

PLEAS BEFORE THE HON. M.C. SAUFLEY, JUDGE
OF THE MERCER CIRCUIT COURT, AT THE COURT
HOUSE IN HARRODSBURG, KY. ON MAY 20TH. 1910.

BE IT REMEMBERED, THAT heretofore to-wit, January 12th 1910 ,
the Plaintiff by her Attorneys filed with the Clerk of the Mercer
Circuit Court her petition in words and figures as follows:-

MERCER CIRCUIT COURT.

Rebecca Sallee

Plaintiff

Petition

VS. Petition

City of Harrodsburg

Defendant.

The Plaintiff Rebecca Sallee states that the Defendant
City of Harrodsburg is a corporation duly organized under the
laws of the State of Kentucky, and by the terms of its charter
authorized and empowered to make contracts, to sue and be sued
and to do all things necessary or pertaining to such a corpor-
ation, that by virtue of the laws under which it is incorporated
the Defendant is and was at the times of the matters hereinafter
complained of required to keep its side-walks and other public
ways free from obstructions of every kind and in a reasonable
safe condition, for the use of persons using and traveling thereon

Plaintiff states that on the 7th day of October 1909
and for sometime prior thereto therewas, in or near the edge of
the pavement on side-walk on the East side of College Street in
front of lot of Chas. S. Vanarsdall a hole dug the depth of about
two feet, and on the pavement was piled dirt, brick and piping

making a dangerous and unsafe condition of said side-walk for the traveling public, that said obstruction were known by the defendant, its officers and agents, negligently suffered and permitted said hole and dirt heap to remain on said sidewalk for a considerable time, up to and including the night of October 7th 1909, when the injury hereinafter complained of occurred.

Plaintiff states that while said side-walk was thus obstructed to-wit, on the night of October 7th 1909, while the plaintiff was using said side-walk and was traveling thereon, from her home on Cornishville, street to the town, and without fault on the part of the Plaintiff, she stumbled over the said pile and heap of dirt, brick and piping and fell over same into the hole, whereby her limbs and body, were bruised and hurt and her back was wrenched and injured, producing thereon a large lump, and so violently wrenching, straining and spraining, plaintiff's limbs and body, and by the shock to plaintiff's nerves her kidneys were caused thereby to be disturbed and diseased and by reason of said fall and consequent injury as stated, plaintiff suffered great bodily pain and mental anguish, and has sustained loss of time and labor and was compelled to incur indebtedness for medical aid and attention, and her power to earn money has been permanently lessened. All of which was without the fault of plaintiff and was because of the negligence of defendant and to the damage of Plaintiff in the sum of Fifteen Hundred dollars.

Wherefore she prays judgment against the defendant for said sum of Fifteen Hundred Dollars, for her costs herein and for all proper relief.

B. F. Roach,

Attorney for Plff.

Endorsed.

1910 January 12th filed.

Ben C. Allin, Clerk.

Upon which summons issued January 12th 1910 directed to the Sheriff of Mercer County, and returned by said Sheriff" Executed by delivering to D. Lee Currey, Mayor of Harrodsburg, for the City of Harrodsburg, a true copy of the within summons.

January 14th 1910.

J.W. Davenport, S.M.C.

And then at the January Term, January 24th 1910, the following order was entered herein:-

Rebecca Sallee

Plaintiff

Vs

City of Harrodsburg,

Defendant.

Answer and cross-petition filed in office January 14th 1910 now noted of record.

The answer and cross-petition referred to is as follows:-

MERCER CIRCUIT COURT.

Rebecca Sallee

Plaintiff

Vs Answer and Cross Petition

Pet. City of Harrodsburg

Defendant.

Comes defendant, and for answer herein, denies that it is its duty to keep its streets clear of all obstructions, or from obstructions of every kind: denies that there was at the time complained of, a hole dug to the depth of about two feet; denies that there was brick, dirt or piping piled up on the pavement on said street; denies that any digging, or piling of

dirt, or brick or piping or anything else, made or rendered said street dangerous in any way or at any time; denies that any obstructions were known to its officers or agents; denies that any obstruction could have been known to its officers by reasonable care or diligence; denies that it, by its officers or agents or at all, negligently suffered or permitted, or at all suffered or permitted, said hole in or near said side-walk for a considerable time, or at all; denies that plaintiff was without fault at the time of the injury; denies that she stumbled over any obstruction in said street; denies that she stumbled over any heap of dirt or brick or piping, or fell into any hole; denies that her limbs or body was bruised or hurt; denies that her back was wrenched or injured, or that a large lump was thereby produced; denies that she was wrenched or sprained; denies that her nerves were shocked; denies that her kidneys were disturbed or diseased; denies that she has suffered any mental anguish or pain or suffered or sustained any loss of time or labor by reason thereof; denies that she was compelled to incur expense of doctor's bills; denies that her power to earn money has been decreased; denies that she has been damaged in the sum of \$1500.00 or at all.

(2) Further answering defendant says that at the time and place complained of by plaintiff, she was herself, guilty of negligence to such an extent as that but for her negligence the injury complained of would never have occurred.

(3) Further answering, and by way of cross-petition, defendant says that C. S. Vanarsdall, is the owner and in possession of a house and lot on the East side of College street; that the obstructions described by and complained of by plaintiff in her petition, were all placed and caused by said C. S. Vanarsdall,

his agents and servants, immediately in front of his property in excavating for connection of water and sewerage to his house; that said alleged obstructions were by him suffered and permitted to remain from the time of the excavation up until the injury, and this, notwithstanding the requests of the City that they be removed; that the injury complained of, if there was, occurred by reason of, and was caused by, the negligence of said C.S. Vanarsdall in placing said alleged obstructions and in suffering and permitting them to remain at the place complained of; that if any one is liable to plaintiff for the injuries complained of it is said Vanarsdall and not this defendant.

Wherefore it makes this paragraph a cross-petition against C. S. Vanarsdall and requests ^{process} against him; it prays that any amount recovered by plaintiff herein be adjudged against said Vanarsdall and not against this defendant. It prays for all proper relief including ^{its} costs.

C.E.Rankin,

City Attorney.

Endorsed

1910 January 14th filed.

Ben C. Allin, Clerk.

Upon which summons issued January 14th 1910, directed to the Sheriff of Mercer County, and returned by said Sheriff "Execute" by delivering to C. S. Vanarsdall a true copy of the within summons. Jan 14th 1910.

