

**The History of  
Courts in  
Carroll County**

By

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## THE HISTORY OF COURTS IN CARROLL COUNTY

During the 156 years since creation of our first court, the Carroll Circuit Court, Carroll County also has been served by a probate court, a common pleas court and numerous justice of the peace, city and town courts.

From the beginning, the circuit court was referred to as the "Carroll Circuit Court." By an Act of the Indiana General Assembly approved January 24, 1828, it was originally included in the First Judicial "District" composed of 13 counties including Tippecanoe. I have so far found no explanation of why Judge Bethuel F. Morris of the Fifth Judicial Circuit presided from 1828 to 1830. In 1830 the First Judicial Circuit was reduced to eight counties including Carroll County. In 1840, Carroll County was placed in the Eighth Circuit with 10 other counties including Cass and Allen Counties. In 1852 we were transferred to the Ninth Circuit, and the following year we were placed in the Eleventh Circuit with seven other counties including Howard, Cass and White Counties. In 1873 we were transferred to the Twenty-Ninth Circuit, a joint circuit with Cass County. Four years later we were included in the Thirty-Ninth Circuit with White County, where we remained for the next 50 years until formation of the present Seventy-Fourth Judicial Circuit in 1927. For trivia buffs, the Carroll Circuit Court has been in seven different judicial circuits (excluding the fifth) with 33 different counties. For a complete listing of circuits, see Appendix A.

From the standpoint of lawyers, a court is known by its order book. I have heard lawyers say: "If it's not in the order book,

it didn't happen." However, we know from the Order Book of the Circuit Court in Carroll County that judicial action did happen which is not in the order book. For instance, on Tuesday Morning, November 17, 1829, in the case of State of Indiana on the Relation of Samuel Milroy v. Henry Robinson, Judge Morris ordered Henry Robinson to appear in the afternoon and show cause why he shouldn't be attached for contempt "in refusing to obey a certain writ of injunction issued by the associate judges of this court in vacation..." I find no order book entry on the issuance of the injunction. Incidentally, Henry Robinson was present in court as he appears to have been at most early court sessions, and by agreement, the case was continued.

The first meeting of the "Carroll Circuit Court" was held at the house of Daniel Baum on Thursday, May 8, 1828. Judge Bethuel F. Morris of the Fifth Judicial Circuit presided. The first business was the entry of Judge Morris's commission from the governor and the commission of Henry B. Milroy as Sheriff of Carroll County. Following the recording of these two entries, court adjourned until 7:00 A.M. the following day.

On May 9, 1828, the commissions of Daniel F. VanDeventer, elected as clerk and Isaac Griffith and Christopher McCombs, "elected to office of associate judge" for a term of seven years, were presented and entered.

James Rariden, Septimus Smith, William Qualess and Andrew Ingram were the first attorneys admitted to practice.

The first case was a petition by Jacob Kuns to be appointed guardian of Rosannah Hiestand, the infant daughter of his wife's sister who died in 1818. The petition was granted. For the final

chapter in this interesting case, see *Hiestand and Others v. Kuns* (1847) 8 Blackf. 403.

A court seal was approved, and court adjourned until the next term.

On Thursday, November 6, 1828, the Carroll Circuit Court was convened by Associate Judges Griffith and McCombs. Two money judgments were entered, two attorneys were admitted to practice, 14 jurors were produced by Sheriff Milroy, and in the words of the order book, "There appearing to be no business for the said jury, they are therefore dismissed by the court." The second money judgment mentioned above was a suit for debt by Alexander Grimes, assignee of Jesse Clark, against Henry Robinson. Robinson appeared in person, but offered no objection, and judgment was entered against him for \$147.20 plus costs. And court was adjourned.

Thus concluded the business of the Carroll Circuit Court in the first year of its existence. The court had met three days in 1828 and disposed of three cases: A guardian was appointed and two money judgments were entered, one by default and the other without objection.

In 1829, judicial business in Carroll County increased. On May 18, 1829, the court met, apparently for the last time at the house of Daniel Baum with Judge Morris and Associate Judges Griffith and McCombs presiding. A Grand Jury was impaneled, and Andrew Ingram, was appointed the first prosecuting attorney, pro tempore. Without objection, a money judgment for \$321.75 plus costs was entered and court adjourned "to meet again at the school house in the Town of Delphi."

On May 19, 1829, the Grand Jury returned 14 indictments,

six for affray, that is fighting, six for assault and battery, and two for adultery and fornication. Bond was set at \$100.00 each for the two charges of adultery and fornication and \$30.00 in all other cases. Then court adjourned until the November term.

