

NOTRE DAME CIRCUIT COURT
(Junior Division)

CAUSE NO. 20.

John Reilly

vs.

Gerald Davenport.

Vincent B. Pater and
Aaron H. Huguenard,
Attorneys for Plaintiff.

Franklyn E. Miller and
John J. Buckley,
Attorneys for Defendant.

FACTS.

On the 8th day of July, 1920, plaintiff parked his automobile in at the curbing in front of his residence, No. 407 west side of Michigan Street, in South Bend, Indiana. The defendant, while driving and operating his own machine in and along said Michigan Street, drove his car into plaintiff's automobile, damaging it to the extent of about \$1000. Plaintiff's car was at the time so parked as to violate an ordinance of the city in that it was parked at an angle with the curb than 45 degrees. Plaintiff's car was unoccupied at time of the collision.

TRIAL RECORD.

Plaintiff filed complaint in two paragraphs and praecipe for summons.

Defendant files motion to require plaintiff to separate his second paragraph of complaint into separate causes of action and number them. Motion sustained.

Plaintiff files amended second paragraph of complaint.

Defendant files answer in three paragraphs.

Plaintiff files motion to strike out certain specified parts of the second and third paragraphs of answer, which motion the court overrules as to each specification, and to each ruling the plaintiff excepts.

Plaintiff files motion to require defendant to separate his third paragraph of answer into separate defences and number them. Motion overruled, to which plaintiff excepts.

Plaintiff files several demurrer to the second and third paragraphs of answer. Court sustains the demurrer to each paragraph, to which ruling the defendant severally excepts.

The case being at issue is submitted to the jury for trial.

Trial concluded. Parties submit instructions, some of which are given as modified, and some refused because they were covered by the court's instructions.

Four arguments were made to the jury, after which the court instructed the jury in writing in twelve instructions which were filed and ordered by the court to be made part of the record without bill of exceptions.

The jury retire to the jury room in charge of a sworn bailiff, to deliberate upon the case and arrive at a verdict.

Come now the jury into open court and return the following verdict: "We, the jury, find for the plaintiff and assess his damage in the sum of \$650.00. (Signed) J. V. Jones, Foreman."

(Senior Division)

CAUSE NO. 21.

Earnest M. Blanchett

vs.

Albert B. Taylor.

William S. Allen,
Frank Francescovich and
George Wittried,
Attorneys for Plaintiff.

Frank E. Coughlin,
Edmund J. Meagher and
Henry W. Fritz,
Attorneys for Defendant.

STATEMENT OF FACTS.

The following contract was entered into by the parties, namely:

"LAND CONTRACT.

This agreement made and entered into this first day of September, 1921, witnesseth that Albert B. Taylor of St. Joseph County, Indiana, has this day plased with Earnest M. Blanchett of South Bend, Indiana, a real estate agent, for sale or exchange the following described property: (Insert)

The said Taylor agrees to pay to said Blanchett one dollar per acre of said real estate commission out of the first funds received in payment on account of such asle or on the exchange of said property, in case a purchaser is found; or said property is sold or exchanged through said Blanchett or through his influence, or if he assists in any way in the sale or exchange of said property.

The said Albert B. Taylor hereby reserves the right to withdraw said property from sale or exchange at any time by giving ten days notice in

writing, and this agreement to remain in full force until such notice is given and expires.

It is further agreed that is said Albert B. Taylor shall secure a purchaser without the aid or assistance of said Earnest M. Blanchett, while the property is still in his hands under this contract, said Blanchett is not to receive any compensation for his services rendered.

(Signed)

Albert B. Taylor,
Earnest M. Blanchett."

Pursuant to the contract Blanchett on September 5th, 1920, procured and furnished one Alfred R. Hardesty as a prospective purchaser for said lands, or one who would exchange lands with said Taylor. That Blanchett accompanied said Hardesty out to the Taylor land and introduced him to Taylor for purchase or exchange of the land described. That sometime after negotiations had been pending, Taylor informed Blanchett that he stood in the way of a deal; that Hardesty would not purchase so long as Blanchett represented him, Taylor. On September 30th, Taylor delivered to Blanchett a written notice of his withdrawal of said land from sale or exchange, Blanchett declaring at the time to Taylor that if the Hardesty deal was closed he, Blanchett, would insist on his commission. On October 15th, said Taylor and said Hardesty closed their contract for the purchase in part and exchange in part of the premises described in the contract of Blanchett. On October 20th, Blanchett demanded of Taylor \$200 commission, that being a dollar per acre of the Taylor lands, which demand chettwas refused by Taylor.

At the time of the notice to Blan-

chett and for ten days thereafter, the deal between Taylor and Hardesty remained open, that is, not finally executed, although Hardesty admits that the terms of the deal were all practically agreed upon at that time, and that the deal as closed was virtually decided upon before the expiration of the notice of ten days. That at the first meeting of Taylor and Hardesty after this notice was given to-wit: on October 15th, they readily closed their contract.

Blanchett brings action in the common law form for the recovery of his commission, \$200.

TRIAL RECORD.

Plaintiff files declaration in four counts of assumpsit.

Defendant files special demurrer which is sustained.

Plaintiff files amended declaration in three counts of special assumpsit.

Defendant files general demurrer to each count of declaration, plaintiff filing joinder. The court sustains the demurrer to the first count of declar-

ation, to which ruling plaintiff excepts.

Defendant files plea in four counts to the second and third counts of declaration.

Plaintiff files general demurrer to each of the counts of plea, the second, third and fourth, defendant joining in demurrer, the court sustains the same, defendant severally excepting to the ruling.

Defendant files amended plea in two counts, general issue traverse and good faith personal sale of property after revoking contract with plaintiff.

Plaintiff files general demurrer to the amended second count of plea, in which the defendant joins. Demurrer overruled to which plaintiff excepts.

Plaintiff files general issue traverse to second count of plea.

Cause at issue, the parties waive a jury trial and the case is submitted to the court for trial.

Trial pending.