J. W. Davenport, S.M.C.

Cloyd, R. S. Bunton, E. R. Burton and J. H. Durr, who were impaneled and sworn according to law, upon motion of defendant this Court's Official Stenographer is directed to take stenographic notes of the trial hereof and the evidence and argument of counsel being heard, but there not being time to conclude the trial hereof on this day, said Jury being charged by the Court were permitted to disperse, until tomorrow morning at nine o'clock, until which time the trial hereof is adjourned.

And then on another day of said term to-wit, May 6th 1910, the following order was entered herein:-

Rebecca Sallee

Plaintiff

VS

City of Harrodsburg

Defendant.

This day against came the parties, as also the Jury sworn herein, appeared and retired to their room to consult of their verdict and returned into Court the following verdict to-wit: " We the Jury find for the Plaintiff in the sum of Three Hundred Dollars (\$300.00) Ed Gill Joseph Kellar, R. S. Bunton, W. C. Carr, C. N. Wilder, T.S. Cloyd, J. W. Jenkins, J. T. Houchins, H. C. Graham.

9
Wherefore it is adjudged that the plaintiff Rebecca Sallee recover of the defendant city of Harrodsburg Ky., the sum of \$300.00 with interest thereon at the rate of six per cent per annum from this date until paid, and her costs herein expended.

NO. 258 CIRCUIT COURT

Rebecca Sallee, - - - - - Plaintiff.

-vs- Official Stenographer's Report of Testimony.

City of Harrodsburg, - - - - - Defendant. |

Be it remembered that on the trial of the above action at the May 16th 1910, of the Mercer Circuit Court, the Plaintiff testified on her own behalf and introduced witnesses on her behalf, as follows:

Rebecca Sallee, Examined by Atty for Plff.

1-Q- Where do you live?

Ans- On Cornishville pike.

2-Q- What is your age?

Ans- I was born in 1862.

3-Q- You are the wife of Jim Sallee?

Ans- Yes sir.

4-Q- And how many children have you?

Ans- Sixteen.

5-Q- Where do you work?

Ans- For Mr. T. I. Thompson.

6-Q- What position did Mr. Thompson occupy in the City of Harrodsburg during last year.

Ans- He was Mayor of the City.

7-Q- What street does he live on?

Ans- He lives on College Street.

8-Q- In going to and from your work just state how you go to Mr. Thompson's which side of the street does he live on.

Ans- He lives on the South side- I don't know. Or the left hand side
coin up.

10-Q- On which side of the street - on the same side or the opposite side,
is to the place where you were hurt?

Ans- On the opposite side.

11-Q- On which side of the street do you live on?

Ans- On the same side Mr Thompson does.

12-Q- In going to and from your work what route do you travel.

Ans- I travel on that side when I go to his house, but when I go
to the town I usually come on the other side.

13-Q- At this time were there any officers of the City residing on
that street?

(Objected to -

Ans- I don't know.

14-Q- Do you know who the City Attorney was then?

Ans- No sir.

15-Q- Do you know Mr Rodman Kennedy?

Ans- Yes sir.

16-Q- Does he live on the same side of the street as Mr Thompson or the
opposite side?

Ans- He lives on the opposite side of College street from Mr Thompson.

17-Q- Now just go ahead and state in your own words what incident you
met with on that street, when it was, and every day about it.

Ans- I was going from home on Thursday night to prayer meeting---

18-Q- Do you remember what time of the month it was.

Ans- It was the 7th.

19-Q- Is the West side of that street that you usually travel in going
to Mr Thompson's have a pavement all the way up to Cornhillville
street.

Ans- No sir.

Q- Did you know anything about any holes or obstruction in the pavement on that street.

Ans- No sir, I did not. As I come down the street there was a pile of dirt and some bricks ----

Q1-Q- Who was with you?

Ans- My little girl, Elizabeth. I stumbled over some bricks or rock, I reckon it was, and that pitched me into the dirt, and that threw me down and I fell with this shoulder into the hole, and hit the side of my neck. I had a bucket and I mopped that. I don't know what part of me hit the bucket - I had a tin bucket. I had brought some cream in. When I got up, I found my hand was bloody, and I went on down and went across to Mr Thompson's so I could see how bad my hand was hurt, and I cleaned my hand and the doc tied it up for me. I went on to Mr Martin. I didn't feel anything but a pain in my wrist. It felt like it was strained, but after I got there, my back got so hurt that I couldn't turn over the next morning. I wanted to know what was the matter and I went to the Doctor's office and told him about it - Mr Witherspoon.

Q2-Q- What position does he hold with reference to the town - or did he at that time?

(Objected to--

Ans- I don't know, but I think he is the town Doctor. I went to his office and told him about it, and he told me what to do. It knocked me up a right smart, and my back didn't have any feeling in it. I done what he told me, put a mustard plaster on it, but it didn't feel like it did any feeling it for a week or two; further up here, it still aches in my back when I bend it.

Q3-Q- Just to describe some injuries.

Ans- Nothing hurts me but my back; that hurts me when I draw a long

breath, right through here.

1-Q- Does that pain remain with you now?

Ans- In my back it does; it never has quit hurting me. I can't work with my hands good, and my back hurts me and it weak.

2-Q- How long did you remain under the care of Dr. Witherspoon?

Ans- I don't know exactly, but I know that was on the 7th of ^{October} ~~November~~, and the first doctor in January was the first Dr. Witherspoon's work I done. I had two churches and two washings - I was janitor at two churches, cleaned up Dr. Witherspoon's office and had two washings.

3-Q- And you had two families to wash for?

Ans- Yes, Mrs. Carlisle, and Mrs. Thompson, and I took care of the Presbyterian church and the Baptist church. I had to give up one of the churches and all the work except the baptisms, from the 7th of ~~October~~ ^{October} in January.

27-Q- Do you mean to say you didn't do any work at all from the 7th day of October until January.

Ans- I couldn't do anything, I couldn't even the church.

28-Q- What was the reason you didn't go to work?

Ans- I couldn't, and couldn't wash - it hurt my back, and hurt it yet.

29-Q- Were you in bed at any time?

Ans- I couldn't lay down - it hurt me, but I had to breathe.

30-Q- How long did Dr. Witherspoon remain in care of you as a physician?

Ans- I don't think he come out to my house but three times. The first time he come, he didn't look at my back. The next time he came he found it was swollen.

31-Q- How bad was it swollen?

