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CASE ON NOTE GETS LAUGHTER

A. P. Johnson & Son Lose in Civil Court Case

JURY OUT HALF THE NIGHT

Plaintiff Wins Without a Single Witness Present in Court

The trial of the case of Campbell & Reid and Western Sales stables Co., against A. P. Johnson & Son, being a suit on a note given by the defendants to the plaintiff company and which fell due and was unpaid in 1919.

The note represented the sum of $200.00 which was paid to Victor M. Johnson by Joe Nugent, and officer of the Campbell & Reid business, while the payee was in St. Louis on a horse and mule purchasing trip, and the draft out of which the money came was sent to the Farmers & Merchants Bank of Johnsonville and returned unpaid. The draft went back to St. Louis, unpaid, of course after Johnson had long since spent the two hundred dollars and doubtless returned to his home at Johnsonville.

When the draft was not paid after repeated dunnings, the claim was placed in the hands of H. H. Woodward to be collected. He did not collect it. According to the testimony, the attorney finally agreed to take a note from A. P. Johnson & Son for the two hundred and the interest thereon, amounting in all to the sum of $207.00. To this the parties agreed and according to the evidence signed up the note and left it in the hands of the attorney falling due on August 1st, 1922 with interest from its date at the rate of seven per cent per annum, and with 10 per cent attorney's fees in case the note was not paid at maturity.

This is the note which was sued. At the time the note fell due the parties were notified, as proved by carbon copies of letters written to them, both to A. P. Johnson who lived at Gurley S. C., and to Victor M. Johnson, who lived at Johnsonville. On August 7, a letter was sent offering to settle the note for the principal and without the addition ofany lawyer's fees in case defendants cared to pay before any suit should be brought. This offer was not accepted.

Finally this action was brought on the note and the defendant A. P. Johnson answered the complaint alleging among other things that he had paid the note, also in a separate defense alleging that he denied the making of the note.

Victor M. Johnson did not answer the complaint. He was, however, a star witness in the trial of the case.

The plaintiff, the Campbell &Reid etc., Company, had no officer here at the time of the trial and no representative except the attorney who brought the suit. The only testimony in the case on the part of the plaintiff was furnished by the attorney and this consisted to a great extent in the carbon copies of letters written by the attorney and letters written to the attorney and to his client about these matters involved in the suit.

While the case was being developed Uncle Ap took out his turn in making some remarks addressed to the attorney for the plaintiff which caused a laugh several times in the court room. He stated to the attorney for the plaintiff, in open court, that this note had been secured by the attorney while, he Johnson, was drunk, and that the attorney had followed him down the street and begged him to sign it until he gave in and wrote his name, or words to that effect. Johnson said he was drunk at that particular time, but that he (the attorney) was drunk all the time—stayed drunk. The attorney answered this by saying that drunk men usually looked upon all other men as being drunk; and at this point the court took a hand in the matter and advised the parties that they would do well to discontinue making remarks at each other.

In the course of examination, while A. P. Johnson was on the stand in his own behalf, hesaid that he had never signed any papers or done any business in Horry county in the name of A. P. Johnson &Son, except such as had been forged against him by the attorney for the plaintiff. This caused another laugh. Later the witness modified his statement.

Then Victor M. Johnson, the junior member of the firm took the stand He said that he lived at Johnsonville and did business there in horses and mules; that he did not deny the making of the note sued on but declared that the note had been paid; that it had been paid later on after the suit had been brought when he and his father went back out to St. Louis and bought another bill of horses and that the amount due on the note, or what they said was due on the note, was included in the bill. Asked to produce this bill he said that he did not have the bill with him.

Cross examination failed to shake this statement.

The attorneys were given ten minutes on each side in which to make their claims clear before the jury.

The jury went out with the case in the late afternoon. At adjournment hour they were still out and were charged by the court, with the consent of the attorneys, to go out to supper with the sheriff whenever they wanted to eat and that when they agreed on a verdict to write it out on the back of the complaint, seal this up in an envelope and say nothing to anybody as to what they had found; then bring the verdict in with the foreman the following morning.

