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1950 census becomes official are certainly made in good faith it is extremely doubtful whether such payments could be required to be returned from such Justice of the Peace or Constable receiving them during the interim. However, once the figures are made official, if they are sufficient to take New Albany Township out of the classifications under Chapter 319, all Justices of the Peace and Constables in that township would go back on a fee basis and there would no longer be any authority to charge a \$6.00 docket fee in civil cases. However, fees as are provided in Sections Burns 5-1701 and 49-3404, should be charged when the specified act is performed.

OFFICIAL OPINION NO. 7.

January 24, 1951.

Ruth V. Kirk,
Executive Secretary,
Indiana State Board of Medical
Registration and Examination,
1138 K. of P. Building,
Indianapolis, Indiana.

Dear Miss Kirk:

Your letter of January 19, 1951, has been received and reads as follows:

“Since it has been repeatedly brought to the attention of the Board of Medical Registration and Examination of Indiana that various persons have asserted that Section 1, Chapter 248, Acts of 1927, same being Section 68-1311 Burns, is unconstitutional as far as injunction actions filed under said Section are concerned on the asserted basis that a trial by jury is not provided for or authorized, said board requests an official opinion from you as to the constitutionality of said injunctive provision of said Section of said statute.”

The only provisions of the Indiana Constitution providing for trials by jury are Article 1, Section 19 and Article 1, Section 20.

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Article 1, Section 19 of the Constitution of Indiana:

“In all criminal cases whatever the jury shall have the right to determine the law and the facts.”

Article 1, Section 20 of the Constitution of Indiana provides as follows:

“In all civil cases, the right of trial by jury shall remain inviolate.”

The provision in the Constitution of the United States touching jury trials has no application to such civil actions in the state court.

Lake Erie, Wabash & St. Louis R. R. Co. v. Heath (1857), 9 Ind. 558, 560; and cases cited.

It is clear Article 1, Section 19 of the Constitution of Indiana, *supra*, is applicable only to criminal cases and it would not apply to injunction cases as the same are civil causes of action within the equitable jurisdiction of the Court as shown by the cases hereinafter referred to.

Article 1, Section 20 of the Constitution of Indiana has been before the Supreme and Appellate Courts of Indiana many times for construction and interpretation as hereinafter shown.

The phrase “civil cases” as used in this section has a narrower meaning than “civil actions,” as used in the Code, and includes only actions triable by jury at common law.

Lake Erie, Wabash & St. Louis R. R. Co. v. Heath (1857), 9 Ind. 558, 560;

Allen v. Anderson (1877), 57 Ind. 388, 389;

McMahan v. Works *et al.* (1880), 72 Ind. 19, 21;

Wright, admx. v. Fultz (1894), 138 Ind. 594, 595;

Vandalia Coal Co. v. Lawson (1909), 43 Ind. App. 226, 250;

State Board of Dental Examiners v. Davis (1918), 69 Ind. App. 109, 119;

Crown Point v. Newcomer (1933), 204 Ind. 589, 595;

- Millers National Insurance Co. v. American States
Bank of East Chicago (1934), 206 Ind. 511, 515;
Warren v. Indiana Telephone Co. (1940), 217 Ind.
93, 102;
State *ex rel.* Gannon v. Lake Circuit Court (1945),
223 Ind. 375, 391.

The phrase "shall remain inviolate" as used in Article 1, Section 20 of the Constitution of Indiana means to "continue as it was at common law."

- Coca Cola Bottling Works v. Harvey (1935), 209
Ind. 262, 263;
Warren v. Indiana Telephone Co. (1940), 217 Ind.
93, 102;
W. T. Rawleigh Co. v. Snider (1935), 207 Ind. 680,
693, 694.

Section 20 of Article 1 of the Constitution of Indiana providing that in all civil cases the right of trial by jury shall remain inviolate guarantees the right to a trial by jury in actions at law which were prior to June 18, 1852, triable by the jury, but does not require a jury trial of issues which were of equitable jurisdiction prior to the adoption of the Constitution.

- Fish v. Prudential Insurance Co. (1947), 225 Ind.
448, 452, 453;
Lake Erie, Wabash & St. Louis R. R. Co. v. Heath
(1857), 9 Ind. 558, 560;
Allen v. Anderson (1877), 57 Ind. 388, 389;
Wright, admx. v. Fultz (1894), 138 Ind. 594, 595,
596;
Vandalia Coal Co. v. Lawson (1909), 43 Ind. App.
226, 250.

The Fish v. Prudential Insurance Company case, *supra*, at page 453 of the opinion, quotes and approves the following rule as summarized in Watson's Works, Practice and Forms, Volume II, at page 192, Section 1523:

"The constitution provides that "in all civil cases, the right of trial by jury shall remain inviolate."

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This provision has been construed to mean, as the language plainly imports, that the right "shall *remain* inviolate", that is, continue as it was. At the time of the adoption of the constitution, the right to a trial by jury in chancery cases, or suits in equity, did not exist. Therefore, there is no right to a trial by jury in such cases under the present constitution, although they are "civil cases" in the sense that they are not criminal cases. The words "in all civil cases" mean only such civil actions as, before the adoption of the constitution, were triable by jury.' "

Injunction cases are of exclusive equity jurisdiction and in an action therefor there is no right or trial by jury.

Helm v. First National Bank (1883), 91 Ind. 44, 47, 48;

Pence v. Garrison (1883), 93 Ind. 345, 350 to 355;

Small v. Binford (1908), 41 Ind. App. 440, 445;

Section 2-1204 Burns R. S. 1933.

From the foregoing authorities I am of the opinion that Section 1, Chapter 248, Acts of 1927, same being Section 63-1311 Burns 1933, is not rendered unconstitutional as far as injunction actions filed thereunder are concerned due to the fact a trial by jury is not thereby provided for or authorized. In fact, as shown by the foregoing authorities, and under the express provisions of Section 2-1204 Burns Revised Statutes 1933, *supra*, which provides in part "issues of law and issues in fact in causes that prior to the eighteenth day of June 1852 were of exclusive equitable jurisdiction shall be tried by the court * * *", that a jury trial of any such injunction case is not intended or authorized.