

State of Kansas vs. E. C. Walker and Lillian Harman

Section 3, Pages 61 - 78

Documents from State of Kansas vs. E. C. Walker and Lillian Harman.

Moses Harman (1830-1910) was a free-thought journalist who lived in northeast Kansas from 1879 to 1896. In 1880 he began publishing a paper in Valley Falls to champion his liberal beliefs, including separation between the state and organized religion and legal equality for men and women. In 1883 it was renamed Lucifer the Lightbearer. E. C. Walker of Valley Falls was the co-editor.

On September 20, 1886, Harman presided over a marriage ceremony between Walker and Harman's 16 year old daughter Lillian, without a clergyman or justice of the peace present. The couple were arrested for living together as man and wife without being legally married and received short jail sentences, which were extended when they refused to pay the court costs.

Harman and Walker appealed their case to the Kansas Supreme Court and the Court's opinion, issued March 4, 1887, affirmed their conviction by the Jefferson County criminal court and instructed the couple to follow the requirements for a legal marriage. This is the Kansas Supreme Court case file, which includes: Appellants briefs, Supreme Court syllabus & opinion by Judge Johnston, original court complaint from the Jefferson County District Court County district court papers; the decision, appeal, and newspaper clippings.

Date: 1887

Callnumber: Supreme Court. Appellate Court. Case file #4312, State of Kansas vs. E. C. Walker and Lillian Harman

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State of Kansas vs. E. C. Walker and Lillian Harman

C. B. HAMILTON & CO.,
TOPEKA, KANSAS.

1 The living together must have continued
2 long enough to be habitual or there can
3 no conviction

4
5 Instruction 3rd If however, the defendants had
6 been living together, within the meaning of
7 the law, as man & wife, the next question
8 is, has it been proved that they were
9 not married? The State must prove this
10 beyond a reasonable doubt when it is
11 shown that two parties were living together
12 as man & wife the law presumes that
13 they were man & wife, that they were law-
14 fully married, for the law means put
15 a guilty construction upon the acts of
16 any person, without actual proof, the law
17 presumes innocence always & reluctantly
18 adopts the theory of guilt

19
20 Instruction 4th Furthermore, living together as man
21 & wife is of itself sufficient evidence
22 from which to infer that an actual
23 marriage had taken place with every
24 requirement essential to its legality.
25 It is for the jury to draw this inference
26 or not according to its view of all the
27 circumstances proved

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29 Instruction 5th Our statute contains various
30 provisions as to the circumstances under
31 which & the mode in which parties may
32 contract marriage. it forbids marriages

(29)

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(30.)

1 altogether between certain classes of
2 persons nearly related by blood; provides
3 for a license to be issued by the Probate
4 Judge; for a certificate by the officiating
5 clergyman, or magistrate; and for a
6 record to be kept by the Probate Judge;
7 and it visits penalties upon the Probate
8 Judge; and the clergyman or the Magistrate
9 for violating these requirements; but it
10 nowhere declares in express terms, that
11 marriage in disregard of these provisions
12 should be void neither does the section
13 upon which this prosecution is based
14 declare that persons living together as
15 man and wife without being married in accordance
16 with this act shall be deemed guilty of an
17 offense; but simply persons so living together
18 without having married there is a penal
19 statute. And the Court can neither add to its
20 letter nor breathe into it a spirit enlarging
21 the plain meaning of the terms it actually
22 employs. Hence, a marriage good in this State
23 at all, is equally a marriage under this section.
24 The parties are not to be punished for failing
25 to observe any of the preliminaries or cere-
26 monies prescribed, but only for living together
27 without being married.

28 Now before this marriage act was
29 passed, the common law of marriage was
30 in force in Kansas. And as this statute
31 contains no provision declaring marriage
32 good at common law void unless this

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3rd of June 20.

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TOPEKA, KANSAS.

1 statute, as to license & the like, has been
2 complied with, the authorities are clear
3 that a common law marriage is still
4 good in Kansas. Hence the absence of a
5 license, & of a clergyman or magistrate
6 does not show that the parties were not
7 married, the question still remains - Where
8 they married by a marriage good at common
9 law in the absence of any statute.

10

11 Instruction 6th The common law was merely the
12 law of nature. Prior to the coming of
13 Christ, even the church had never required
14 anything further than mere consent to
15 constitute marriage, & even after that
16 the common law remained unchanged.
17 All that is required by the common law
18 to constitute marriage, is the mutual agree-
19 ment of the parties to become at once - at the
20 very time - husband & wife, & cohabitation
21 afterwards is lawful, so that, if in this case
22 it appears, that the defendants did enter
23 into an agreement to immediately become
24 husband & wife, they were lawfully
25 married & are guilty of no offense charged
26 in this information. no matter what agree-
27 ments they may have made as to how they
28 should be divorced, nor as to what should
29 be done with property, nor as to the custody
30 of children; if the agreement entered into
31 was really that they should immediately
32 become husband & wife that made hus-
33 and

