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## A “Paucity of Details”: S.J. Crane and the Baseball Rule

Robert Jarvis

Nova Southeastern University - Shepard Broad College of Law, jarvisb@nova.edu

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2019

# A “Paucity of Details”: S.J. Crane and the Baseball Rule

Robert M. Jarvis, *Nova Southeastern University - Shepard Broad College of Law*

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# A “PAUCITY OF DETAILS”: S.J. CRANE AND THE BASEBALL RULE

*Robert M. Jarvis*

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## I. INTRODUCTION

In *Crane v. Kansas City Baseball & Exhibition Co.*,<sup>1</sup> the Kansas City Court of Appeals affirmed the dismissal of a personal injury lawsuit against a local baseball team.<sup>2</sup> Crane, the plaintiff, had paid fifty cents for a grandstand seat and was hurt when a foul ball hit him.<sup>3</sup> According to Crane, the club had been “negligent in not screening in the whole of the grand stand, and [its] negligence was the proximate cause of his injury.”<sup>4</sup>

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1. 153 S.W. 1076 (Mo. Ct. App. 1913).

2. *Id.* at 1078.

3. *Id.* at 1077.

4. *Id.*

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*Robert M. Jarvis is a professor of law at Nova Southeastern University (jarvisb@nova.edu). He dedicates this article to his friend and fellow historian J. Gordon Hylton (1952–2018). He acknowledges, with gratitude, the assistance of Larry Bowles of the Ancestral Research Corporation (Hemet, California); Shella Robertson of SRGenealogy (Fulton, Missouri); and Juli Whittaker of Genealogy Safari (Kansas City, Missouri). He also wishes to thank Rex Hamann, the editor of the indispensable American Association Almanac.*

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In deciding that Crane had assumed the risk of being hit by choosing to sit in an unprotected seat, the court created a defense that has come to be known as the “baseball rule.”<sup>5</sup> Today, the rule has been judicially adopted in nearly every U.S. jurisdiction.<sup>6</sup> Four states have gone further and have made it a part of their statutory law.<sup>7</sup> Despite this overwhelming show of support, commentators uniformly, and increasingly, have called for the rule’s repeal, arguing that it penalizes plaintiffs while providing defendants with an unfair windfall.<sup>8</sup>

Although *Crane* has received a substantial amount of attention,<sup>9</sup> the answers to certain very basic questions remain a mystery, including:

1. Who was Crane?
2. How old was he?
3. What did he do for a living?
4. Why was he at the game?

5. See Bob Gorman, *The Antiquated Baseball Rule*, DEATH AT THE BALLPARK—THE BLOG, Nov. 17, 2017, at <https://deathattheballpark.wordpress.com/2017/11/17/the-antiquated-baseball-rule/> (“Basically, the Baseball Rule is another name for assumption of risk. . . . The basic structure of the Baseball Rule originated in a 1913 court case, *Crane v. Kansas City Baseball and Equipment [sic] Co.*”). See also ED EDMONDS & FRANK G. HOUDEK, *BASEBALL MEETS THE LAW: A CHRONOLOGY OF DECISIONS, STATUTES AND OTHER LEGAL EVENTS* 55 (2017) (under “February 17, 1913: Assumption of Risk a Defense Against Injury from Foul Ball”).

6. See James L. Rigelhaupt, Jr., Annotation, *Liability to Spectator at Baseball Game Who Is Hit by Ball or Injured As Result of Other Hazards of Game*, 91 A.L.R.3d 24 (1979 & 2018 Supp.) (collecting cases).

7. See ARIZ. REV. STAT. ANN. § 12-554 (“An owner is not liable for injuries to spectators who are struck by baseballs, baseball bats or other equipment used by players during a baseball game.”); COLO. REV. STAT. ANN. § 13-21-120 (“Spectators of professional baseball games are presumed to have knowledge of and to assume the inherent risks of observing professional baseball games, insofar as those risks are obvious and necessary. These risks include, but are not limited to, injuries which result from being struck by a baseball or a baseball bat.”); 745 ILL. COMP. STAT. ANN. 38/10 (“The owner or operator of a baseball facility shall not be liable for any injury to the person or property of any person as a result of that person being hit by a ball or bat.”); N.J. STAT. ANN. § 2A:53A-46 (“Spectators of professional baseball games are presumed to have knowledge of and to assume the inherent risks of observing professional baseball games. These risks are defined as injuries which result from being struck by a baseball or a baseball bat anywhere on the premises during a professional baseball game.”).

8. See, e.g., Nathaniel Grow & Zachary Flagel, *The Faulty Law and Economics of the “Baseball Rule”*, 60 WM. & MARY L. REV. 59 (2018); Chris Breton, *The Seventh-Inning Stretch[er]?: Analyzing the Antiquated “Baseball Rule” and How It Governs Fan Injuries at Major League Baseball Games*, 21 U. DEN. SPORTS & ENT. L.J. 209 (2018); Matthew J. Ludden, *Take Me Out to the Ballgame . . . But Bring a Helmet: Reforming the “Baseball Rule” in Light of Recent Fan Injuries at Baseball Stadiums*, 24 MARQ. SPORTS L. REV. 123 (2013); Mohit Khare, Note, *Foul Ball! The Need to Alter Current Liability Standards for Spectator Injuries at Sporting Events*, 12 TEX. REV. ENT. & SPORTS L. 91 (2010); Gorman, *supra* note 5.

9. A July 22, 2018, Westlaw search turned up dozens of judicial opinions that cite *Crane*, including thirteen state supreme court cases (from Indiana, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Washington, and West Virginia). Similarly, a July 22, 2018, Google Books search generated 458 results.

5. When was he injured?
6. Where did the ball hit him?<sup>10</sup>

Most writers have glossed over these matters, content to cite *Crane* as the source of the baseball rule while repeating its few known facts.<sup>11</sup> In contrast, Professor J. Gordon Hylton, in a 2003 article in the *Tulsa Law Review*, pointedly remarked on "the paucity of details in the court's opinion."<sup>12</sup> He then took a stab at filling in the gaps:

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10. A recent newspaper article does answer this last question: "The precedent was set 105 years ago, when a Missouri appellate court ruled against the claim of one S. J. Crane, who suffered a broken rib and internal injuries after being hit by a foul ball during a game involving the Kansas City Blues of the American Association." Wallace Matthews, *Netting Improved Fan Safety, but in Court, It's Teams That Are Protected*, N.Y. TIMES, Mar. 29, 2018, at B15. Mr. Matthews determined the nature of Crane's injury by examining the appellate case file. Telephone Interview with Wallace Matthews (July 20, 2018). For a further discussion, see Part II-A of this article.