Ans- I couldn't tell you. I couldn't see it. He said my back was swollen and I asked him what he thought was the matter - was it strained, and he said I had a binder wrenched it --- (Objected to

you say that was on the second trip that he made the examination of your back?

Ans- Yes sir.

33-Q- How long after the hurt had been received.

Ans- This was on the 7th, on Thursday I think it was, that I fell, and about the 10th or 11th was the first time he came. I went back home and done what he told me, and it didn't do me any good and then I sent for him.

34-Q- How long after that was the second trip you made?

Ans- I don't remember how long it was.

35-Q- In response to your sufferings, did he make the examination of your kidneys?

Ans- Yes sir. The first time he examined he said they were all right; then the next time he said they were injured.

36-Q- How long was that from the time that was the first visit to you and to the second examination when he told you they were affected?

Ans- I don't know just exactly - I never tried to keep any account. I couldn't answer that.

37-Q- I want to ask you if the pain you suffered at the time you described your sufferings to the Doctor that induced him to make this examination, is any different from the pain you experience now.

(Objected to, objection sustained to which I'll accept)

38-Q- You say you suffer with a pain in your back now.

Ans- It is about the same only it don't hurt quite as bad; it never has quit hurting entirely. I am not able to work now. I ~~am~~ am willing to be examined now.

39-Q- Going back to the time you fell, describe your position so far as it affects your sufferer, which was nearer the curbine?

Ans- Coming down this way, over here would be the horse; the man on the

side next to the house.

40-Q- She was on the inside.

Ans- Yes, I was on the side next to the like. This is the street; there is a little crosswalk there and this is the like out here. We come down this street this way - the like was thrown kinder back this way, and I commenced to stumble along here and fell, about that far from the edge of the walk - the like hole was out here. When I stumbled I pitched over this way, and first my shoulder went in this place, kinder this way; the dirt was on the pavement.

41-Q- Awhile - you said something about bricks.

Ans- The bricks was what I commenced to stumble over, and this piece of pipe.

42-Q- Your little girl was next to the fence from you?

Ans- Yes, next to the house.

43-Q- How did you get up?

Ans- The little girl pulled me up.

44-Q- Did you hear her speak to you after you fell?

Ans- I never, no sir. When she took hold of me she says - are you hurt, and I says - I don't know whether I am or not. After I got up I felt the blood on my hand, and I said my hand was hurt. A little later my wrist began to hurt and I thought I had sprained my wrist. I didn't hurt anywhere else until I went on to church and sat down, and then my back got to hurting me.

45-Q- Did you know anything about any obstruction in the street pavement?

Ans- No sir.

46-Q- Did you see it before you stumbled over the bricks?

Ans- No sir, I did not; it was as dark as could be.

47-Q- Did you examine this place the next day?

Ans- Yes sir.

Q- Was it still there.

Ans- Yes sir, the bricks were there, not the pipe. I ~~had~~ went down to see. I didn't know what it was until the next day; then I went to see the Doctor.

49-Q- In passing to and from your work, had you ~~examined~~ noticed the work on this sewer that was being built there.

(Objected to, objection over ruled, to which Deft excepts)

Ans- Yes, I knew they were working over there.

50-Q- Had you seen that sewer open during the time they were working on it.

(Objected to, objection sustained to which Plaintiff excepts)

51-Q- Did you suffer any pain except the pain in the back, after this injury.

(Objected to, objection over ruled, to which Deft excepts)

Ans- I hurt enough here - I had a swelling at the back of my neck, so I couldn't turn my head for several days - the swelling on the left side.

52-Q- Were there any cuts except on the hand.

Ans- No sir; that was all.

Cross Examination.

1-Q- How old are you, Rebecca?

Ans- I am 48 years old; I was born 1. 1862.

2-Q- What has been your constitution or health all your life up to this time.

Ans- I have been very stout.

Q- You live out on the Cornishville pike don't you?

Ans- Yes sir.

4-Q- You work for Mr C.D. Thompson?

Ans- Yes sir; I have been there 17 years.

5-Q- His place was way down further down from where you hurt?

Ans- Yes sir. Mr Thompson was down here further.

6-Q- Mr Aemon's place is right opposite that?

Ans- Yes sir.

7-Q- And you live down here on Cornishville pike?

Ans- Yes sir.

8-Q- How do you place this as being the 7th, Thursday, that you were hurt.

Ans- I was going to prayer meeting.

9-Q- What church were you going to?

Ans- To the Baptist church- their prayer meeting is on Thursday night.

10-Q- You are positive then that the accident happened on Thursday night?

Ans- Yes, I am sure it was.

11-Q- What time of night was it?

Ans- It was between 6 and 7 o'clock, as near as I can come at it.

12-Q- Was it dark?

Ans- Yes sir, it was dark.

13-Q- You had come up the Cornishville pike with your daughter?

Ans- Yes sir.

14-Q- And crossed over to the East side of the pike and come down that way?

Ans- Yes sir.

15-Q- There is a little drive way at Mr Vanarsdall's that goes back to his barn.

Ans- Yes sir.

The hole you speak of was North of the drive wa?

Ans- Yes sir.

17-Q- In coming down that street were the electric lights on?

Ans- No sir.

18-Q- Are you sure?

Ans- Yes sir, I am sure.

19-Q- Was the moon shining?

Ans- No sir.

20-Q- You were walking along here with your daughter.

Ans- Yes sir. I had a pocket in my hand.

21-Q- What was the first thing you saw in the way of an obstruction in the street?

Ans- I didn't see anything until the next day.

22-Q- Then how do you know that you struck your foot against?

Ans- I don't know positively- of course I couldn't pick out the very brick it was.

23-Q- Were they in the middle of the street?

Ans- I don't know. They were there where they were thrown out.

24-Q- Were these brick ~~known~~ torn up clear across the pavement?

Ans- No sir. The dirt was on the pavement.

25-Q- That was the dirt from this hole?

Ans- Yes sir.

26-Q- How far out on the pavement?

Ans- It looked about like that much - covering the whole pavement next to the house.

27-Q- Are you sure about that?

Ans- Yes sir.

28-Q- How deep and how high was that dirt?

Ans- About that high (indicating)

29-Q- Where were the bricks you are talking about?

the bricks were along up here . When I pitched my foot forward I struck that bank.

30-Q- Didn't you say something about hitting something before you got to the dirt?

Ans- Yes sir.