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(32)

1 ^{and} wife ^{and} the law binds them with all the
2 legal consequences of marriage simply
3 disregarding all their agreements in consist-
4 ent with those consequences

Instruction 7th If the defendants made an agreement
7 to live together as man ^{and} wife do; ^{and}
8 the object was was to establish a family
9 ^{and} a home ^{and} to rear children as in usual
10 matrimony, ^{and} to raise ^{and} care for offsp-
11 ings, if any should be born, as parents;
12 in short, if the agreement was not intended
13 to establish merely the relation of man ^{and}
14 mistress, if its object was not merely
15 lust, but a union for companionship, a
16 home, ^{and} a family; if it was not the concep-
17 tion of lascivious minds seeking only
18 unlawful sexual gratification without
19 regard to home or progeny, then it was
20 an agreement to become husband + wife, ^{and}
21 no agreement as to future actions no rights
22 inconsistent with law, could destroy its
23 legal effect as a marriage. Neither because
24 preacher nor magistrate is essential, if
25 there was an agreement to immediately
26 become husband ^{and} wife; ^{and} if the license
27 ^{and} clergymen or magistrate were dispense
28 ed with from honest conviction that they
29 were needless, ^{and} not from mere desire to
30 establish a meretricious relation, the
31 agreement was marriage. ^{and} the law
32 affixes to that marriage every legal conse-

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G. H. HAMILTON & CO.,
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sequence as fully as if it had been entered into by means of the most elaborate ceremonial; if marriage was the relation intended, no agreement as to future actions could prevent the consequences of marriage attaching fully; but all such inconsistent agreements would be void - the Marriage valid.

Instruction 8th If there is a reasonable doubt as to whether the parties intended to become husband and wife, the jury should acquit for the law will presume innocence, and presume, in case of doubt, that marriage was intended.

But the court as to each and all of said instructions severally and as to the whole thereof, by distinct and different rulings, refused to give said instructions or any of them, and defendants at the time, guilty and severally, duly excepted to the said several refusals as the same were respectively made; and therefore, the court charged the jury, in writing as follows, and the following are all of the instructions given by the court to the jury upon the trial of this action:

" The State vs. Walker et al., 3

" 1st The defendants are to be presumed to be innocent until they are found to be

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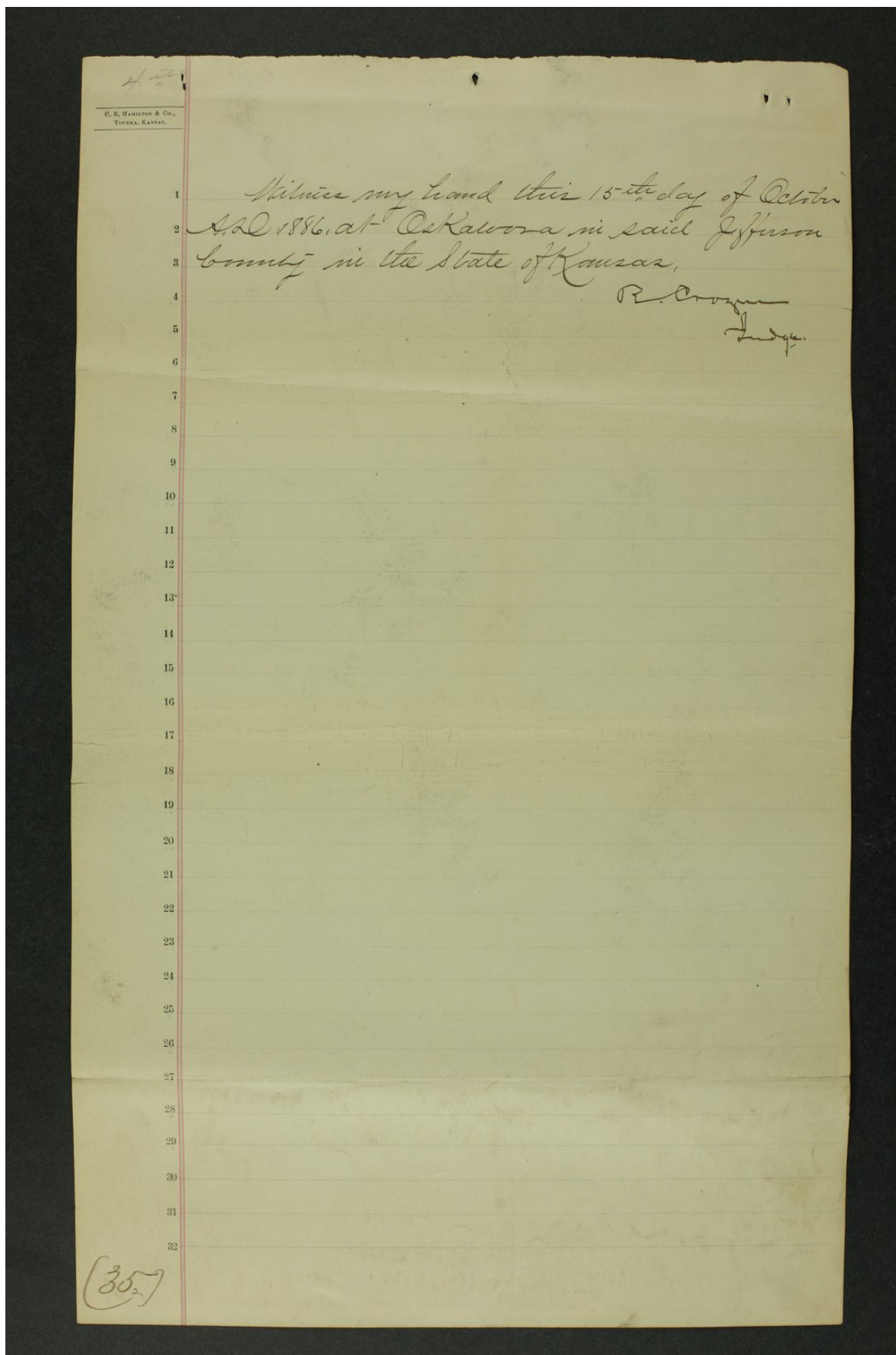
1 guiding beyond a reasonable doubt-
2 2nd of the defendants at the time alleg-
3 =ed in the information ^{as} in this State
4 agreed to live together as husband ^{and} wife
5 without having a license to be married
6 ^{as} without having a marriage solemniz-
7 =ed by a Judge, Justice of the peace or
8 licensed minister of the gospel ^{as} in
9 pursuance of such agreement lived together
10 in this County, they would be guilty of
11 the offense, charged in the information.

