

SUPREME COURT

Abstracts of Opinions Handled
Down October 13, 1920.

CRIMINAL LAW—SELECTION OF JURY—
EVIDENCE.

2221. Dennis J. Bush vs. State of Indiana. Marion Cr. C. Affirmed. Myers, C. J. Lairy, J. dissent.

APPEAL AND ERROR—REHEARING—
PLEADING.

10302. Clark, administrator vs. the City of Huntington et al. Wahash C. C. Appellant's petition for rehearing is denied.

(1) This is a conviction of assault with intent to kill. There was evidence that appellant was street criminal of Indiana, and that he sought others to commit the assault and battery and afterward put them upon the pay roll of his department and issued them checks without any service by them. On appeal the appellant questions the action of the trial court in the choosing of a jury, but the court holds that they did not present the question to the trial court for review and for that reason can not present it to the supreme court for review. The trial court being the trial court of error, it is to the trial court that the matter of error occurring on the trial under Clause 7 of Section 2150 Burns, 1914, the court saying that the trial court was not bound to accept the appeal, and that the question which was technical, was proper to present under the trial court's jurisdiction. The court holds that the instruction that the evidence as to the keeping of the persons committing assault and battery in his employ as labor, was not of itself sufficient to show guilt of the appellant, was not in view of the evidence and other circumstances, given by the trial court. (2) Appellant's requested instructions 2 and 7, which were refused, were covered by other instructions given. (3) The trial court's opinion that he was permitted to testify that he mailed from 100 to 150 large envelopes and contents from his office to the post office, as his business, was proper upon the theory of the prosecution that appellant thought him guilty of the offense and that he was compelled to testify. (4) A witness having testified that he was employed by appellant to make the assault, and that he had no acquaintance or malice or hatred against the one assaulted. (5) In order to permit the trial court to permit an error to permit one of the assailants to testify that he had received money through appellant on his pay roll, and that he was a traitor to his country, as well as trading money and not as statements of a conspirator. (6) There was no reversible error in the trial court's examination of appellant regarding his knowledge of the various names upon the pay roll, which he said he did not know, and he having testified on direct examination that he had no knowledge of such fictitious names when he signed the pay roll, and that he was present in the discussion of the trial court. (7) Although the court does not approve of the trial court's examination of appellant, it is remittal to testify that Marshall, a deputy fire marshal, had told him soon after the assault that a deputy fire marshal was disturbed by the questionable political matter, which was in consideration of the outcome of Bush as a traitor to his country, the court holds that appellant's contention of the wholly impropriety of the evidence is such that the court cannot not hold that he was not guilty, no matter how right he is in his contention that it was no proper evidence.

Appellee Court.

TAXATION—INJUNCTION.

10411. Schlesser Brothers vs. George W. Huff, treasurer. Marshall C. C. Affirmed. Hartman, J.

The appellant sued to enjoin the appellees from making additional assessments against appellant, which is a corporation. The trial court made a special finding of facts that appellant had no property in the state, property in the several townships, and set a value opposite each item, and the assessor agreed with the trial court, and the board of review, without notice or waiver of notice, rejected the valuation of the several properties and that the assessor, the appellees, will unless restrained restrain appellant from recovering for the payment of taxes on the excess valuation.

It is held that the trial court did not pay its taxes on the valuation placed upon the property by the assessor, and that though the board of review did not place any additional valuation upon prop-