31-Q- Do you know what that was?

Ans- It felt like a brick, and when I went back the next the brick was there, laying scattered around the street.

32-Q- When you stumbled you fell clear out in the hole?

Ans- Yes sir- the hole was at the side of the walk.

33-Q- That dirt was fresh- wasn't it?

Ans- No sir, not when I saw it.

34-Q- The dirt your shoulder went in- was that fresh dirt?

Ans- I don't know.

35-Q- Was it soft- the dirt that you went into?

Ans- There was no dirt in the hole.

36-Q- It was along the side of the hole?

Ans- It was just like I told you - it had been there for some time.

37-Q- Did you fall in the dirt that came out of the hole.

Ans- Yes, that-----

38-Q- Did your shoulder fall in that dirt.

Ans- Yes, my shoulder struck this way.

39-Q- Did you strike the dirt?

Ans- I struck the hole.

40-Q- Did your shoulder go clear to the bottom of the hole?

Ans- No sir.

41-Q- When you fell what part of your body hit the dirt.

Ans- When I pitched forward, I kinder fell over this way.

42-Q- What did you fall on?

...over that pile into the hole, and my shoulder went in the hole
and the other part of me fell across that dirt.

43-Q What parts of your body?

Ans- My shoulder and arm went in this hole.

44-Q What was the rest of your body on?

Ans- The other part of me was lying on the dirt.

45-Q What was the dirt that came out of this hole?

Ans- Yes sir.

46-Q You got up and the little girl asked you if you were hurt and you
said you thought not.

Ans- Yes, I didn't think I was until I got further down, and then I discovered
my hand was wet and it was bleeding, and I went on down to Mr. Thompson's
and the cook tied it up for me, and then I went on to where I
was going.

47-Q You went on to prayer meeting?

Ans- Yes sir.

48-Q How long did you stay at prayer meeting?

Ans- I don't know; sometimes we stay about an hour- usually.

49-Q What time did you get back home 10 or 11 o'clock.

Ans- I don't know. I never looked.

50-Q You had walked on to prayer meeting and back?

Ans- Yes sir.

51-Q Did you sleep any that night?

Ans- Yes, some.

52-Q You stayed at home that night?

Ans- Yes sir.

53-Q Didn't have any Doctor?

Ans- No sir, not until the next day. I got so hurting so bad I went to see
the Doctor.

54-Q What day did you go to see the Doctor?

Ans- The next day, Friday, the 8th.

55-Q And as you come down town you stopped to see what it was that you had fallen over?

Ans- Yes sir.

56-Q What did you find the condition of the street then?

Ans- The bricks were there, and this old pipe, and that pile of dirt.

57-Q Were they still on top of the ^{pavement} ~~xxxxxx~~ that day?

Ans- Yes sir.

58-Q You are sure about that, that?

Ans- Yes sir.

59-Q How deep was the dirt ~~pi~~ piled on the pavement when you saw it?

Ans- It covered a place about that wide. (indicating)

60-Q It covered a ~~place~~ all over next to the grass plot?

Ans- Yes sir.

61-Q What did you do when you got up on Friday morning?

Ans- I didn't do anything.

62-Q What did you do on Saturday morning?

Ans- I don't remember.

63-Q What did you do on Sunday morning?

Ans- I stayed at home.

64-Q How did you happen to go to see the Doctor?

Ans- My back was hurting me.

65-Q How did you happen to go to Dr Witherpoon?

Ans- He had been my Doctor ever since he had been here.

66-Q How many years?

Ans- I couldn't tell you how long. He has been our Doctor ever since Dr Peddiford left here.

67-Q You went to him on Friday?

Ans- Yes sir.

68-Q-You went to his office?

Ans- Yes sir.

69-Q- How far is that from your house.

Ans- I don't know.

70-Q- It is nearly 2 mile?

Ans- About three quarters of a mile.

71-Q- You walked down there and back?

Ans- Yes sir.

72-Q- When was the next time you saw the Doctor?

Ans- I don't remember whether I come back or whether he come to my house the next time.

73-Q- You say you stayed at home on Sunday- what did you do on Monday?

Ans- I was at home.

74-Q- Did the Doctor come that day?

Ans- No sir.

75-Q- Did the Doctor come on Tuesday?

Ans- ~~Yes~~ He come somewhere about about 10 or 11 o'clock, the first time.

76-Q- That was the first time he had been to your house.

Ans- Yes sir.

77-Q- Did you send for him.

Ans- Yes sir.

78-Q- Before he come out there had you seen Enoch Burton?

Ans- Yes, I saw Mr Burton.

79-Q- Did you have any talk with him?

Ans- Yes sir. He asked me what was the matter- what made me walk that way, and I told him I was hurt.

80-Q- Did he tell you anything about going home and going to bed.

Ans- I don't remember.

81-Q- That conversation that you had with him, was that before the Doctor come out to see you.

Yes, I think that was the next time.

Q Didn't you tell Mr ~~Arthur~~ Burton that you had fallen into this hole going down town, and didn't he tell you that the thing X you ought to do was to go home, go to bed and send for the Doctor.

Ang- No sir, he didn't. I don't remember of him telling me that.

83-4- You did go home and have the Doctor?

Ans- I didn't have the Doctor that day. I had just come from the Doctor before I saw him- was coming from there then.

Q4-4- What had you been doing just before ~~xxxxxx~~ you got hurt, for the last few days - the last week.

Ans- The day before I was hurt I had finished ironing at Mr Thompson's, and Wednesday I didn't do anything, except the church - that is the white folks prayer meeting- the Presbyterian church. Then Thursday that was the Baptist church.

85-7- And you went to prayer meeting that night.

Ans- Yes sir.

Q- What had been your last conversation with him?

Ans: I worked for Mr. Thompson for 20 years.

10-10- You only washed for him one day in the week

Myself too, but I ironed too.

88-Q- Then where else did you work?

Ang- I had Mrs Stevia Cardwell's
Mrs Cardwell's

LD-4- Who else?

Q. I never used any other regular war dog. I had been at work first one place and then another. I picked up Dr. Witherspoon's office.

90-Q- After you were hurt, didn't you still go to Mr Thompson's.

Ans- No sir. I never went there any more until January.

91-Q- Then you went back to Mrs Cardwell's too?

Ans- No sir, I didn't wash for her any more.

92-4- Did you still clean up the two churches?

Ans- No sir, the family did.

93-Q- Did you help?