12 And these were the only instructions
13 given upon the trial of this action.

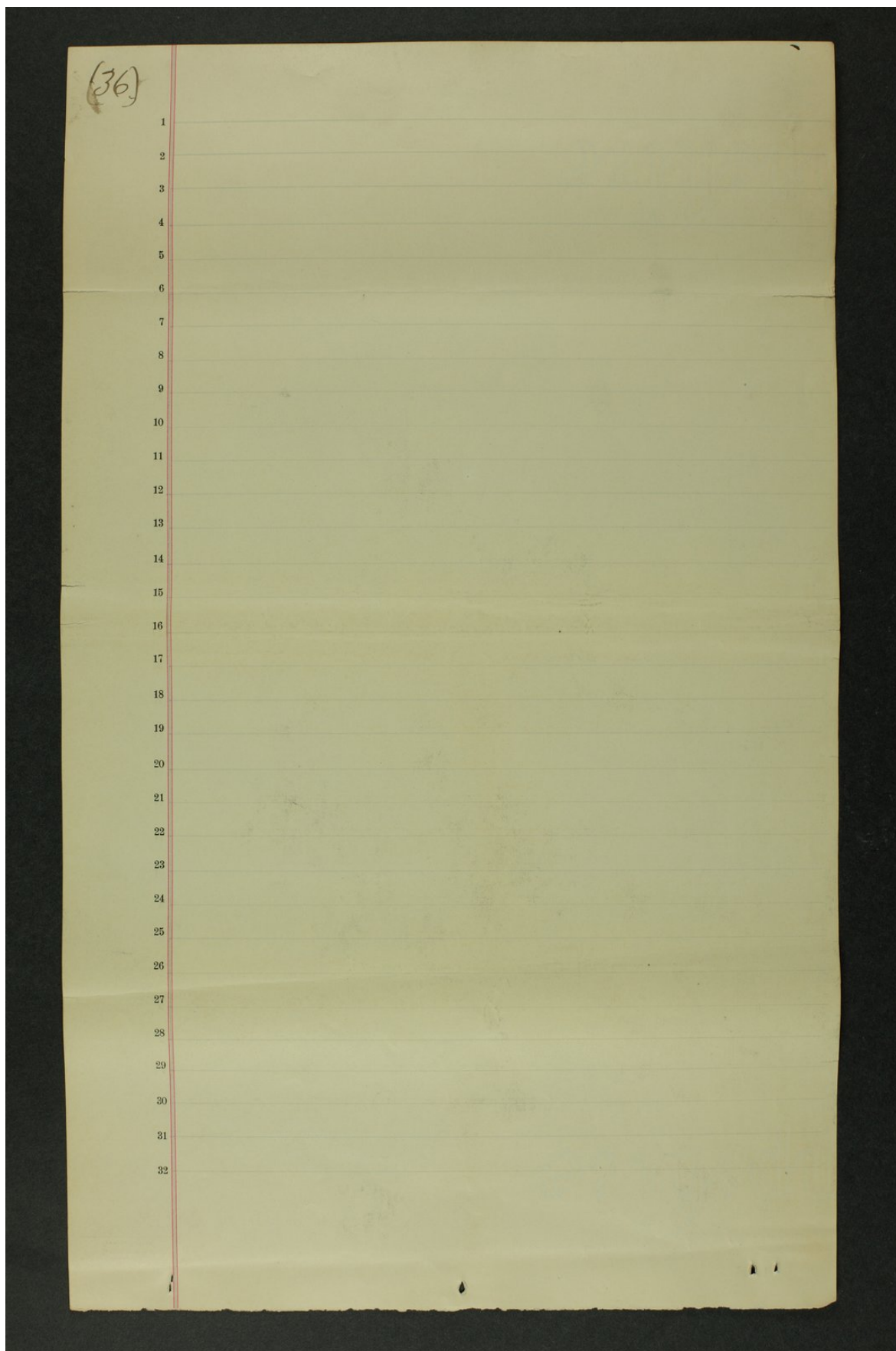
14 To the giving of which instructions ^{as} each
15 of them, ^{as} to each ^{as} every part of each
16 of them, the defendants at the time jointly
17 ^{as} severally duly excepted.

