract, held by the defendant at the time the suit was commenced.

R. S., Sec. 348.
Avery v. Dougherty, 102 Ind., 443.
Grose v. Dickerson, 53 Ind., 460.
See R. S., Sec. 5503.

(3) Pleas in abatement—Must be in writing and supported by affidavit.

R. S., Secs. 365, 1456.

(4) The denial of the execution of a written instrument or any assignment thereof sued on, must be by special plea verified by affidavit.

R. S. Secs. 1460, 364.
Woolen v. Whitacre, 73 Ind., 198.

4. REPLICATION—No Replication shall in any case be necessary.

R. S., Sec. 1463.

5. AMENDMENTS—Either party may be permitted to amend his pleading before or during trial; such amendment may be ground of continuance at the cost of the party making such amendment.

R. S., Sec. 1464.

IX. Change of Venue.

1. WHEN.—At any time before the trial is commenced, whenever affidavit is made before the Justice, by either party.

R. S., Sec. 1467.

2. GROUNDS.—There are three grounds, viz., when the Justice is a material witness, when affiant believes Justice cannot give an impartial trial, and when affiant believes he cannot have an impartial trial in the township.

R. S., Sec. 1467.

3. CHANGE GRANTED.—If a change be granted, the cause must be sent to some other Justice of the same township if there be one competent to try it, and if there be none, then such cause must be sent to some Justice of an adjoining township.

R. S., Sec. 1468.

4. COST OF CHANGE.—No change granted, except on payment or confession of judgment of all costs occasioned by the change, if taken by the defendant; and of all accrued costs and the cost of such change, if taken by the plaintiff.

R. S., Sec. 1469.

X. Continuance.

All actions may be continued on affidavit when justice requires it; which affidavit may be amended and re-sworn to, for a period not longer than sixty days at the cost of the party making such application.

R. S., Secs. 1471, 410, 1456.

1. SOME GROUNDS OF CONTINUANCE.—

a. *If in cases of suits commenced by summons*, the cause of the action is not filed three days before the day of trial, the cause shall be continued at the plaintiff's cost, on the defendant's motion.

R. S., Sec. 1461.

b. *In cases of amendment* there may be a continuance at the cost of the party amending.

R. S., Sec. 1464.

c. *Upon affidavit* of the absence of certain witnesses.

R. S. Secs. 1471, 410, 1456.
Prather v. Young, 67 Ind., 480.

d. *Upon affidavit* that a party or his attorney is too sick to attend the trial.

Bartel v. Tieman, 55 Ind., 438.

XI. Witnesses.

1. SUBPOENAS FOR—Any Justice may issue subpoenas for witnesses and they are generally issued only for witness-

es in the county where the suit is pending; but on affidavit of the materiality of a witness residing in an adjoining county, a subpœna may issue into such county for him directed to any constable thereof. The service is usually made by reading the subpœna to the witness, but if the witness resides within the county, it may be served by certified copy left at his last usual residence. If served by any other person than a constable, the service is to be shown by affidavit.

R. S., Secs. 484, 485, 1456, 1453, 1472, 1473.

2. ATTACHMENTS FOR— Justices have power to subpœna witnesses and enforce their attendance by attachment and fine not exceeding five dollars and imprisonment not exceeding three hours.

R. S., Secs. 1477, 486.

3. COST OF WITNESSES— Generally the party causing witnesses to be subpœnaed and not swearing and examining them if in attendance must pay the cost occasioned thereby.

R. S., Sec. 1478.

4. FEES OF WITNESSES—Attending, per day, one dollar, and mileage for each mile necessarily travelled in going to and returning from Court from his residence, five cents. A witness shall not be obliged to attend before a Justice of the Peace out of the county where he resides, unless his legal fees for travelling and one day's attendance are paid or tendered before or at the time of the service of the subpœna.

No claims of attendance shall be allowed a witness; unless made before the judgment is entered and signed.