11. Here is a typical example:

One of the first baseball cases that identified a stadium owner's standard of care owed to its fans was *Crane v. Kansas City Baseball & Exhibition Co.* The plaintiff was a spectator who, after paying for admission to the game, voluntarily chose to sit in an unprotected part of the stadium. After a foul ball struck the plaintiff, he sued the ballpark owners, claiming the defendants were negligent in not screening the entire grandstand. The court found in favor of the owners, reasoning that the owners "engaged in the business of providing a public entertainment for profit" and only needed to exercise "reasonable care," which they did by providing protective screening for "nearby" spectators. The screening protected spectators behind home plate and also protected spectators a few feet down the first-base and third-base lines. Also, the spectator could have sat in one of the protected seats, and the plaintiff had "full knowledge of the risks and dangers of the situation."

Aaron Wakamatsu, *Spectator Injuries: Examining Owner Negligence and the Assumption of Risk Defense*, 6 WILLAMETTE SPORTS L.J. 1, 2 (2009) (footnotes omitted).

Here is another example:

Missouri first recognized that there were inherent dangers in attending baseball games for spectators over 100 years ago in *Crane v. Kansas City Baseball & Exhibition Co.* In *Crane*, the defendants were owners of a baseball park and the plaintiff was a spectator at the defendants' park. Certain seats at the defendants' park were "safe" in that there was mesh fencing to protect spectators from foul balls, while other seats did not have a mesh fence between them and the ball field. The plaintiff, who was not sitting in one of the "safe" seats, was injured by a foul ball and sued, claiming that the defendants were negligent in not screening all of the seats from foul balls. The court did not go so far as to say that the defendants had no duty to spectators at their park whatsoever, but instead stated that the defendants "were bound to exercise reasonable care, i.e., care commensurate to the circumstances of the situation, to protect their patrons against injury." The court held that the defendants had exercised reasonable care by providing seating that was "safe" from foul balls and that the defendants had the opportunity to sit in those seats.

Ross H. Freeman, Note, *The (Hot) Dog Days of Summer: Missouri's "Baseball Rule" Takes a Strike*, 80 MO. L. REV. 559, 565 (2015) (footnotes omitted).

12. J. Gordon Hylton, *A Foul Ball in the Courtroom: The Baseball Spectator Injury as a Case of First Impression*, 38 TULSA L. REV. 485, 494 n.46 (2003). Professor Hylton also expressed

It was against this doctrinal backdrop that S.J. Crane brought his suit against the Kansas City Baseball and Exhibition Company. The defendant owned and operated the Kansas City Blues of the minor league American Association. The Blues played their home games at Association Park, located at the intersection of 19th and Olive Streets in Kansas City. The game at which Crane was injured was apparently played in 1910. . . . At some point during the game, Crane was struck by a foul ball. The nature of his injuries were not described by the court, but they were apparently not too serious, as he requested only one hundred dollars in damages.

Sometime after the game, Crane filed a civil action against the team in the Jackson County Circuit Court. . . .

Crane's case presented no special circumstances. . . . He was not a child; he was not elderly; he was not a woman who had been admitted to the park free of charge on Ladies Day; he was not nearly blind or deaf. . . .<sup>13</sup>

For some time, I have been following up on Professor Hylton's hypotheses. What follows are the results of my inquiry.

## II. THE CASE FILES

### A. *The Appellate Case File*

Because the trial court's opinion is unpublished,<sup>14</sup> I began my search by focusing on Crane's appeal at the Kansas City Court of Appeals.<sup>15</sup> Its decision, dated February 17, 1913, was authored by Judge James M. Johnson.<sup>16</sup> The opinion's caption lists only Crane's last name,<sup>17</sup> and Judge Johnson uses the term "plaintiff" whenever he refers to Crane.<sup>18</sup> However, the syllabus identifies Crane as "S.J. Crane."<sup>19</sup>

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surprise that "the first [foul ball] cases to reach the appellate court level did not do so until the early 1910s, nearly a half century after the beginnings of commercialized baseball." *Id.* at 485.

13. *Id.* at 493–96 (footnotes omitted).

14. *See Crane*, 153 S.W. at 1076–77 ("The cause was submitted to the trial court on an agreed statement of facts . . . and judgment was rendered for defendants. Plaintiff appealed.").

15. For a description of the Kansas City Court of Appeals, which was created in 1884 as Missouri's second intermediate appellate court (after St. Louis), see George H. Maitland, *A History of the Kansas City Court of Appeals*, 31 U. KAN. CITY L. REV. 215 (1963). The court now is known as the Missouri Court of Appeals for the Western District. *See* <https://www.courts.mo.gov/page.jsp?id=227>.

16. *See Crane*, 153 S.W. at 1076. In the opinion, only Judge Johnson's last name is used. *Id.* As Professor Hylton explains, at this time the Kansas City Court of Appeals "was composed of Presiding Judge James Ellison and Associate Judges J.M. Johnson and Francis H. Trimble." *See* Hylton, *supra* note 12, at 496 n.58. A bit of digging reveals that J.M. Johnson was James M. Johnson. *See* North T. Gentry, *Report of Committee on Biography*, 6 Mo. B.J. 256, 258 (1935) (explaining that Johnson was born in 1862, was admitted to the bar in 1884, served on the Kansas City Court of Appeals from 1905 to 1917, and died in 1935).

17. *See Crane*, 153 S.W. at 1076.

18. *Id.* at 1076–78.

19. *Id.* at 1076.

In the Missouri state archives, located in Jefferson City, Missouri,<sup>20</sup> one can find the *Crane* appellate case file.<sup>21</sup> It runs thirty-six pages and consists of four items:

1. The trial court's judgment and order, dated August 17, 1912 (two jackets and two pages). For ease of reference, I have reproduced this document in Appendix A to this article.
2. Crane's appellate brief, filed January 14, 1913 (cover and sixteen pages).
3. The respondents' appellate brief (cover and nine pages), filed January 14, 1913.
4. The appellate court's typed original opinion, dated February 17, 1913 (jacket and four pages).