18 And now on this 15th day of October A.D.
19 1886, being at the same time of said Court at
20 which said verdict was returned ^{as}
21 judgment rendered. Come said defendants
22 by their Attorneys ^{as} presents to the Court
23 their foregoing bill of exceptions. ^{as} pray
24 that the same may be allowed, signed
25 ^{as} filed as part of the record in this action;
26 which is accordingly done; ^{as} it is ordered
27 that the foregoing bill of exceptions be
28 ^{as} it is hereby allowed as a true bill of
29 exceptions, ^{as} signed accordingly; ^{as}
30 that it be filed ^{as} be ^{as} become a part
31 of the records in this case as provided
32 by law. Witness my hand

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State of Kansas vs. E. C. Walker and Lillian Harman

C. B. HAMILTON & CO.,
TOPEKA, KANSAS.

In the District-Court of Jefferson County

The State of Kansas
-vs- Plaintiff
E. C. Walker and
Lillian Harman
Defendants.

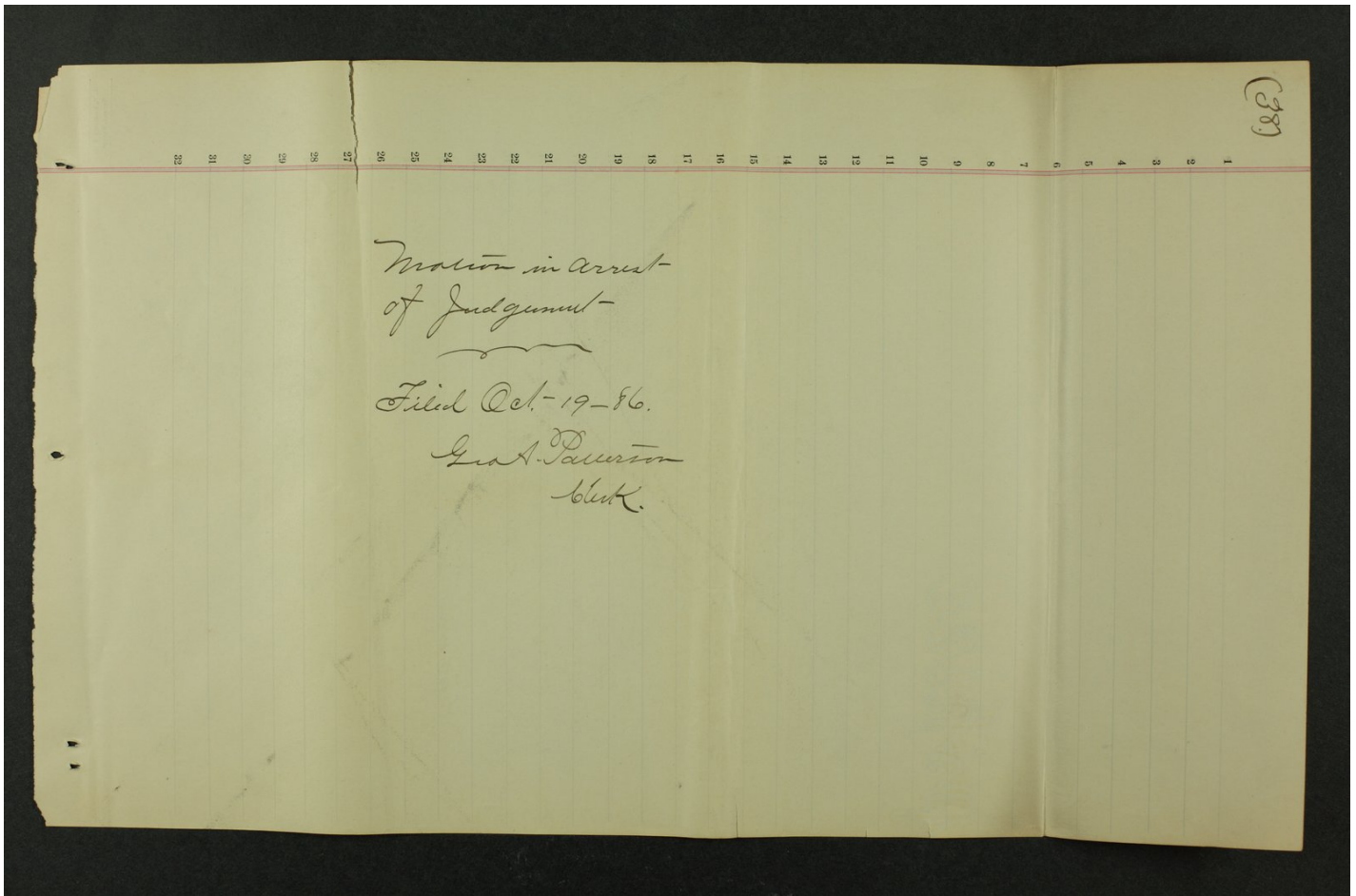
Motion in Arrest of Judgment-

And now come said defendants and jointly and severally move the court to arrest the judgment in this action and discharge the defendants for the reason that the facts stated in the information filed against them herein, do not constitute a public offense.

David Overmyer
and G. C. Columbus and
Guthart - attorneys for
said defendants.

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C. B. HAMILTON & CO.,
TOPEKA, KANSAS.

In the Jefferson County District
Court.

The State of Kansas
vs. Plaintiff
E. C. Walker and
Lillian Harman
Defendants.