The jury soon proved to be ten to two in favor of the plaintiff. The two favored the Johnsons said that they could not understand why men would go on the stand and testify as these men had if what they said were not so. They stuck to this idea all through the early hours of the night while other people slept or read their newspapers by the family firesides; and still on until midnight, when, at last, the two had thus stood out came over to the side of the ten. On the next morning the jury returned a verdict for the plaintiff and found against A. P. Johnson & Son the full amount due on the note, with the attorney's fees as claimed in the complaint, amounting in all to the sum of $293.00.

The attorneys for the defense made a motion for a new trial which at the time of this writting had not been argued.

ONLY A FEW CASES TRIED

Court Disposes of Five Really Contested Cases in Six Days

On the roster of the cases prepared by the members of the bar for trial last week there appeared forty-nine different cases for trial.

There was about the same number left on the docket that did not appear on the dockets.

It might be interesting to show a list of the cases actually disposed by contested trials in the true sense of the word, and then a number of others disposed by consent verdict.

The only cases actually tried out were:

—1—

Campbell & Reid vs. A. P. Johnson & Son.

—2—

W. D. Bethea vs. J. A. Lewis, Sheriff, and Bank of Loris.

—3—

Rufus M. Dyson vs. E. M. Graham.

—4—

H. Barnes vs. C. M. Reaves, and y A. Reaves.

—5—

E. H. Hardwick and others vs. Trexler Lumber Company.

This makes only five cases that were really contested that could possibly be tried in the six days during which the court lasted.

Some other cases which turned out not to be seriously contested and which were disposed of by consent orders or verdicts, were:

Barnhill vs. Barnhill,
Holliday vs. Rogers,
Page vs. McCutchen,
Auto Company vs. McDowell.

All the rest of the long list of cases appearing on the above mentioned roster were continued. There was no time in which to take them up and try them. The docket will be congested just as much next time as it was this time, and as it has been for the past two years or more.

OATHS TAKEN AT A HEARING

Show That Witnesses Were Confined to Particular Date

JACK VEREEN MENTIONED

Purpose of Holding a Preliminary in a Magistrate Court

The Herald has secured in the last few days a copy of the testimony taken at the preliminary hearing in Dogwood Neck township in the case of the State vs. N. A. Martin, charged with violation of the prohibition laws.

The hearing took place on October 20th, before magistrate A. P. Thompson.

It has been stated by several who were present at the trial that the court limited the witnesses to facts that they might know as occuring on March 24th, 1922 was the date on which rural policeman, D. Frank Bellamy, caught Jack Vereen, an aged negro who said it belonged to Martin.

The testimony of Jack Vereen, according to the statements made to the reporter here in Conway by two men who were present at the hearing, was fuller and much more in detail than what was evidently taken down as shown by the copy of the testimony sent to the Herald and herewith published.

The ruling of the court that the testimony must be confined to March 24th, 1922, or events since that date, would indicate that the effort of finding out if the law had ever been

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RESPECT FOR THE LAW

Since the decision of the Federal courts some time ago to the effect that prohibition agents have a right to make a search without lawful search warrant, the authorities are using that means of making searches more and more. Time was when these agents would prowl through the private premises of people without any leave or license. The Federal court held that a man thus treated, even though whiskey was found on his place, could not be convicted under the laws of the land.

This change of procedure will have the result of causing people to have more respect for the law than they had before. Why should different plans be used regarding whiskey? There was no way of finding any reason why violations of this sort should be treated differently from other violations of law in hunting down which no officer would think of going in without a search warrant.

HARDWICKS TRY TIMBER ACTION

Hardwicks Lose in Damage Case Against Harry C. Trexler

One of the most interesting of the cases tried in the court last week was that of J. M. Hardwick and others against Harry C. Trexler and others trading under the name of Trexler Lumber Company, brought for damages alleged to have occurred to the lands of the plaintiffs when the lumber company cut the timber therefrom in the years 1916 and 1917.

It was interesting mainly for the reason that in the minds of some it is a noted question as to how far a Lumber Company may go in the exercise of certain rights conferred upon them in the lengthy timber deeds that are used for selling timber.