On November 16 and 17, 1829, the Carroll Circuit Court met at the public school in the Town of Delphi.

The first jury trial was held in a criminal case of assault and battery charged against Parker McGriff. The jury found the defendant guilty and he was fined \$3.50 "for the use of the Carroll County Seminary..." plus costs. While the fine doesn't seem much today, it was larger than those imposed in guilty pleas in other cases in 1828 and 1829. It appears that affray was regarded worse than assault and battery. Affray generally produced two dollar fines while assault and battery generally received \$1.00 fines.

The Grand Jury returned four new indictments for assault and battery and two for affray. Three new civil cases were commenced, another was submitted to the court and disposed, 12 householders were ordered selected by the sheriff to examine and report on a proposed mill site pursuant to statute upon petition of Samuel Milroy, and court was adjourned. The bailiff was awarded 75¢ per day for two days attending the Grand Jury.

Reviewing the 315 pages of the first order book entries of the Carroll Circuit Court covering the years from 1828 to 1837, the similarities to entries in the order book of today are many.

Although typical cases had different names, like trespass on the case, assumpsit, trover, debt, in chancery and divorce, the subjects of today's typical cases are very similar. However, there are certainly more divorces and fewer slander actions today.

Appeals from justice of the peace courts constituted a significant part of the civil caseload in the early years. They have disappeared with the justice of the peace courts. Entries from April 22, 1830, through the last entry October 27, 1837, consumed 296 pages of handwritten entries. During the last year in circuit court, we filled 1316 pages in a comparable order book of typewritten entries, plus 1190 pages of entries in the probate and guardianship order book, plus 226 pages in the juvenile order book, a total of 2732 pages of orders within the past year compared to an average of 42 pages per year between 1830 and 1837.

In 1837 the Grand Jury returned 51 indictments, a majority of which were for betting and assault and battery. Throughout the first nine years, the most common crimes were assault and battery, affray i.e. fighting, gaming and betting, followed by retailing spirituous liquors, petit larceny and grand larceny. These generally brought a fine from 1¢ to \$2.00. The most severe penalty I found was a conviction of grand larceny of Edward White on October 25, 1837, by a jury. The jury set his fine at 1¢ and sentenced him to two years in the state prison at hard labor. His attorney, Samuel Wilson, was ordered paid \$15.00 for defending him. One of the larger fines assessed during the period was against Sheriff Samuel D. Gresham, five dollars for permitting noise in the lobby of the courthouse on April 25, 1837. In one conviction for larceny on October 25, 1836, the defendant received a fine of 1¢ and was ordered imprisoned for one hour.

One of my personal favorite entries comes from an appeal from the justice of the peace where Judge Porter's order was as follows: "Now comes the parties by counsel and the matters and

things herein being by the court fully heard and inquired into, but not being fully advised in the premises gives the parties further day in the present term to hear the courts decision."

Apparently, the judge, as we say today, took the case "under advisement," but he didn't keep it there long. As his first entry the following day, Judge Porter entered his order finding for the appellee.

One of the most extraordinary entries in the first order book occurs at page 28. Associate Judge Isaac Griffith appears in the order book not infrequently as a litigant, sometimes as appellant or appellee on appeals from judgments in the justice of the peace courts. Although the record doesn't reflect it, I trust that he disqualified himself from participating in the decision because he did lose his case on occasion. On this particular occasion he joined his wife, Jane Griffith, in a suit for slander against Ethen Allen. A copy of the original complaint is attached.

See Appendix B. The entire entry is as follows:

"Isaac Griffith & Wife ) Slander  
vs. )  
Ethan Allen ) At this time comes the parties by  
their counsel and by agreement this cause is dismissed at defendant's  
cost and by further agreement the following certificate was ordered  
to be spred upon and made a part of the record

Isaac Griffith & Wife ) Case for Slander  
v. )  
Ethan Allen ) Carroll Circuit Court April term 1830

In this case I am willing to acknowledge that the words imputed to me was spoken upon the information of an other without any foundation in truth as far as I know that of my own knowledge

(7)

I know nothing against the character of Miss Griffith on the contrary her conduct towards me has been modest and becoming and it is my belief that she is innocent of the charge and imputations cast upon her character. I am willing to make this acknowledgement and to pay the costs and charges which have accrued in this slander suit or to give ample security for the payment on condition the cause is compromised without further prosecution.

S/S Ethan Allen

It is therefore considered that the plaintiffs recover against the said defendant their costs by them expended in this behalf and the defendant in mercy be."