Ans- No sir.

94-Q- Did you go to help?

Ans- I went thereafter a month.

95-Q- Did you help do the work after a month?

Ans- No sir.

96-Q- How many times did Dr Witherspoon come to your house to see you?

Ans- I don't remember- two or three times.

97-Q- Did you have any other Doctor after that?

Ans- No sir.

98-Q- Have you ever had any other Doctor to examine you?

Ans- No sir.

99-Q- Is it not a fact that you had Dr RoBards to examine you?

Ans- No sir.

100-Q- Didn't you have Dr Carol Price?

Ans- No sir.

101-Q- Did Dr A.D. Price examine you?

Ans- No sir.

102-Q- Didn't you try to get others to examine you?

Ans- No sir, I never tried. I went to Dr RoBards.

103-Q- When was that?

Ans- It has been about two months ago.

104-Q- How did you happen to go to him?

Ans- Judge Roach told me he would like for ~~xxx~~ for some other Doctor to see me.

105-Q- And you went to Dr RoBards?

Ans- Yes sir.

106-Q- Did he examine you?

for her since I fell.

120-Q- Did you have any pain in your back or any kidney trouble before this happened.

Ans- No sir.

121-Q- Nothing of that kind?

Ans- Not as I know of.

122-Q- You say your back still pains you?

Ans- My back does, yes sir. When I work my back gets tired and weak.

123-Q- It don't hurt you when you first setup in the morning.

Ans- I feel very well until I begin to work.

124-Q- How long does it take you to get tired?

Ans- It is owing to what I am doing. I couldn't tell you.

125-Q- How often did you pass up and down the East side of that street where you were hurt?

Ans- I couldn't tell you. I would go that way lots of times.

126-Q- About how often?

Ans- I can't tell you. I don't always go that way to town.

127-Q- Did you pass by that way on Monday before this thing happened?

Ans- Not on that side.

128-Q- Did you pass on the other side?

Ans- Yes, on the side where I go to work.

129-Q- Did you notice that hole then?

Ans- No sir.

130-Q- Did you notice it on Tuesday?

Ans- No sir, I never thought anything about it.

131-Q- Did you notice it on Wednesday?

Ans- No sir.

132-Q- Could you have seen it if you had looked over there?

Ans- Yes, I guess I could.

133-Q- Did you notice it on Thursday as to whether there was anything

Ans- No sir.

107-Q- Since the 1st of January, have you been working all the time?

Ans- No sir, not all the time.

108-Q Have you been still working for Mr Thompson since then?

Ans- Yes sir.

109-Q- How regular amount of work you had been doing there?

Ans- Yes, but not by myself.

110-Q- You still have your two churches?

Ans- No sir, just one.

111-Q- You are doing the work for that?

Ans- Yes, I am doing the work.

112-Q- How much a week did you earn up to the time you were hurt?

Ans- I got \$2.00 for the church, \$1.50 a week at Mr Thompson's; \$1.50 xx
xxxx for the church, \$2.25 for and 50 cts at the afternoon,
besides the other day work that I did.

113-Q- About how much did you make on an average per week?

Ans- You can count that up.

114-Q- How much did you also outside of what you have given?

Ans- I am hardly ever at home for the week.

115-Q- You average about \$5.00 a week?

Ans- Sometimes more.

116-Q- How much more?

Ans- I don't know just how much. I did lots of work out by the day.

117-Q- Since the 1st of January you have been able to do the same amount of work?

Ans- No sir.

118-Q- How much difference does it make?

Ans- I am not doing anything regular but Mr Thompson's work and the church.

119-Q- Who else did you work for?

Ans- Nobody else regular, since Mrs Cardwell went away. I haven't washed

over there or not.

Ans- I wasn't down thereon Thursday until that night.

Re- examination.

1-Q- You sometimes serve as nurse for women, don't you.

Ans- Yes sir.

2-Q- And work in the cornfield if necessary?

Ans- Yes sir.

3-Q- You say I told you I would like to have another physician make an examination, examination of you, why didn't you have a physician to examine you -- did you say anything to Dr Witherspoon about it?

Ans- Yes, I did after I went up there. Dr Richards said he didn't want any law suit, after he found out I was hurt. Dr Richards said if Dr Witherspoon was willing - that he was a particular friend of his - and I could go and ask him about it, and while I was in the office he telephoned to Dr Witherspoon himself, and after he received the message he come and told me that he had telephoned Dr Witherspoon--- Dr Witherspoon said to me- Well, I have done you right, and I said I believe that, and I didn't want to make no ill feelings.

4-Q- Who was it you told that to?

Ans- Dr Witherspoon, when we were talking about me being at Dr Richards. I didn't go back to Dr Richards. I felt like it would make hard feelings, and I didn't want to do anything like that.

Re- cross examination.

1-Q- What was the reason for the suggestion that you go to Dr Richards?

Ans- I don't know.

2-Q- Did he explain why he wanted you to go there?

Ans- No sir /

Re - re examination.

1-Q- Didn't Dr Witherspoon say to you that it was all right for you to get somebody else if you wanted, but you didn't do that?

Ans- After I seen ~~him~~ how it was, I didn't do it.

Re - Cross -examination.

1-Q- Did you know that Dr Witherspoon was the City physician when you went to him?

Ans- Yes, I knew it.

2-Q- He was also your physician?

Ans- Yes sir. He was my regular Doctor.

Z.D.Bryant, Examined by Atty for Plff

1-Q- Where do you live?

Ans- I live up on College Street. On the West side.

2-Q- Say this is the Cornishville pike, and you live here next to the first house on this street, about along here.

Ans- Right here is the Cornishville pike; this is the pavement along here--
shows

3-Q- This plat shows the pavement here, and this ~~the~~ grass plot is wider than the pavement - is that true?

Ans- No sir; the grass plot is not more than two feet wide.

4-Q- Do you remember the hole that was in the grass plot there near C.S.Vanarsdall corner?

Ans- Yes sir.

5-Q- When did you first see that hole?

Ans- The first ~~next~~ time I noticed it was the night of the registration.

6-Q- What day was that.

Ans- Monday was Court day- that was the 4th, I think, and Registration day was Tuesday the 11th.

7-Q- Describe the hole as you remember it.

Ans- It was late at night when I went along there- the police close at 9 o'clock. I was one of the officers and had to put the ballots away before I could go home, so I reckon it was after 10 o'clock when I passed there. I walked along, and the dirt was on the side walk- that attracted my attention to the hole.

