

State of Tennessee

Vs

H.B. & Larceny

Motion to retax costs

Less Crafton &
Dude Moran

In this case came the Attorney General, pro tem for the state and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the Clerk of this court against the estate of the defendant for the cost of this suit that the defendant is wholly insolvent, unable to pay the cost of this suit or any part thereof.

So it is therefore ordered, adjudged and decreed by the Court, that the cost accrued upon the part of the State be allowed and ordered paid out of the Treasury of the State and that the clerk of this court make out and certify the same to the Comptroller for payment as the law directs.

SHERIFF'S BOARD BILL FOR BOARDING PRISONERS CHARGED WITH FELONIES.

This day came Walter McNeill Sheriff and jailer for Humphreys County, Tennessee, in open Court and presents and reads his board bill against the State of Tennessee, for boarding prisoners charged with felonies.

State of Tennessee Vs. Less Crafton H.B. & Larceny Apr. 26, 1933, to April 28th, 1933, 3 days at 60¢ per day \$1.80, 2 turn keys \$2.00,	\$3.80
State of Tennessee Vs. Dude Moran, H.B. & Larceny Apr. 26th 1933, to Apr. 28th 1933, 3 days at 60¢ per day \$1.80, 2 turn keys \$2.00	\$3.80
State of Tennessee Vs. Jesse Edwards, Transporting Liquor, Apr. 26th. 1933 to May 3rd. 1933, 8 days at 60¢ per day \$4.80, 2 turn keys \$2.00,	6.80
State of Tennessee Vs. Joseph Edwards, Transporting Liquor, Apr. 26th 1933, to May 3rd. 1933, 8 days at 60¢ per day \$4.80, 2 turn keys \$2.00	6.80
State of Tennessee Vs. Leon Runions, Age of Consent, Apr. 26th, 1933, to Apr. 26 1933, 1 day at 60¢ per day 60¢ 2 turn keys \$2.00,	2.60
State of Tennessee Vs. Melvin Rollins, H.B. & Larceny, Apr. 26th. 1933 to Aug. 31st, 1933, 66 days at 75¢ per day \$49.50, 66 days at 60¢ per day \$39.60,	86.10
State of Tennessee Vs. Odell King, H.B. & Larceny, Apr. 26th 1933, to Aug. 31st, 1933, 62 days at 75¢ per day \$46.50, 66 days at 60¢ per day \$39.60,	86.10
State of Tennessee Vs. Robert Maynard, H.B. & Larceny, Apr. 26th, 1933, to Aug. 31st, 1933, 62 days at 75¢ per day \$46.50, 66 days at 60¢ per day \$39.60	86.10
State of Tennessee Vs. Harrie Mosley, H.B. & Larceny, June 13th, 1933, to June 17th, 1933, 5 days at 60¢ per day \$3.00, 2 turn keys, \$2.00,	5.00
State of Tennessee Vs. Max Thompson, H.B. & Larceny, June 13th, 1933 to June 22nd. 1933, 10 days at 60¢ per day \$6.00, 2 turn keys \$2.00	8.00
State of Tennessee Vs. June Waggoner, Manslaughter, July 16th, 1933, to Aug. 31, 1933, 47 days at 75¢ per day \$35.25,	35.25
State of Tennessee Vs. Monroe Crafton, H.B. & Larceny, July 21, 1933 to Aug. 31st, 1933, 42 days at 75¢ per day	31.50
State of Tennessee Vs. Maxie Thompson, H.B. & Larceny, Aug. 16, 1933 to Aug. 31, 1933, 16 days at 75¢ per day	12.00
State of Tennessee Vs. Harrie Mosley, H.B. & Larceny, Aug 16, 1933, to Aug. 31st, 1933, 16 days at 75¢ per day	12.00
State of Tennessee Vs. L.J. Cowen, Larceny, Aug. 30, 1933 to Aug. 31, 1933 2 days at 75¢ per day \$1.50,	1.50

State of Tennessee vs. Allie Lashlee, Witness, Aug 13, 1933 to Aug. 19,

1933, 7 days at 75¢ per day \$5.25, 2 turn keys \$2.00

\$7.25

State of Tennessee Vs. Glendell Chester, Witness, July 29th 1933, to Aug.

23, 1933, 26 days at 75¢ per day \$19.50, 2 turn keys \$2.00

21.50

State of Tennessee Vs. Joe Thompson, Age of Consent, Aug. 30, 1933, to Aug.

31, 1933, 2 days

1.50

WALTER McNEIL'S BOARD BILL FOR BOARDING JURIES AS FOLLOWS:

This day came into open court Walter McNeill and present and read in open court his account against the State of Tennessee, for boarding jury in case of State against Ray Patterson, which amount is \$7.00 for boarding the jury in case of State against Charlie Tilsen, which amount is \$21.00, For boarding the jury in case of State against Joe Thompson, which amount \$26.00, For boarding the jury in case of State against Tom Curtis, which amount is \$7.00, For boarding jury in case of State against June Waggoner, which amount is \$56.00, For boarding jury in case of State against Tom Danesworth, which amount is \$77.00, For boarding jury in case of State against J.A. Adams, which amount is \$14.00 And which amount is allowed by the Court, and ordered paid out of the State Treasury, of State of Tennessee, and that the Clerk of this Court make out and certify the same to the Comptroller of the Treasury for payment as the law directs.

Court then adjourned until Sept. 20th 1933.

..... *W. McNeill* Judge

COURT MET PURSUANT TO ADJOURNMENT PRESENT AMPERSIDING THE HON. J.D.G. MORTON, JUDGE, ETC.

State of Tennessee }
 Vs. } Embezzlement

J.A. Adams }
 In this cause comes the Attorney General, pro tem, for the State and the defendant in person and by attorney, when the motion New Trial, this day filed in t this cause, came on to be heard by the Court, and which motion is as follows:

State of Tennessee }
 Vs. } In the Circuit Court,
 J.A. Adams } At Waverly, Tennessee.

MOTION FOR NEW TRIAL

Comes the defendant J.A. Adams in person and by his attorneys and moved the Court to set aside the verdict of guilty, the judgment entered thereon, and go grant him a new trial upon the following grounds, to wit:

(I)

There is no evidence to support the verdict of the Jury.

(II)

The evidence preponderates against the verdict of guilty and in favor of the innocence of the defendant.

(III)

The indictment under which the defendant was arraigned and tried, and upon which he was convicted, is fatally defective in that it fails to allege the rendition of a judgment against the defendant, the issuance of an execution thereon and a nulla bona return on said execution. The averment of the indictment that the execution was returned unsatisfied is insufficient in that it fails to show whether the money on said judgment was collected or why the same was unsatisfied. For these reasons said indictment fails to allege facts sufficient to constitute a violation of the statute under which defendant was tried and convicted.

(IV)

The Court erred in overruling and disallowing defendant's plea in abatement to said indictment which plea was based upon the fact that said indictment was not found by the Grand Jury upon any evidence heard or submitted to said Grand Jury, and is in this respect fatally defective.

(V)

The Court struck the plea in abatement because the Court was of the opinion that it came too late. This action of the Court was taken without any hearing of the facts under the plea in abatement and without any showing as to when the facts on which said plea in abatement was based came to the knowledge of the defendant. This error because the Court should have heard the evidence and ascertaining when such facts came to the knowledge of defendant and whether such plea was filed within time.

(VI)

The Court erred in admitting as evidence before the Jury certain papers purporting to be individual ledger sheets of the Peoples Bank of McEwen, Tennessee, because there was no proof or showing any sort that such papers were in fact a true, whole and complete record of the Peoples Bank, or any testimony by any one who had custody of the records of the Peoples Bank, or who was in any wise familiar with the records of the Peoples Bank, that said documents or papers purporting to be such records were in fact the records or

ledger sheets of said Peoples Bank.

(VII)

The Court erred in admitting the following testimony over the objection of defendant by his counsel:

Q. From the records in your possession, I will ask you if you procured these sheets of paper here?

A. Yes, sir, Five sheets, individual ledger sheets, no six of them of the account of J.A. Adams and J.A. Adams, administrator.

Q. Were they all together, in the same place?

A. There were all under "A".

Q. I will ask you to look at them now.

A. Yes, sir.

Q. I will ask you if those, numbered from one to ten, were the ones that you took out of the files?

A. Yes, sir.

Q. I will ask you to examine the balance at the bottom of each page and the amount brought forward at the top of each page, and state whether or not they are the same.

A. The first one is \$121.57.

Mr. Morris: We except to that, for the reason that it hasn't been shown he kept the individual ledger sheets at the Peoples Bank, it is not shown that anybody kept any individual ledgers in that bank, and it is not shown that this is all the records of the bank and we think it is incompetent.

Court: Mr. Simpson, you stated that you were one of the attorneys for the receiver of the McEwen Bank?

A. Yes, sir.

Q. And those papers have been in your possession as an attorney for the receiver?

A. Yes, sir.

Q. And are in your possession at this time?

A. Yes, sir.

Q. Are they the original papers of the bank?

A. They are the ones that were turned over to me.

Q. And what are they?

A. Individual ledger sheets of the Peoples bank.

Court: The exception will be overruled.

Mr. Morris: We want to except to the action of the Court.

This action of the Court was erroneous because such papers not being properly identified as ledger sheet of the Peoples Bank were hearsay and incompetent.

(VIII)

The Court erred in admitting the following testimony over the objection of defendant:

Q. Mr. Avery: Mr. Simpson, will you file those sheets numbered from 1 to 10, in a bunch, as Exhibit A to your testimony?

A. Yes, sir.

Mr. Morris: We want to except to those sheets because they are immaterial and throw no light on the questions involved in this lawsuit and we think they are incompetent evidence.

Court: Let the motion be overruled.

Mr. Morris: All right sir, we want to except to the action of the Court.

Court: The charge here is conversion, and I don't know whether they show it or not. This action of the Court was erroneous because said balance sheets were not properly identified as the records of the Peoples Bank, were hearsay and were immaterial and incompetent.

(IX)

The Court erred in admitting for the consideration of the Jury the following evidence over the exception of the defendant:

Q. I will ask you to turn that ledger sheet to the date of August 2, 1922, and state what check is charged to that account on that date?

A. One check for \$600.00.

Q. I have here and hand you a check dated July 27, 1922, which is stamped on its face, Peoples Bank, McEwen, Tennessee, August 2, 1922, which check is payable to the order of Mrs. Lina Johnson, in the amount of \$600.00 for partial payment of the W.M. Adams estate and is signed by J.A. Adams, administrator. I will ask you if that entry on that sheet shows that a check was drawn against that account and on that date was charged to the account?

A. Yes, sir, it does.

Mr. Morris: The defendant excepts. That has no bearing on this case at all.

Court: That exception is overruled.

Mr. Morris: We want to except to the action of the Court, and further it is not shown whether that is a McEwen Bank Account or a Peoples Bank Account.

Court: That will be overruled, too.

(X)

The Court erred in admitting for the consideration of the jury the following evidence, over the exception of the defendant.

Q. I hand you now what is exhibit 5 to the testimony of Mrs. Willie Mai Hypper which is a check dated January 4, 1924, drawn on the Peoples Bank, of McEwen, made payable to the order of Willie Mai and Harry Adams in the amount of \$50.00, for the W.M. Adams estate and signed by J.A. Adams, administrator and carrying the paid stamp of the Peoples Bank with the date of January 14, 1924, and I will ask you to examine that record and see if you can find that?

A. It was paid January 14th.

Q. Is there any other check of \$50.00 drawn on the account on or about that date?

A. No, sir.

Mr. Morris: We are also objecting to that.

Court: That is overruled.

(XI)

The Court erred in admitting for the consideration of the Jury the following evidence, over the exception of the defendant:

Q. Now, Mr. Simpson, I hand you a check dated July 27, 1922, drawn on the Peoples Bank and made payable to the order of Mrs. Myrtle Ellis, for \$270.00, as partial payment of the W.M. Adams estate, and signed by J.A. Adams, administrator, carrying the paid stamp of the Peoples Bank of McEwen on the date of August 2, 1922, and will ask you to examine the record and see if you can find that?

A. There was a check of that amount paid on August 2nd.

Mr. Morris: We object to that because there is nothing shown so far in this lawsuit that a check to that person would have anything to do with it,

Court: That is overruled. The purpose of this is to show the account of J.A. Adams, as

administrator.

(XII)

The Court erred in excluding, upon the exception of the prosecuting attorney, the following evidence:

Q. Was it shown in that suit that the Peoples Bank and was it recognized by you as one of the attorneys and other attorneys in the case on both sides that the Peoples Bank individual ledger was kept and was in such a shape that it was very unreliable?

Mr. Avery: We except to that, if the Court please.

Court: That objection is sustained.

Mr. Morris: The defendant excepts to the action of the Court.

(XIII)

The Court erred in sustaining, upon the exception of the prosecuting attorney, the following evidence:

Q. Can you state from your own personal knowledge of the individual ledger of the Peoples Bank at McEwen, that the individual ledger, or even the six sheets that you hold in your hand now, are reliable in any respect?

Mr. Avery: We except to that.

Court: Yes, sir, that would just be his opinion.

(XIV)

After said papers purporting to be the ledger sheets or balance sheets of the Peoples Bank had been introduced over the objection of defendant, the defendant, through his counsel, cross examined the witness Mack Simpson, by whose testimony said purported ledger sheets had been introduced as follows, and made the following objection to the admission of said balance sheets before the Jury:

Q. Is there anything shown on those sheets that you have been testifying from that they came from the Peoples Bank?

A. No, sir.

Q. There is nothing on each sheet to show that it is the Peoples Bank?

A. No, sir.

Mr. Morris: I want to except to the introduction of all of this testimony with reference to these particular sheets that have been introduced here and all the sheets that have been introduced and referred to because it hasn't been shown by anybody that these actually sheets of the Peoples Bank.

Court: That will be overruled.

Mr. Morris: We want to except to the action of the Court.

This action of the Court was erroneous because said balance sheets had not been properly identified, had not been shown to be in the custody of anybody who had made them or was familiar with them, were not shown to have been actually the balance sheets of the Peoples Bank, and were consequently hearsay, inadmissible, immaterial and competent. All this evidence with reference to said purported balance sheets to which this objection appears, and which had by the Court been admitted over the defendant's objection, is here set forth in detail in order to comply with the rules of this Court, said evidence being as follows:

MAC K C. SIMPSON'S TESTIMONY; DIRECT EXAMINATION BY MR. AVERY:

Q. What was your relation, if any, with the investigation or receiver after that bank ceased to do business?

A. I was one of the attorneys for the receiver.

Q. During that time did you have under your control and in your possession, the books and papers of that institution?

A. Yes, sir, they were turned over to me, I think about the first of 1930.

Q. You say they were turned over to you?

A. Yes, sir.

Q. Now where they kept, Mr. Simpson, all the time after that?

A. They were kept in the vault at the bank for a short time, two or three or four months, and then they were in an office behind mine over here from there they were taken to my garage.