Throughout these materials, Crane is identified as "S.J. Crane," and the defendants are listed as the Kansas City Baseball and Exhibition Company and George Tebeau. Although Judge Johnson's opinion does not mention Tebeau, the case's caption includes an "et al." after the company's name.<sup>22</sup>

In his article, Professor Hylton does not discuss the caption's "et al.," but he does include a footnote explaining that the Blues were owned "by George 'White Wings' Tebeau, a Missouri native and a former professional baseball player who played in the major leagues from 1887 to 1895."<sup>23</sup> Thus, Crane sued both the team and its owner.

20. For more about the archives, see its web site, <https://www.sos.mo.gov/archives>.

21. Because the file has not been digitized, one must request it from the archives. This can be done by using the case name and the date of the decision. See E-mail from Shella Robertson of SRGenealogy to the author, dated June 8, 2018, at 4:35 p.m. (copy on file with the author).

22. See *Crane*, 153 S.W. at 1076.

23. Hylton, *supra* note 12, at 494 n.45. For a biography of Tebeau, see Bill Lamb, *George Tebeau*, SABR, at <https://sabr.org/bioproj/person/6cd61800>. As Lamb explains, Tebeau sold the Blues in 1917 after falling on hard times:

By 1910, George Tebeau was "one of the wealthiest men in baseball," often reputed in newsprint to be a millionaire.

Tebeau's fortune took some hits in the ensuing years. Hours after the final game of the 1912 season, the Kansas City ballpark was consumed by fire "incendiary in nature." The club owner's \$20,000 loss was only partially covered by insurance, necessitating a rebuilding of the edifice substantially via his own checkbook. The following year, an expensive divorce . . . put another dent in his finances. And by now he also had a mistress to maintain, one Mary St. John, a Chicagoan some 20 years his junior. She was mansion-ensconced in Riverside, a pricy Windy City enclave. But the real blow to Tebeau's finances was dealt by the Federal League. Unlike his AA brethren, Tebeau alone had to contend with direct intricacy competition (courtesy of the Kansas City Packers) from the upstart major league. Never popular with Kansas City fans to begin with, attendance at the games of Tebeau's Blues plummeted, going from 185,950 in 1912 (the season before the minor-league Federal League entered Kansas City) to 56,219 in 1915. Mercifully for Tebeau, the Federal League expired after the 1915 campaign.

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It is worth noting here that if one starts with the official case reporter (*Missouri Appeal Reports*) rather than West's more popular *South Western Reporter*, one immediately sees Crane's first two initials and Tebeau's full name in the caption.<sup>24</sup>

In addition to omitting Crane's full name, the appellate case file contains no information about him. It does, however, give the date of his mishap, a description of his injury, and the damages he was seeking:

Plaintiff states that on the 17th day of August, 1911, he applied for admission to said park of defendant to attend a game of baseball and paid an admission fee to defendant for the purpose of entering said park. That upon entering plaintiff was given a seat in the grandstand opposite to the path leading from the third base to the home plate, upon said grounds. That said seat was in such proximity to where the batter stood at the home plate that balls struck by the batter were liable to go into the grandstand. That it was entirely practicable for the defendant to have placed a wire screen across the front of the grandstand to ward off balls so struck, but defendant carelessly and negligently failed to do so. That while plaintiff was sitting in the grandstand, witnessing the game, a ball was batted by the batter and came into the grandstand and struck plaintiff in the right side, fracturing two ribs, injuring his arm, and also injuring plaintiff internally.

Plaintiff states that said injuries are permanent and have caused damage to plaintiff in these particulars:

First: In permanently crippling him.

Second: In causing him to suffer great bodily pain and mental anguish.

Third: In loss of earnings by reason of his disability.

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"Two years of strife with the Federal League have put a fearful crimp in George Tebeau's bankroll," declared *Sporting Life*. But he took pride in his repulse of the Feds "without assistance from elsewhere." Still, the club owner remained unpopular with Kansas City baseball fans, and soon encountered pressure from AA President Hickey and others to sell the Blues to someone more palatable to the locals. A proud man, Tebeau resisted for a time. But after a dismal 1917 season on the field (66-86, seventh place) and at the turnstiles (85,106, seventh in AA attendance), he sold the Blues to a consortium of Kansas City businessmen. The purchase price was not reported in the press, but was doubtless less than the \$150,000 he had been offered for the franchise previously. Tebeau then withdrew to the Chicago abode that he shared with now-wife Mary.

*Id.* (footnotes omitted).

24. See *Crane v. Kansas City Baseball & Exhibition Co.*, 168 Mo. App. 301, 301 (1913). *Missouri Appeal Reports* was published from 1876 to 1952 (a total of 241 volumes). See J. Raymond Dyer, *Report on the Practical Utilization of Its Recorded Knowledge by the Legal Profession*, 7 AM. DOCUMENTATION 201, 205 (1956). In contrast, West's *South Western Reporter*, which covers Arkansas, Kentucky, Missouri, Tennessee, and Texas, has been published since 1887. See 1 S.W. i (1887). For a further discussion, see *South Western Reporter*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, at [https://en.wikipedia.org/wiki/South\\_Western\\_Reporter](https://en.wikipedia.org/wiki/South_Western_Reporter) (explaining that Thomson Reuters is now the publisher and the current series is "S.W.3d"). See also WANDA M. TEMM & JULIE M. CHESLIK, *MISSOURI LEGAL RESEARCH* 36-37 (3d ed. 2015).



Fourth: In permanent impairment of his earning capacity.

Fifth: In causing him to pay or become liable to pay sums of money for medical attention, drugs and nursing.

Wherefore, plaintiff says that by reason of the premises he has been damaged in the sum of three thousand dollars, for which sum plaintiff asks judgment with costs.<sup>25</sup>

Crane's appellate brief explains that he filed his lawsuit on August 25, 1911,<sup>26</sup> that both the Blues and Tebeau submitted their answers on April 8, 1912,<sup>27</sup> that the parties waived their respective jury rights on the same day,<sup>28</sup> and that a bench trial was held on August 17, 1912.<sup>29</sup> The file also reveals that the trial judge, after finding for the defendants and denying Crane's motion for a new trial, granted Crane's request for leave to appeal.<sup>30</sup>

Because of the foregoing, several revisions must be made to Professor Hylton's guesses.<sup>31</sup> First, the game took place in 1911, not 1910. Second, Crane filed his complaint almost immediately (eight days) after the game, not "sometime" later. Third, Crane initially sought \$3,000 in damages, not \$100.