8-Q- What kind of a hole was it.

Ans- I didn't pay much attention only I just saw it. I thought it was a hole for a telegraph pole or electrical light pole when I first saw it.

10-Q- What did you finally find out what it was?

Ans- I afterwards heard -----

11-Q- Did you see the hole afterwards?

Ans- Yes, the next night I saw it.

12-Q- What kind of a hole did you discover there?

Ans- As I told you it looked like an electric light pole or telegraph pole.

14-Q- What was the condition of the hole?

Ans- The dirt was piled up there, and if I remember right there was some 4 or 5 inch pipe there, 5 or 6 feet long. One end of this pipe was on the pile of dirt, and the other end on the pavement.

13-Q- Where was the dirt piled with reference to the pavement.

Ans- The hole was in the grass plot, if I remember right, and the dirt was scattered out on the pavement at least two feet or more.

14-Q- When did you notice the hole again after the Tuesday night you saw it?

Ans- I noticed it nearly ever night for a week I reckon.

15-Q- Did you pass along there with anybody.

Ans- On Wednesday night- the second time I saw it, we came down to the

picture, she with my little boy, Christopher, and my ~~xxxxx~~ niece Mary Gore, and about the time we got to this side gate - it was on the pavement, and Mary was on the outside of the pavement and I cautioned her about the hole. I says look out, take care, something like that.

CROSS EXAMINATION

1-Q- You say you were late on that Tuesday night on account of having to put the ballots away.

Ans- Yes, I think the polls closed about 9 o'clock and I got away from there about 10 o'clock.

2-Q- You counted the ballots, and made up your returns, and then you went home?

Ans- Yes, I think so.

3-Q- What place did you serve at that morning?

Ans- Down at the Chambers house.

4-Q- Who was elected?

Ans- Judge Saufley.

5-Q- Then it was the day Judge Saufley was elected you went home and saw that hole?

Ans- Yes sir.

6-Q- Who else was running ~~xxxx~~ in that election.

Ans- I don't remember now.

7-Q- You left the polls about 9 o'clock?

Ans- Yes sir.

8-Q- And you went up the East side of the street?

Ans- Yes sir.

9-Q- Did you ever take any measurements of this hole or cross plot?

Ans- Up to in front of Mr Edwards'.

Q-Q- On the other side it is paved - the way up

Ans- Yes, up to Mr Neale's corner.

Q-Q- What is the travel on the West side there.

Ans- All the travel out that way.

Q-Q- Is that much or little- Is there a considerable part of the town out on the Cornsylvia pike- out that way, that are foot passengers.

Ans- Its a great many of the people who live out there are foot travelers.

Q-Q- State whether or not the people who live out that way are owners of vehicles or are they walkers?

Ans- Most everybody from out that way has to walk. Mrs Throckmold lives further out Cornsylvia street, and she rides in a buggy.

Re re cross examination

1-Q- Didn't you go up town on the West side of the street in the day time?

Ans- While I was working for Mr Acker I was on that side.

2-Q- Did you see any hole over there either Tuesday or Wednesday night as you went up town in the day time?

Ans- No sir.

3-Q- You were only about 40 or 50 feet from it.

Ans- Occasionally I would go down Price Avenue, when the road is good- there is no side walk - occasionally I go down that way.

Dr W.H. Witherspoon.

Examined by Atty Gen Rich

Q-Q- What is your profession?

Ans- I am a physician.

Q- What position do you hold in the City of Harrodsburg?

Ans- I am city physician.

3-Q- What position did you hold in October 1906?

Ans- City physician.

4-Q- Do you know the Plaintiff Rebecca Sallee?

Ans- Yes sir.

5-Q- State whether or not you saw her professionally any time during the month of October of last year?

Ans- Yes sir, I did.

6-Q- When was the first time you saw her?

Ans- The first time was the 8th or 9th of October.

7-Q- Did you see her after that?

Ans- Yes sir, several times.

8-Q- You made an examination of her and treated her professionally?

Ans- Yes sir.

9-Q- Will you please state to the jury what you found to be the trouble with this woman?

Ans- The day she came to my office she told me about falling, and complained of her back. I examined her at the office and told I didn't think there was anything seriously wrong at the time, though she had a slight fever and her temperature was 99. She complained more of her back than anything else. I told her to go home and lie down and put a plaster on, use some liniment and see if that would remove the pain.

10-Q- This examination at the office was not a close examination.

Ans- I examined her closely. I had her to loosen her clothing.

11-Q- Her clothing was not entirely off?

Ans- No sir, not entirely.

12-Q- Later on, did you make any examination of her back?

Ans- Yes sir. My first visit to her house was on October 11th. At that time she complained of her back being very sore. She had a slight

xxix page of the left side, back, I suppose about that large (indicating).

13-Q- In inches about how wide across?

Ans- I suppose 6 by 6.

14-Q- At the apex of the pond- probably how deep?

Ans- About an inch.

15-Q- Later on did you make any ^{further} examination of her.

Ans- Yes; after that I had her send me a specimen of her urine. I examined that and I found she had albumen in it, which means bright's disease.

16-Q- Did you examine it once before and find it without a trace?

Ans- No sir- the day she came to the office, I didn't. The first time she called me at the house I told her to send me a specimen.

17-Q- And you examined it for some time afterwards?

Ans- Yes.

18-Q- How long did the kidneys continue in that condition.

Ans- For 5 or 6 weeks; then she got better.

19-Q- Was that condition of the kidneys such as would be produced by a fall, a wrench or a strain.

Ans- Yes, it ~~was~~ could have been produced by a wrench or a fall, if the kidney became loosened so that it became a floating kidney; that condition of her kidneys might have been due to some muscular ~~trouble~~ trouble -----

20-Q- There was a muscular trouble?

Ans- Yes sir.

21-Q- It was upon her statement ~~xxx~~ of her ailment, and the way it affected her that caused you to make this examination of the kidneys?

Ans- Yes, I examined her thoroughly.

22-Q- The examination followed because of her statement to you as to the way she suffered.

Ans- Yes sir.

23-Q- That caused you to suspicion this condition, and you found it in accordance with your suspicions?

Ans- When she sent for me and made her complaint; then I examined it.

24-Q- And the sufferings she told you she experienced caused you to attribute it to the kidneys, and your examination revealed the fact that you were right in your diagnosis.