R. S. Secs. 1479, 1474, 1478.

5. PARTY AS WITNESS—Either party may, in all cases, have the other sworn as a witness.

R. S., Sec. 1480.

XII. Proceedings when Parties Fail to Appear.

An action may be dismissed without prejudice by the Court,

where the plaintiff fails to appear on the trial; if the defendant fail to appear, judgment may be entered against him by default, upon proof heard, for the amount of the plaintiff's demand.

R. S. Secs. 1456, 333, 1492, 1493, 383.

XIII. Proceedings When the Defendent is in Custody.

When a capias is issued, the defendant shall be forthwith conveyed before the Justice and be entitled to a trial within twenty-four hours; and a continuance shall be granted only by consent, except on motion of the defendant, supported by affidavit, the defendant at the time giving special bail.

R. S., Secs. 1551–1557.

XIV. Trial by Jury.

1. THE JURY.

a. *Number* — Jury shall consist of six qualified voters of the township unless the parties consent to less than six.

R. S., Sec. 1483, as amended, Acts 1889, p. 321.

b. *Challenges*—Either party may challenge for cause or may peremptorily challenge half the jury.

R. S., Sec. 1484

(1) For cause—The following are grounds of challenge for cause.

a. That the juror is not a qualified voter of the township.

R. S., Sec. 1483.

b. That the juror is related to one of the parties.

R. S., Sec. 240, subdiv. 11.
Hudspeth v. Herston, 64 Ind., 133

c. That the juror has formed or expressed an opinion.

R. S., Sec. 1793 subdiv. 2
Scranton v. Stewart, 52 Ind., 68.

(2) Peremptory—Either party may peremptorily challenge half the jury.

R. S., Sec. 1484

c. *Disagreement*—After the jury have consulted together for a reasonable time and are unable to agree, the Justice shall discharge them, and continue the cause until another day.

R. S. Sec. 1485.

2. MANNER OF TRIAL—The trial shall proceed in the following order, unless the court, for special reasons, otherwise directs:

a. *The Plaintiff* may briefly state his case and the evidence by which he expects to sustain it.

b. *The defendant* may then briefly state his defense and the evidence he expects to offer in support of it.

c. *The party* on whom rests the burden of the issue must first produce his evidence; the adverse party will then produce his evidence.

See XXII and XXIII.

d. *The parties* will then be confined to rebutting evidence.

e. *The parties* may submit or argue the case to the jury.

R. S., Secs. 1456, 533 subdiv. 1–3, 536.

3. VOLUNTARY DISMISSAL OF ACTION—An action may be dismissed *without prejudice* by the plaintiff before the jury retires; or, when the trial is by the court, at any time before the finding of the court is announced.

R. S., Secs. 1456, 333 subdiv. 1.

4. THE VERDICT—When the jury have agreed upon their verdict, it must be reduced to writing and signed by the foreman; and when returned into court the foreman shall deliver the verdict, and either party may poll the jury.

R. S., Secs. 1456, 544.
Bowen v. Bowen, 74 Ind., 470.

XV. Trial by the Justice.

The issues of fact shall be tried by the Justice, unless either party demand a jury; and the provisions respecting trials by jury apply, so far as they are applicable, to trials by the Justice.

R. S., Secs. 1483, 1456, 552.

XVI. New Trial.

New trials may be granted by Justices at any time within four days after entering judgment. In cases of default, defendant has ten days.

R. S., Secs. 1487, 1280, 1493.

1. NOTICE—Notice of the motion must be given to the opposite party unless the motion is made in his presence, or the presence of the attorney who conducted the suit.

R. S.. Sec. 1487.

2. NEW TRIALS are granted according to the usages of the circuit court.

R. S., Sec. 1487.

3. CAUSES FOR—A new trial may be granted in the following cases:

a. *Irregularity* in the proceedings of the court, jury or prevailing party, or any order of court, or abuse of discretion, by which the party was prevented from having a fair trial.