In perusing the appellate case file, four questions come to mind: (1) Why did it take the defendants eight months to answer the complaint?; (2) Why did Crane agree to waive his right to a jury trial?; (3) Why did Crane reduce his damage demand from \$3,000 to \$100?; and, (4) Why did Crane not appeal Judge Johnson's decision to the Missouri Supreme Court?

With respect to the first question, it is possible that the parties initially tried to reach a settlement, and it was only after this effort failed that answering the complaint became a necessity. Crane was represented by Louis A. Laughlin,<sup>32</sup> while the defendants were represented by the law firm of Hadley, Cooper, Neel & Wilson.<sup>33</sup> Laughlin was a sole practitioner who by 1911 had built up a thriving practice.<sup>34</sup> His office was located

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25. Abstract of Record, Statement, Brief and Argument for Appellant 3-4 (S.J. Crane v. Kansas City Baseball and Exhibition Company and George Tebeau, Kansas City Ct. App., Case No. 10605, filed Jan. 13, 1914) [hereinafter Crane's Appellate Brief].

26. *Id.* at 1.

27. *Id.* at 11.

28. *Id.*

29. *Id.*

30. See Appendix A to this article.

31. See *supra* text accompanying note 13.

32. See *Crane*, 153 S.W. at 1076. The opinion refers to Laughlin as "L.A. Laughlin." *Id.*

33. *Id.* At the time the case began, the firm was known as Cooper & Wilson. See Crane's Appellate Brief, *supra* note 25, at 5. Its lead partner was Armwell L. Cooper, a former state senator. See *Sen. A. L. Cooper Dies*, KANSAS CITY TIMES, Apr. 17, 1957, at 3 (explaining that Cooper served in the Missouri legislature from 1906 to 1910). For a further discussion, see *infra* note 37.

34. In the 1910 census, Laughlin and his wife Emma, together with their son Kendall, Emma's mother Rosamond, and a servant named Katherine O'Mailia, are shown living

in the prestigious New York Life Building,<sup>35</sup> and the bulk of his time was spent litigating civil matters.<sup>36</sup> Conversely, Hadley, Cooper was a corporate law firm whose senior partner was former Missouri governor Herbert S. Hadley and whose clients included, in addition to the Blues, various banks, insurance companies, and railroads.<sup>37</sup>

Turning to the second question, Laughlin was a poor public speaker who failed to captivate juries. This fact was noted in his memorial in the *Kansas City Bar Bulletin*:

It was my pleasure to have been quite closely associated with Mr. Louis A. Laughlin for 12 or 15 years. . . .

Mr. Laughlin was born in 1857. After his graduation in high school at Princeton, Florida, he attended the Columbia Law School, and was a classmate of Theodore Roosevelt. Admitted to the bar at Saginaw, Michigan, in 1882, he was for a time a station agent and telegraph operator, following in the footsteps of his brother, who taught him the dot and dash system.

He practiced law in Wisconsin for about four years and came to Kansas City, Missouri, in 1888; he was then 31 years of age. His duty to his clients and devotion to his profession were second to no other interests. A practicing lawyer for over sixty years, he died at the age of 89. He took care of his clients' business up to the last-year of his life. He was absolutely honest and trustworthy; once retained in a case he never lost sight of his client's interests.

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at 3730 Central Street. See Thirteenth Census of the United States, Kansas City, Jackson County, State of Missouri, Supervisor's District No. 5, Enumeration District No. 57, Sheet No. 11A, Lines 39-43 (Apr. 25, 1910), available at <https://search.ancestry.com> (under "1910 United States Federal Census"). This address places Laughlin and his family just to the east of fashionable Broadway Boulevard in an area "lined with large homes." MARY JO DRAPER, KANSAS CITY'S HISTORIC MIDTOWN NEIGHBORHOODS 65 (2015).

35. See 42 HUBBELL'S LEGAL DIRECTORY FOR LAWYERS AND BUSINESS MEN--APPENDIX 183 (1912) (display ad listing Laughlin's office as "1041, 1042 and 1043 New York Life Building, Kansas City, Mo."). Opened in 1890, the New York Life Building was Kansas City's first skyscraper. See *New York Life Building (Kansas City, Missouri)*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, at [https://en.wikipedia.org/wiki/New\\_York\\_Life\\_Building\\_\(Kansas\\_City,\\_Missouri\)](https://en.wikipedia.org/wiki/New_York_Life_Building_(Kansas_City,_Missouri)) (explaining that the building, now known as the "Catholic Center" because it is owned by the Roman Catholic Diocese of Kansas City-Saint Joseph, is on the National Register of Historic Places).

36. Laughlin's *Hubbell's* ad advised readers that he had a "General Practice" but that the "Trial of Causes [Is] Given Special Attention." See HUBBELL's, *supra* note 35. A July 22, 2018, Westlaw search located 138 cases handled by Laughlin, ranging from divorces to mortgages to tax liens. *Crane*, however, was Laughlin's only baseball case.

37. See 44 HUBBELL'S LEGAL DIRECTORY FOR LAWYERS AND BUSINESS MEN 198 (1914). For a biography of Hadley, who served as Missouri's attorney general from 1905 to 1909 and governor from 1909 to 1913, see *Herbert S. Hadley*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, at [https://en.wikipedia.org/wiki/Herbert\\_S.\\_Hadley](https://en.wikipedia.org/wiki/Herbert_S._Hadley). Hadley joined Cooper & Wilson when his term as governor ended on January 1, 1913, and brought with him Ellison A. Neel, his former law partner. See [No Headline in Original], SHELBY CNTY. HERALD (Shelbyville, Mo.), Jan. 22, 1913, at 4; see also *Hadley Back to K. C.*, COFFEYVILLE DAILY J. (Kan.), Sept. 24, 1912, at 1 (reporting on Hadley's post-gubernatorial plans).

His appearance in court was always prompt. The weather, his age, or other appointments never caused delay on his part.

