

commission though the sale be made by the owner."

This ruling is in effect generally and has been laid down in the following cases similar to the present one: Wells vs. Andreas, 115 N. W. 792, Wisconsin. Montgomery vs. Amsler, 122 S. W. 307, Texas. Johnstone vs. Cochrane, 121 N. E. 531, Massachusetts. Desmond vs. Stebbins, 5 N. E. 150, Massachusetts. Willard vs. Wright, 89 N. E. 559, Massachusetts. Maddox vs. Harding, 135 N. W. 1019, Nebraska. McCray & Son vs. Pfof, 94 S. W. 998, Missouri. Martin vs. Holly, 10 S. E. 83, North Carolina. Knox vs. Parker, 25 Pac. 909, Washington.

Some courts have gone so far as to rule that a revocation under such conditions is in bad faith. In Cadi-gan vs. Crabtree, 78 N. E. 412, the Massachusetts Court said: "It perhaps might be assumed that a broker's authority is revoked in bad faith where negotiations had been carried on by the broker for the principal and had progressed so far at the time when the broker's authority was revoked that he was found to be the efficient cause in fact of a trade subsequently struck between the principal and customer. In such a case it would seem that the finding that the broker was the efficient cause of the trade made includes a finding that the revocation was in fraud of his rights." The Missouri court handed

down a similar decision in Dodge vs. Childers, 151 S. W. 749.

In all of the cases given the revocation of the agency of the broker has not affected his right to commission and some of them have even held that the right to commission existed where the contract provided for the sale of the land by the broker and the performance was by the owner after revocation. But all concur in sustaining the rule that if the contract provided that the commission shall be paid if a purchaser is found, subsequent negotiations and sale by the owner of the land do not take from the broker his right to commissions, even though there has been a revocation under a special contract. In conclusion the appellee believes that the decision of the Circuit Court was correct in awarding a judgment to the plaintiff broker for his commissions earned under the written contract because he had performed his part of the contract and no revocation can affect the agent's authority as to those acts already performed by him.

Wherefore the appellee prays that the decision of the lower court be sustained.

Respectfully submitted to the Honorable, the Supreme Court of Notre Dame.

*William S. Allen,*

Attorney for the Appellee.

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## NOTRE DAME CIRCUIT COURT

Be it Remembered, That, to-wit: On Monday, September 19, 1921, the Notre Dame Circuit Court was duly organized for the year, with Hon. Francis J. Vurpillat as regular Judge presiding, and the other officers of court duly elected, qualified and act-

ing, to-wit: Edwin J. McCarthy, Clerk of the Court, and Edward J. Dundon, Sheriff.

Court was opened in due form and the following proceedings were had and orders made, to-wit:

In re Jury Commissioners for the

year 1921-1922: The Court appoints J. Paul Cullen and James E. Murphy, two competent persons, residents and legal voters of Notre Dame, Indiana, and opposite political affiliations, to act as Jury Commissioners for the year 1921-1922, who now come into open court and are qualified as such Jury Commissioners.

The following rules of court were promulgated and ordered to be spread of record: (Here Insert)

In re Court Stenographer: The court now appoints John F. Hefferman to be the official court stenographer of this court for the ensuing year, 1921-1922. Comes now said Hefferman and qualified as such stenographer by taking the oath of office.

#### CAUSE NO. 23.

John D. Carsons, Administrator,  
Estate of Ray Stevens, Decd.

vs.

Charles D. Simpson, and  
Edward Williams.  
Edward J. Dundon, and  
John Killilea,

Attorneys for the Plaintiff.  
Clarence R. Smith, and  
William A. Miner,  
Attorneys for the Defendant.

#### TRIAL RECORD.

(Continued)

The cause being at issue the jury is empannelled and sworn and the case submitted to trial.

Trial is begun and the plaintiff's case in chief is concluded. Defendant files a motion for a non-suit, which motion is overruled and an exception is granted to the defendant.

Defendant begins his case in chief. Defendant rests his case in chief. And the trial of this case is concluded. Defendant now files a motion for a directed verdict, which motion

is overruled and an exception is granted.

Plaintiff now tenders instructions numbered one and two with a request in writing that each of them be given to the jury. The defendant also tenders instructions numbered from one to six inclusive, with a request in writing that each and all of them be given to the jury. The court now indicates which of the instructions will be granted and which will be refused; which instructions are ordered filed and made a part of this record without a bill of exceptions.

The jury now retires in charge of a sworn jury bailiff to deliberate upon the case and arrive at a verdict. Come again the jury into open court with their general verdict, to-wit: "We, the jury, find for the plaintiff, that he is the owner of the property described in the complaint, to-wit: One horse, brown in color, three years old, white spot on the forehead, white stocking on the left hind leg, a slit in one ear; and that the plaintiff is entitled to the property and the immediate possession thereof.

"J. P. Brady, Foreman."

Come now the parties by their counsel and the defendant moves the court for a *non obstante veridicto*. Motion is overruled and defendants separately except. The defendants now file separate motions for a new trial. Court overrules the motions and the defendants separately except.

Court now renders judgment upon the verdict in favor of the plaintiff against the defendants, to which the defendants separately except.