R. S., Sec. 559, subdiv. 1.

b. *Misconduct* of the jury or prevailing party.

R. S., Sec. 559, subdiv. 2.

c. *Accident or surprise.*

R. S., Sec., 559, subdiv. 3.

d. *Excessive damages.*

R. S., Sec. 559, subdiv. 4.

e. *Error in the assessment* of the amount of recovery, whether too large or too small, where the action is upon

a contract or for the injury or detention of property.
R. S., Sec. 559, subdiv. 5.

f. *That the verdict* or decision is not sustained by sufficient evidence or is contrary to law.
R. S., Sec. 559, subdiv. 6.

g. *Newly discovered evidence*, material for the party applying, which he could not with reasonable diligence, have discovered and produced at the trial.
R. S., Sec. 559, subdiv. 7.

h. *Error of law* occurring at the trial and objected to by the party making the application.
R. S., Sec. 559, subdiv. 8.

i. *A new trial* is not to be granted on account of the smallness of damages in actions for an injury to the person or reputation, nor in any other action where the damages shall equal the actual pecuniary injury sustained.
R. S., Sec. 560.

4. COSTS—The court may allow a new trial at the costs of the party applying therefor; or on the costs abiding the event of the suit; or a portion of the costs, as the justice and equity of the case may require.
R. S., Sec. 559, subdiv. 8.

5. SUBSEQUENT PROCEEDINGS AFTER GRANTING A NEW TRIAL—When granted the Justice shall set a day for the same and cause at least three days' notice thereof to be given to the party against whom the motion was granted.
R. S., Sec. 1488.

6. NUMBER OF NEW TRIALS—After the new trial the losing party may move for another new trial as there is no limit to the number of new trials a party may have.
R. S., Sec. 559, subdiv. 8.

XVII. Judgments.

1. WHEN TO BE ENTERED.

a. *When a suit is dismissed*, judgment must be entered and signed immediately.
R. S., Sec. 1489.

b. *When the verdict of the jury is returned*, judgment must be entered and signed immediately.
R. S., Sec. 1489.

c. *When a judgment is confessed*, judgment must be entered and signed immediately.
R. S , Sec. 1489.

(1) Judgments may be rendered by confession, and no appeal shall lie therefrom, but the same may be collaterally impeached for fraud by creditors of the judgment debtor; and such judgment shall be void as to such creditors unless at the time of the rendition thereof the defendant makes affidavit that he justly owes the debt.
R. S., Sec. 1490.

d. *When the defendant is in actual custody*, judgment shall be entered and signed immediately.
R. S., Sec. 1489

e. *The statute provides that in all other civil cases*, the judgment must be entered and signed within four days after the trial.
R. S., Sec. 1489, 1280.

2. KINDS OF FINAL JUDGMENTS.

a. *Judgment of dismissal.*

b. *Judgment by default*—If the defendant fail to appear, judgment may be entered against him by default, upon proof heard, for the amount of the plaintiff's demand.
R. S., Sec. 1492.

And such judgment by default may be set aside on motion, at any time within ten days upon the defendant filing his affidavit, showing a good defense to the action and paying all the accrued costs.

R. S., Sec. 1493.

c. *Judgment on the finding of the Justice.*

d. *Judgment on verdict.*

e. *Judgment by Confession*—A judgment may be confessed for any sum not exceeding $300.

R. S., Sec. 1433.

f. *Judgment Without Relief*—Where the note or obligation sued on is payable without relief from valuation or appraisement laws, such agreement shall be made a part of the judgment, and shall be noted on the execution, and property sold, without appraisement, to satisfy the same.

3. EFFECT OF JUDGMENTS—Every judgment which puts an end to the present suit, without indicating a decision on the validity of the claim merely operates to subject the plaintiff to the payment of the costs and to put him out of court, without barring him from bringing another action; the effect however of a final judgment on the validity puts an end to the controversy. If jugdment be rendered upon demurrer to a bad complaint, it will not bar another action upon a sufficient complaint.