The original certificate signed by Ethan Allen makes clear that the reference to "Miss" Griffith as may appear in the order book was actually to "Mrs." Griffith.

Article V, Section 3 of the Indiana Constitution of 1816 provided that circuit courts would consist of a president and two associate judges. The president judge was appointed, and the associate judges were elected. Associate judges were required to reside in their respective counties. The three had common law, chancery and complete criminal jurisdiction. The president judge could act alone or with one associate judge; and the two associate judges could hold court in absence of the president judge except in capital cases and cases in chancery. Provisions for associate judges were removed in the Constitution of 1851.

I have not found any biographies of the first two associate judges of the Carroll Circuit Court elected in 1828; however, from various sources I have collected some information. The first

election for county officers was held at the house of William Wilson on the 28th day of April, 1828. Seventy-six voters are listed by Dr. Stewart. Isaac Griffith received 65 votes, Christopher McCombs received 43 votes and Henry Robinson received 42 votes for the office of associate judge.

At the Old Settlers fifth meeting, August 14, 1858, Colonel John B. Milroy remarked of Judge Isaac Griffith: "Thought he had done more than any other man for the early settlers; he was against vice in all its forms, and he had many virtues. He built the first sawmill and opened the first store. He 'pushed business.'" (Stewart p. 60) In 1830 Judge Griffith was operating one of three stores in Delphi "in a little frame," across from the Market House. (Stewart p. 91) His will devises "two lots in the Town of Delphi, situated on the west side of the publick [sic] square ..." Odell says two stores were built in 1827, "one at the sawmill, on the Deer Creek, four miles east of Delphi, by Isaac Griffith, Sr." Dr. Stewart's census of Delphi, March 1831, shows Isaac Griffith as head of a family of 11. He chaired the "Delphi Moot Legislature" in 1831. He entered 160 acres in the tract book on March 17, 1827, and acquired the patent from the United States May 15, 1827. His land was located about three to four miles northeast of Delphi on both sides of the Deer Creek in Section 23. On one occasion, twenty-two rattlesnakes were killed by two Ballards at a den on his land, and Mrs. Griffith told frightening stories of rattlesnakes in the neighborhood of their mill. Judge Griffith contracted with a neighbor by the name of Hays to frame his sawmill. Hays hired Hopkinson, a carpenter by trade, to finish the job in July 1829. However, other accounts put operation of the mill as early

as 1826. Isaac Griffith obtained from the Board of County Commissioners on May 12, 1828, a license to "vend foreign merchandise." In May 1829, the County Board of Commissioners assigned Isaac Griffith as a hand under supervision of William Hughes to the road leading from Delphi to the "Old Trading House." He was born July 18, 1795. He was married to Jane Waugh on May 16, 1822. She was born February 18, 1796, in Kentucky. She was first married to Joseph John, November 15, 1815, and he died prior to her marriage to Judge Griffith on October 30, 1819. Isaac was survived by five children, Isaac Durah, born June 20, 1827; James W., born May 26, 1834; Elizabeth Jane, born March 12, 1823, (wife of William Halsey); Sara J., born October 5, 1825, (wife of Corbly M. Knight); and Frances Reder, born April 16, 1829, (wife of William H. McCain). Four children predeceased him between 1828 and 1833. James W. was a second lieutenant serving during the Civil War with Company C, One Hundred Thirty-Fifth Regiment Indiana Volunteers. Jane Griffith deeded part of the original 160 acres south of the Deer Creek to James W. Griffith in 1867, and survived until February 12, 1868.

Isaac died on March 31, 1836, little more than a year after the end of his term as judge. His will was admitted to probate April 8, 1836, and commenced: "In the name of God, Amen..." He was apparently in failing health for an unspecified period prior to his death. His place of burial is unknown.

If you will permit me one curious footnote: The nine acres we purchased to build our home six years ago, unknown to us at the time, was part of the original farm of Judge Griffith purchased

from the United States in 1827.

Even less is known of Judge Christopher McCombs. He was appointed school trustee in 1830. He was probably born in 1799. He was married on May 23, 1839, by John Grantham, J.P., to Sarah Straight, born in 1800. He was a farmer in Rock Creek Township. He died January 8, 1846, and is buried in the Johnson City Cemetery. According to Helm, he arrived in 1829 (?), accompanied by his mother and two brothers, John and David. "He was a good farmer, and became a very popular man... their father was a physician in Ohio, but died prior to the removal to [sic] the family to the West."