Q. In the capacity in which you were employed, you had access to those records?

A. Yes, sir.

Q. Are you or not reasonably familiar with the papers of that institution?

A. Well, I just know what they were and what was found there.

Q. While they were being kept in the building at McEwen, did you often go up there and see them?

A. Yes, sir.

Q. And at different times?

A. Yes, sir.

Q. I will ask you if you in company with myself went there to that building in McEwen and made an investigation of the daily ledger account of J.A. Adams and J.A. Adams, administrator?

A. Yes, sir.

Q. State to the Court and Jury if you went through the entire files and segregated and separated the accounts of J.A. Adams, and J.A. Adams, administrator?

A. We went up there and investigated them, yes, sir.

Q. Where did you go?

A. To the bank there.

Q. The Peoples Bank is an institution that formerly operated in McEwen?

A. Yes, sir, that's right.

Q. And it has been taken out of McEwen?

A. It merged into the McEwen Bank.

Q. From the records in your possession, I will ask you if you procured these sheets of paper here?

A. Yes, sir, five sheets, individual ledger sheets no six of them of the account of J.A. Adams and J.A. Adams, administrator.

Q. Were they all together, in the same place?

A. They were all under "A".

Q. I will ask you to look at them now?

A. Yes, sir.

Q. I will ask you if those, numbered from one to ten, were the ones that you took out of the files?

A. Yes, sir.

Q. I will ask you to examine the balance at the bottom of each page and the amount brought forward at the top of each page, and state whether or not they are the same?

A. The first one is \$121.57.

Mr. Morris: We except to that, for the reason that it hasn't been shown he kept the individual ledger sheets at the McEwen Bank; it is not shown that anybody kept any individual ledgers in that bank, and it is not shown that this is all the records of the bank, and we think it is incompetent.

Court: Mr. Simpson, you stated that you were one of the attorneys for the receiver of the McEwen Bank?

A. Yes, sir.

Q. And these papers have been in your possession as an attorney for the receiver?

A. Yes, sir.

Q. And are in your possession at this time?

A. Yes, sir.

Q. Are they the original papers of the bank?

A. They are the ones that were turned over to me.

Q. And what are they?

A. Individual ledger sheets of the Peoples Bank.

Court: The exception will be overruled.

Mr. Morris: We want to except to the action of the Court.

Q. Now, Mr. Simpson, state the balance at the bottom of the pages, and the amounts carried forward on each page.

A. The bottom of page one shows a balance of \$121.57 and on top of the next page, page 2, the same balance, \$121.57 and the bottom of the next page shows an overdraft of \$5.33 and is carried forward on page 4 as a debit or balance of \$5.33 and that bottom of that page shows \$105.40 overdraft and shows it is transferred, I don't know what that means, and on page 5 the bottom shows \$385.95 and is carried forward on page 6, \$385.95, and the bottom of page 6 shows \$4,322.10 and is carried forward to page 7, \$4,322.10 and the same on page 8, and on the bottom of page 8 is a balance of \$777.35, and is carried forward to the top of page 9 as the same, and the bottom of page 9 shows \$57.79, and that is carried forward to the top of page 10.

Q. Examine the dates on those, and on the last page, which page 10, and tell the Court and Jury what is the date by the year and the month.

A. The year is 1924 and the last entry seems to be October 24th of that year.

Q. Examine the date on the first page, and tell the Court and jury what that date is?

A. It begins on May 18th; I don't see any year date.

Q. I will ask you to turn to page 6 and look for the year date and state what that is?

A. December 1, 1922.

Q. The first one that you see there, what is that date?

A. December 21, 1921.

Q. Turn to page 5, and what is the last date on that?

A. December 27th.

Q. Run the months back consecutively from the last page, and tell the Court and jury date that shows the first entry to have been made?

A. It seems to be made in May, 1920.

Q. Then the ten sheets you have in your hand show running account of J.A. Adams and J.A. Adams, administrator, from 1920, running on through October 24, 1924?

A. Yes, sir.

Court: Is one marked J.A. Adams, and the other marked J.A. Adams, administrator?

A. Some are marked J.A. Adams, and some are marked J.A. Adams, administrator.

Q. Those that have J.A. Adams, administrator also have J.A. Adams?

A. The first one begins in 1920; these are badly kept sheets as to the dates, but you can trace them back to May 18, 1920.

Q. That was before the death of the testator?

A. Yes, sir.

Q. Mr. Avery: Mr. Simpson, will you file these sheets, numbered from 1 to 10, in a bunch, as Exhibit A to your testimony?

A. Yes, sir.

Mr. Morris: We want to except to those sheets because they are immaterial and throw no light on the questions involved in this lawsuit and we think they are incompetent evidence. Court: Let that motion be overruled.

Mr. Morris: We want to except to the action of the Court.

Court: The charge here is conversion, and I don't know whether they show it or not.

Q. I will ask you to turn that ledger sheet to the date of August 2, 1922, and state what check is charged to that account on that date?

A. One check for \$500.00.

Q. I have here and hand you a check dated July 27, 1922, which is stamped on its face, Peoples Bank, McEwen, Tennessee, August 2, 1922, which check is payable to the order of Mrs. Lina Johnson, in the amount of \$500.00 for partial payment of the W.M. Adams estate and is signed by J.A. Adams, administrator. I will ask you if that entry on that sheet shows that a check was drawn against that account and on that date was charged to that account?

A. Yes, sir, it does.

Mr. Morris: The defendant excepts. That has no bearing on this case at all.

Court: That exception is overruled.

Mr. Morris: We want to except to the action of the Court, and further it is not shown whether that is a McEwen bank account or a Peoples Bank account.

Court: That will be overruled too.

Q. Mr. Simpson, I show you a check that has been exhibited here to the testimony of Mrs. Hopper, and which was made exhibit 5 to her testimony, dated April 2, 1924, drawn on the Peoples Bank of McEwen, and made payable to Willie Mai Adams and Harry Adams in the amount of \$50.00, signed by J.A. Adams, administrator, and written on it, "For the W.M. Adams estate," and the paid stamp on this check is not clear and I can't read it; I will ask you to look about the date of April 2nd and state if a check of the same size as the one I have shown you was charged to that account?

A. There was a check on April 7th that was paid and \$50.00 charged to his account.

Q. Is there any other check of \$50.00 about that date shown on those sheets?

A. No, sir.

Q. Now I show you a check which was made Exhibit 4 to the testimony of Mrs. Willie Mai Hopper, signed by J.A. Adams, administrator and drawn on the Peoples Bank and made payable to the order of Willie Mai Adams and Harry Adams for \$50.00, for "Moneys from your grandfather's estate," showing a paid stamp of the Peoples Bank of November 8, 1922, and I believe I said it was signed by J.A. Adams, administrator?

A. What is the date?

Q. November 8th of some year, it looks like 1922.

Court: What is the date of that check?

A. October 21, 1923 and paid on November 8th.

Mr. Simpson: Here was a check paid on November 8th of \$50.00

Q. Were there any other checks of \$50.00 paid about that time?

A. No, sir.

Q. I hand you now what is exhibit 5 to the testimony of Mrs. Willie Mai Hopper which is a check dated January 4, 1924, drawn on the Peoples Bank of McEwen, made payable to the order of Willie Mai and Harry Adams in the amount of \$50.00, for the W.M. Adams estate and signed by J.A. Adams, administrator and carrying the paid stamp of the Peoples Bank with the date of January 14, 1924, and I will ask you to examine that record and see if you can find that?

A. It was paid on January 19th.

Q. Is there any other check of \$50.00 drawn on the account on or about that date?

A. No, sir.

Mr. Morris: We are also objecting to that.

Court: That is overruled.

Q. Now, Mr. Simpson, I hand you a check dated July 27, 1922, drawn on the Peoples Bank and made payable to the order of Mrs. Myrtle Ellis, for \$270 as a partial payment of the W.M. Adams estate, and signed by J.A. Adams, administrator, carrying the paid stamp of the Peoples Bank of McEwen on the date of August 3, 1922 and ask you to examine the record and see if you can find that?

A. There was a check of that amount paid on August 3rd.

Mr. Morris: We object to that because there is nothing shown so far in this lawsuit that a check to that person would have anything to do with it.

Court: That is overruled; the purpose of that is to show the account of J.A. Adams, as administrator.

Q. Is there any other checks charged about that date for \$270?

A. No, sir.

Q. Now, Mr. Simpson, I show you another check, McEwen, Tennessee, dated November 13, 1923, on the Peoples Bank at McEwen, to the same party, Mrs. Myrtle Ellis, for \$77.49, signed by J.A. Adams, administrator, for balance due you from the W.M. Adams estate and carrying the paid stamp of the Peoples Bank on December 5, 1923, and ask you to examine that account and state to the Court and jury whether or not that check is charged?

A. There was a check of that amount charged on December 5.

Q. Was there any other check of that amount drawn on the account on or about that date?

A. Not that exact amount, no, sir.

Q. I hand you a check dated July 27, 1922, on the Peoples Bank at McEwen, payable to the order of W.H. Adams in the amount of \$180.45, shown to be a partial payment for W.M. Adams estate and carrying the paid stamp of the Peoples Bank of August 1, 1922 and will ask you to examine that account and state whether or not that account is charged with that check?

A. There was a check of that amount on August 1, 1922.

Q. Is there any other check of that amount about that date?

A. No, sir.

Q. I hand you another check, payable to Hardy Adams, dated November 13, 1923, signed by J.A. Adams, administrator, for the W.M. Adams estate in the amount of \$38.74, carrying the notation, "Balance due in full for your father's estate, according to the will," and with the paid stamp of the Peoples Bank of McEwen, under date of November 20, 1922, and ask you if you can find that?

A. A check of that amount is charged to the account on that date.

Q. Is there any other check of a like amount on that date?

A. There is one for \$38.75 on the same date.

Q. You say on the same date?

A. Yes, sir.

Q. I hand you a check dated August 24, 1921, drawn on the Peoples Bank and payable to the order of J.A. Adams, for \$11.25, for expenses in probating the will by J.A. Adams, in a trip in a car, etc., and that check is signed by J.A. Adams, administrator, carrying the paid stamp of the Peoples Bank of McEwen, August 24, 1921, and will ask you if that check is charged to his account on that date?

A. It is.

Q. Is there any other check of a like amount on that date?

A. No, sir.

Q. Now, Mr. Simson, I hand you a receipt for \$121.00, signed by J.A. Adams, proposed to be received of J.A. Adams, administrator, for a tombstone and the erection of same to the grave of W.M. Adams, deceased, and dated December 14, 1922 and signed by J.A. Adams, agent. I will ask you to look at his account on that date and see whether or not any amount like that was charged against his account, as recited in this receipt.

A. No, sir.

Q. I show you another receipt dated the 30th of August, 1923, in the amount of \$120.00 for twelve days use of car in looking after estate, and legal advice, this the 30th day of August, 1923, and signed by J.A. Adams, administrator. I will ask you to look at the sheets you have there and see if any such amount was charged to the account on that date?

A. No, sir.

Q. I hand you a check dated April 6, 1923 on the Peoples Bank of McEwen signed by J.A. Adams, administrator, payable to the order of W.M. Adams, for \$25.00, shown to be for the W.M. Adams estate, signed by J.A. Adams, administrator, and carrying the paid stamp of the Peoples Bank of McEwen as of the date of April 15, 1923; I will ask you if that \$25.00 is charged?

A. Yes, sir, on April 16th.

Q. I now show you another, dated July 27, 1922, payable to Wade Adams, for \$500.00, drawn on the Peoples Bank of McEwen, shown to be a partial payment of the W.M. Adams estate, signed by J.A. Adams, administrator, and carrying the paid stamp of the Peoples Bank of McEwen, on August 3rd, 1922, and ask you to see if you can find that check charged on that date?

A. Yes, sir, it is charged with \$500.00 on that date.

Q. I hand you another check payable to the same party, Wade Adams, dated November 13, 1923, for \$32.00, signed J.A. Adams, administrator, drawn on the Peoples Bank of McEwen, with the notation, "Balance due you in full from your father's estate," and carrying the paid stamp of the Peoples Bank of December 18, 1923, and ask you if that amount, that same amount, is charged to that account on that date?

A. It is December 18th.

Q. I hand you another check dated July 21, 1922, payable to Mrs. H.L. Street, for \$550.00, signed by J.A. Adams, administrator, drawn on the Peoples Bank, and carrying the paid stamp of the Peoples Bank under date of July 26, 1922, for partial payment of W.M. Adams estate, and ask you if that account is charged with \$550.00 on that date?

A. It is.

Q. Now, another check, this one dated on November 13th for \$77.49 payable to Mrs. Cora Street, drawn on the Peoples Bank and signed by J.A. Adams, administrator, for W.M. Adams estate, balance due in full, and carrying the paid stamp of the McEwen Bank on Jan. 4, 1924?

A. Yes, sir, that amount is charged on January 4, 1924.

Q. Edmund Buranashay, payable to the same person, dated March 8, 1922, for \$30.00, drawn on the Peoples Bank of McEwen, signed by J.A. Adams, administrator, and written across it, "Good when properly endorsed, W.D. King, Cashier," carrying the paid stamp of the Peoples Bank of McEwen on March 11, 1922. I will ask you if the date of that paid stamp, the account was charged with that amount?

A. Yes, sir, \$30.00 on March 11th.

Q. I hand you another check dated October 29, 1923, on the Peoples Bank of McEwen, payable to the order of Mrs. A.B. McClarkin for \$77.49, signed by J.A. Adams, administrator, for final settlement of her part of the W.M. Adams estate, and carrying the paid stamp of the Peoples Bank under date of December 28, 1923, and will ask you if that check, and I can't tell whether that is a 23 or a 28 on this check, but it seems to be the 28th day of December. Is there a check for \$77.49 on that date?

A. On December 28th \$77.49.

Q. I hand you another check dated August 27th 1922, on the Peoples Bank of McEwen, paid to the order of Mrs. Addie McClarkin, \$500.00 signed by J.A. Adams, administrator, as partial payment of the W.M. Adams estate carrying the paid stamp of the Peoples Bank under date of August 1, 1922 and ask you if that check is charged?

A. Yes, sir, such an amount was charged on August 1, 1922.

Q. I show you another check, dated July 7, 1922, on the Peoples Bank of McEwen made payable to the order of Mrs. Vera Winstead, for \$400.00, for partial payment on W.M. Adams' estate, carrying the paid stamp of the Peoples Bank of McEwen of August 3, 1922, and ask you if on that account was charged with the amount of that check?