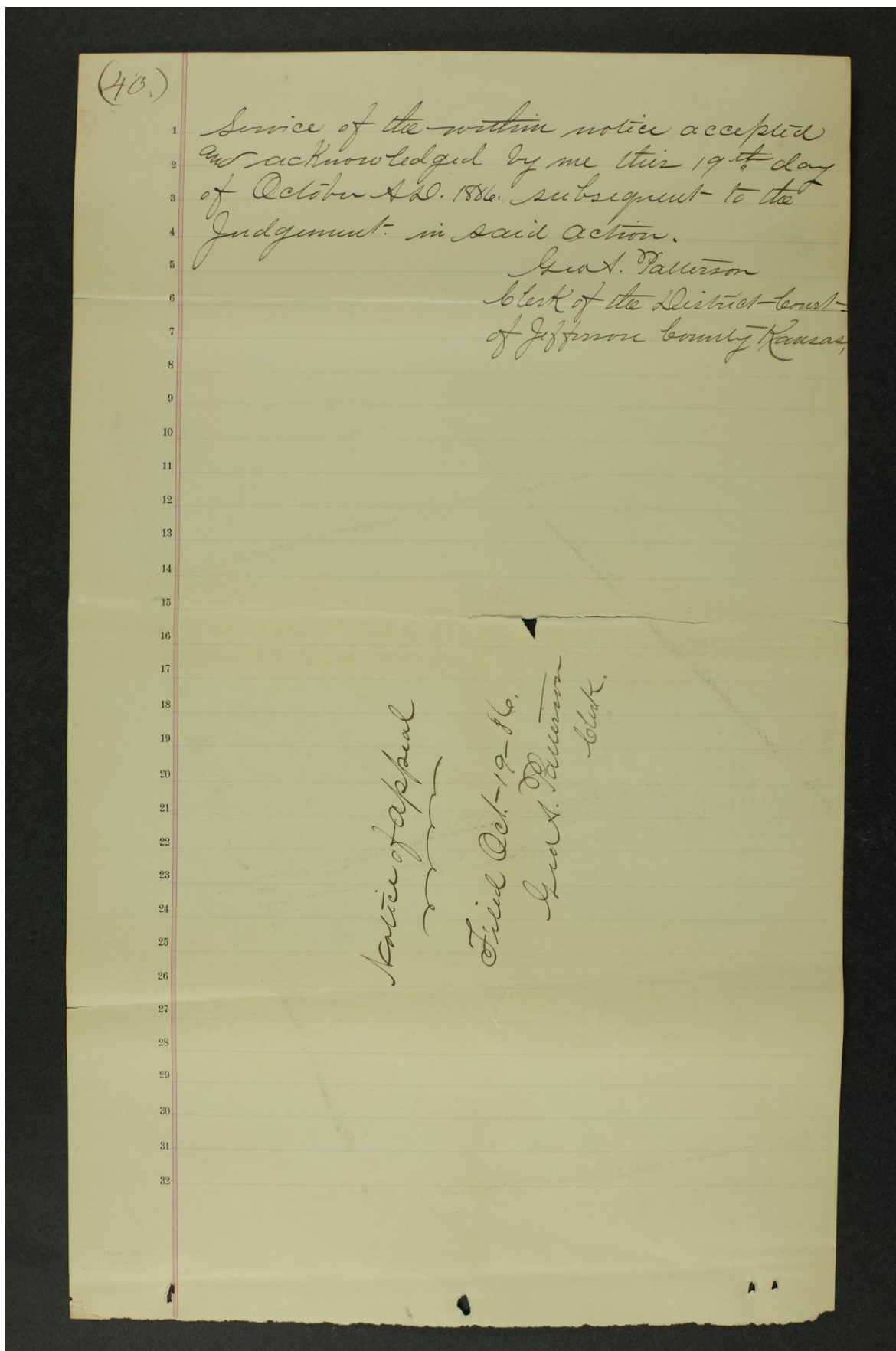
To the Clerk of said Court-

You are hereby notified that we
do reach of us severally appeal from
the judgment against us respectively