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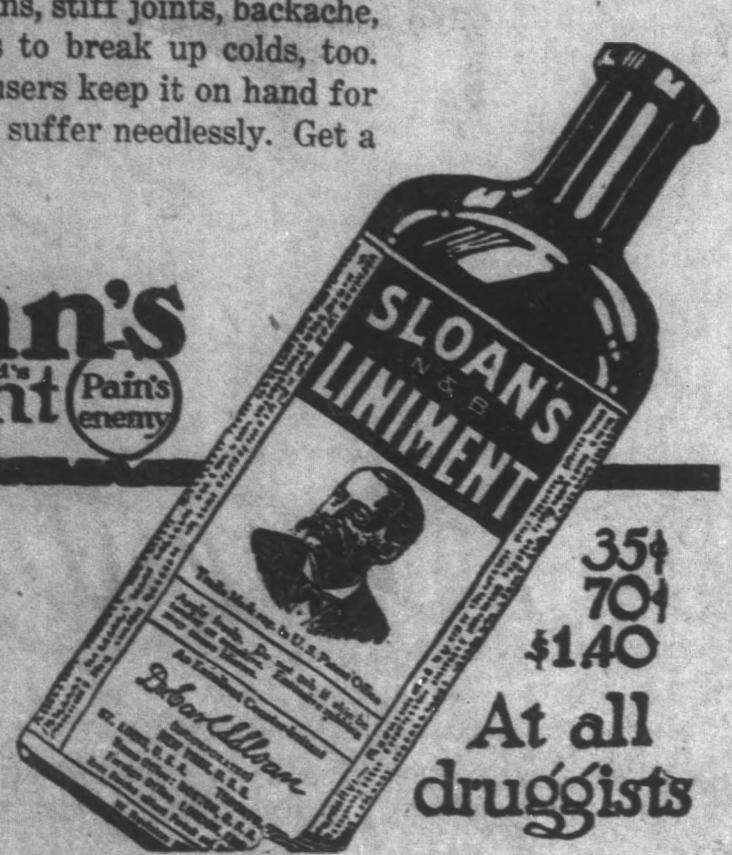


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the court held it insufficient upon its own examination. The trial court did not do especially in view of the fact that the complaint contains allegations not in conformity with the facts.

FRAUD—TRIAL—INSTRUCTIONS.

10423. Clark, W. Rountree vs. Lee C. Thayer, Sr. et al. Hamilton C. C. Reversed.

This was an action for damages for fraud practiced by appellees in obtaining a trade of appellant's farm for worthless corporate stock. The court reviews the evidence at the trial and holds that the defendant has failed to show a reversible error in the opinion which he attempted to present on the matter of introduction and exclusion of evidence but holds that the court erred in giving of each of the two instructions 4 and 5, one involving the province of the jury relating to the value of stock and the other relating to the proper application to the facts of the individual cases there being no evidence that appellant had either made any investigation of the value

of the stock or had any opportunity to make such investigation.

MASTER AND SERVANT—COMPENSATION LAW.

10524. Indiana Window Glass Company vs. Wyatt M. Manick, Industrial Board. Affirmed. Nichols, J.

Appellant was working for appellee in his factory at the prior part of the time of his injury. He was using a hand tool for the work. Appellant contends that appellee was not a servant, but a contractor, and defendant, the Industrial Board, of Muncie, etc. Co. vs. Thompson, 125 N. E. 186, and other cases cited.

FAILURE TO PRESENT QUESTION.

10525. Abe Feinberg vs. Thomas F.

Hart et al. Delaware S. C. Affirmed. McAben, C. J.

"On the authority of Simpson vs. Lopshire, Ind. App. 124 N. E. 497, and authorities thereto cited, we hold that no question is presented for our consideration. Judgment affirmed."

HIGHWAY PROBLEMS UP.

Municipal Improvement Society in Convention at St. Louis.

ST. LOUIS, October 14.—Problems

in highway construction were considered at the twenty-sixth annual convention of the American Society for Municipal Improvements, in session here today. Speakers advocated classification and standardization of roadway widths to meet different conditions.

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by preventing the building of roads of excess width and at the same time assure ample width to meet traffic demands without undergoing reconstruction.

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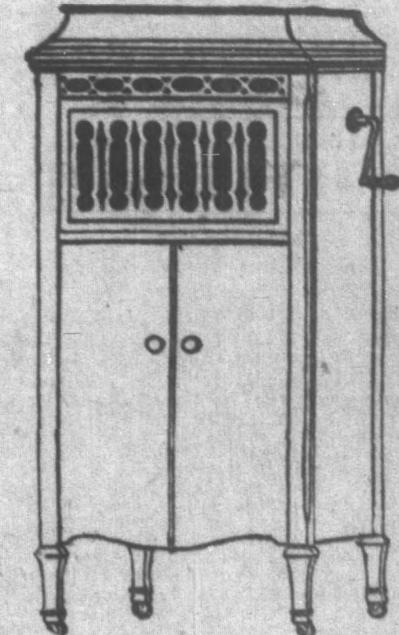
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