A. It was.

Q. I hand you another check, payable to the same party, Mrs. Vera Winstead, signed by J.A. Adams, administrator, dated November 13, 1923, for balance in full of father's estate according to will, carrying the paid stamp of the Peoples Bank of McEwen under date of

November 20, 1923, and will ask you if that date \$28.75 was charged to that account?

A. It was, \$28.75.

Q. I hand you a check dated July 21, 1922, payable to Mrs. W.F. Holloway, drawn on the Peoples Bank of McEwen, for \$573.00, signed by J.A. Adams, administrator and written on it, "For part payment of W.M. Adams estate," and carrying the paid stamp of the Peoples Bank of McEwen, dated July 23, 1922, and will ask you if an amount of that character was charged to his account on that date?

A. It was on July 26th, not on the 23rd.

Q. That's right; July 26th is correct. I now hand you another check dated November 13, 1923, payable to Mrs. Nora Holloway, the same amount \$77.49, with the notation, "Balance payment in full of father's estate," signed by J.A. Adams, administrator and will ask you if that amount was charged to his account on December 18, 1923?

A. How much?

Q. \$77.49.

A. Paid when?

Q. On December 18, 1923.

A. No sir, on December 18, it was \$77.40.

Q. I will ask you whether or not on that sheet under that there is a notation in pencil of 9¢?

A. Yes, sir.

Q. I hand you a check dated September 20, 1921 drawn on the Peoples Bank of McEwen, pay-

able to A.D. Dickson, M.D., and signed by J.A. Adams, administrator, carrying the paid stamp of the Peoples Bank of McEwen under date of September 29, 1921, for \$67.50, and will ask you to look at his account and see if that is charged.

A. On September 29th?

Q. September 29th, yes, sir.

A. No, sir.

Q. Do you find any amount equal to that check paid about that date?

A. No, sir.

Q. I will ask you to look under October 3rd of that same year and state if that account is charged with \$67.50?

A. No, sir, on September 29th it is.

Q. That is the date I was asking you about?

A. I beg your pardon, I thought you said October.

Q. Now on September 29th, what is the amount of the check charged?

A. \$67.50.

Q. I hand you another check, dated April 20, 1923, drawn on the Peoples Bank, payable to the order of Sam Cohen, signed by J.A. Adams, administrator, carrying the paid stamp of April 21, 1923, and ask you if that check is charged to his account?

A. Yes, sir.

Q. I now hand you a check dated September 27, 1921, payable to the order of W.M. Bryan, drawn on the Peoples Bank of McEwen, for \$250.00, for operation on W.M. Adams, signed by J.A. Adams, administrator, carrying the paid stamp of the Peoples Bank of McEwen of Sept. 27, 1921, and ask you if that check is charged to that account on that date?

A. It is.

Q. I hand you another check, dated McEwen, Tennessee, September 13, 1921, drawn on the Peoples Bank of McEwen, payable to the order of Mrs. Ruby Street, \$2.25, for telephone bill signed by J.A. Adams, administrator, carrying the paid stamp of the Peoples Bank under date of September 24, 1921, and ask you if that is charged, \$2.25?

A. Yes, sir, it is.

Q. I hand you a check dated December 8, 1921, drawn on the Peoples Bank of McEwen, signed by J.A. Adams, administrator, in the amount of \$5.00 payable to Sadie Adams, and in the corner, "For children," carrying the paid stamp of the Peoples Bank under date December 14, 1921, and will ask you if that check is charged to that account?

A. Yes, sir.

Q. I hand you another, dated McEwen, Tennessee, February 28, 1922, payable to Sadie Adams, for \$44.75 drawn on the Peoples Bank of McEwen, signed by J.A. Adams, Administrator, carrying the notation, "W.M. Adams taxes, 1921," carrying the paid stamp of the Peoples Bank on March 14, 1922, and will ask you if that check was charged to that account on that date?

A. It was.

Q. I hand you another check, dated December 22, 1921, drawn on the Peoples Bank payable to Sadie Adams, for \$10.00, signed by J.A. Adams, administrator, for children, and carrying the paid stamp of the Peoples Bank on December 27, 1921, and ask you if that amount is charged to the account on that date?

A. It is.

Mr. Morris: Who is that made payable to?

A. Sadie Adams.

Court: Do you want to exhibit those?

Mr. Avery: These checks are filed with the County Court Clerk of Dickson County along with the settlement this man made over there, and as far as we are concerned I don't guess we do; that is the reason I read them into this record. I don't know that we could have the right to take them from the Court over there and make them exhibits over here.

Cross Examination

By Mr. Morris:

Q. How many sheets of the individual ledger book of the Peoples Bank that failed at McEwen have you been testifying from?

A. Six Sheets.

Q. And you have them all fastened together?

A. Yes, sir.

Q. Do those sheets you have been testifying from show the individual account of J.A. Adams, and the account of J.A. Adams, as administrator of the estate of W.M. Adams?

A. Some of them have written on the top, "J.A. Adams," and some of them have J.A. Adams, administrator.

Q. You don't know that is that way?

A. No, sir.

Q. And you don't know whether they are correct or not?

A. No, sir.

Q. Do you know whether or not that is all the sheets from the individual ledger book of the Peoples Bank, showing the account of J.A. Adams, and the account of J.A. Adams, Administrator?

A. No, sir.

Q. However, there might be other sheets somewhere else that show different from what the sheets you have in your hand show?

A. That is possible.

Q. Mr. Avery: We except to that.

Court: Go ahead.

Q. Mr. Simpson, I believe you stated that you were one of the lawyers that looked after and were employed by the receiver of the McEwen Bank in their matter in the Chancery Court of Humphreys County that brought into play, and into that suit, the matter of the correctness and incorrectness of the Peoples Bank individual ledger, were you not?

A. Yes, sir.

Q. Was it shown in that suit that the Peoples Bank, and was it recognized by you as one of the attorneys and other attorneys in the case on both sides that the Peoples Bank individual ledger was kept and was in such shape that it was very unreliable?

Mr. Avery: We except to that, if the Court please.

Court: That objection is sustained.

Mr. Morris: The defendant excepts to the action of the Court.

Q. Can you state from your own personal knowledge of the individual ledger of the Peoples Bank at McEwen, that the individual ledger, or even the six sheets that you hold in your hand now, are reliable in any respect?

Mr. Avery: We except to that.

Court: Yes, sir, that would be just his opinion.

Q Where were those individual ledger sheets found?

A There were found in the regular trays for the discarded ledger sheets.

Q You found them there?

A I first got them in the vault of the McEwen Bank.

Q In a place where there was rubbish and a lot of other papers, discarded by the bank?

A They were preserved in boxes, that were especially built for that.

Q In other words, they were just discarded sheets?

A Yes, sir.

Q You don't know, and you are not undertaking to say that these six sheets that you discovered are all of the individual ledger sheets of J.A. Adams' account?

A No, sir; there were all that were in these papers.

Q Do you know when the Peoples Bank of McEwen failed and closed its doors?

A In January, 1925.

Q To refresh your memory, it was January 12, 1925?

A Yes, sir.

Q Do you know of your own personal knowledge whether the McEwen Bank took over the assets and books and property of the Peoples Bank?

A No, sir.

Q You say the Peoples Bank failed in 1925?

A Yes, sir.

Q Where were these six sheets from the individual ledger book of the Peoples Bank gotten by Mr. Avery, one of the attorneys for the State?

A I let him have them.

Q And you got them from your garage, or found them as you stated before, just piled in with a lot of papers and records that you had stored in your garage?

A No, sir, they were taken from the vault in the McEwen Bank.

Q Didn't you state that you got them from your garage?

A No, sir, Mr. Avery got them before the papers were moved to Waverly; they were still in the vault.

Q The bank was not occupied then, where you got them?

A No, sir.

Q And the vault was open?

A No, sir, it was closed.

Q And they were found in a lot of discarded papers of the Peoples Bank?

A Yes, sir.

Re-Examination

By Mr. Avery:

Q From your experience and connection and work in this bank do you know what an individual ledger sheet is?

A Yes, sir.

Q I will ask you if those sheets you have exhibited here are sheets from the individual ledger, the daily ledger?

A That is the individual ledger.

Court: Were they discarded, thrown away, or were they loose leaves from the ledger that were put away and preserved?

A Yes, sir, they were put away and preserved; they were not thrown away.

Mr. Morris: How were they put away?

A In long boxes, built for that purpose; they were collapsible, could be knocked down.

Mr. Avery: (Cont)

Q Were they steel?

A No, sir, I think they were hard cardboard.

Q I will ask you another question; are the headings on the collection of sheets included in that Exhibit A to your testimony all the same printed matter?

Court: They speak for themselves.

Q In that account there are many other charged to it; there are many other charges against that account on those pages?

A Yes, sir, there are numerous charges.

Q Other than the ones I have asked you about?

A Yes, sir; many.

Re Cross Examination

By Mr. Morris:

Q Is there even anything on those sheets that you have been testifying from that they came from the Peoples Bank?

A No, sir.

Q There is nothing on each sheet to show it is the Peoples Bank?

A No, sir.

Mr. Morris: I want to expect to the introduction of all of this testimony with reference to these particular sheets that have been introduced here and all the sheets that have been introduced and referred to because it hasn't been shown by anybody that these are actually the sheets of the Peoples Bank.

Court: That will be overruled.

Mr. Morris: We want to except to the action of the court.

(XV)

The Court erred in excluding from the consideration of the Jury the following evidence;

T.R. MEADOW'S DIRECT EXAMINATION: (JURY EXCLUDED)

By Mr. Morris:

Court: I think that has been decided in the case of State v. Glass and the Supreme Court held that a man could not be asked that very question.

Mr. Morris: Well, I want to ask him the question, so that I might get the benefit of it.

Court: Yes, sir, you can ask him the question now. What you want to get is the exact questions asked and the answers given before the Court, and not in the presence of the Jury.

Q Mr. Meadow, I will ask you to state whether or not, when this individual ledger from which these leaves have been taken out that were shown you and I know how you was not under close inspection and investigation of the people of the McEwen Bank in order to ascertain from this particular individual account the amounts of the account of the various depositors in the Peoples Bank, and while that was going on, did not the people of the Peoples Bank have an expert accountant come from Nashville and take charge of this particular individual ledger, and make a report on that to the McEwen Bank?

Mr. Avery: We except to that.

Court: That is sustained. Now let the question be answered.

A They did.

Q Was this particular bank accountant or examiner kept there for a period of two or three weeks, and still unable to make a report on the condition of this particular ledger?

MR. Avery: We except to that, too.

A By agreement they engaged an accountant and he worked about two weeks on this account, and it seems that this fellow did not come to any definite conclusion, and we thought that it was going to be so expensive, and then not amount to anything, as far as concerned the McEwen Bank that we objected to going any further as far as paying this man and he didn't work any more and never did make a report to us at all. He expressed himself that it would be doubtful about reaching any definite conclusion.

Q Did you personally make an examination of many sheets in that individual ledger book of the Peoples Bank, from which these sheets came that are exhibited here and did you find many and numerous and serious discrepancies in the amounts of the depositors of that bank?

A Yes, sir.

Q Were there or not found checks issued from a man by the name of Sugg in a checking account at that bank, the Peoples Bank, aggregating and having been paid out of that bank as much as \$1,700.00 or \$2,000.00, and no account of that kind ever appeared in the bank at all?

MR. Avery: I want the record to show that we are excepting to all of those questions.

A This particular account that you are asking about, it seemed from the records was about \$2,200.00, that should have been charged to this account that there was no record of, and where checks were there to show for it.

Q And there was nothing on the ledger to show for it all?

A No, sir.

Court: The question is to what Mr. Meadow knows of his own knowledge can be asked in the presence of the Jury, but only what he knows, and not what someone else did.

MR. Avery: Does the Court hold that this man can testify about other accounts other than this one?

A Yes, sir.

MR. Morris: The Court holds that I can ask in the presence of the jury, now I want to ask this question, if it is correct and proper banking for the cashier of a bank to accept checks signed by an administrator or executor and charge or pay those, against the individual account of the same person, who might have an individual checking account in that bank?

Court: I don't think that is a question for the jury at all. That is a question of law.

MR. Morris: Yes, sir, it might be, I think that would be a question of law, whether a bank has a right to honor an individual check drawn on an administrator's fund.

Q Mr. Meadow, I will ask you to state from your own personal knowledge whether or not in adjusting and trying to get this individual ledger straight and trying to find out what the depositors should be paid if you know anything about the account of Ed Lehman and his wife?

A Yes, sir.

Q I will ask you in your investigation whether or not that account of Mr. Ed Lehman happened to appear on these sheets or whether there was any account found at all to his credit?

A Yes, sir, there was such an account, but this amount was never certified to us from them as owing that the McEwen Bank was to pay, but in this investigation with Mr. Lehman and others, it showed that this account was a just account, and the bank allowed this account to be paid.

Court: I don't think that is competent, Judge Morris.

MR. Morris: We want to except.

Q Mr. Meadow, in looking over this particular ledger, did you find that that account had been destroyed or thrown away, or was never turned over to your bank?

A We got no account showing any balance. It was never really turned over to us in the certified accounts by Mr. Sugg and Mr. King, and after it was never turned over to us, we didn't think that this man had an account in the McEwen Bank at all.

Q Do you remember the account of Mr. Lehman, what the exact amount of it was?

A It was something over six hundred dollars, but I don't know exactly the amount.

MR. Avery: We are excepting to all of this testimony about Mr. Lehman's account.

Court: Yes, sir, I think you are right about that.

Q In this particular instance these records actually showed the Peoples Bank owed Mr. Lehman six hundred and some odd dollars?

A Yes, sir.

Q And that was found from the records themselves?

A Yes, sir.

MR. Avery: The records themselves are the best testimony, all of us know that.

Court: These things about the Lehman proposition are excluded; the records will show about it.

MR. Morris: Yes, sir, and your Honor, those are in such a state that nobody in the world can tell anything about them.

Court: He can testify about the accounts of the Peoples Bank how they were kept.

ATTY. GEN. HOWELL: You are permitting him to testify as to that as far as his personal investigation went and no further?

Court: Yes, sir, as an expert banker.

ATTY. GEN. HOWELL: He can do that in the presence of the Jury?

Court: Yes, sir, he was put on as an expert on banking.

Court: Judge Morris, you can ask him about his personal investigation of these accounts.

MR. Avery: Your Honor doesn't hold that this man can testify about records that are existing when they are not here?

Court: I hold that he can testify as an expert banker that the records of the Peoples Bank are not correct and how the accounts were kept, as an expert banker.

MR. Avery: Will your Honor permit me to ask this witness a question or two?

Court: Yes, sir.

Cross Examination

By MR. Avery:

Q Is this Mr. Sugg that you have been asked about relative to the \$2,200.00; is he the assistant cashier of that bank?

A No, sir.

Q Who is he?

A That is his father Dr. Sugg.