Ans- Yes sir.

25-Q- Would the condition you found on her- this gone 6 by 6 on her back, cause this woman much suffering?

Ans- Yes sir.

26-Q- Would that suffering remain after the trace of albumen had ceased to appear?

Ans- It might.

Cross Examination.

1-Q- How long had you seen her physician before she came to you at this clinic?

Ans- I had been her physician nearly every since I came here, about 4 years ago.

2-Q- Did she come to you as her family physician, or as the City's physician?

Ans- As her family physician. Being her physician has nothing to do with my City work.

3-Q- The first time you saw her she came to your office?

Ans- Yes sir.

4-Q- And the next time you went to her home?

Ans- Yes.

5-Q- And that was about the 10th of October?

Ans- That was the 11th day of October.

6-Q- How long after the 11th before you went to see her again?

Ans- I saw her again on October 16th.

7-Q- And how many times after that?

Ans- Three or four.

8-Q- When you saw her about six times, in all?

Ans- Five or six times.

9-Q- About what month was the last time you saw her?

Ans- About two months ago.

10-Q- Did you at any time discharge her as cured, or as relieved?

Ans- No, I didn't discharge her as cured, but as relieved of the conditions I found. She continued to complain.

11-Q- When did you discharge her of the conditions you found?

Ans- About 5 or 6 weeks after she was hurt.

12-Q- In diagnosing cases, there are different kinds of conditions to go by to ascertain the trouble?

Ans- Yes sir.

13-Q- Explain to the jury how you would take them into consideration?

Ans- In an injury such as Rebecca had, in ascertaining the trouble -- one of the first things you would do would be to examine the kidneys and by an examination of the urine you can usually get all the information you want concerning the kidney. I examined it more because she complained and also as original examination.

14-Q- And the symptoms were those that lead you to make an analysis?

Ans- Yes.

15-Q- In examination of a patient there are some things you are compelled to take from the patient?

Ans- Yes, you have to take a man's statement for what it is worth.

16-Q- What kind of symptoms do you call that.

Ans- Subjective symptoms.

... and other kinds of symptoms.

Ans- Objective.

18-Q- You see the objective and the subjective you get from the patient?

Ans- Yes sir.

19-Q- At the end of this 3 or 4 ~~xxxxx~~ weeks, were there any symptoms at all?

Ans- No sir.

20-Q- What examination of this woman did you make at that time to ascertain her condition?

Ans- I saw her at my office; had her remove a portion of her clothing, and examined her back.

21-Q- What did you find her condition to be?

Ans- I didn't find anything wrong with her except what she complained of.

22-Q- At that time you discharged her as relieved?

Ans- Yes, I told her she was all right.

23-Q- When you examined her on the 11th, or about that time, I believe you say you found albumen in the urine?

Ans- Yes.

24-Q- And that ordinarily indicates Bright's disease.

Ans- Yes, that usually means Bright's disease.

25-Q- What is Bright's disease.

Ans- Ordinarily an inflammation of the lining of the kidneys - the kidney itself.

26-Q- Ordinarily what causes it?

Ans- It may be caused by a severe burn, by taking strong medicine - turpentine ~~will injure the kidney~~, or anything to injure the region of the kidney ----

27-Q- By an injury to the region of the kidney, what do you mean by that.

Ans- Such as she had in the muscles of the back.

28-Q- That would have caused the albumen?

Ans- Yes.

29-Q- At the time of the discharge in five or six weeks was there any albumen?

Ans- No sir.

30-Q- How often have you examined her since the ^{first} discharge?

Ans- I have examined her from time to time, four to six times.

31-Q- What did you find her condition at those times?

Ans- In good condition with the exception of the complaint.

32-Q- Were there any objective symptoms at any time?

Ans- No sir.

33-Q- Any evidence of any albumen?

Ans- No sir.

34-Q- No other evidence of Bright's Disease?

Ans- No sir, only except the pain that she complains of in the region of the kidneys.

35-Q- Is the test for albumen an infallible test or not.

Ans- We have two or three tests that usually settle it.

36-Q- The first time you went to the house to see her was the 11th of Oct.?

Ans- Yes sir.

37-Q- Did she ever sit up in bed?

Ans- She put herself in the most comfortable position, sometimes in a rocking chair, on a couch, or wherever she was most comfortable.

38-Q- You saw her on the 11th, then on the 12th, then when did you see her again?

Ans- Nov 5th, 26th, and December first.

39-Q- Between those times did she come to your office?

Ans- No sir, she didn't come to my office until I stopped going out there, except the first time. Then she came to the office from time to time.

Re-examination.

40-Q- How long have you known the Plaintiff four or five years?

yes sir.

1-Q The subjective symptoms you have to take on confidence?

Ans- Yes sir.

2-Q You say that pain still exists - the pain and suffering?

Ans- Yes, I believe she is still suffering.

1-Q- ~~XXXX~~ cross examination.

1-Q In your judgment, based on the objective and subjective symptoms, has she that pain?

Ans- If ~~someone~~ ~~told~~ told me she had a pain I would believe she had a pain.

1-Q- re examination.

1-Q That is because of your knowledge of her?

Ans- Yes sir.

Mary Gore, Examined by Attorney for
Plaintiff.

1-Q What relation are you to Mr Zed Bryant?

Ans- I am a niece.

2-Q Do you remember on one occasion of passing down College Street near a hole that had been made near the pavement- passing there with Mr Bryant?

Ans- Yes, I remember seeing the dirt lying on the pavement - a pile of it on the pavement.

3-Q Of your own knowledge are you able to say what day of the week or month that was?

Ans- No sir; I think it was about the middle of the week. I am not sure.

4-Q- What was it you saw and heard?

Ans- It was between Mr Venersdall's and Mrs Linne's. I didn't notice the hole, but I saw the dirt piled up on this side of it.

5-Q- Where was the hole in reference to the paved part?

Ans- The hole was on the outside of the pavement in the front plot. The dirt was on this side towards the fence.

6-Q- Right on the pavement?

Ans- I think a little of it was on the pavement.

7-Q- Did you notice any rings there?

Ans- No sir.

8-Q- How often did you see this pile of dirt?

Ans- I don't remember.

9-Q- Had you seen it before this night?

Ans- No sir, I don't think I had.

10-Q- Are you sure about that?

Ans- I don't think I saw it before that.

11-Q- How often do you think you saw this hole?

Ans- Two or three, maybe four or five times.