in this action.

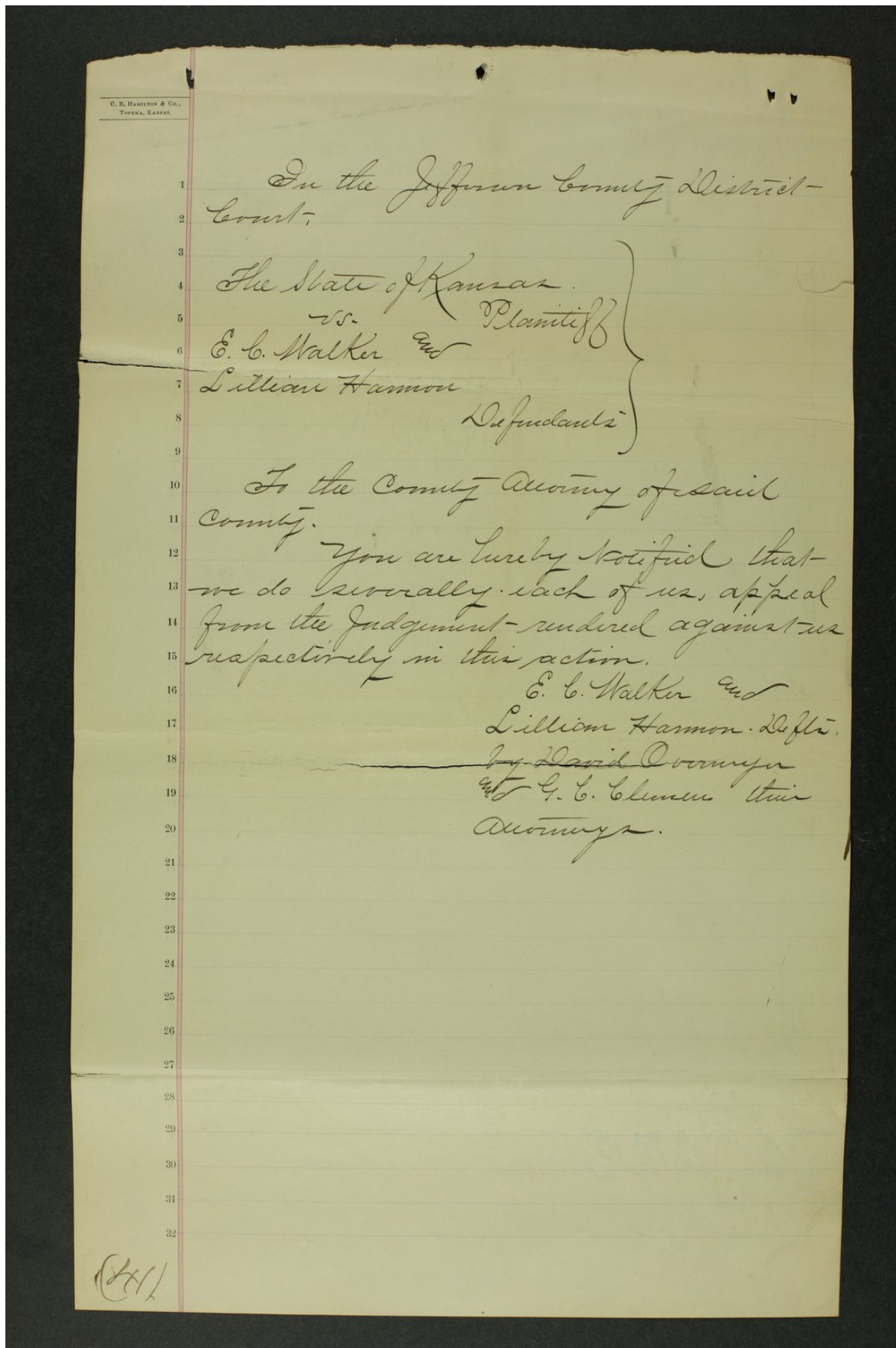
E. C. Walker and
Lillian Harman
by David Orrmyer
and G. C. Clemens. Their
Attorneys.