Q His son was the assistant cashier of the Peoples Bank; the man about whose accounts you were asked had a son who was assistant cashier of the Peoples Bank?

A Yes, sir.

Q I will ask you another question; were the depositors that had these other accounts as sent over to your bank from the Peoples Bank, were they all paid and charged by the McEwen Bank?

A Well, practically all of them. Our bank failed three or four years after that; they had all that time to get the ir money.

Court: They could have gotten it at any time.

A Yes, sir.

Court: Judge Morris, I am not going to allow you to go into this unless you produce all of the records here for this man to examine and I am not inclined to let you go into detail as to any particular account. He as an expert can say whether or not the accounts were kept in a banking fashion, but what would be as far as he could go with his evidence. That is all that I am going to allow him to testify about, what he found from his own examination, and I think he has already testified about that. Let the Jury come in.

This was error and particularly prejudicial to the defendant because it deprived him of showing by competent evidence that the records of the Peoples Bank were wholly and altogether unreliable and showed nothing as to the true status of the account of the defendant in said bank or any other depositor in said bank.

(XVI)

The Court erred in charging the jury as follows:

"I therefore charge you gentlemen, that before there can be a conviction in this case, it must be shown beyond a reasonable doubt, not only that the defendant converted this trust fund, due Willie Mai Hopper, to his own use, but it must be shown beyond a reasonable doubt, that this conversion was done willfully and maliciously, that is knowingly and intentionally, with intent to use the money belonging to this legatee for himself."

This was error in order to authorize a conviction under the indictment the state had to prove not only a willful conversion of the money, but also the existence of a judgment against the defendant and in favor of Willie Mai Adams Hopper, and a nulla bona returned of this execution. The effect of the charge above quoted was to tell the jury that mere conversion without more, and in the absence of any proof as to the existence of a judgment and return of an execution thereon sufficient to warrant a conviction.

(XVII)

The Court erred in charging the jury as follows:

"And I further charge you gentlemen, That even though you may find that the defendant drew a check for the amount due the prosecutor and her brother, and deposited that check in the bank, to be drawn out in their favor, I charge you gentlemen that that would not be a payment of the fund to the prosecutor and her brother, unless the defendant actually paid them the money, but this may be looked to by you together with all the other evidence in the case, in ascertaining whether or not the state has shown a willful and malicious conversion by the defendant, beyond a reasonable doubt."

The effect of this charge was to tell the Jury that if the defendant had deposited the money due to Willie Mai Adams Hopper and her brother in the bank to be drawn out in their favor, this would not be a defense against the indictment but that the defendant would be guilty even though the money remained in the bank until the bank broke, and was never received or used by the defendant. Further, the effect of this charge was to make the guilt or innocence of the defendant under this indictment hinge on a question of whether or not he had actually paid the fund to the prosecutor and her brother, and this prejudicial instruction is not contradicted by the further statement of the Court to the

effect that the drawing of a check for the amount due the prosecutor and her brother, and deposited that in the bank in their favor, or to be drawn out in their favor, and that this may be looked to together with all the other evidence in the case in ascertaining whether or not the State had shown a willful and malicious conversion by the defendant. If this latter part of the instructions had any effect, it was merely to confuse and mislead the jury and not correct the impression that the jury had already gotten from the former portion of the charge to the effect that the guilt or innocence of the defendant depended on whether he had actually paid the money to the prosecutor and her brother.

(XVIII)

The Court erred in charging the jury as follows:

"Gentlemen, my attention has been drawn to the wording of the statute in this case. I used the word maliciously, in saying that the conversion must be willful and malicious. It is not necessary to show that there was any malice in the conversion, that is, it need not be shown that there was intent to defraud the prosecutor, or heirs. All that is necessary to show is that the conversion was willful, if there was any conversion, that is, to show that the defendant knew that he was converting the trust fund to his own use and intended to do so, and I charge you that if you find that the defendant knowingly intermingled the trust fund with his own funds, and knowingly used the common fund for his own use, this would be a willful conversion. Also, if guilty, the maximum punishment is ten instead of five years, that is, the punishment, if guilty, would be some term not less than one nor more than ten years, and the term fixed by you would be the maximum."

Here the Judge in effect told the jury that if the defendant knowingly intermingled the trust fund with his own funds and knowingly used the common fund for his own use, this would be a willful conversion and would be sufficient to authorize a conviction of the defendant under the indictment. This was prejudicially erroneous because neither the intermingling of the trust funds by the defendant with his own funds, nor knowingly used the common fund by him for his own use would constitute a violation of the statute under which the defendant was indicted, or justify a finding of guilty under the indictment.

Wherefore, the defendant upon the foregoing grounds, prays the judgment of the Court whether the verdict and judgment heretofore made in this cause against him ought not to be set aside and a new trial granted him.

J.R. Morris

W.B. Mumfrees
Attorneys for Defendant.

Motion for new trial overruled.

9/20/33 J.D.G. Morton, Judge.

John A. Davis
 Vs.
 Southern Bell Telephone &
 Telegraph Company

In Circuit Court,
 Sitting at Waverly,
 Humphreys County, Tenn.

On consent of parties, the order removing this case of the District Court of the United States for the Nashville Division of the Middle District of Tennessee, is vacated, set aside and for nothing held.

September 7th, 1933.

J. R. Morris
 Attorney for Plaintiff

Attorney for Defendant

John A. Davis
 Vs.
 Southern Bell Telephone
 & Telegraph Company

In the Circuit Court,
 Sitting at Waverly,
 Humphreys County, Tenn.

This cause came on to be heard before the Honorable J.D.G. Morton, Judge, etc. on this 20th day of September, 1933, on the petition, answer, oral testimony and statement of counsel in open Court, and on the entire record, from which it appears:

That petitioner and defendant were, on and prior to September, 1931, and continuously since that time, subject to the terms and provisions of the Workmen's Compensation Law of Tennessee.

Petitioner insists that in September, 1931, he suffered an accidental injury to his back while stringing drop wires at Paris, Tennessee, in the course of his employment by the defendant, but that the seriousness nor the extent of the injury was not at the time known by the petitioner; that he resumed work and suffered a recurrence of disability on or about January 31st, 1932, and again in November 14th, 1932, from which latter date he has been unable to perform any work, that his present disability and the disability suffered from November 14th, 1932, to the present, is due to a recurrence of the injuries received by petitioner in September, 1931; that defendant paid petitioner from November 18, 1932 to the middle of May, 1933, at which time payments were discontinued and demanded by petitioner for further payments were by the defendant declined, petitioner insists that he is entitled to a recovery against the defendant on the basis of permanent disability under the Workmen's Compensation Law of Tennessee.

On the other hand defendant insists the disability suffered by the defendant at the present time and at any time subsequent to September, 1931, was due to sickness and not due to an accidental injury; that a full investigation made by the defendant in February, 1932, together with discussions with the petitioner resulted in the petitioner and defendant mutually agreeing that petitioner's disability should be considered as a sickness case and that petitioner should be paid on the basis of a sickness case under the Employee's Disability Benefit Plan. All payments made by the defendant to the petitioner were under said Plan and no payments at any time since September, 1931, have been made by the defendant to the petitioner for an accidental injury under the Workmen's Compensation Law, of Tennessee, or otherwise; defendant insists that the petitioner is estopped to claim a recovery for an accidental injury that occurred in September, 1931, or any disability that resulted from a recurrence of such injury; defendant insists that the right, if any, of the petitioner is barred by the statute of limitations, and both of said defenses are specially pleaded by the defendant; defendant further insists that it is

not indebted to the petitioner in any amount, under the Workmen's Compensation Law, of Tennessee, or otherwise, by reason of an accidental injury claimed to have been suffered by petitioner in September, 1931, or an accidental injury suffered in January, 1932, or November 14th 1932, or a recurrence of the original injury claimed in September, 1931.

It further appears to the Court that the parties hereto have reached an agreement for a full and final settlement of the matter in controversy in this cause on the payment by the defendant to the petitioner of the lump sum of \$632.00, subject to the approval of the Court.

It is, therefore, ordered, adjudged and decreed by the Court as follows:

(1) That the compromise settlement of the matters in controversy on the basis of the defendant paying to the petitioner the lump sum of \$632.00, is hereby ratified and in all things approval by the Court.

(2) That the defendant has this day paid to the petitioner the sum of \$632.00, the receipt of which is acknowledged by the signature of the petitioner and his attorney of record, hereto affixed.

(3) That said payment of \$632.00 is in full and final discharged and satisfaction of any and all claims of the petitioner against the defendant under the provisions of the Workmen's Compensation Law of Tennessee, or otherwise, by reason or on account of the accidental injury claimed to have been suffered by the petitioner in September, 1931, and the recurrence thereof on or about January 31st, 1932, and on or about November 14th, 1932.

(4) That the defendant, Southern Bell Telephone & Telegraph Company is hereby released of any and all liability to the petitioner John A. Davis by reason or on account of any and all claims of the petitioner against the defendant under the provisions of the Workmen's Compensation Law of Tennessee, or otherwise.

The costs of this cause will be paid by the defendant.

J. R. Morris
 Attorney for petitioner

John A. Davis
 Petitioner

Frederic Hume & Armistead
 Attorneys for Defendant

Approved:

J. D. G. Morton
 Judge.

Court then adjourned until Court in Course.

J. D. G. Morton, Judge.

CAPTION DECEMBER TERM CIRCUIT COURT A.D. 1933.

State of Tennessee)
Humphreys County)

Be it remembered that said Circuit Court was opened and held in and for the County of Humphreys at the Court House in the town of Waverly, Tennessee, on the 11th day of December it being the second Monday of said month, and the One Thousand Nine Hundred and Thirtythird year of our Lord, and the One Hundred and Fiftyeighth year of American Independence. Present and Presiding the Hon. J.D.G. Morton, Judge of the Ninth Judicial District of the State of Tennessee.

Court was opened in due form of law by Walter McNeil, sheriff of Humphreys County, Tennessee, and by him was returned into open Court a writ of Venire Facias, showing that the following named persons were appointed by the County Court, at its October Term 1933, to appear and to serve as jurors at this the present term of this Court to wit: E.L. Bell, Will Harvey, Elmer Swayney, R.L. Curtis, Ralph Hooper, Carl Stewart Sr. T.H. Sourlock, Jim Diviney, R.C. Lyton, M.M. Anderson, Tom Williams, Grady Chronister, Ed Gray, pallis Christaen, Florence Hidinga, John Wilhite, J.H. Davis, Tom Pullen, Alvie Simpson, John Podge, Roy Buchanan, Clint Bell, Neal Pace, and Clint Parke.

And it appearing to the Court that the above named parties were regularly summoned by the sheriff of Humphreys County, and that all of said parties so summoned appear and answered said summon.

And out of said jurors so summoned the following were selected, as required by law, as Grand Jurymen, Ralph Hooper, E.L. Bell, Tom Pullen, Roy Buchanan, John Wilhite, J.H. Davis, R.C. Lyton, M.M. Anderson, Clint Bell, C.J. Stewart, and Will Harvey, and R.H. McKeel having been appointed Foreman of the Grand Jury at a former term of this Court, the said Grand Jury is in all things as the law directs having been duly elected, tried and sworn and charged by the Court according to law, retired to their room in charge of W.M. Lane Constable of Humphreys County, sworn according to law to attend them in in considering indictment and presentment.

And out of the remaining number of said jurors so summoned, the following were excused from the service, by the Court, to wit: Alvie Simpson, and Clint Parke, and the following named persons was summoned by the sheriff of Humphreys County, and qualified as a regular juror in the stead of the above named excused jurors, to wit: L.D. Cullum and N.C. Curtis,

APPOINTMENT OF W.C. HOWELL, ATTORNEY GENERAL, PRO TEM.

Whereas, Honorable John B. Bowman, Attorney General for the Ninth Judicial Circuit, of the State of Tennessee, is sick and on that account unable to attend the present term of the Court to perform his duties as such Attorney General and on that account has failed to attend and prosecute according to law, Therefore I, J.D.G. Morton, Judge of the said Judicial Circuit, by virtue of the power vested in me by the Constitution and laws of the State of Tennessee, do hereby appoint W.C. Howell, a regularly licensed Attorney for the State of Tennessee, engaged in the active practice of his profession in said State, and who possesses all the qualifications required by law, as Attorney General, Pro tem, for and during this term of the Circuit Court for and in the place of said John B. Bowman, Attorney General, and with all the powers and duties conferred upon him by virtue of this appointment. This appointment of the said W.C. Howell, as such Attorney General, Pro tem, is for the December Term 1933, of the Circuit Court for Humphreys County, Tennessee.

This the 11th., day of December 1933.

J.D.G. Morton, Judge.

State of Tennessee)
Humphreys County)

I, W.C. Howell, do solemnly swear that I will perform with fidelity the duties of the office of District Attorney General, pro tem, for the Ninth Judicial Circuit of Tennessee, to which I have been appointed by J.D.G. Morton, the Circuit Judge of said district and that I will support the constitution of the United States of America and the Constitution of the state of Tennessee. I further swear that I have not, directly or indirectly given, accepted, or knowingly carried a challenge, in writing or otherwise to any person, being a citizen of this State, since the adoption of the Constitution in 1959 or aided or abetted therein, and that I will not, during my continued in office, be guilty of either of these acts.

Witness my hand, this the 11th., day of December 1933.

W.C. Howell

Sworn to and subscribed before me,
this 11th., day of December 1933.

L.C. Bohanan
Circuit Court Clerk.

WILLIAM M. SLAYDEN ADMITTED TO THE BAR

Appearing in open Court, the Honorable Clarence W. Turner, M.D., a licensed attorney of the Humphreys County Bar, moved the Court that Wm.M. Slayden II be admitted to said bar, and it appearing that the board of the Law Examiners for the State of Tennessee having certified to the Supreme Court of the State aforesaid that Wm. M. Slayden II is a person of good moral character, of proper age and well versed in Law and its practice, and that the Supreme Court accordingly has conferred on him a License to Practice Law in all the Courts of the State of Tennessee;

Now, Therefore, be it hereby ordered the said Wm.M. Slayden II, upon subscribing the following oath, be admitted to the Humphreys County Bar, and that his name be placed upon the roll of practicing attorneys of said County.

I, Wm.M. Slayden II, duly licensed and authorized to practice law in all the Courts of Law and Equity in the State of Tennessee, do hereby solemnly swear that I will support the Constitution of the State Of Tennessee and of the United States, and truly and honestly demean myself in the practice of my profession to the best of my skill and ability.

Wm. M. Slayden

Sworn to and subscribed to before me in open Court this the 11th day of December 1933.

L.C. Bohanan
Clerk of the Circuit Court.

Court then adjourned until tomorrow morning at 9:00 O'Clock

J.D.G. Morton Judge.

