Even petty crime was cause for lashes in 1818

LOOKING BACK
By Rose McIlveen

The pages in the book are almost parchment-like. The old-fashioned handwriting chronicles the proceedings of the earliest sessions of the circuit court in Monroe County.

Beginning in 1818, the court record validates itself with a copy of the appointment by the governor of the circuit judge. That is followed by the names of the associate judges.

In Indiana's beginnings, courts were lumped together in three or four counties with one presiding judge who made the rounds of the county seats hearing cases. Hence the name "circuit judge."

What behavior of early Monroe Countians warranted the attention of the court? There was the case of the woman suspected of "unlawful cohabitation" with a man. By the time she was secured in jail, there was another charge — assault on the sheriff.

Perhaps the sparsely populated county led some new settlers to believe that their lapses in behavior would go unnoticed. Not so. The May 1821 court term contains the record of Thomas Bailey vs. Nat Clark for slander. A second case reverses the above two participants, but the allegation in that case is battery.

It is the third case — The State of Indiana vs. James Ellis — that has some interesting twists and turns. The charge was "larceny."

It is not clear whether Ellis was a permanent resident or just passing through the county. He may have been the James M. Ellis Sr. between the ages of 50 and 60 who appears in the 1840 census.

Ellis' attorney told the court his client was "in no wise guilty." The case was presented to a jury composed of: James Wright, David Sears, Eli Lee, John Henderson (foreman), Isaac (illegible), John Whisenand, James (illegible), Evans Rolla, William Julian, Thomas Heady, Thomas Dunning and John Crumb.

The names of witnesses and evidence are not documented in the record, but when the jury had had an opportunity to deliberate, they returned a verdict of guilty. John F. Ross, prosecuting attorney, and Sheriff Jesse Wright must have been pleased with the conviction but they congratulated themselves too soon.

Ellis' attorney filed some reasons why there should be an "arrest of judgment." They were: (1) the year in the caption of the indictment was stated in figures and not in words; (2) the body of the indictment contained sundry abbreviations and the bills therein alleged to have been stolen were described in numbers, dates and amount with figures and not in words; (3) the indictment did not conclude "against the Peace and dignity of the State of Indiana; and (4) the verdict was against the law and evidence.

Eventually the court — presided over by Jonathan Doty "arrested the judgment." What punishment was Ellis attempting to avoid? The sentence was a fine of five cents and that he receive "five stripes."

Surprised? So was I until I consulted the *Journals of the General Assembly of Indiana Territory, 1805-1815.* A footnote on page 43 says:

"Penalties for larceny under the act (of 1788) were: first conviction — restoration of article and payment of its value to owner (twice the value without restoration), and a fine not exceeding twice the value of the article, ... second conviction — restoration and payment to owner as before; fine not to exceed four times the value of the article, and whipping not to exceed thirty-nine stripes."

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