He was not a great spellbinder before a jury, but his greatest success was in the Courts of Appeal and in the Supreme Court. He had the natural aptitude or knack of seeing the controlling point in a case. His briefs were concise and to the point. He was never unduly elated over victory nor noticeably depressed by defeat. . . .<sup>38</sup>

The answer to the third question involves timing. As will be recalled, Crane was injured on August 17, 1911,<sup>39</sup> and his complaint was filed eight days later.<sup>40</sup> By the time his case was tried on August 17, 1912,<sup>41</sup> however, a full year had passed and, as Crane's appellate brief candidly acknowledged, while "[o]ne of his ribs [had been] broken . . . he has since recovered."<sup>42</sup> Thus, it was no longer possible for Crane to argue that he had suffered \$3,000 in damages, the equivalent today of \$80,000.<sup>43</sup>

Lastly, the fourth question is an easy one. Under Article VI, section 12 of the 1875 Missouri constitution, Crane's case did not fit within any of the eight categories of cases that could be appealed to the Missouri Supreme Court,<sup>44</sup> a fact Laughlin would have had no trouble recognizing.<sup>45</sup>

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38. Frank Yeoman, *Louis A. Laughlin*, 23 KANSAS CITY B. BULL. 13, 13 (Apr. 1947). Laughlin died on November 5, 1946. See State Board of Health of Missouri, *Standard Certificate of Death for Louis Augustine Laughlin*, available at [https://www.sos.mo.gov/images/archives/deathcerts/1946/1946\\_00037072.pdf](https://www.sos.mo.gov/images/archives/deathcerts/1946/1946_00037072.pdf).

39. See *supra* text accompanying note 25.

40. See *supra* text accompanying note 26.

41. See *supra* text accompanying note 29.

42. Crane's Appellate Brief, *supra* note 25, at 5.

43. To convert Crane's damage demand into current dollars, I have used Morgan Friedman's inflation calculator, which can be found at <https://westegg.com/inflation>.

44. These categories were as follows: (1) cases in which the amount in controversy exceeded \$2,500; (2) cases construing a provision of the U.S. or Missouri constitutions; (3) cases involving a federal treaty or statute; (4) revenue cases; (5) public office title cases; (6) real estate cases; (7) cases in which one of the state's political subdivisions, or a state officer, was a party; and, (8) felony cases. See CONSTITUTION OF THE STATE OF MISSOURI 48 (1909). Article V, § 3, of Missouri's current constitution eliminates several of these categories. See <http://www.moga.mo.gov/Mostatutes/moconstn.html> ("The supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of a treaty or statute of the United States, or of a statute or provision of the constitution of this state, the construction of the revenue laws of this state, the title to any state office and in all cases where the punishment imposed is death. The court of appeals shall have general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the supreme court.")

45. By the time of Crane's lawsuit, Laughlin had litigated the issue of the Missouri Supreme Court's jurisdiction multiple times. See, e.g., *Russell v. Woerner*, 106 S.W. 49 (Mo. 1907); *Marx v. Hart*, 66 S.W. 260 (Mo. 1901); *Ash v. City of Independence*, 46 S.W. 749 (Mo. 1898) and 68 S.W. 888 (Mo. 1902). Thus, Laughlin undoubtedly set Crane's initial damage demand at \$3,000, see *supra* text accompanying note 25, to ensure that he could meet the Supreme Court's \$2,500 threshold. See *supra* note 44.

### B. *The Trial Case File*

Both the West syllabus<sup>46</sup> and Professor Hylton's article<sup>47</sup> explain that Crane began his case in the Jackson County (Kansas City) Circuit Court before Judge W.O. Thomas.<sup>48</sup> The appellate case file indicates that the trial court's case number was 61103.<sup>49</sup> However, when I sent a local researcher to retrieve the trial case file using this information, she reported: "A review of the microfilm of the Circuit Court Case Files, K, 1905-1995, Case Numbers, 059672-061315 (C16348) turned up no case number 61103. The assumption is that because it went to the Appellate Court it was pulled from this record."<sup>50</sup>

### III. IDENTIFYING S.J. CRANE

Because Crane appears in all of the case file materials as "S. J. Crane," I had to use other sources to identify him. I first looked in newspapers for articles about the case, thinking that they might give his full name.<sup>51</sup> However, the ones I found also referred to Crane as "S. J. Crane."<sup>52</sup>

I next turned to Kansas City's annual city directories.<sup>53</sup> Because these directories were prepared in the year prior to their publication,<sup>54</sup> I could

46. See *Crane v. Kansas City Baseball & Exhibition Co.*, 153 S.W. 1076, 1076 (Mo. Ct. App. 1913).

47. See Hylton, *supra* note 12, at 495.

48. William O. Thomas was born in 1857, was admitted to the bar in 1880, served on the circuit court from 1909 to 1921, and died in 1944. See 3 CENTENNIAL HISTORY OF MISSOURI (THE CENTER STATE): ONE HUNDRED YEARS IN THE UNION 1820-1921, at 259-60 (1921); *Obituaries*, 38 Mo. HIST. REV. 361, 364 (1944).

49. See Appendix A to this article (in the caption).

50. JULI WHITTAKER, CRANE v. KC BASEBALL & EXHIBITION REPORT 3 (June 28, 2018) (copy on file with the author) [hereinafter Whittaker Report]. As explained in my biographical profile at the beginning of this article, Ms. Whittaker was one of the genealogists that I hired to assist me in my research.

51. During this time, Kansas City had two major daily English-language newspapers: the *Kansas City Journal* (founded 1854) and the *Kansas City Star* (1880). See CARRIE WESTLAKE WHITNEY, KANSAS CITY, MISSOURI: ITS HISTORY AND ITS PEOPLE 364-401 (1908). The *Journal* was the city's morning newspaper, while the *Star* was its evening newspaper. *Id.* at 365, 367.

52. See "*Fan*" Assumes Risk, KANSAS CITY J., Feb. 18, 1913, at 5; *A "Fan" Loses Damage Suit*, KANSAS CITY STAR, Feb. 17, 1913, at 1.

The *Star's* article contains an obvious typographical error, for it says: "The Kansas City Court of Appeals decided today against S. J. Crane in his suit for \$5,000 damages against the Kansas City Baseball and Exhibition Company and George Tebeau." *Id.* Of course, Crane sued for \$3,000. See *supra* text accompanying note 25. This mistake was repeated by at least one other newspaper. See *A "Fan" Loses Damage Suit: Ball Club Need Not Pay on "Foul" That Struck S. J. Crane*, CHANUTE DAILY TRIB. (Kan.), Mar. 6, 1913, at 2.