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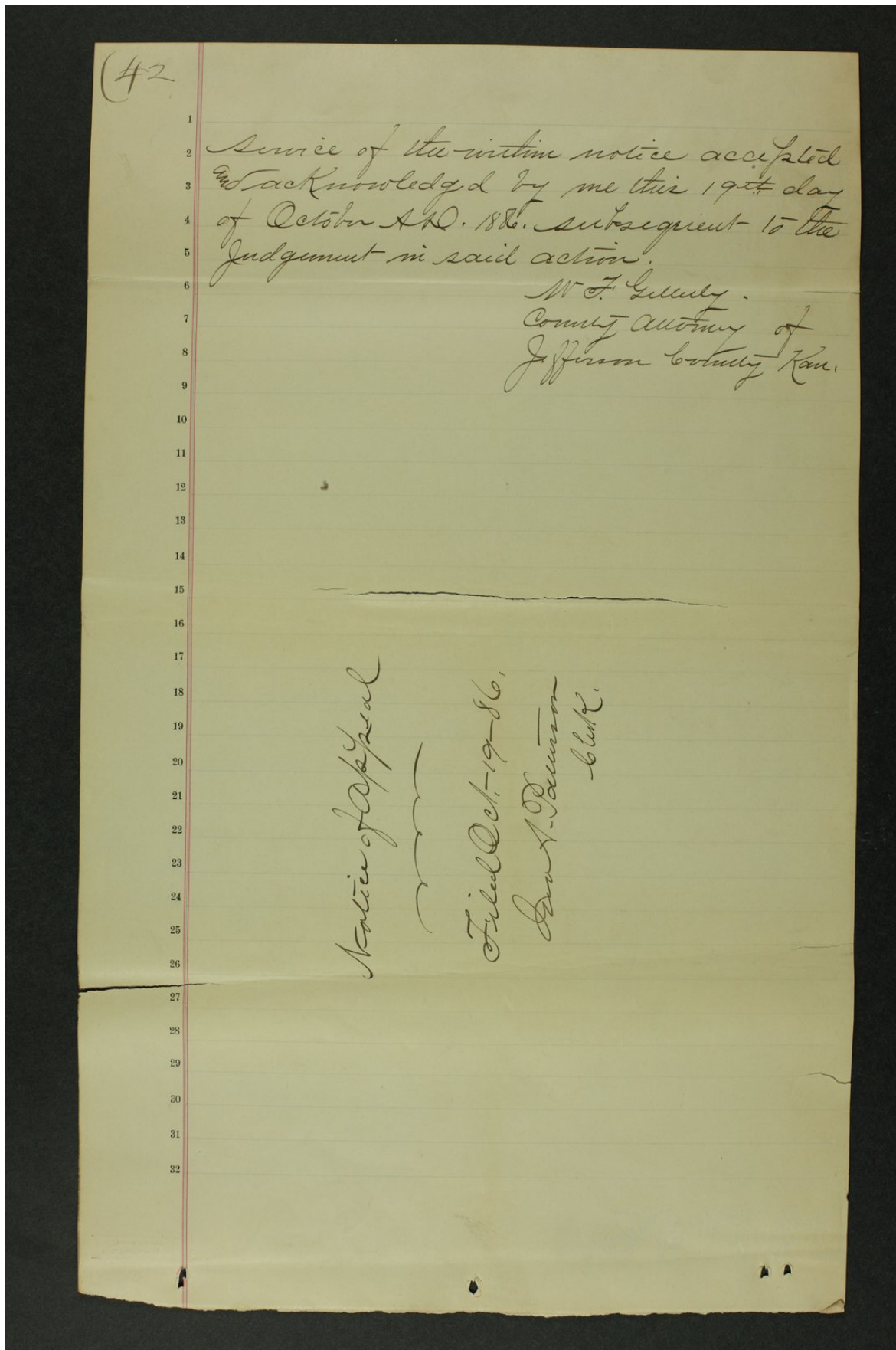
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O. B. HAMILTON & CO.,
 TOPICK, KANSAS.

The State of Kansas
 vs. Plaintiff
 E. C. Walker and
 Lillian Harman.
 Defendants.

This case came on regularly for trial.
 The plaintiff appeared by W. F. Gilluly, Esq.
 and L. A. Myers, Esq. The defendants appeared
 in person and by David Overmyer and L. C. Clemens,
 and Marshall Tephart their attorneys.

The defendants were duly arraigned and pled
 not guilty. a trial was then had. A jury
 was duly impanelled and sworn to try the
 action, after hearing the evidence and arguments
 of counsel and being instructed by the Court
 the jury returned their verdict in words and
 figures following to wit:

Verdict;
 We, the jury impanelled and sworn in the above
 entitled case, do upon our oaths find the Defendants
 guilty.
 D. C. Condearn
 Foreman.