COURT MET PURSUANT TO ADJOURNMENT PRESENT AND PRESIDING THE HON. J.D.G. MORTON, JUDGE ETC. This day the Grand Jury came into open Court and presents the following indictments and presentments.

One against William Baker, which indictment is in the words and figures as follows: to wit: State of Tennessee, Humphreys County, December Term of the Circuit Court, A.D. 1933.

The Grand Jurors for the State of Tennessee, duly elected, empaneled, sworn, and charged to inquire for the County of Humphreys and the State aforesaid, upon their oath aforesaid, present that William Baker heretofore, to wit, on the 24th day of September 1933, in the State and County aforesaid, unlawfully, willfully, deliberately, premeditatedly, and maliciously made an assault upon the body of one Hugh Capps with a shot gun inflicting deep, dangerous, and mortal wounds, from and on account of which he, the said Hugh Capps died; and so the Grand Jurors aforesaid, upon their oaths aforesaid, present and say that the said William Baker, on the day and year aforesaid, by the means and in the manner aforesaid, and in the State and County aforesaid, unlawfully, feloniously, willfully, deliberately, premeditatedly, and of his malice aforesaid, did kill and murder him, the said Hugh Capps, and commit the crime of murder in the first degree, to the evil example of all others likewise offending, and against the peace and dignity of the State of Tennessee. W.C. Howell Attorney General, Pro tem, December Term, 1933, The State Vs. William Baker, Murder, Mrs. Tera Warren Prosecutor, Subpoena for the State: Tera Warren, Tom Capps, Clifford Dotson, Clyde Mayberry, Albert Capps, Jim Moran, Frank Ingram, Bryant Davidson, Germany Shoat, Floyd Wright, K.C. Hood, and Monroe Warren, W.C. Howell, Attorney General, Pro tem, Witnesses sworn by me to testify before the Grand Jury upon this indictment at December Term, 1933, R.H. McKee Foreman Grand Jury, A True Bill R.H. McKee Foreman Grand Jury.

One against Manuel Russell, Larceny, which indictment is in the words and figures as follows: to wit: State of Tennessee, Humphreys County, December Term of Circuit Court, A.D. 1933, The Grand Jurors for the State of Tennessee, elected, empaneled, sworn, and charged to inquire for the body of the County of Humphreys and State aforesaid, upon their oath aforesaid, present that Manuel Russell of said County, heretofore, to wit, on the 11th day of October 1933, in the County aforesaid, unlawfully and feloniously did steal, take and carry away one pair men shoes of the value of Two Dollars, the property of John Dunn of said County, then and there being found, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Tennessee, W.C. Howell, Attorney General Pro tem. And the Grand Jurors aforesaid upon their oath aforesaid, do further present that the said Manuel Russell of said County, on the day and year aforesaid, in the County aforesaid, unlawfully and feloniously did receive, buy conceal, and aid in concealing one pair of men shoes of the value of Two Dollars, the property of John Dunn of said County, before then feloniously stolen, taken and carried away by some one, to the Grand Jury unknown, he the said Manuel Russell and and there knowing the said property to have been feloniously stolen, taken and carried away, and he the said John Dunn intending then and there fraudulently to deprive the owner thereof, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Tennessee, W.C. Howell Attorney General Pro tem, December Term, 1933. The State Vs. Manuel Russell, Larceny, John Dunn Prosecutor. Subpoena for the State: John Dunn, Allen Yates, Stella Hogan, Percell Spicer, Neal Hollaway and J.S. Westbrook. Witnesses sworn by me on this indictment before the Grand Jury, December Term, 1933, R.H. McKee Foreman Grand Jury, W.C. Howell, Attorney General Pro tem, A True Bill R.H. McKee Foreman Grand Jury.

One against Andrew Gallyon & Irvin Adkins, H.B. & Larceny, State of Tennessee, Humphreys County, December Term of Circuit Court, A.D., 1933. The Grand Jurors for the State of Tennessee, duly elected, empaneled, sworn, and charged to inquire for the body of the County of Humphreys and State aforesaid, upon their oath aforesaid, present that Andrew Gallyon and Irvin Adkins heretofore, to wit on the 9th day of September 1933 in said County and State, unlawfully, feloniously and forcibly did break and enter the business house of one J.D. Holmes, of said County, with intent to commit a felony, to wit a larceny. And the Grand Jurors aforesaid, upon their oath aforesaid, further present that the said Andrew Gallyon and Irvin Adkins, on the day and year aforesaid, in the state and county aforesaid, unlawfully and feloniously did take, steal, and carry away certain overalls, pants, 50 pounds sugar, six 24 lb. sacks sunkist flour, canned goods, salmon, corn, tomatoes, peanut butter, viena sausage, chewing gum, candy, shirts, underwear, sweater, socks, tobacco, all of the value of fifty dollars, and the goods and chattels of the said J.D. Holmes, with intent to deprive him, the said J.D. Holmes, the true owner thereof and convert the same to his own use. And the Grand Jurors aforesaid upon their oath aforesaid further present that the said Andrew Gallyon and Irvin Adkins, on the day and year aforesaid, in the state and county aforesaid, unlawfully and feloniously did receive, buy, conceal, and aid in concealing certain overalls, pants, 50 lbs sugar, six 24 lb. sacks sunkist flour, canned goods, salmon, corn, tomatoes, peanut butter, viena sausage, chewing gum, candy, shirts, underwear, sweaters, socks and tobacco all of the value of fifty dollars, the property of J.D. Holmes of said county, before then feloniously stolen, taken and carried away by someone, to the Grand Jury unknown, they the said Andrew Gallyon and Irvin Adkins then and there knowing the said property aforesaid to have been feloniously stolen, taken, and carried away, and they the said Andrew Gallyon and Irvin Adkins intending then and there fraudulently to deprive the owner thereof, contrary to the statute and against the peace and dignity of the State of Tennessee. W.C. Howell, Attorney General, pro tem, December Term, 1933 The State Vs. Andrew Gallyon and Irvin Adkins, H.B. & Larceny, J.D. Holmes Prosecutor, Subpoena for the State J.D. Holmes, Walter McNeil, L.B. McCann, and T.R. Westbrook. Witnesses sworn by me on this indictment before the Grand Jury December Term, 1933 R.H. McKee Foreman Grand Jury. W.C. Howell, Attorney General pro tem, A True Bill R.H. McKee, Foreman Grand Jury.

One against Will Valentine, Transporting Liquor, Subpoena for the State, J.R. Traylor, C.N. Simpson, and J. McReeves.

One against Joe McCrary, Reckless Driving, Subpoena for the State, O. A. Kirby and W.A. Kirby.

One against Virgil Hill, B.D. Subpoena for the state, J.R. Traylor, T.R. Westbrook and J.C. Thomas.

One against Marshall Brown, B.D. Subpoena for the State, D.B. McCann, D.A. Bruck and T.R. Westbrook.

One against Dee Wells and Jesse Anderson, Larceny, which indictment is in the words and figures as follows: to wit: State of Tennessee, Humphreys County, December Term of Circuit Court, A.D. 1933, The Grand Jurors for the State of Tennessee, elected empaneled, sworn, and charged to inquire for the body of the County of Humphreys and State aforesaid, upon their oath aforesaid, present that Jesse Anderson and D. Wells of said County, heretofore to wit on the 6th day of November 1933, in the County aforesaid, unlawfully and feloniously did steal, take and carry away one wagon wheel of the value of Ten Dollars, the property of Boyd Allen of said County, then and there being found, contrary to the form of the

statute in such cases made and provided, and against the peace and dignity of the State of Tennessee. W.C. Howell Attorney General, pro tem, And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that the said Jesse Anderson and D Wells of said County, on the day and year aforesaid, unlawfully and feloniously did receive, buy, conceal and aid in concealing one wagon wheel of the value of Ten Dollars, the property of Boyd Allen of said County, before then feloniously stolen, taken and carried away by someone to the Grand Jury unknown, they the said Jesse Anderson and D Wells then and there knowing the said property to have been feloniously stolen, taken and carried away, and they the said Jesse Anderson and D Wells intending then and there fraudulently to deprive the owner thereof, contrary to the form of the statute in such cases made and provided, and against the peace and against the dignity of the State of Tennessee. W.C. Howell, Attorney General Pro tem, December Term, 1933 The State Vs Jesse Anderson and D Wells, Haroony Boyd Allen Prosecutor. Subpoena for the State: Boyd Allen, Vernon Brewer, D.B. McCann, Joe Traylor and Walter McNeil. Witnesses sworn on this indictment before the Grand Jury. December Term, 1933, R.H. McKeel, Foreman Grand Jury, W.C. Howell, Attorney General, pro tem. A true bill R.H. McKeel Foreman Grand Jury.

State of Tennessee

Vs.

Misd.

H.H. Moody

In this case the Grand Jury returned an indictment marked not a true bill.

It is therefore ordered adjudged, and decreed by the Court the defendant be dismissed and go hence without day.

State of Tennessee

Vs.

Drunkness.

Forest Wymick

In this case came the Attorney General pro tem for the State and the defendant in person and pleads guilty as charged in the indictment, there upon the Court assess the penalty and say he shall pay a fine of Five Dollars together with all the costs of this cause for which let execution issue.

State of Tennessee

Vs.

Drunkness

Woodroe Harrington

In this case came the Attorney General Pro tem for the State and the defendant in person and pleads guilty as charged in the indictment, there upon the Court assess the penalty and say he shall pay a fine of Five Dollars together with all the costs of this cause for which let execution issue.

ALIASES

It is ordered by the Court that Alias be issued for the following defendants, to wit; State of Tennessee Vs. Glasve Goodman, T.S. Holmes, G.O. Cox, P.K. Wilson, W.J. Jamison, Ernest Durham, Ray Merideth, Ivan Adkins, Hunter Blackwell, George Mosley.

State of Tennessee

Vs.

Plea of guilty to possessing stolen goods.

Andrew Gallyon

In this cause comes the Attorney General, Pro Tem, for the State and the defendant in person and by attorney, who, being duly charged and arraigned on said pleads guilty to possessing stolen goods.

Thereupon to try the issues joined, came a jury of good and lawful men of Humphreys County, to wit; Grady Chronister, Neal Pace, John Hodge, Florence Ridings, Ed Gray, E.W. Swanev, Jim Diviny, T.H. Sourlock, Dallis Christain, Tom Williams, L.D. Cullom and N.C. Curtis, who, being duly elected, tried and sworn according to law, and being in charge of their sworn officers, Frank Ingram and Joe Traylor who had previously been legally sworn to attend them, after hearing all the proof, argument of counsel and the charge of the Court, upon their oath do say they find the defendant guilty of possessing stolen goods as charged in the indictment and assess and fix his punishment at one year in the Penitentiary. It is therefore ordered, adjudged and decreed by the Court that, for the offense as found by the jury, the defendant be confined in the State Penitentiary at Nashville, Tennessee, at hard labor for a period of time of not less than one year nor more than one year and one day and that he pay the costs of this cause for which let execution issue and that defendant be rendered infamous.

State of Tennessee

Vs.

H.B. & Larkeny

Manuel Russell

In this cause comes the Attorney General, Pro Tem, for the State and the defendant in person and by attorney, who, being duly charged and arraigned on said indictment, pleads guilty to larceny.

Thereupon to try the issues joined, came a jury of good and lawful men of Humphreys County, to wit; Grady Chronister, Neal Pace, John Hodge, Florence Ridings, Ed Gray, E.W. Swanev, Jim Diviny, T.H. Sourlock, Dallis Christain, Tom Williams, L.D. Cullom and N.C. Curtis, who, being duly elected, tried and sworn according to law, and being in charge of their sworn officers Frank Ingram and Joe Traylor who had previously been legally sworn to attend them, after hearing all the proof, argument of counsel and the charge of the Court, upon their oath do say they find the defendant guilty of larceny as charged in the indictment and assess his punishment at Ten days in the County Jail.

It is therefore ordered, adjudged and decreed by the Court that, for the offense as found by the jury the defendant be confined in the County Jail of Humphreys County, Tennessee, for a period of time of Ten days and pay the costs of this cause for which let execution issue and that defendant be rendered infamous.

State of Tennessee

Vs.

Embezzlement.

J.A. Adams

State of Tennessee To the Honorable Judge of the Circuit Court of Humphreys County, holding and presiding at Waverly, Tennessee: Whereas, in our Supreme Court, at Nashville, at its December Term, 1933, it was adjudged and ordered in the cause J.A. Adams Vs. The State appealed to our said Court from said Circuit Court that the same be remanded thereto for further proceedings and final determination therein.

These are, therefore, to require you, the Court aforesaid, that you proceed with the execution of this Judgment of our said Supreme Court, by such further proceedings in your Court as shall effectuate the objects of this order to remand, and attain the ends of justice.

Witness, David S. Lanaden, Clerk of our said Court, at office in Nashville, the first Monday in December, 1933, David S. Lanaden, Clerk.

State of Tennessee, He it remembered, that at a Supreme Court of Errors and Appeals, begun and held at the Capitol, in the City of Nashville, on the first Monday of December, 1933, it being the ... day of December, 1933... when the following proceedings were had to wit: J.A. Adams Vs. The State Humphreys Criminal. Came the plaintiff.... in error in proper person and by counsel, and also came the Attorney General on behalf of the State, this cause was heard on the transcript of the record from the Circuit Court of Humphreys County, and upon consideration thereof the Court as of the opinion that there is reversible error on the record, for the reasons stated in opinion filed.

It is therefore ordered by the Court that the judgment of the Court below be reversed, and the verdict of the jury set aside, and the cause remanded to the Circuit Court of Humphreys County for a new trial. The State of Tennessee will pay the costs of the appeal, which will be certified to the Comptroller for payment in the manner required by law. The plaintiff... in error may be admitted to bail on bond or recognizance in the penalty of \$... with sufficient sureties to be approved by the Clerk of this Court, for his appearance in the Court below, and in default of such bond or recognizance he will be remanded to the custody of the Marshal of this Court and by him delivered to the Sheriff of Humphreys County to be safely confined until he again tried.

Office of the Clerk of the Supreme Court of the Middle Division of the State of Tennessee. I, Preston Vaughn, Clerk of said Court, do hereby certify that the foregoing is a true, correct, and complete copy of the judgment of the said Court, pronounced at its December Term, 1933, in the case of J.A. Adams Vs. The State, as the same appears of record in my office. In testimony whereof I have hereto set my hand and affixed the seal of the Court, at office in the Capitol, at Nashville, on this the 12 day of March, 1934.

David S. Lanaden, Clerk.