The Lumber Companies have the right to take what they have bought. They of course have the right to enter the land for the purpose of taking the timber. They cannot exercise their rights in a careless, neligent and wanton manner to the injury of the man who owns the soil of the land, or else they are liable under the law for the damages sustained.

The trial of this case brought up points just like these for consideration.

The lands involved in the action are situate in Simpson Creek township and cover an acreage of about three hundred acres, counting the cleared and uncleared lands of the tracts.

There were four of the suits all tried together as one case, but so as to have four verdicts rendered finding the damages, if any as proved in each of the four different cases brought.

There were four suits because the land had been divided by J. M. Hardwick owned and in the possession of four different sons of J. M. Hardwick, in one or two of the cases, a tract or portion of the original tract being owned by two of the sons jointly.
owned by two of the sons jointly.

The timber had been sold by J. M. Hardwick before he made the deeds which divided up the land in several tracts.

The trial was commenced in the early morning of last Friday. At the time of adjournment on Friday evening, all of the testimony had not been taken. Several more witnesses were still to be heard.

The plaintiffs were the first witnesses on the stand. According to their testimony the lumber company crossed the stream of Buck Creek at three different points with their tram roads, filling the stream with logs in crib building style on which to lay the tracts that these places formed complete stoppages to the flow of the water in Buck Creek especially after trash and debris had gathered up and lodged so as to fill the small space that was left for the water to seep through. They also showed that the mouth of Ox Pen Branch had been filled in with trash, logs, bark, and trees as the skidder pulled logs across it; that trees and timber tops were cut down and left in the run of Buck Creek so that the creek was caused to overflow its banks, new channels to be formed; that the water backed up on the Hardwick lands and sobbed through the soil of the lands cutting off the crops and damaging the freehold. They also showed that the lumber company took about fifty poplar trees from the land while in their deed they had not bought the poplar timber. This poplar timber was said to be worth five or six hundred dollars to the land. The rental value of the land that was damaged was placed at from five to ten dollars per acre by the witnesses.

One of the witnesses for the plaintiff said that in the year 1918 they had a tobacco crop which was lost by the flood as the water could not run off the land; that it was boggy and showed a condition different from what it had ever been before, owing to the water which backed up on the land and could not be drained off.

That a ditch had been cut into the creek just below the mouth of Ox Pen in order to try to correct the damages wrought by the filling in of the creek and the branch. This ditch cost six hundred dollars.

Other witnesses were called to testify to the condition of the creek after the lumber company had taken up their tracks and left the land. They told about the blocking of the stream in places by trees and tree tops cut down and left in the bed of the stream.

The defendant put up witnesses whose testimony tended to try to show that there were other obstructions in the run of the creek and also in this branch which had as much to do in their opinion with the bad drainage as the work of the lumber company had done.

Surveyors testified as to the obstructions of the stream and the levels at different places on the land and in the Buck Creek Swamp.

Photographs were introduced in evidence showing various places where the run of the creek had been blocked with trees and tree tops.

The defense put up witnesses to show that the poplar timber mentioned had been cut over across Buck Creek on land known as the Norris land; and that it was not cut on the Hardwick land.

A long list of letters were placed in evidence showing the compliant made by the Hardwicks about the damage that had been done to the land. Also letters from the lumber company in answer to those. The proof showed that when the lumber company left the place they did pull out some of the obstructions but that they did not take out all of the blockades made by them in the run of the creek and at the mouth of the Ox Pen Branch.

The plaintiff sued for both punative and actual damages alleging a wanton disregard of the rights of the land owners in taking this timber in that manner.

The case went ahead on last Saturday morning, it soon becoming evident that it would be the last case tried at the term. It appeared that the case with the four different arguments to be made would take up the entire day of Saturday.

A JURY VALUES REAVES TIMBER

H. Barnes Sued C. M. Reaves and Also Mary Reaves

The case of H. Barnes against Mary A. Reaves and C. M. Reaves, was called for trial on Wednesday afternoon of last week.