The defendants then filed their Motion to set
 aside said verdict and for a new trial which
 motion was by the Court heard and overruled
 to which ruling the defendants then excepted.

The defendants then filed their motion in
 arrest of judgment which was by the Court
 heard and overruled to which ruling the defend-
 ants then excepted.

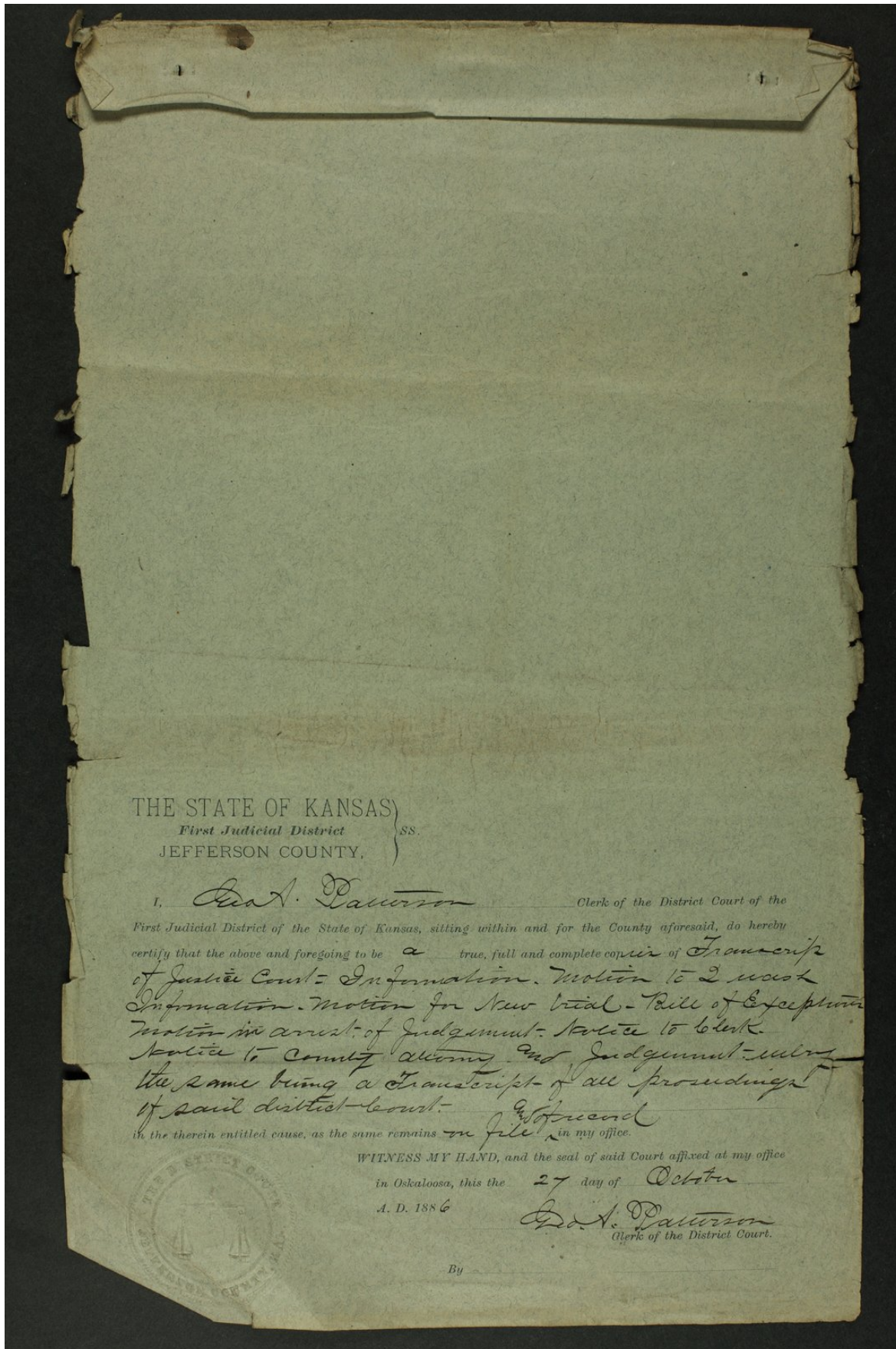
Thereupon it was by the Court considered

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1 and adjudged that the defendant E. C. Walker.
2 be confined in the jail of the county for the
3 period of seventy five (75) days and that
4 defendant Lillian Harman, be confined in
5 said jail for the period of forty five (45)
6 days. and that said defendants pay the
7 costs of this action and that they stand
8 committed to the said jail until such
9 payment be made. The defendants duly
10 verbally excepted to said judgment and
11 prepared and presented to the court their
12 bill of exceptions herein which Bill of excep-
13 tions was by the court found to be correct.
14 and was duly allowed settled and signed as
15 a true bill of exceptions in this action and
16 was ordered to be made a part of the records
17 of this cause.
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