4. SATISFACTION OF JUDGMENT—Any person alleging satisfaction of any judgment on a Justice's docket, may file his complaint in writing showing specifically in what manner such satisfaction was made and there shall be a suit to determine the question.

R. S., Sec. 1497.

5. REVIVAL OF JUDGMENT.

a. *In favor of personal representative*—Judgment in favor of any deceased person may be revived in favor of his personal representatives, on complaint and summons as in other cases.

R. S., Sec. 1498.

b. *Judgment against deceased person*—Judgment against any deceased person can never be revived so as to have execution on it in a Justice's court. The only remedy is by a proceeding against the executor or administrator of the deceased party in the circuit court.

R. S., Secs. 2328, 2310, 2311.

c. *In favor of one who has neglected execution*—Whenever any judgment has remained without the issue of execution thereon for the space of three years, no execution shall issue thereon, unless on affidavit filed, showing that such judgment is unsatisfied, and how much is yet due thereon.

R. S., Sec. 1513.

XVIII. Appeals.

1. WHERE TAKEN—Any party may appeal from the judgment of any Justice to the Circuit or Superior courts of the county.

R. S., Secs. 1499, 1351.

2. IN WHAT CASES—The statute applies to all kinds of civil proceedings, except there can be no appeal from judgments rendered by confession.

R. S., Sec. 1490.

Hobbs v. Cowden, 20 Ind., 310.

3. HOW TAKEN—Any party may appeal and when there are two or more plaintiffs or defendants, one or more of such plaintiffs or defendants may appeal without joining the others.

R. S., Sec. 1499.

4. TIME—Within thirty days from the rendition of the judgment; but appeals may be authorized by the circuit court after the expiration of thirty days, when one has been prevented form taking the appeal by circumstances not under his control.

R. S., Secs. 1499, 1503.

If on filing a bond the Justice is told not to send up the papers until further orders, the appeal will be considered as taken when the order to transmit the papers is given.

Baumbauer v. State, 76 Ind. 351

5. BOND—Appellant must file a bond except in cases dispensed with by law payable to appellee in a sum sufficient to secure the claim of the appellee and interests and costs.

R. S., Sec. 1500.

a. *There must be a surety.*

R. S., Sec. 1500.
Ind. etc. R. R. Co. v. Beam, 63 Ind. 490.

b. *Conditions*—There must be two conditions in the bond, viz., one that the appellant will prosecute his appeal to effect, and the other that he will pay the judgment that may be rendered against him in the circuit court.

6. FILING TRANSCRIPT—The appeal granted, it then becomes the duty of the Justice to cause the papers in the case and a transcript from his docket to be filed in the appellate court within twenty days.

R. S., Sec. 1501.

7. TRIAL.

a. *Time*—It shall stand for trial at the next term when the papers are filed in vacation, and when filed in

term, to stand for trial of the expiration of ten days from the date of filing.

Acts of 1889, p. 255.

b. *Rules of trial*—The trial in the circuit court is under the same rules and regulations as prescribed for trials before Justices.

R. S., Sec. 1502.

(1) The cause stands for trial in the circuit court as if it had been commenced in such court.

Britton v. Fox, 39 Ind., 369.

(2) In the appellate court the cause is not tried alone upon errors in the proceedings before the Justice, but on the merits upon the original papers.

Baker v. Chambers, 18 Ind., 222.

(3) The rules of the circuit court apply as to the selection of a jury and change of venue.

Vanschoiack v. Farrow, 25 Ind., 310.

(4) A demurrer filed before a Justice must be renewed in the appellate court.

C. W. & M. R. R. Co. v. Harris, 61 Ind., 293.

(5) A written answer rejected below must be renewed.

Hunter v. Thomas, 28 Ind., 448.

(6) In appeals to the supreme court in all cases originating before Justices, only errors from the appellate court are reviewable.

Harrington v. Luddington, 23 Ind., 542.