J.A. Adams

Humphreys Criminal

The State

MEMO. OPINION

This a conviction under the 1932 Code Section 1375 (Shannon's 652) providing for punishment of Executors and others holding funds in trust for willful conversion of such funds to their own use, with a prison sentence of three years. Mr Adams is shown by the record to be a man of good character and worthy of credit. He was appointed by his father as executor of his estate and qualified in 1921. A total of some seven or eight

thousand dollars came into his hands, and a final settlement was made by him in the County Court in May, 1925, and confirmed in November 1925, which showed that he had distributed the estate among the legatees in accordance with the will, with the exception of a balance of \$527.45, that represented the balance going under the will to the two minor children of a deceased brother of the plaintiff in error, after previous payment to them on account of \$150.00. By the will it was provided that the distributive share of these two minors, when ascertained, should be deposited in a bank in the names of these minors, subject to check by plaintiff in error, to be paid to the minors as he should see fit.

It was shown for the State that this balance of \$527.45 had never been paid over to the minors; that the older of the two minors had reached her majority and been married, and that she had made no demand on plaintiff in error for the balance of her share and that suit had been brought and judgment obtained against plaintiff in error in a magistrate's court for this amount and that an execution had been returned unsatisfied. For the defense it was insisted that shortly before, and in contemplation of, the final report above mentioned, plaintiff in error had caused the amount aforesaid to be deposited in a bank in the form and manner required by the will and that no withdrawal of any part thereof had ever subsequently been made by plaintiff in error. The State asked that the bank in which it was claimed that the deposit had been made had been taken over by another bank in the town of McEwen in the year 1928, and that, some three years later, in 1928, this second bank had failed and was at the time of the institution of this prosecution being wound up by a receiver, that its books did not show any balance or account in favor of these legatees, and it was insisted that no such deposit had ever been made for their account. On the other hand, plaintiff in error testified that on the 6th of September, 1924, having ascertained the exact amount of the balance which would go to these legatees, he drew a check on an account he had in the Peoples Bank of McEwen and delivered this check to the Cashier, one King, with instructions to make the deposit to the credit of these legatees, the still minors. He produced the original check showing the payment stamp of the Bank thereon, and also produced the deposit slip of the bank evidencing this deposit made out by the Cashier of the bank at the same time, these instruments clearly sustaining his testimony. His theory was that, having made the deposit in the form required by the will, and asserting that he had never withdrawn any part of it, he was not further liable. The State, in an effort to show that no such deposit had been made, introduced what purported to be sheets from the individual ledger of the defunct Bank showing an account, or accounts of J. A. Adams in that bank, and relied on the fact that these sheets failed to show the making of any such deposit. Exception was taken to the introduction of these sheets as evidence, upon the grounds that they were not verified in any way or supported by the testimony of any official of the Bank or of anyone who knew of the making of the entries thereon. It appears that they were produced by an attorney for the receiver of the McEwen Bank, to which reference has heretofore been made, and who claimed to have come into possession of them in the course of his handling the affairs of the Bank being wound up in receivership. It was not claimed that he ever had any connection with the Peoples Bank or knew anything with regard to these sheets or entries of his own knowledge.

By one of the assignments of error in the Court it is insisted that this documentary evidence was clearly inadmissible and prejudicial. The learned Attorney General on his brief in this Court concedes the inadmissibility of this evidence, following the holding of this Court in Holden v. State, 140 Tenn., 122, and he is clearly right in so doing. If this evidence be excluded, there remains practically nothing in this record in any way to contradict the testimony of plaintiff in error, supported as it is by the check and deposit ticket which he introduces.

However, we have read this record in its entirety, including the testimony to which exception was properly taken. Insofar as these reported copies from the individual ledger go, the particular deposit relied on does not appear thereon, and, as contended by the State, these sheets or papers indicate that plaintiff in error did not have to his credit in the Bank on the 8th of September, when the check above referred to was given, a balance equal to the amount of the check. However, this is met in at least two ways. In the first place, there is definite testimony that a deposit of more than \$500 was made prior to the giving of the check, which, likewise, is not shown on these papers or sheets from the individual ledger. That this deposit was made is not only testified to by plaintiff in error very definitely, but his testimony is supported by a deposit slip which he produces. In this connection, it may be remarked that the record clearly shows that the books of the Peoples Bank were kept in a very loose and irregular manner and that, in numerous instances, they failed to show the deposits and withdrawals made, and we think it fairly inferable that the failure to show the entries here involved may be accounted for in the way and that these records are, therefore, unreliable. In the second place, even if the check given by J. A. Adams, made payable to these two minors, did overdraw his account in the Bank on the day on which it was given, since it clearly appears that it was accepted by the Bank and treated as a deposit in the names of these minors, the Bank made itself liable for this deposit, as a matter of law, and, since there is no evidence that any withdrawal was ever made thereafter by plaintiff in error by checks drawn on this fund, the evidence as a whole fails to show any conversion by him thereof.

Moreover, by another assignment the accuracy of the charge of the trial Judge is challenged and, in the respect at least, we are satisfied that prejudicial error was committed by the charge. In the course of the charge the trial Judge said, "I further charge you gentlemen, that even though you may find that the defendant drew a check for the amount due the prosecutor and her brother, and deposited that check in the Bank, to be drawn out in their favor, I charge you gentlemen that that would not be a defense to this indictment in this case, and would not be payment of the fund to the prosecutor and her brother unless the defendant actually paid them the money", etc.

In this we cannot concur. In depositing a check in the bank in the manner indicated, plaintiff in error would be doing exactly as and what was required of him by the will, and, having done so, the fact that the money was not actually paid to these legatees thereafter would not render this plaintiff in error guilty under the statute. In State v. Henry, 1 Lea, p. 720, it was held, in construing this particular statute, that a charge of willful conversion could not be predicated on an indebtedness simply to the ward and a failure actually to pay the money. Proof of a willful conversion must be otherwise established than merely by a showing that the money was never paid over. Especially is this true where it appears that the executor or guardian has deposited the money in a bank to the credit of the legatees or ward and has not therefore withdrawn it.

If the Bank fails, and the proof shows that the executor or guardian had reason to suspect its solvency, civil liability might be predicated on such a showing, but this is an altogether different thing from criminal liability for willful conversion. Because of this error in the charge, and also because of the erroneous admission of the material evidence from the books of the Bank, this case must be reversed and remanded, particularly, in view of the grave doubt which we entertain of the sufficiency of the evidence to sustain a conviction, even admitting all of the evidence heard on the trial. In addition to the unimpeached and affirmatively sustained good character of plaintiff in error, we think it worthy of consideration, as bearing upon the question of a willful, that is, deliberate premeditated and designed purpose to convert these trust funds to his own use, that the record shows that plaintiff in error administered and distributed the estate left by his father, aggregating ten times the amount here involved, fully and honestly, paying over to the legatees all of the funds with this relatively small exception. This would seem to indicate a purpose, on the whole, to deal honestly with the trust funds committed to his care, and raises a presumption, in addition to the general presumption of innocence, that he did not willfully convert this particular fund to his own use.

Before concluding, it may be observed that the Cashier of the Peoples Bank, one King, appears to be still living, but was not introduced, or his evidence otherwise secured. What light he may be able to show upon the facts of the transaction does not appear. On the grounds and for the reasons stated, the judgment will be reversed and the case is remanded.

Chambliss

Office of Clerk of the Supreme Court for the Middle Division of the State of Tennessee. I, David S. Lansden, Clerk of said Court, do hereby certify that the foregoing is a true, perfect and complete copy of the Opinion of said Court, pronounced at its December Term, 1933, in case of J. A. Adams against The State as appears on record now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Court, at office in the Capitol at Nashville, on this, the 14 day of March, 1934

(Seal) David S. Lansden, Clerk

By _____ D.C.

State of Tennessee)
Vs.)
Leon Runion

Agg Consent

State of Tennessee, To the Honorable Judge of the Circuit Court of Humphreys County, Holding and Presiding at Waverly, Tennessee:
Whereas, in our Supreme Court, at Nashville, at its December Term, 1933, it was adjudged and ordered in the cause Leon Runion Vs. The State, appealed to our said Court from said Circuit Court that the same be remanded thereto for further proceedings and final determination therein.
There are, therefore, To require you, the Court as aforesaid, that you proceed with the execution of this Judgment of our said Supreme Court, by such further proceedings in your Court as shall effectuate the objects of this order to remand, and attain the ends of justice.
Witness, David S. Lanaden, Clerk of our said Court, at office in Nashville, the first Monday of December, 1933

(Seal) David S. Lanaden, Clerk.
By _____ D.C.

The State of Tennessee, be it remembered, That at a Supreme Court of Errors and Appeals, begun and held at the Capitol, in the City of Nashville on the first Monday of December 1933 it being the _____ day of December, 1933 --- when the following proceedings were had, to wit: Leon Runion Vs. The State, Humphreys Crim. Came the plaintiff in error in proper person and by counsel, and also came the Attorney General on behalf of the State, and this case was heard on the transcript of the record from the Circuit Court of Humphreys County, and on consideration thereof, the Court is of opinion that there is no reversible error on the record, and that the judgment of the Court below should be affirmed, and it is accordingly so ordered and adjudged by the Court.
It is therefore ordered by the Court that the plaintiff in error, for the offense of having unlawful sexual intercourse with a female more than 12 and less than 21 yrs old as charged in the indictment, be delivered to the Warden of the Penitentiary, or his agent, and be by him conveyed to the Penitentiary of the State of Tennessee and there confined at hard labor for a term of not more than three years commencing on the day of his reception at said penitentiary.
It is further ordered by the Court that plaintiff in error be infamous and disqualified from holding any office under the State, or exercising the elective franchise, or giving evidence in the Courts of the State. The plaintiff in error will pay the costs of the cause accrued in this Court and the Court below, and execution may issue from this Court for the costs of the appeal. A procedendo will be issued to the said Circuit Court of Humphreys County directing that Court to proceed with the collection of the costs of the cause accrued therein in the manner provided by law.
The clerk of this Court will issue a duly certified copy of this judgment to the sheriff of Humphreys County, which will be his authority for delivering the plaintiff in error to the Warden or his agent; and also a duly certified copy hereof to the Warden of the penitentiary who will at once proceed to execute this judgment.
Office of the Clerk of the Supreme Court of the Middle Division of the State of Tennessee.
I, David S. Lanaden, Clerk of said Court, do hereby certify that the foregoing is a true perfect and complete copy of the judgment of said Court, pronounced at its December Term, 1933, in the case of Leon Runion Vs. The State, as the same appears of record in my office.

In testimony whereof I have hereto set my hand and affixed the seal of the Court, at office in the Capitol, at Nashville, on this the 29 day of Jan. 1934
(Seal) David S. Lanaden, Clerk.

State of Tennessee)
Vs.) Driving Drunk.
R.L. Stockard

In this case came the Attorney General, Pro tem for the state and the defendant in person, upon the plea of the defendant's attorney the case is continued and jail sentence suspended until next term, on conditions that defendant do not operate automobile until next term, it is therefore ordered, adjudged and decreed.

State of Tennessee)
VS.) Incest.
Floyd Livingston

In this case came the Attorney General, pro tem for the state, and states to the Court that he desires to prosecute the case no further.
It is therefore ordered, adjudged and decreed by the Court, that the defendant be dismissed and go hence without day.

State of Tennessee)
VS.) Driving Drunk.
Frank Anderson

In this case the final cost has been fixed heretofore, and the jail sentence is suspended until next term of this Court.

State of Tennessee)
VS.) Transporting Liquor.
Jesse Bird

In this case the Attorney General, pro tem for the State, and the defendant in person and by attorney, upon consent of both attorneys for the state and the defendant the case is continued until next term of this court, it is therefore ordered adjudged and decreed.

State of Tennessee)
Vs.) Driving Drunk.
Hal Stricklin

In this case came the Attorney General, pro tem for the State and states to the Court that he desires to prosecute the case no further.
It is therefore ordered adjudged and decreed by the court that the defendant be dismissed and go hence without day.

State of Tennessee)
Vs.) Perjury.
David Potter

In this case came the Attorney General, Pro tem for the state and states to the court that he desires to prosecute the case no further. It is therefore ordered adjudged, and decreed by the court that the defendant be dismissed and go hence without day.

State of Tennessee

VS.

Drunkness.

Bob T. Wiggins

This case is continued upon agreement that the defendant plead guilty at the next term of this Court.

State of Tennessee

VS.

B.D.

Virgil Hill

This case continued upon agreement that the defendant plead guilty at the next term of this Court.

State of Tennessee

VS.

B.D.

Marshall Brown

This case is continued upon agreement that the defendant to plead guilty at the next term of this Court.

Court then adjourned until tomorrow morning at 9:00 O'Clock

J.D.G. Morton Judge.

COURT MET PURSUANT TO ADJOURNMENT PRESENT AND PRESIDING THE HON. J.D.G. MORTON, JUDGE, ETC.

State of Tennessee

VS.

A. & B. with intent to commit murder.

Francis Malone

In this case came the Attorney General, pro tem for the State and the defendant in person, and by attorney, who, being duly charged and arraigned on said indictment pleads not guilty.

Thereupon to try the issues joined came a jury of good and lawful men of Humphreys County Tennessee, to wit: Grady Chronister, Neal Pace, John Hodge, Florence Ridings, Ed Grady E.W. Swaney, Jim Diviney, T. H. Sourlook, Farris Christian, Tom Williams, L.D. Cullum, & N.C. Curtis, who, being duly elected tried and sworn according to law, and in charge of their sworn officers D.A. Burch and Tom Ferguson, who had previously been legally sworn to attend them after hearing all the proof, argument of counsel and the charge of the Court upon their oath do say that they find the defendant not guilty.

It is therefore ordered, adjudged and decreed by the Court that the defendant be dismissed and go hence without day.

State of Tennessee

VS.

Driving Drunk.

Hub Cooley

In this case came the Attorney General, Pro tem for the State and states to the Court that he desires to prosecute the case no further.

It is therefore ordered, adjudged and decreed by the Court that the defendant be dismissed and go hence without day.

State of Tennessee

VS.

Driving drunk.

John Diviney

In this case came the Attorney General, pro tem for the State and states to the court that he desires to prosecute the case no further. It is therefore ordered, adjudged and decreed by the court that the defendant be dismissed and go hence without day.

State of Tennessee

VS.

Mfg. Liquor

Hubert Curtis et al

In This case is continued by the State on account of absent of Myrtle Curtis.

State of Tennessee

VS.

B.D.

Tom Curtis

In this case came the Attorney General, pro tem, for the State and defendant in person and by attorney, upon the plea of the defendant's attorney the case is to be nolle when cost are paid.

It is therefore ordered, adjudged and decreed by the Court that this case be nolle upon defendant paying or securing costs, for which let execution issue.

State of Tennessee

State of Tennessee
VS.
R.E. Runch

B.D.

In this case the fine is suspended until the next term of this Court, it is therefore ordered, adjudged and decreed.

State of Tennessee
Vs.
Lee Hedge

B.D.

In this case the fine is suspended until next term of this Court. It is therefore ordered, adjudged and decreed.