On July 14, 1828, William Scott, Isam Adkinson and Henry Robinson were commissioned justices of the peace. By the end of 1830 six additional justices of the peace had been commissioned. By the end of 1840, more than 60 different justices of the peace had been commissioned in Carroll County (Stewart p. 277).

Justice of the peace courts were created by the Northwest Territories Act on December 2, 1799. The Indiana Constitution of 1816 provided that "a competent number of justices of the peace shall be elected by the qualified electors in each township, in the several counties..." That provision was retained in the Constitution of 1851. By Constitutional Amendment approved in 1970, the office of justice of the peace was removed from the Constitution, and their jurisdiction was assigned to the County Court Division of the Carroll Circuit Court in 1975.

The probate court handled estates and guardianships from its first term, held at the house of Daniel Baum, from May 11, 1829,

until 1851. John Carey was the first probate judge. Associate Judges Isaac Griffith and Christopher McCombs attended and presided at early probate court sessions as well as circuit court.

Following adoption of the Constitution of 1851, the Common Pleas court was established by the General Assembly and basically took over the jurisdiction of the probate court. Carroll County was in a joint district with Tippecanoe, Benton and White Counties until 1873 when the legislature abolished the Common Pleas Court. and all probate jurisdiction was transferred to the Carroll Circuit Court.

The first attorney to maintain an office in Carroll County was probably Henry Chase in 1830. His office was on the north side of Franklin Street, opposite the courthouse. He was followed by Albert L. Holmes, Andrew L. Robinson and Hiram Allen. The first law partnership of Aaron Finch and Nathaniel Niles in Delphi was formed about 1836. By 1882, no less than 19 lawyers had established practices in Delphi, although not all at the same time. (History of Carroll County, Helm p. 239 ff).

According to its order book, the first term in the first courthouse was on April 13, 1835. The second courthouse was completed in 1857, and the cornerstone was laid for the present courthouse on September 4, 1916.

The trend in Carroll County over the past 156 years has been away from "lay" judges and toward consolidation of the jurisdiction of county courts in the Carroll Circuit Court. The exception is the Delphi City Court, established January 1, 1960, and the Burlington Town Court, established in 1979. They serve primarily

for processing guilty pleas on traffic and city and town ordinance violations. In recent years upon a plea of not guilty, the prosecutor has had the alleged traffic violators transferred or refiled in the Carroll Circuit Court for trial and disposition. Court costs are a source of needed revenue for cities and towns.

The two attorneys whom I interviewed with over 50 years practice each seemed to concur: The law continues growing ever more voluminous and complex. In 1926, Burns Indiana Statutes Annotated contained all of the statutes of Indiana with annotations and an index in three volumes. Fifty-eight years later, the new West's Annotated Indiana code containing all of the statutes of Indiana with annotations and an index requires sixty volumes. The index alone is four volumes. In 1851, the Acts of the Indiana General Assembly were 257 pages. In 1977, the Acts of the General Assembly were 2067 pages. Justice Benjamin N. Cardozo said: "History, in illuminating the past, illuminates the present, and in illuminating the present, illuminates the future." (Nature of the Judicial Process, 53 (1921))

APPENDIX A

JUDICIAL CIRCUITS OF THE CARROLL CIRCUIT COURT

Acts of: 1828	Chapter: 24	First Judicial District:	Knox, Sullivan, Green, Owen, Vigo, Parke, Vermillion, Montgomery, Fountain, Warren, Putnam; Tippecanoe, Carroll (13 counties).
1830	28	First Judicial Circuit:	Vermillion, Parke, Montgomery, Fountain, Warren, Tippecanoe, Carroll, Cass (8 counties)
1840	25	Eighth Judicial Circuit:	Carroll, Miami, Wabash, Huntington, Whitley, Noble, DeKalb, Steuben, LaGrange, Allen, Cass (11 counties)
1852	21	Ninth Judicial Circuit:	Lake, Laporte, Porter, St. Joseph, Marshall, Starke, Fulton, White, Cass, Pulaski, Howard, Carroll, Miami (13 counties)
1853	23	Eleventh Judicial Circuit:	Grant, Huntington, Wabash, Miami, Howard, Cass, Carroll, White. (8 counties)
1873	24	Twenty-ninth Judicial Circuit:	Cass, Carroll
1877	11	Thirty-ninth Judicial Circuit:	Carroll, White
1927	9	Seventy-Fourth Judicial Circuit:	Carroll