(7) Amendments—Amendments of the pleadings may be made on such terms, as to costs and continuances, as the court may order.

R. S., Sec. 1502

8. APPEAL DISMISSED—When an appeal is dismissed by the court the judgment shall stand on the Justice's docket as if no appeal had been taken.

R. S., Sec. 1504.

9. COSTS—Costs follow judgment in the circuit court on appeals.

R, S., Sec. 1505.

a. *Exceptions.*

(1) If either party against whom judgment has been rendered, appeal, and reduce the judgment against him five dollars or more, he shall recover his costs in the circuit court, when appellant appeared before the Justice.

R. S., Sec. 1505, subdiv 1.

(2) If either party in whose favor judgment has been rendered, appeal, and do not recover at least five dollars more than he recovered before the Justice, the appellee shall recover his costs in the circuit court.

R. S., Sec. 1505.

(3) If judgment is rendered against one in a Justice's court for less than five dollars and he appeals and gets judgment in his favor in the circuit court, the appellant is entitled to costs, he is entitled not because he reduces the judgment five dollars, but because he recovers judgment.

Brown v. Snavely, 24 Ind., 270.
Black v. Dale, 18 Ind., 335.
Brenneman v. Grover, 16 Ind., 347.

(4) If the plaintiff remits part of the judgment before appeal, the remainder of the judgment is considered as the amount thereof in determining the question of costs on appeal.

Clark v. Milburn, 62 Ind., 203.

10. SUITS ON APPEAL BONDS—Every appeal bond has two conditions and a liability arises on the bond whenever there is a breach of one of these conditions.

R. S., Sec. 1500.
Wood v. Thomas, 5 Blkf., 553.

XIX. Executions.

1. STAY—In all cases where a stay of execution is not prohibited by law, the judgment defendant may have stay of execution by entering replevin bail on the docket of the Justice.

R. S.. Sec. 1520.

a. *When not allowed*—In certain cases a stay is not allowed as in many cases of breach of trust and on official bonds; also no stay allowed against any corporation other than municipal.

R. S., Sec. 1521.

b. *When allowed—Period of stay*—The statute fixes the length of time during which an execution may be stayed, running from thirty days to one hundred and eighty days according to the amount of the judgment, exclusive of costs.

R S., Sec. 1522.
Tucker v. White 19 Ind., 253.

c. *Additional bail*—If upon the showing, of the person who has obtained judgment, to the satisfaction of the court, that the replevin bail already given is insufficient and there is a failure on the part of the judgment debtor to furnish other bail, the Justice must forthwith issue execution against the latter's property the same as if no stay had been taken.

R. S., Sec. 1523.

A replevin bail may compel execution.

R. S., Sec. 1524.

d. *Effect on Stay, etc.*—The undertaking of the bail for the stay has the effect of a judgment confessed and execution shall issue thereon, at the expiration of such stay, jointly against the judgment defendant and such bail; and when a replevin bail has paid the judgment,

the same shall stand unsatisfied for his use, and he may have execution thereon.

R. S., Secs. 1520, 1526.

2. THE ISSUE OF EXECUTIONS.

a. *When the Justice* must issue in cases where the judgment is not stayed, or not appealed from or where a motion is not pending for a new trial.

(1) In four days—When the party appeared the Justice must issue execution on the judgment after four days from its rendition.

R. S., Sec. 1506.

(2) In ten days—If defendent did not appear then after ten days from such judgment.

R. S., Sec. 1506.

(3) Immediately—In cases of judgment by confession, in cases begun by capias and in all other cases in which it is made to appear by affidavit that delay will endanger the collection of the judgment, execution must issue immediately after entering judgment.

R. S., Sec. 1506.

b. *Kinds of*—There are three kinds.

R. S., Sec. 676.

(1) One against the property of the judgment debtor.

R. S., Sec. 676.

(2) One against his person.

R. S., Sec. 676.

(3) One for the delivery of the possession of real or personal property.