53. In 1874-75, Corbett, Hoye & Co. published the first directory of Kansas City businesses and individuals. See A.V. WILLIAMS, THE DEVELOPMENT AND GROWTH OF CITY DIRECTORIES 126 (1913). Thereafter, various successor companies continued to do so. *Id.* Copies of these directories are available on various web sites; I used the ones at <https://search.ancestry.com> (under "U.S. City Directories, 1822-1995").

54. See Whittaker Report, *supra* note 50, at 5.

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have gone directly to the 1912 directory to see if there was an S.J. Crane listed. Instead, I decided to start my research a bit before Crane's accident and therefore began with the 1908 directory. It lists three Cranes whose first names begin with "S": Samuel Crane, a laborer living at 2124 Vine Street; Samuel G. Crane, a telephone company employee; and Seneca L. Crane, whose employment (if any) is not listed.<sup>55</sup> Clearly, only the laborer Samuel could possibly be the right Crane.

In the 1909 directory, there are two Samuel Cranes listed: the laborer at 2124 Vine Street and a plumber at 1629 Cottage Avenue.<sup>56</sup>

In the 1910 directory, there is only one Samuel Crane listed: a laborer at 1629 Cottage Avenue.<sup>57</sup>

In the 1911 directory, there again is only one Samuel Crane listed: the laborer at 1629 Cottage Avenue.<sup>58</sup> However, there also is a laborer named Stephen Crane who resides at 2648 East 7th Street.<sup>59</sup>

In the 1912 directory, there is a plumber named Samuel Crane at 2126 Highland Avenue.<sup>60</sup> There also is the laborer Stephen Crane who lives at 2648 East 7th Street.<sup>61</sup>

In the 1913 directory, there is a laborer named Samuel Crane at 2126 Highland Avenue.<sup>62</sup> There also is a Stephen J. Crane, for whom no occupation is given, at 2648 East 7th Street.<sup>63</sup>

In the 1914 directory, only the plumber Samuel Crane is listed, and he lives at 2128 Highland Avenue.<sup>64</sup>

In the 1915 directory, there is the laborer Samuel Crane, who now is living at 2452 Highland Avenue.<sup>65</sup> There also is a Stephen J. Crane, who is identified as a laborer residing at 2648 East 7th Street.<sup>66</sup>

In the 1916 directory, there is only the laborer Stephen J. Crane at 2648 East 7th Street.<sup>67</sup>

In the 1917 directory, the only Crane whose first name begins with an "S" is Sylvanus M. Crane.<sup>68</sup>

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55. See KANSAS CITY DIRECTORY—THIRTY-EIGHTH ANNUAL EDITION 320 (1908).

56. See KANSAS CITY DIRECTORY—THIRTY-NINTH ANNUAL EDITION 356 (1909).

57. See KANSAS CITY DIRECTORY—FORTIETH ANNUAL EDITION 386 (1910).

58. See KANSAS CITY DIRECTORY—FORTY-FIRST ANNUAL EDITION 399 (1911).

59. *Id.*

60. See KANSAS CITY DIRECTORY—FORTY-SECOND ANNUAL EDITION 425 (1912).

61. *Id.*

62. See KANSAS CITY DIRECTORY—FORTY-THIRD ANNUAL EDITION 449 (1913).

63. *Id.*

64. See KANSAS CITY DIRECTORY—FORTY-FOURTH ANNUAL EDITION 567 (1914).

65. See KANSAS CITY DIRECTORY—FORTY-FIFTH ANNUAL EDITION 559 (1915).

66. *Id.*

67. See KANSAS CITY DIRECTORY—FORTY-SIXTH ANNUAL EDITION 527 (1916).

68. See KANSAS CITY DIRECTORY—FORTY-SEVENTH ANNUAL EDITION 936 (1917).

In the 1918 directory, there is only the laborer Stephen J. Crane, who remains at 2648 East 7th Street.<sup>69</sup>

Lastly, in the 1919 directory, there is only Samuel J. Crane, a meat cutter at 711B Locust Street.<sup>70</sup>

Based on the foregoing, S.J. Crane the unsuccessful baseball litigant is either the laborer turned plumber turned meat cutter Samuel J. Crane or the laborer Stephen J. Crane.

Turning first to Samuel, in Ancestry.com there is a World War I draft registration card, dated September 12, 1918, for a Samuel Jeneful Crane.<sup>71</sup> It lists his occupation as “beef boner” (misspelled “booner”), his employer as Wilson & Co., his birth date as November 2, 1884, his mother’s name as Sara Anna Crane, and his home address as 702½ Charlotte Street in Kansas City, Missouri.<sup>72</sup> The card describes Samuel as having brown hair, gray eyes, a medium build, and being of medium height.<sup>73</sup>

Ancestry.com also has Samuel Jeneful Crane’s 1942 World War II draft registration card.<sup>74</sup> It lists his employer as the Los Angeles Bureau of Power and Light, his birth date as November 2, 1885, his birth place as Ellsworth, Kansas, his wife’s name as Rhea V. Crane, and his home address as 1810½ North Whitley Avenue in Los Angeles.<sup>75</sup>

At the web site “Find A Grave,” there is a Samuel Jeneful Crane who was born on November 2, 1885, in Ellsworth, Kansas, who was married

69. See KANSAS CITY DIRECTORY—FORTY-EIGHTH ANNUAL EDITION 897 (1918).

70. See KANSAS CITY DIRECTORY—FORTY-NINTH ANNUAL EDITION 925 (1919).

71. See World War I Draft Registration Card for Samuel Jeneful Crane, available at <https://search.ancestry.com> (under “U.S., World War I Draft Registration Cards, 1917-1918”).

72. *Id.* Wilson & Co. was a large, Chicago-based slaughterhouse. See *Wilson & Co.*, ENCYCLOPEDIA OF CHICAGO, at <http://www.encyclopedia.chicagohistory.org/pages/1512.html>. “Beef boner” is another name for meat cutter, a job made famous by the investigative reporter Upton Sinclair:

He is a beef-boner, and that is a dangerous trade, especially when you are on piece-work and trying to earn a bride. Your hands are slippery, and your knife is slippery, and you are toiling like mad, when somebody happens to speak to you, or you strike a bone. Then your hand slips up on the blade, and there is a fearful gash. And that would not be so bad, only for the deadly contagion. The cut may heal, but you never can tell. Twice now; within the last three years, Mikolas has been lying at home with blood poisoning—once for three months and once for nearly seven. The last time, too, he lost his job, and that meant six weeks more of standing at the doors of the packing houses, at six o’clock on bitter winter mornings, with a foot of snow on the ground and more in the air. There are learned people who can tell you out of the statistics that beef-boners make forty cents an hour, but, perhaps, these people have never looked into a beef-boner’s hands.