Defendants now pray an appeal to the Supreme Court of Notre Dame, which is granted, and five days are given in which to file the general bill of exceptions. Ten days are given the

said defendants in which to file their appeal bond in the sum of \$500.00, with Jerome Dixon and Raymond Kerns as sureties, which bond so executed and filed is hereby approved.

## CAUSE NO. 24.

James Mansfield  
vs.

Daniel O'Connor.

Edwin McCarthy and  
Mark R. Healey,

Attorneys for the Plaintiff.

Jos. H. Farley and

K. W. Nyhan,

Attorneys for the Defendant.

## TRIAL RECORD.

Plaintiff shows to the court that on September 28th, 1921, he filed his complaint and praecipe for summons. Return of the sheriff filed. Plaintiff's complaint in one paragraph and alleges: "That on and before the 19th day of October, 1919, the defendant wrongfully kept and harbored in the said county and state, a certain dog which was fierce, vicious and dangerous, and which was accustomed to attack and bite mankind, all of which the defendant well knew during all of the time that he so kept and harbored the said dog. That the defendant wrongfully and negligently allowed the said dog to go at large without being properly muzzled or confined. And that on said date, while the said defendant so owned and harbored said dog, and while he so suffered it to run at large, the said dog attacked and bit and wounded the plaintiff, by biting him three times, tearing and lacerating the flesh and seriously injuring him and throwing him to the ground. That thereby the plaintiff became became sick and sore and lame, and so continued for a space of seven

months then next ensuing, and was prevented during all of that time from the performance of any service or doing any business whatsoever, and that he expended the sum of \$1000.00 in endeavoring to be cured of said sickness and lameness; and that in the course of the aforesaid seven months he was damaged to the extent of \$1,100.00. His salary for seven months, all to the plaintiff's damage in the sum of \$2,100.00. Wherefore the plaintiff sues and demands judgment for the afore-mentioned sum of \$2,100.00."

Comes now the defendant by counsel and moves the court to strike out certain parts of the complaint "fierce, vicious and dangerous." Motion overruled, exception taken. Defendant now files a motion to make the complaint more specific in the description of the dog. Motion sustained.

Plaintiff files amended complaint describing dog as follows: "Large grey whippet hound with a long strong tail, large head and massive jaws, and mouse-colored eyes."

Defendant files demurrer to the amended complaint. Demurrer overruled, exception for defendant. Counsel for the defendant files answer in two paragraphs, (1) general denial; (2) confession and avoidance on the ground that the plaintiff at the time of his injury was a trespasser upon the premises of defendant, and that had no knowledge that defendant harbored such a dog.

Plaintiff files reply to the second paragraph of the defendants answer.

Cause being at issue jury empanelled and sworn, and case submitted to trial. Trial had and concluded.

Plaintiff now tenders instructions numbered from one to three inclusive together with a request in writing that each and all of them be given to

the jury. Defendant also tenders instructions numbered from one to three inclusive with a request in writing that each and all of them be given to the jury. The court now indicates which instruction will be given and which refused, which instructions are ordered filed and made a part of this record without a bill of exceptions.

Arguments of the counsel are now heard and the court instructs the jury, and files the instructions numbered from one to seven inclusive, ordered a part of this record without a bill of exceptions.

The jury now retire in charge of a sworn jury bailiff to deliberate upon the case and arrive at a verdict. Come again the jury into open court with their general verdict, to-wit: "We, the jury, find for the plaintiff and assess his damages in the sum of \$2,100.00.

"John Killilea, Foreman."

#### CAUSE NO. 25.

Sadie Thompson, by her Next Friend  
vs.

Carl Meyne.

Frank M. Hughes and  
Paul Paden,

Attorneys for the Plaintiff.

J. Paul Schwertly and  
Raymond Kerns,

Attorneys for the Defendant.

#### TRIAL RECORD.

Comes now the attorneys for the plaintiff and show to the court that they filed their complaint and praecipe for summons on October 19th, 1921. Return of the sheriff. Plaintiff's complaint in one paragraph and alleges as follows: "That the said defendant is indebted to the said plaintiff in the sum of two dollars per week for a period of one hundred and

fifty-six weeks, over and above board, lodging and clothing, for work, labor and services, rendered by her for the said defendant at his special instance and request, at the said County of St. Joseph by this plaintiff at divers times between the first day of July, 1918, and the beginning of this action, in and about, carrying on and conducting the defendant's business as a household servant and laborer, doing various kinds of household work, cleaning, cooking, churning, milking cows, feeding and carrying water for the stock, chickens, and horses, in and about the defendant's farm in the said county. That the defendant promised to pay the plaintiff whatever these services were reasonably worth. That said work, labor and services were reasonably worth two dollars a week, for a period of 156 weeks, amounting to \$312.00 over and above board and clothing. That said sum is wholly due and unpaid. Wherefore plaintiff prays judgment for three hundred and twelve dollars."

Comes the defendant and files a motion to require the plaintiff to separate her causes of action into separate paragraphs. Motion overruled, exception for the defense. Defendant now moves the court to strike out certain parts of the complaint as surplusage. Motion sustained. Defendants demurrer to the complaint. Demurrer overruled, and exception. Defendant files answer in two paragraphs: (1) general denial; (2) confession and avoidance, that she was in the house of the defendant and did work as a member of his family, not as a servant girl, and that she received support and education from defendant as a member of his family. Plaintiff files reply to second paragraph of answer.