12-Q- To you mean 3 or 4 different times?

Ans- Different times, it seems like- I don't remember.

13-Q- Do you remember hearing about Rebecca Salter being hurt?

Ans- Yes, I heard it.

14-Q- Had you seen the hole before that.

Ans- Yes, it was before that. I heard in two or three days that she had fallen in.

15-Q- After you had seen the hole and pile of dirt on the pavement?

Ans- Yes sir.

Cross Examination.

1-Q- You think it was about the middle of the week that you came down with

(Objected to, objection sustained to which Plaintiff excepts.

3-Q- Do you know Mr Adams?

Ans- Yes sir, I know him when I see him.

4-Q- Do you know whether he has any connection with the town?

(Objected to-

Ans- No sir, I don't know.

And this was all the testimony offered by Plaintiff in Chief.

Attorney for City of Harrodsburg moves the Court to peremptorily instruct the jury to find for the City, and the Court reserves its ruling upon said motion at this time.

Whereupon the Defendant introduced witnesses who testified on its behalf as follows;

C. S. Vanarsdall, Examined by Atty
for Defendant

1-Q- How old are you Mr Vanarsdall?

Ans- I am 75 or soon will be.

2-Q- Do you own any property on College Street in Harrodsburg?

Ans- Yes sir

3-Q- Examine this diagram and point out to the jury where your property is?

Ans- It is right here.

What street is that on?

Ans- It is on College Street.

Q- What does this line represent?

Ans- The drive way to the back part of my premises.

Q- Is there a pavement in front of your property?

Ans- Yes sir.

Q- Have you taken the measurement to see how wide that pavement is?

Ans- Yes, it is 5 1/2 feet.

Q- What is this strip between the old pavement and the curb?

Ans- It measures 2 1/2 feet, ~~xxxxxxxxxxxxxxxx~~ to that plug and 4 feet out.

Q- Then how much would that be?

Ans- 5 1/2 feet from here out to there.

Q- What does that red line indicate?

Ans- I expect it is meant for the sewer pipe- I don't know what else it would be.

Q- What improvements were you making up there at your property last October?

Ans- I was putting in a sewer pipe, to drain the back part of my house.

Q- Is there a telephone pole in that grass plot anywhere.

Ans- Yes sir, 3 1/2 feet out from that plug.

Q- That red spot on the plot represents the plug?

Ans- Yes, I suppose so.

Q- When did you commence that work?

Ans- I commenced it on Tuesday morning after Court day in October.

Q- What was the first thing you did?

Ans- I dug out that sewer pipe place.

Q- Across the pavement?

Ans- We commenced at the pavement.

10-Q- Did you tear up the pavement the ^{first} ~~xxxx~~ day?

Ans- We did that morning.

11-Q- On the 5th?

Ans- Yes sir.

12-Q- What did you do when you tore it up?

Ans- We laid some plank along there for people to walk over.

13-Q- Did you put anything in there in the way of a pipe under the pavement?

Ans- Not that day.

14-Q- When did you put it in there?

Ans- On Wednesday evening. We never did take the balance of it out until Wednesday evening. Mr Adams laid the pipe. That was his contract. I was just to dig this drain. He was to tap the pipe; and we ^{filled} put that in the same evening.

15-Q- What was it you filled up that same evening.

Ans- On Wednesday- the last evening.

16-Q- What did you fill up?

Ans- That drain we dug out there.

17-Q- What did you do with the brick you had taken out?

Ans- I laid some of the brick over on this side, and the balance we piled up above the pavement up this way.

18-Q- How far from the pavement?

Ans- Right by the side of it.

19-Q- On which side of the pavement?

Ans- Next to the house.

20-Q- You did that Wednesday afternoon?

Ans- Yes sir.

21-Q- What was Mr Adams doing while you were doing that?

Ans- He was at work up at the back part of the house, putting in the pipes there.

22-Q- Had this hole ever here been dug then?

no sir.

20-Q- When was it done?

Ans- It wasn't done there at noon Wednesday. I didn't know it was done until Thursday morning.

21-Q- What time Thursday morning did you go out there?

Ans- It was pretty early.

22-Q- Was it before or after breakfast?

Ans- I don't know now- it was pretty early.

23-Q- Did you go down to look at it?

Ans- Not then.

24-Q- Did you go down that morning any time to look at it?

Ans- Yes, I went along some time in the day.

25-Q- What day of the month or week was that on?

Ans- On Wednesday we went to work and we were two days getting the job finished.

26-Q- On Thursday, what day of the month was that.

Ans- Monday was the 5th - that would make Thursday the 7th.

27-Q- When you went down there on Thursday morning, on the 7th, what condition did you find it in?

Ans- It was open.

28-Q- How much dirt was on the pavement, if any?

Ans- Some of it was piled up against this post here and some of it had run down on the edge of the pavement 6 or 8 inches.

29-Q- How high was that dirt running out 6 or 8 inches.

Ans- It ran down gradually. I don't know that I could tell you just how high it was.

30-Q- Were there any loose brick in that pavement.

Ans- I never noticed any.

31-Q- What did you do with the loose brick?

Ans- Piled them up on the pavement next to the house. There wasn't none dug out of there. I never heard of that.

39-Q- Did you see the old bollard that had been taken out of the old plug?

Ans- I never saw it after it was dug out. . . I was going to fill that hole the next day that Mr Adams was there that night, but Mr Farney said he was going to put in a new one right away and----

40-Q- What day did you cover that hole?

Ans- The next day after it was dug out, on Thursday.

41-Q- What time of the day did you cover it up?

Ans- Some time before noon.

42-Q- How did you cover it?

Ans- I went to the barn and carried down three planks 10 inches wide, nine planks, about 7 ft long and I laid them over the hole and put some bricks on them.

43-Q- Did you see the place again on Friday?

Ans- Yes sir.

44-Q- What condition was it in when you saw it on Friday?

Ans- Just like I fixed it.

45-Q- Up to that time had you received any information that this woman had been hurt there.

Ans- I had.

46-Q- When you covered it up was the loose dirt there?

Ans- Looks like they dug it up.

47-Q- Did you go back there and make any examination of the place?

Ans- Yes, after I heard some one had fallen in it. The dirt was there just like it was and all just like I covered it up. The plank was on the same way.

48-Q- Were there any evidences there on Thursday morning that anybody had fallen in?

(Objected to, sustained to which Deft excepts)