UPTON SINCLAIR, *THE JUNGLE* 12–13 (1906).

73. See *supra* note 71.

74. See World War II Draft Registration Card for Samuel Jeneful Crane, available at <https://search.ancestry.com> (under “U.S., World War II Draft Registration Cards, 1942”).

75. *Id.*

to Rhea Virginia Craft Crane, who died in Hemet, California on May 15, 1960, and who is buried in the San Jacinto Valley Cemetery in San Jacinto, California.<sup>76</sup> Also included is a photograph of his headstone, which reads: "Husband Samuel J. Crane 1885-1960."<sup>77</sup> This information matches up with the obituary for Samuel J. Crane that appeared in the May 18, 1960 issue of the *Riverside Independent Enterprise*:

Samuel J. Crane, 74-year-old retired Los Angeles city employe [sic], died Monday at his home, 245 S. Columbia St., after a long illness. . . .

Crane was born Nov. 2, 1885, in Kanopolis, Kan., and had been an employe [sic] of the Los Angeles Bureau of Power and Light before moving here [to Hemet] in retirement about 12 years ago.

Survivors include the widow, Rhea, and two sisters, Mrs. Myrtle Wagner, Sequim, Wash., and Mrs. Frances McDonough, Kansas City, Mo.<sup>78</sup>

In the 1920 Kansas City directory, there is an "S J Crane" who is listed as a "groundman" at the Kansas City Power and Light Company.<sup>79</sup> In the 1921 Kansas City directory, there is an "S J Crane" employed by the Kansas City Power and Light Company.<sup>80</sup> This same entry appears in the 1922 directory.<sup>81</sup> In the 1923 directory, "Samuel J Crane" is listed as a construction worker for the Kansas City Power and Light Company.<sup>82</sup> After the 1923 directory, there are no further listings of this sort, which suggests that Samuel moved to Los Angeles sometime in the mid-1920s.<sup>83</sup> In the 1928 Los Angeles voter registration rolls, there is a Samuel J. Crane who is an electrician.<sup>84</sup>

76. See *Samuel Jeneful Crane*, FIND A GRAVE, at <https://www.findagrave.com/memorial/144536338/samuel-jeneful-crane>.

77. *Id.*

78. *S.J. Crane, Hemet, Dies*, RIVERSIDE INDEP. ENTER. (Cal.), May 18, 1960, at 32.

Depending on the source, Samuel is listed as being born either in Ellsworth, Kansas, or in Kanopolis, Kansas. This is because Kanopolis, a city in Ellsworth County, was not founded until the spring of 1886, shortly after Samuel's birth. See Carlene Vaughn, *Fort Ellsworth/Fort Harker Timeline*, KANSAPEDIA—KANSAS HISTORICAL SOCIETY, Feb. 25, 1999, at <https://www.kshs.org/kansapedia/fort-ellsworth-fort-harker-timeline/11178>; see also *Kanopolis, Kansas*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, at [https://en.wikipedia.org/wiki/Kanopolis,\\_Kansas](https://en.wikipedia.org/wiki/Kanopolis,_Kansas).

79. See KANSAS CITY DIRECTORY—FIFTIETH ANNUAL EDITION 931 (1920).

80. See KANSAS CITY DIRECTORY—FIFTY-FIRST ANNUAL EDITION 1015 (1921).

81. See KANSAS CITY DIRECTORY—FIFTY-SECOND ANNUAL EDITION 1009 (1922).

82. See KANSAS CITY DIRECTORY—FIFTY-THIRD ANNUAL EDITION 975 (1923).

83. An article about Samuel's funeral arrangements, however, states (but probably only as an approximation) that he did not arrive in California until 1930. See *Last Rites Slated Tomorrow for Samuel J. Crane*, HEMET NEWS (Cal.), May 17, 1960, at 4 ("Mr. Crane was born November 2, 1885, in Kanopolis, Kansas, and came to California thirty years ago. He was with the power and light bureau in Los Angeles until his retirement twelve years ago when he came to Hemet and has resided here since.")

84. See Index to Register of Voters—Los Angeles City Precinct No. 362 (1928), available at <https://search.ancestry.com> (under "California, Voter Registrations, 1900-1968").



Samuel married Rhea in 1940.<sup>85</sup> It appears that this was Samuel's only marriage,<sup>86</sup> and as his obituary makes clear, he had no children.<sup>87</sup> His obituary also mentions that he left behind two sisters: Frances and Myrtle.<sup>88</sup> According to the 1900 census, Samuel's parents—Sarah (not Sara) A. (b. 1861) and Smith B. Crane (b. 1861)—had a total of six children: Lawrence (b. 1883), Samuel (b. 1885), Frances (misspelled "Francis") (b. 1888), Edward (identified by his middle name Leroy) (b. 1890), Myrtle (b. 1893), and Helen (b. 1896).<sup>89</sup> Samuel's father was a farmer,<sup>90</sup> and more information about him appears on his Find A Grave web page.<sup>91</sup> Find A Grave also has a page for Samuel's mother Sarah, and it indicates that she died in West Los Angeles in 1943.<sup>92</sup>

A 1909 article in the *Kansas City Times* mentions a heroic deed performed by Samuel and his older brother Lawrence:

Between 150 and 200 mules were killed in a fire at the big barn of the Guyton & Harrington Mule company on Seventeenth and Genesee streets last night. . . .

Nobody was in the Guyton barn when the fire was discovered in the northeast corner of the building. The dry material flared up and attracted a crowd before the fire engines could reach the scene. Samuel Crane and his brother, Lawrence, of 2 Kansas avenue, Richard Jennings and John Fowler, working on the Armourdale dike, beat the north door in with railroad ties and with other help got many of the crazed animals into the street. They attempt to do the same with the east door in the alleyway, but the fire had hold of the building

85. See *Vital Statistics—Intention to Wed*, RIVERSIDE DAILY PRESS (Cal.), Aug. 27, 1940, at 13 ("6183—Samuel J. Crane, 55, Rhea V. Walters, 43, both of Los Angeles."). The 1940 Los Angeles city directory shows Samuel and Rhea residing together at 4015 Melrose Street and indicates that Samuel is an electrician. See LOS ANGELES DIRECTORY CO.'S LOS ANGELES CITY DIRECTORY 1940, at 486 (1939).