The complaint alleged that the plaintiff had purchased a tract of land from the defendant several years ago with full warranty as to both the soil and the timber thereon; but that afterwards J. E. Harbour entered on the land and took the timber off under a timber deed or reservation of timber by Burroughs & Collins Co. who had sold to the said J. E. Harbour.

The answer stated that when defendant Reaves had agreed to make the sale they thought they owned the timber but did not actually own the timber on the land and before closing the sale offered to let the plaintiffs out of the trade but refusesd to make any reduction in price; but that plaintiffs insisted on having the deed as originally contemplated, and that plaintiffs took the land with full notice of the timber title.

The plaintiffs asked damages in the sum of $2000.00 for the loss of the timber.

The land is known as the Futrill place near Loris.

The difficult question meeting the parties at the threshold of the case was by what rule the damages would be arrived at and measured. After some argument it was decided to go ahead with the trial and make a ruling on the question as the case progressed.

The plaintiff then introduced a number of deeds to show the title in a regular claim including the deed under which the timber had been reserved before the land came to the Reaves. This was a reservation in a deed from Burroughs & Collins Co. to J. M. Grainger, Burroughs Collins &Co., in selling the land to Grainger reserved the timber for the period of ten years. Grainger sold to Land and Security Co. and the latter to C. M. Reaves. Then the land was sold by the trustee in bankrupty of Mary A. Reaves. They also introduced a timber deed from Burroughs & Collins Co. to J. E. Harbour for this timber that they had reserved.

The trial of this case went ahead on the issues last Thursday morning. exhibited a blue print showing the tract of land in detail.

The first witness sworn was J. M. Johnson of the firm of Johnson & Roberts civil engineers, who exhibited a blue print showed the trace of land in detail.

J. E. Harbour testified that he took off about one million feet of timber from this land under his deed, from Burroughs & Collins Co. The witness was not allowed to testify as to the value of this timber, but only to tell the values of the land before and after the timber wa taken regarding the purchase money of the land as the basis of comparison. There was much argument of counsel over the admission of thi testimony. The witness said that he would place the value of the timber at 33.5 per cent and the land without the timber at 66.5 per cent of the $7000.00 for which the property both land and timber was purchased by the plaintiff.

H. Barnes, the plaintiff testified He lives at Proctorville in Robeson County N. C. He bought the land which he thought included the timber for $7000.00; that the comparative value of the timber was one half of the value of the land this making $3500.00 for the land and the same amount for the timber that stood on the land.

Several more witnesses on the opposing side were sworn as to the value of the timber and then the issue if the value of this timber was submitted to thejury. The nature of the case required that other questions arriving in the case should be decided by the court.

The jury went out on Thursday afternoon to fix by their verdict the value of the timber on the land. They were tied up when the court adjourned that evening but on Friday morning they brought in a verdict finding the value of the timber at $1250.00.

This did not end the case as certain equitable issues still remained in the case to be passed on by the court.

Following this the court took up the case of J. M. Hardwick and others against Trexler Lumber Co for damages in taking timber from their lands.

JOHN BARFIELD WAS NOT AT HOME

Officers Raided His Place and Found a Still up in His Loft

V. D. Johnson, rural policeman, went with Federal prohibition agents last Thursday to Causey, S. C., where they raided the premises of John Barfield. They were acting under a search warrant issued from the magistrate court.

Barfield was not at home but his wife and three or four children were there. He is a white man. At first the officers thought they had searched his place in vain as there was nothing on the lower floors or outbuildings to indicate a still or a large supply of the products of such a plant.

Continuing their search into the loft of the house they struck a find. It consisted of a keg of sour mash being made ready for the still, and one and a half gallons of white whiskey.

Going still further into the mysteries of a dark corner in the loft, they discovered the still and its complete outfit, showing that it had been used evidently in the swamp to make whiskey and then taken up and brought to the house where it had been hidden until another time came around to make the rum and to be safe from detection while another lot of the sour mash was being made ready.

Barfield could not be taken into custody as there was no way to locate him. He was gone. His family could not tell anything as to when he would return or whither he had gone that morning. A warrant will be pushed against him, however, if he can be found.