State of Tennessee
Vs.
B.L. Thompson

Driving Drunk

In this case came the Attorney General, Pro Tem, for the State, and it appearing to the Court, that this defendant was indicted at a former term of this Court for the offense of Driving an Automobile upon the Public Highways of the State of Tennessee while under the influence of intoxicating liquor, was arrested and entered into bond, which bond is in the words and figures as follows, to wit; State of Tennessee, Humphreys County, We, Ben. L. Thompson, agree to pay to the State of Tennessee Two Hundred Fifty (\$250.00) Dollars, unless the said Ben L. Thompson appear at the next term of the Circuit Court of Humphreys County, to be held at the Courthouse in the town of Waverly, on the 1st, Monday in April 1934, on Tuesday of said term, to answer the State of Tennessee for the offense Driving Car while intoxicated and do not depart the Court without leave.

Ben. L. Thompson, Priv.

Approved..... J. Shiff.

By..... Deputy

And the defendant Ben L. Thompson being solemnly called to come into open Court, to answer the State of Tennessee, upon a charge of Driving an Automobile upon the Public Highways of the State of Tennessee while under the influence of intoxicating liquor, came not but made default.

It is therefore Considered by the Court that the defendant Ben L. Thompson, for his said default do forfeit and pay unto the State of Tennessee the said sum of Two Hundred Fifty (\$250.00) Dollars according to the tenor and effect of his said bond, And it is further ordered by the Court Soi Fa. be issued to the defendant requiring him to appear at the next term of this Court, and show cause if any they have why this judgment should not be made final.

And further that Alias Capias be issued for the defendant.

State of Tennessee
Vs.
Ben L. Thompson

B.D.

It is ordered by the Court that a Alias Capias be issued for the Defendant in this case.

State of Tennessee
Vs.
Henry Marcum et al

Bad Check.

In this case the Attorney General, Pro Tem for the State, and the defendants in person and by attorney, upon consent of both attorneys for the state and the defendants the case is continued until next term of this court. It is therefore ordered adjudged and decreed.

State of Tennessee
VS.
Henry Marcum et al

Bad Check.

In this case the Attorney General, pro tem for the State, and the defendants in person and by attorney, upon consent of both attorneys for the state and the defendants the case is continued until next term of this court, it is therefore ordered adjudged and decreed.

State of Tennessee
Vs.
Hershel Cooley

B.D.

In this case the Attorney General, pro tem for the State, and the defendant in person and by attorney, upon consent of both attorneys for the state and the defendant the case is continued until next term of this Court, it is therefore ordered adjudged and decreed.

State of Tennessee
Vs.
P.K. Wilson

Soi Fa.

It is ordered by the Court that an Alias Soi Fa be issued to Davidson County for the defendant.

State of Tennessee
VS.
J.W. Madden

Mis.

In this case it is ordered by the Court that the fine be suspended until next term of this court.

State of Tennessee
Vs.
Bud Binkley & Sarah Binkley

B.D.

In this case came the Attorney General, Pro Tem, for the State and the Defendant in person and by attorney, who, being duly charged and arraigned on said indictment plead guilty. Thereupon to try the issues joined came a jury of good and lawful men of Humphreys County, to wit: Grady Choinister, Neal Pace, John Hodge, Florence Ridings, Ed Gray, E.W. Swaney, Elm Diviney, T.H. Sourlock, Lallie Christian, Tom Williams, L.D. Cullum, and N.C. Curtis, who, being duly elected, tried and sworn according to law, after hearing all the proof, argument of counsel and charge of the Court upon their do say they find the defendant guilty as charged in the indictment and assess and fix his punishment as to a fine of One Hundred Dollars and Ninety days in Jail.

It is therefore ordered, adjudged and decreed by the Court, that for the offense as found by the Jury the defendant be required to pay or secure a fine of One Hundred Dollars (\$100.00) and will serve a term of Ninety days in the County Jail or workhouse of Humphreys County, Tennessee, also will pay the costs of this cause for which let execution issue, and in the event of his failure to pay or secure all of said fine and costs he shall be confined in the aforesaid County Jail or workhouse until he pay, secure or work out all of said fine and costs.

State of Tennessee

Vs.

A. & B.

Brownie Ingram

In this case came the Attorney General, Pro tem, for the State and the defendant in person and by attorney, who, being duly charged and arraigned on said indictment pleads not guilty.

Thereupon to try the issues joined came a jury of good and lawful men of Humphreys County, Tennessee, to wit; Ralph Hooper, E.L. Bell, Tom Pullen, Roy Buchanan, R.L. Curtis, John Wilhite, I.R. Davis, S.C. Lyton, M.M. Anderson, Clint Bell, C.J. Stewart and Will Harvy, who being duly elected, tried and sworn according to law, after hearing all the proof, argument of counsel and charge of the Court, upon their oath do say they find the defendant not guilty.

It is therefore ordered, adjudged and decreed by the Court that the defendant be discharged and go hence without day.

State of Tennessee

Vs.

Age Consent

Joe Plant

This case is continued until the next term of this Court on account of the absence of the defendant.

State of Tennessee

Vs.

Carter Simeon

This case is continued until the next term of this Court.

State of Tennessee

Vs.

Forfeiture

Reece Castleman
et al.

In this case came the Attorney General, Pro Tem for the State, and it appearing to the Court, that this defendant was indicted at a former term of this Court for the offense of Manufacturing intoxicating liquor, and the said defendant, was arrested and entered into bond with J.L. Bradley, and R.L. Tummine, as his sureties, which bond is in the words and figures as follows, to wit; State of Tennessee, Humphreys County, We, R.S. Castleman & agree to pay to the State of Tennessee, Five Hundred Dollars unless the said R.S. Castleman appear at the next term of the Circuit Court for Humphreys County, to be held at the Courthouse in the town of Waverly, on the 2nd Monday of August 1933, on Tuesday of said term to answer the State of Tennessee, for the offense of Possessing and operating still, and do not depart the Court without leave.

Approved:

Walter McNeil, Shff.

This 11th day of Aug. 1933.

R.S. Castleman, Prin.

J.L. Bradley, Surety

R.L. Tummine "

J.C. Castleman "

And the defendant R.S. Castleman being solemnly called to come into open Court, to answer the State of Tennessee, upon a charge of Manufacturing intoxicating liquor, came not but made default and the said J.L. Bradley, R.L. Tummine and J.C. Castleman, were also called to come into open Court and bring with them the body of the said R.S. Castleman according to the tenor and effect of their said bond, came not but made default, neither came the defendant, R.S. Castleman nor his said sureties but made default.

It is therefore considered by the Court that the defendant R.S. Castleman, J.L. Bradley, R.L. Tummine and J.C. Castleman for their said default do forfeit and pay unto the State of Tennessee the said sum of Five Hundred Dollars according to the tenor and effect of their said bond. And it is further ordered by the Court that Sol Fa be issued to the said defendant and his said sureties requiring them to appear at the next term of this court, and show cause if any they have why this judgement should not be made final. And further that Alias Capias be issued for the defendant.

State of Tennessee

Vs.

Mfg. Liquor.

Jimmie Dunn

In this case came the Attorney General, Pro Tem, for the State and the defendant in person and by attorney, who being duly charged and arraigned on said indictment pleads guilty. Thereupon to try the issues joined came a jury of good and lawful men of Humphreys County, Tennessee, to wit; Grady Choinster, Neal Pace, John Hodge, Florence Ridings, Ed Gray, E.W. Swaney, Jim Diviney, T.H. Scarlock, Dallis Christian, Tom Williams, L.D. Cullum and N.C. Curtis, who, being duly elected, tried and sworn according to law, after hearing all the proof, argument of the counsel and charge of the Court upon their oath do say they find the defendant guilty as charged in the indictment and assess and fix his punishment as a fine of Two Hundred Fifty Dollars and Ninety days in Jail.

It is therefore ordered, adjudged and decreed by the Court, that for the offense as found by the Jury the defendant be required to pay or secure a fine of Two Hundred Fifty Dollars (\$250.00) and will serve a term of Ninety days in Jail or workhouse of Humphreys County Tennessee, also will pay the costs of this cause for which let execution issue, and in the event of his failure to pay or secure all of said fine and costs he shall be confined in the aforesaid County Jail or Workhouse until he pay, secure or workout all of said fine and costs.

Court then adjourned until tomorrow morning at 9:00 O'Clock

Judge.

COURT MET PURSUANT TO ADJOURNMENT PRESENT AND PRESIDING THE HON. J.D.G. MORTON, JUDGE, ETC.

State of Tennessee

Vs.

Murder.

William Baker

In this cause comes again the Attorney General, Pro Tem, for the State and the defendant in person and by attorney, who, being duly charged and arraigned on said indictment pleads not guilty. Thereupon to try the issues joined, came a jury of good and lawful men of Humphreys County, to wit; Will Hassell, Fred Webb, T.D. Story, Jim Thompson, Neal Pace, L.D. Cullum, Mose Frazee, Guy McMillon, Dick Stanfield, Tom Williams, Dallis Christian and Stanley Hassell, who, being elected, tried and sworn according to law, and being in charge of their sworn officers, T.G. Ferguson and J.R. Traylor, who had previously been legally sworn to attend them, and the proof not being completed said jury was respite by the Court until tomorrow morning at half past eight o'clock and said jury retired in charge of their sworn officers aforesaid.

Nellie Paxton

Vs.

In the Circuit Court of Humphreys County, Tenn.,
December term, 1933.

Lebanon Bridge Co.

Upon motion of plaintiff the defendants are required to plead specially their defenses in this case as provided by section of 8767 of the New Code of Tennessee for 1928.

Court then adjourned until tomorrow morning at 8:30 O'Clock

J.D.G. Morton Judge.

State of Tennessee

Vs.

Murder.

William Baker

In this cause comes again the Attorney General, Pro Tem, for the state and the defendant in person and by attorney, when the jury heretofore selected and sworn in this cause, to wit; Will Hassell, Fred Webb, T.D. Story, Jim Thompson, Neal Pace, L.D. Cullum, Mose Frazee, Guy McMillon, Dick Stanfield, Tom Williams, Dallis Christian, and Stanley Hassell, having returned into open Court in charge of their sworn officers T.G. Ferguson and J.R. Traylor, and having resumed the consideration of this cause, after hearing all the proof, argument of counsel and the charge of the Court, upon their oath do say they the defendant not guilty.

It is therefore ordered, adjudged and decreed by the Court that the defendant be discharged and go hence without day.

This day the Grand Jury came into open Court and presents the following indictments and presentments.

One against Osby Baker, drunkness, subpoena for the State Wiley Crowell, and W.M. Castile.

One against Johnnie Burns, B.D. subpoena for the State, D.B. McCoan, Walter McNeil, I.S. Westbrook, J.R. Traylor and Tom Ferguson.

One against Marion Story, and Connie Story, Felony, which indictment is in the words and figures as follows, to wit, State of Tennessee, Humphreys County, December Term of Circuit Court, A.D., 1933. The Grand Jurors for the State of Tennessee, duly elected, empaneled, sworn, and charged to inquire for the body of the County of Humphreys and State aforesaid, upon their oath aforesaid, present that Marion Story and Connie Story heretofore, to wit, on the 24th day of November 1933, in said County and State, unlawfully and feloniously did attempt to take, steal and carry away unshucked corn from the crib of Brown Wafford of the value of one dollar, the said taking, stealing and carrying away of which is a felony or crime punishable by imprisonment in the penitentiary, contrary to the statute and against the peace and dignity of the state of Tennessee. W.C. Howell Attorney General Pro Tem, December Term, 1933 the state Vs. Marion Story and Connie Story, Brown Wafford Prosecutor, Subpoena for the state: Brown Wafford, Oscar Lytton and Johnnie Lane, Witnesses sworn by me on this indictment before the Grand Jury December Term, 1933, R.H. McKeel Foreman Grand Jury. W.C. Howell Attorney General Pro Tem A true bill R.H. McKeel Foreman Grand Jury.

One against W.C. Sprague, Misd. Subpoena for the state W.M. Thompson, Essie Thompson.

One against Al Miles (Alias Chas Bruin) Subpoena for the state Joe Traylor, Frank Ingram and Top Lee.

One against Roy Freeman, Carrying a Pistol, Subpoena for the state Joe Traylor, Frank Ingram and Top Lee.

REPORT OF THE GRAND JURY

We, the members of the Grand Jury at the December term 1933 of the Circuit Court for Humphreys County, beg leave to submit the following report to your Honor.

We have diligently inquired and true presentment made of all offenses given us in charge by Your Honor or otherwise brought to our knowledge.

We have examined the County Jail and Poor House and find the prisoners and inmates well fed and cared for.

We have examined all the bonds required to be examined by us and find them properly executed and good and solvent for the several amounts thereof, and now, having completed

our labors, we respectfully ask to be discharged for the term. R.H. McKeel Foreman of Grand Jury. B.C. Lytton, I.H. Davis, M.M. Anderson, W.R. Hooper, R.L. Curtis, T.J. Pullen, Will Harvey, Roy Buchanan, John Wilhite, E.L. Bell, J.C. Bell and C.J. Stewart.

Court then adjourned until tomorrow morning at 9:00 O'Clock

J. D. Morton Judge.

COURT MET PURSUANT TO ADJOURNMENT PRESENT AND PRESIDING THE HON. J.D. MORTON, JUDGE, ETC.

J.A. Tomlinson

Vs.

Mrs. Bettie Tomlinson

In the Circuit Court of Humphreys County, Tennessee
December Term 1932.

In this case, on this the 10th day of December 1932, the Defendant, Mrs. Bettie moved the Court to dismiss this case for the want of prosecution thereof by the Plaintiff, and, it appearing to the Court that the summons in the case had been issued and served upon the defendant for more than five whole days before the first day of this term of the Court and that the Plaintiff has failed up to this date to file his declaration, or to further proceed with the prosecution of this suit. It is therefore considered by the Court that the Plaintiff's case be and the same is hereby dismissed at his cost for which execution will issue.

V.V. Rogers

Vs.

W.D. Patterson

Circuit Court of Humphreys County,
Tennessee, December Term, 1932.

Came the parties in this case in person, and by their Attorneys, and submitted the issues to the Court without the intervention of a jury, who upon hearing the proof, found the issues in favor of the Plaintiff, and found that he was entitled to the property area for in this case, to wit: One Baxter D. Whitney Steve Iron Saw and Frame patented January 10, 1899, Steel No. 3205.

It is therefore considered by the Court that said property be and is awarded to the Plaintiff and that the Plaintiff recover of the Defendant all the costs of the cause for which let execution issue.

Mary Louise Graves Ingram

Vs.

Harris Ingram

In the Circuit Court, Waverly, Tenn. Humphreys County.