R. S., Sec. 676.

c. *Execution Against the Property* of the judgment debtor.

(1) How directed and where served—The execution shall be directed to any constable of the county and may be served throughout the county.

R. S., Sec. 1507.

(2) When returnable—Execution is returnable at the expiration of six months, but may be sooner returned if satisfied or no property of the defendant can be found.

R. S., Sec. 1509,

(3) What property to be levied on—All tangible property is subject to execution.

R S,, Sec. 1571 form, 5224, 720, 721, 723, 724, 725.

(4) Exemption—Resident householders are entitled to exemption from execution.

R. S., Sec. 703.

a. For any debt growing out of or founded upon a contract, express or implied.

R. S., Sec. 703.

b. Amount of exemption—For an amount of property not exceeding in value six hundred dollars.

R. S., Sec. 703.

c. Kind of property exempt—The property may be real or personal or both as the debtor may elect and designate.

R. S., Sec. 704.

d. What exemption does not affect—The exemption does not affect any mechanic's or laborer's lien, nor lien for purchase money of real estate, nor exempt property from taxation or sale for taxes.

R. S., Sec. 717.

e. How take advantage of exemption law—Before a debtor shall receive the benefit of the

exemption, he must make out and deliver to the officer having the writ, an inventory of all his real estate and personal property and support the same by affidavit.

R. S., Secs. 713, 714.

(5) Appraisement and sale of the property levied on by execution—Before the sale of the property, it must be appraised by two or more disinterested householders of the neighborhood, who must make an affidavit to its valuation; the property must then not be sold for less than two-thirds of its appraised value and such sale when made must be at public action.

R. S., Sec. 1511, 732–736, 1528.

(6) Trial of right of property seized on Execution—Whenever any party other than the judgment debtor lays claim to property seized on execution, such claimant must file a written complaint verified by affidavit, setting forth the fact of such levy and seizure and stating his claim to said property and then there shall be a trial of the right of property.

R. S., Secs. 1529–1546.

(7) The delivery bond and its effects—The execution defendant shall be entitled to the custody of the goods levied upon by executing a delivery bond; and if the condition of the bond be broken, the execution plaintiff may prosecute his remedy thereon.

R. S., Secs. 1514–1519.

(8) How reach the lands of the judgment debtor—The judgment creditor may file a transcript of

his judgment in the county clerk's office and this transcript filed and recorded becomes a lien on the debtor's lands to the same extent as a judgment of the circuit court.

R. S., Sec. 612-614.

d. *Execution Against the Body of the Judgment Debtor*—The body may be taken where the debtor is practicing some fraud to avoid the payment of the debt; and the creditor must file an affidavit with the Justice and there shall be a trial.

R. S., Secs. 1558-1570, 6119.

XX. Limitation of Actions.

The statutes limit the period within which an action may be brought, the period varying from two to twenty years.

R. S., Secs. 292-306, 880, 995, 367, 633.

XXI. Fees of Justices of the Peace.

Acts of 1899, p. 77.

XXII. Depositions.

Depositions of witnesses or parties residing out of the county, or sicy, or about to leave the county, are taken under the rules prescribed by law for taking depositions; and if such party or witness is absent from the county or is unable to attend at the trial, they may be read as evidence in any cause; and no dedimus shall be necessary in such case.

R. S., Secs. 1481, 1482, 418-439.

XXIII. Evidence.

The rules of evidence are the same as in the circuit court unless expressly provided otherwise.

R. S., Sec. 1475.

1. PROOF—The proof of the plaintiff must be confined to the allegations of his complaint, and such proof as may be necessary to rebut the proof of the defendant; and the proof of the defendant must be confined to such matters of defense as he is authorized by the Justices' Act to prove without plea, and to proof of such special pleas as he may file.
R. S., Sec. 1476.

2. WITNESSES—Who competent and who incompntent.
R. S., Secs. 496—509.

James M. Ogden