DAMAGE CASE THROWN OUT

In the case brought by J. M. Hardwick against Harry C. Trexler and others, and tried last week in the court of common pleas, the jury found the cases, four in number, all in favor of the defendants.

There were four of the cases. In several of them the sum of two thousand dollars was asked as damages for stopping up the run of Buck Creek and the mouth of Ox Pen Branch on the Hardwick farm in Simpson Creek township.

DYSON BURNING AIRS IN COURT

Many Witnesses Called by Opposing Sides at the Trial

GASOLINE AND KEROSENE

Mixing of the Oils Was Admitted But not the Sale as Alleged

The court of common pleas tried last week before Special Judge W. C. McLain, the most interesting case of the entire week, which was that of R. M. Dyson, as administrator of the estate of his wife, Effie Jane, against E. M. Graham, in his individual capacity and trading as the Aynor Mercantile Company.

The trial was started on Tuesday morning, following the decision of the court as to a demurrer interposed by the attorneys for plaintiff to the several defenses of negligence of the husband imputed to the wife which they alleged contributed to the injury and death of Mrs. Effie Dyson. The court held that this alleged negligence of R. M. Dyson, the husband, could not be charged or imputed to the deceased wife, so as to bar the recovery of damages, unless they were engaged in the pursuit of some enterprise common to both of these parties and common to the infant Edison Dyson, and that the acts of the said R. M. Dyson were under the control of, or commanded by the deceased Mrs. Dyson.

The defendant amended his answer so as to conform to the court's order and the trial began about 10 o'clock on Tuesday evening of last week.

The testimony of the witnesses brought back to the minds of the people the horrible burning to death of Effie Dyson, wife of R. M. Dyson, at the home of the little family at Aynor, S. C., on the early morning of the 26th of December in the year 1919. Her clothes caught on fire from the explosion of a can of oil that was alleged to have been carelessly mixed with gasoline and sold by Aynor Mercantile Company as kerosine without any warning as to the nature of the contents.

The substnce of the testimony showed that on that morning, the weather being cold, husband and wife awakened and noticed the sun was shining and said that it was time to arise. They got up about the same time, the wife picking up her shoes and stooping over not far from the fire place in the front portion of the home putting on her stockings and shoes, while R. M. Dyson went to the wood box and laid some wood across the andirons; that R. M. Dyson then took up the oil can containing the remains of purchase of three gallons after the wife had cooked on an oil stove for several days out of it, and uncapped the spout leading from the can and spurted some oil on the wood; that a flame shot up into the can and the bottom blew out casting flames of burning oil against the left leg of Mr. Dyson and enveloping and igniting the clothing of Mrs. Dyson. R. M. Dyson said on the stand that there had been no fire kindled on the hearth since the hour of nine o' clock on the morning of the preceeding day; that when he had laid the sticks of wood and poured the oil he had not seen any fire, but that there must have been live coals of fire beneath the ashes or else the flames would not have exploded the can as they did. There was some testimony on the part of the defense that R. M. Dyson had told W. I. Hatcher, following the burning that he and his wife had been up before day that morning with the baby and kindled a fire, but this was denied by Dyson.

There was testimony on the part of witnesses for the plaintiff that they had purchased oil supposed to be kerosene at this store and had tried to use it as an illuminating oil in lamps and that the lamps had exploded with a bang in some cases, bursting the lamps wide open, and that in other cases there was a "popping" at the burners and they became afraid of the oil and would not use it further. Other witnesses on the part of the defendant testified that they had bought oil from the same store about the same period and that they had no trouble with it.

It was admitted by the defense that the oils had become mixed by someone having emptied a drum of kerosene in the gasoline tank; that this product was sold to several for gasoline and would not answer for that material and had to be taken from the tanks of a number of cars; that the kerosine oil was then pumped from the gasoline station and placed in a kerosine drum and rolled off at the side or back of the store.

There was a conflict among the witnesses as to what was done with the mixed oils after they had been pumped into the drum. It was the contention of the plaintiff that the oil was placed in the kerosine tank inside the store and sold as kerosine with results as related by witnesses, while the defendant said that he had only sold it to those who wanted an oil for washing out motors and clean-

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