In this cause, on motion of petitioner, and it duly appearing to the Court that the defendant, Harris Ingram, has been regularly served with subpoena to answer the petitioner's bill, and that the defendant has failed to appear and make defense to said bill within the time required by law, it is ordered that as to the defendant, petitioner's bill be taken as confessed, and the cause set for hearing ex parte.

DECREES

And this cause came on to be heard before the Honorable J.D. Morton, Judge, upon petitioner's bill, the pro confesso heretofore taken against the defendant, the oral testimony of the witnesses examined in open court, and it satisfactorily appearing to the Court from the bill and the proof that the facts charged in the bill are true; that the defendant is guilty of such cruel and inhuman treatment or conduct toward petitioner, as renders it unsafe and improper for her to cohabit with him and be under his dominion and control. That he has abandoned her, turned her out of doors and refused and neglected to provide for her.

It is therefore ordered, adjudged and decreed by the Court that the bonds of matrimony uniting the petitioner and the defendant be absolutely and per-etually dissolved, and that petitioner be restored to all the rights and privileges of an unmarried person, and that her maiden name, Mary Louise Graves, be restored to her. It is further ordered, adjudged and decreed by the Court that all the costs of this cause, including the six dollars deposited by the petitioner, be taxed to the defendant, for which execution may issue.

Walter Smith, et al. }
 Vs. }
 Dick Stanfield, et al. }

In the Circuit Court at Waverly,
 Tennessee.

This cause came on to be heard and was heard before the Hon. J.G.D. Morton, Judge, on this the 16th day of December, 1933, without the intervention of a jury, and after hearing all the proof offered in the cause, and argument of counsel, the Court adjudges the property in controversy to belong to the defendant, Dick Stanfield, a deputy sheriff, and subject to the execution held by him and levied upon said property, except the bullock Poland-China sow and one set of black smith tools which the Court holds are not subject to execution in this cause, and fixes the value of the property, consisting of two knives at \$12.00 each, or \$24.00, two young calves at \$1.50 each, or \$3.00, one Emerson meat grill at \$5.00, one two seated sack at \$10.00, one mower at \$10.00, one hay rake at \$10.00, one mare mule colt 1 year old at \$50.00, one disc harrow at \$5.00, one set of floor scales at \$5.00.

It is therefore ordered, adjudged and decreed by the Court that the defendant, Dick Stanfield, Deputy Sheriff, for the use of the Union Bank of McEwen, Tennessee, have and recover of the plaintiffs, Walter Smith and Annie Smith, and their sureties on their relevin bond, A.J. Richerson and W.R. Patrick, the sum of One Hundred Twenty Three (\$123.00) Dollars, which may be discharged by delivering all of said property to the defendant, Dick Stanfield, who will sell same according to law under the execution held by him or order of sale issued by the Court, and apply the proceeds as directed in said execution, and the defendants will recover of the plaintiffs and their said sureties on their relevin bond all the costs of this cause, for which execution may issue.

State of Tennessee }
 Vs. }

A. B. }
 Motion to retax cost

In this case came the Attorney General pro tem for the state and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the Clerk of this Court against the estate of the defendant for the cost of this suit that the defendant is wholly insolvent unable to pay the cost of this suit, or any part thereof.

So it is therefore ordered, adjudged and decreed by the Court, that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the Clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee }
 Vs. }
 Cardell Scarlet }

Drunkness }
 Motion to retax cost

In this case came the Attorney General pro tem for the state and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit that the defendant is wholly insolvent, unable to pay the cost of this suit or any part thereof. So it is ordered, adjudged and decreed by the Court, that the cost accrued upon the part of the state be allowed and paid out of the County Treasury, and that the clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee }
 Vs. }

State of Tennessee }
 Vs. }
 Ed Marable et al. }

Gaming }
 Motion to retax cost

In this case came the Attorney General pro tem for the state and it appearing to the court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit that the defendant is wholly insolvent, unable to pay the cost of this cause or any part thereof. So it is therefore ordered, adjudged and decreed by the Court, that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee }
 Vs. }
 Orvil Jarred }

A. B. }
 Motion to retax cost

In this case came the Attorney General pro tem for the state and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit that the defendant is wholly insolvent, unable to pay the cost of this suit or any part thereof.

So it is therefore ordered, adjudged and decreed by the Court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee }
 Vs. }
 R.C. Marable }

A. B. }
 Motion to retax cost

In this case came the Attorney General pro tem for the state and it appearing to the court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit that the defendant is wholly insolvent unable to pay the cost of this suit or any part thereof. So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee }
 Vs. }
 Wm. Clark }

Drunkness }
 Motion to retax cost

In this case came the Attorney General pro tem for the state and it appearing to the court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit that the defendant is wholly insolvent, unable to pay the cost of this suit or any part thereof. So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee }
 Vs. }
 Dug Taylor et al. }

B. D. }
 Motion to retax costs

In this case came the attorney General pro tem for the state and it appearing to the court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit that

the defendant is wholly insolvent, unable to pay the cost of this suit or any part thereof. So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee)

Drunkness

Vs

Motion to retax costs

Joe Hooper

In this case came the Attorney General Pro tem for the state and it appearing to the Court from the return of the Sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for cost of this suit and that the defendant is wholly insolvent, unable to pay the cost, or any part thereof. So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee)

Disturbing assembly

Vs

Motion to retax costs

Bill Durham

In this case came the Attorney General pro tem for the State and it appearing to the court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit and that the defendant is wholly insolvent unable to pay the cost of this suit or any part thereof.

So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee)

Drunkness

Vs

Motion to retax cost

Walter Hooper

In this case came the Attorney General pro tem for the state and it appearing to the court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant and that the defendant is wholly insolvent unable to pay the cost of this suit or any part thereof.

So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee)

Drunkness

Vs

Motion to retax costs

Lonnie Parrott

In this case came the Attorney General Pro tem for the state and it appearing to the court from the return of the sheriff, upon an execution issued to him by clerk of this court against the estate of the defendant for the cost of this suit and that the defendant is wholly insolvent unable to pay the cost of this suit or any part thereof. So it is therefore ordered, adjudged and decreed by the court that the cost accrued on the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee)

B.D.

Vs

Motion to retax costs

Bud Wright

In this case came the Attorney General, pro tem for the state and it appearing to the court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit and that the defendant is wholly insolvent, unable to pay the cost of any part thereof. So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee)

B.D.

Vs

Motion to retax costs

John Tankersley

In this case came the Attorney General, pro tem for the state and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit and that the defendant is wholly insolvent unable to pay the cost of this suit or any part thereof.

So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee)

Drunkness

Vs

Motion to retax costs

Roy Hughey

In this case came the Attorney General, pro tem for the state and it appearing to the court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit and that the defendant is wholly insolvent, unable to pay the cost of this suit or any part thereof.

So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee)

Lewdness

Vs

Motion to retax costs

Charlie McGruder

In this case came the Attorney General pro tem for the state and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit and that the defendant is wholly insolvent unable to pay the cost of this suit or any part thereof.

So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee

B.D.

Vs

Motion to retax costs

Joe Smith

In this cause comes the Attorney General, pro tem, for the State and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the costs of this suit that the defendant is wholly insolvent unable to pay the costs of this suit or any part thereof. So it is therefore ordered, adjudged and decreed by the Court, that the costs accrued upon the part of the State be allowed and ordered paid out of the County Treasury, and that the clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee

B.D.

Vs

Motion to retax costs.

Aly Howell

In this case came the Attorney General, Pro Tem, for the State, and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the costs of this suit that the defendant is wholly insolvent, unable to pay the costs of this suit or any part thereof. So it is therefore ordered, adjudged and decreed by the Court, that the costs accrued upon the part of the State be allowed and ordered paid out of the County Treasury, and that the clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee

B.D.

Vs

Motion to retax costs.

Paul Westbrook

In this case came the Attorney General, Pro Tem, for the State, and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit and that the defendant is wholly insolvent, unable to pay the cost of this suit or any part thereof.

So it is therefore ordered, adjudged and decreed by the court, that the cost accrued upon the part of the State be allowed and ordered paid out of the County Treasury, and that the clerk make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee

B.D.

Vs

Motion to retax costs.

L.J. Cowen

In this case came the Attorney General, Pro tem for the state and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit and that the defendant is wholly insolvent unable to pay the cost of this suit or any part thereof. So it is therefore ordered, adjudged and decreed by the Court that the cost accrued upon the part of the state be allowed and ordered paid out of the County Treasury, and that the clerk make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee

B.D.

Vs

Motion to retax costs

Dee Hedge

In this case came the Attorney General, pro tem for the state and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit that the defendant is wholly insolvent, unable to pay the cost of this suit or any part thereof. So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the State be allowed and ordered paid out of the County Treasury, and that the clerk of this court make out and certify the same to the County Judge for payment as law directs.

State of Tennessee

B.D.

Vs

Motion to retax costs

Jodie Stephens

In this case came the Attorney General, pro tem for the state and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit that the defendant is wholly insolvent unable to pay the cost or any part thereof. So it is therefore ordered, adjudged and decreed by the Court that the cost accrued upon the part of the state be allowed and paid out of the County Treasury, and that the Clerk make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee

B.D.

Vs

Motion to retax costs

Ose Craft

In this case came the Attorney General, Pro tem for the state and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the clerk of this court against the estate of the defendant for the cost of this suit that the defendant is wholly insolvent, unable to pay the cost of this suit or any part thereof. So it is therefore ordered, adjudged and decreed by the Court that the cost accrued upon the part of the State be allowed and ordered paid out of the County Treasury and that the clerk of this Court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee

Gaming

Vs

Motion to retax costs

Raymond Chambers

In this case came the Attorney General, Pro tem for the State and it appearing to the Court from the return of the sheriff, upon an execution issued to him by the Clerk of this court against the estate of the defendant for the cost of this suit that the defendant is wholly insolvent, unable to pay the cost of this suit or any part thereof. So it is therefore ordered, adjudged and decreed by the court that the cost accrued upon the part of the State be allowed and ordered paid out of the County Treasury, and the clerk of this court make out and certify the same to the County Judge for payment as the law directs.

State of Tennessee)

Vs.

Driving Drunk

Nealy Inmon

This cause coming on to be heard, present for the State the Attorney General, Pro Tem, and the defendant in person and by attorney, when upon motion of the defendant it is ordered, adjudged and decreed by the Court that the order entered in this cause at the August Term, 1933 of this Court be revived which order is in the words and figures as follows: In this case came the Attorney General, Pro Tem, for the State, and the defendant in person, and by attorney, who, being duly charged and arraigned on said indictment pleads guilty. Thereupon to try the issue joined came a jury of good and lawful men of Humphreys County, to wit; Jim Wilhite, Elmo Smith, Vester Spann, Luther Morrison, Anderson Brown, A.L. Regal, Phill Legan, Halden Waggoner, C.S. Forrest, Jesse Anderson, Wess Cathey and J.D. Parker, who, being duly elected, tried and sworn according to law, after hearing all the proof, argument of counsel and the charge of the Court, upon their oath do say they find the defendant guilty as charged in the indictment and assess and fix his punishment at thirty days in jail and also a fine of Ten Dollars. It is therefore ordered, adjudged and decreed by the Court that, for the offense as found by the jury the defendant be required to pay a fine of ten dollars and will serve a term of thirty days in jail in Waverly, Humphreys County, Tennessee, and will pay the costs of this cause, ~~for which execution may issue.~~

It is further ordered, by the Court, that the defendant be prohibited from driving an automobile for a period of six months and in the event he should do so, he will be taken in charge and be further confined for a period of four months.

It is further ordered by the Court, that the jail sentence be suspended until the next term of this Court on payment of fine and costs.

Thence came into open court, the defendant Nealy Inmon and paid to the Clerk of this court all of said fine and costs.

State of Tennessee)

Vs.

B.D.

Lee Ingram

In this case came the Attorney General, Pro Tem, for the State, and the defendant in person, who, being duly charged and arraigned on said indictment pleads not guilty.

Thereupon to try the issue joined came a jury of good and lawful men of Humphreys County, to wit; Grady Chronister, Neal Pace, John Hodge, Florence Ridings, Ed Gray, E.W. Swaney, Jim Diviney, T.H. Sourlock, Dallis Christain, Tom Williams, L.D. Oullum and N.C. Curtis, being duly elected, tried and sworn according to law, after hearing all the proof, argument of counsel and the charge of the Court, upon their oath do say they find the defendant not guilty.

It is therefore ordered, adjudged and decreed by the Court that the defendant be discharged and go hence without day.

State of Tennessee)

Vs.

B.D.

Carl Pearl

In this case came the Attorney General, Pro Tem, for the State, and the defendant in person, who, being duly charged and arraigned on said indictment pleads not guilty.

Thereupon to try the issue joined came a jury of good and lawful men of Humphreys County, to wit; Grady Chronister, Neal Pace, John Hodge, Florence Ridings, Ed Gray, E.W. Swaney, Jim Diviney, T.H. Sourlock, Dallis Christain, Tom Williams, L.D. Oullum and N.C. Curtis, who, being duly elected, tried and sworn according to law, after hearing all the proof, argument of counsel and the charge of the Court, upon their oath do say that, they find the defendant not guilty.

It is therefore ordered, adjudged and decreed by the Court that, the defendant be discharged and go hence without day.

State of Tennessee)

Vs.

Murder

Tom Danesworth

This cause coming on to be heard, present for the State the Attorney General, Pro Tem, and the defendant in person and by attorney, when upon motion of the defendant it is ordered, adjudged and decreed by the Court that the order entered in this cause at the August term, 1933 of this Court be revived, which order is in the words and figures as follows: In this case comes again the Attorney General, Pro Tem for the State and the defendant in person and by attorney, when the jury, heretofore selected and sworn in this cause to wit; Vernon Brewer, Jimmie Wilhite, M.O. Mimms, G.W. Anderson, R.T. Mitchell, Tex Plant, G.E. Branch, Arthur Jones, Harvey Begard, J.D. Forrester, Sam Moore, and E.A. Toland, having returned into open court in charge of their sworn officers Geo. Wyatt and J.O. Thomas and having resumed the consideration of this cause, having heretofore heard all of the proof, the argument of the counsel and the charge of the Court upon their oath do say that they find the defendant guilty of Involuntary Manslaughter as charged in the indictment and assess and fix his punishment at sixty days in the County Jail.

It is therefore ordered, adjudged and decreed by the Court, that for the offense as found by the Jury, the defendant be confined in the County Jail of Humphreys County, Tennessee, for a period of sixty days and that he pay the costs of this cause for which let execution issue and upon further consideration it is ordered, adjudged and decreed by the Court that the jail sentence of sixty days be suspended until the next term of this court and that the defendant go without bond.

State of Tennessee)

Vs.

Mis.d.

Joe McGrary

In This case is continued until the next term of this Court by Consent.