State of Indiana

Carroll Circuit Court

Of April from eighteen hundred and  
thirty

Carroll County vs - Isaac Griffith and Jane Griffith his wife  
 complain of Ethan Allen in custody he of a job of  
 trespass on the case - For that whereas the said Jane  
 is a good honest shrewd modest & virtuous citizen of this  
 state and as such hath always behaved & conducted  
 herself and until the committing of the said several  
 grievances by the said Ethan as herein after mentioned  
 was always reputed esteemed & accepted by & amongst  
 all her neighbors & other good & worthy citizens of this  
 State to whom she was in any wise known to be a person  
 of good name fame & credit to wit at the County  
 aforesaid - And whereas also the said Jane hath  
 not ever been guilty or until the time of the committing  
 of the said several grievances by the said Ethan as  
 herein after mentioned been suspected to have been  
 guilty of the offences & misconduct herein after mentioned  
 to have been charged & imputed to the said Jane or of  
 any other such offences or misconduct. By means  
 whereof the said Jane had deservedly obtained the good  
 opinion credit & esteem of all her neighbors & other  
 good & worthy citizens to whom she was in any wise  
 known to wit at the County aforesaid - Yet the said  
 Ethan well knowing the premises but greatly envying  
 the happy state & condition of the said Jane, and  
 contriving & falsely & maliciously intending to injure  
 & prejudice her the said Jane in her said good name  
 fame & credit & to bring her into public scandal

infamy & disgrace with & amongst all her neighbors &  
other good & worthy citizens, and to cause it to be suspected  
& believed by those neighbors & citizens that she the  
said Jane had been & was guilty of the offences and  
misconduct herein after mentioned to have been charged  
& imputed to the said Jane & to vex harass impoverish  
& wholly ruin the said Jane heretofore to wit on the  
first day of April in the year eighteen hundred & thirty  
at the County of Carroll aforesaid in a certain discourse  
which he the said Ethan Allen then & there had of and  
concerning the said Isaac and Jane his wife in the presence  
& hearing of divers good & worthy citizens of this State  
then & there in the presence & hearing of the said last  
mentioned citizens unlawfully falsely & maliciously spoke  
& published of & concerning the said Jane these false scan-  
dalous malicious & defamatory words following, that is  
to say; "He (meaning said Isaac) got his riches by marrying  
a strumpet (meaning his said wife the said Jane)." "She (meaning  
said Jane) had a child by her brother-in-law, her first hus-  
band's brother, who (meaning her said first husband) left her  
in consequence thereof; he (meaning her said first husband)  
on returning home from a visit abroad found her (meaning  
said Jane) pregnant by his brother (meaning the brother of her  
said first husband) who admitted that such pregnancy was  
by him (meaning s<sup>d</sup> brother) & said that it was Jane's fault"  
(meaning said Jane wife of said Isaac). "Griffith's wife (meaning  
said Jane) is a whore" "He (meaning said Isaac) married  
a strumpet (meaning s<sup>d</sup> Jane) for her money" thereby then  
& there meaning that said Jane had been & was guilty  
of fornication & adultery

By means of the committing of which said several  
grievances by the said Ethan Allen as aforesaid she the

Said Jane hath been & is greatly injured in her credit & reputation & brought into public scandal infamy & disgrace with & amongst all her neighbors & other good & worthy citizens of this state inasmuch that divers of those neighbors & citizens to whom the innocence & integrity of the said Jane in the premises were unknown have on occasion of the committing of the said grievances by the said Ethaw as aforesaid from thence hitherto suspected & believed & still do suspect & believe the said Jane to have been & to be a person guilty of the offences & misconduct herein before mentioned to have been charged & imputed to her & have by reason of the committing of the said grievances by the said Ethaw as aforesaid from thence hitherto wholly refused & still do refuse to have any transaction acquaintance or discourse with the said Jane as they were before used & accustomed to have and otherwise ~~to have had~~ - and the said Jane hath been & is by ~~means of~~ the premises otherwise greatly injured - To the damage of the said Plaintiffs of one thousand Dollars & against the form of the Statute in such case made & provided, and therefore they bring suit &c

Wm. V. White Atty -

Carroll Ci. Court

Isaac Griffith & wife

vs

Thomas Allen

Nov -

Filed in my office

April 8<sup>th</sup> 1855

D. Handcock Clerk

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Griffith Family Bible

Abstract of Donald R. & Phyllis E. Myers to Part of SW (1/4) of  
Sec. 23 in Twp. 25N Range 2W

Miscellaneous Census, Birth, Death, Cemetery Records, etc. with  
assistance of Phyllis Moore, Carroll County Historical Society.