This was Rhea's second marriage. On October 6, 1914, she had married a man named Jack S. Walters. See <https://search.ancestry.com> (under "Utah, Select County Marriages, 1887-1937"). A short time earlier, she had moved from Salt Lake City to Los Angeles to pursue a movie career. See *Salt Lake Girl Takes Position with Producers of Motion Picture Films*, SALT LAKE TRIB., Feb. 8, 1914, at 4. For Rhea's obituary, see *Funeral Today for Virginia Crane at McWane Chapel*, HEMET NEWS (Cal.), July 3, 1962, at 5. For her gravesite, see *Rhea Virginia Craft Crane*, FIND A GRAVE, at <https://www.findagrave.com/memorial/144536187/rhea-virginia-crane>.

86. On his World War I draft registration card, for example, Samuel lists his closest contact as his mother, rather than a spouse. See *supra* note 71.

87. See *supra* text accompanying note 78. Further proof that Samuel had no children comes from his headstone, which includes the word "husband" but not the word "father." See *supra* text accompanying note 77.

88. See *supra* text accompanying note 78.

89. See Twelfth Census of the United States, Monticello Township, Johnson County, State of Kansas, Supervisor's District No. 2, Enumeration District No. 99, Sheet No. 14, Lines 75-82 (June 21, 1900), available at <https://search.ancestry.com> (under "1900 United States Federal Census").

90. *Id.*, Line 75.

91. See *Smith Belmont Crane*, FIND A GRAVE, at <https://www.findagrave.com/memorial/115972348/smith-belmont-crane> (stating that he died in Redfield, Kansas, in 1928).

92. See *Sarah Anna Merrill Crane*, FIND A GRAVE, at <https://www.findagrave.com/memorial/144843107/sarah-anna-crane>.



by that time and the mules were already falling suffocated when an entrance was obtained.<sup>93</sup>

Given all of the foregoing, Samuel Jeneful Crane could be the baseball world's S.J. Crane.

Shifting to Stephen J. Crane, Ancestry.com has a World War I draft registration card, dated September 12, 1918, signed by a Stephen Joseph Crane.<sup>94</sup> It reports that he is foreign-born, lists his birthday as November 3, 1881, says he is working as a clerk for the Kansas City Water Department, describes him as having brown eyes, brown hair, a medium build, and being of medium height, and shows him living with his mother, Margaret Crane, at 2648 East 7th Street.<sup>95</sup> This address, of course, makes it clear that he is the "Stephen J. Crane" who appears in the 1911-13, 1915-16, and 1918 Kansas City directories.

On December 8, 1919, a mere fifteen months after the registration card was filled out, a man named Stephen J. Crain died in Kansas City. His death certificate lists his address as 2648 East 7th Street, his occupation as plumber, his marital status as single, and his cause of death as "Fractures[:] Patient jumped out of a window."<sup>96</sup> It also states that his parents are Margaret (nee Fitzpatrick) and James Crain, that he was born in Ireland, and that his date of birth is unknown.<sup>97</sup>

The death certificate's "informant" is John F. Crain.<sup>98</sup> In an obituary published in the next day's *Kansas City Star*, John is identified as Stephen's brother: "DIED. CRAIN—Stephen, 37 years of age, died at the home of his mother, Mrs. James Crain, 2648 E. 7th st. Besides his mother, he is survived by one brother, John F. Crain. . . . Burial is Mount St. Mary cemetery."<sup>99</sup>

At Mount Saint Mary's, the Crains have a family headstone. It reads (from top to bottom) as follows:

CRAIN  
 JAMES J. CRAIN 1853-1910  
 MARGARET, HIS WIFE  
 1851-\_\_\_\_  
 WM S. CRAIN 1878-1910  
 STEVE J. CRAIN 1878-1919  
 JOHN F. CRAIN 1880-1920<sup>100</sup>

93. *Fire Destroys 150 Mules*, KANSAS CITY TIMES, May 18, 1909, at 1.

94. See World War I Draft Registration Card for Stephen Joseph Crane, available at <https://search.ancestry.com> (under "U.S., World War I Draft Registration Cards, 1917-1918").

95. *Id.*

96. See Missouri State Board of Health—Bureau of Vital Statistics, *Certificate of Death for Stephen J. Crain*, available at [https://www.sos.mo.gov/images/archives/deathcerts/1919/1919\\_00037713.pdf](https://www.sos.mo.gov/images/archives/deathcerts/1919/1919_00037713.pdf).

97. *Id.*

98. *Id.*

99. *Died—Crain*, KANSAS CITY STAR, Dec. 9, 1919, at 21.

100. See *Steve J Crain*, FIND A GRAVE, at <https://www.findagrave.com/memorial/15050513/steve-j-crain>. Find A Grave also has web pages for Stephen's father, who was a teamster, and

Further proof that Stephen J. Crain and Stephen J. Crane are the same person is available by taking a closer look at the city directories. In the 1916 directory there is a Stevens [sic] Crain who is a plumber and lives at 2648 East 7th Street.<sup>101</sup> As explained above, there also is a Stephen J. Crane who is a laborer and lives at 2648 East 7th Street.<sup>102</sup>

There is no obvious reason why Stephen regularly went by “Crane” rather than “Crain.”<sup>103</sup> Nevertheless, because he did, he also could be the baseball world’s S.J. Crane. And, unfortunately, without further evidence, breaking the tie is impossible.

#### IV. CRANE’S INJURY

That Crane (Samuel or Stephen) was a baseball fan, and had been to previous games, is made clear in Judge Johnson’s opinion:

In the agreed statement of facts it is said: “Baseball is our national game, and the rules governing it and the manner in which it is played and the risks and dangers incident thereto are matters of common knowledge.” Plaintiff’s concurrence in this statement would seem to justify the conclusion that he was no novice at the game, but was familiar with the risks and dangers incident to the situation of the spectator occupying a seat in the grand stand.<sup>104</sup>

The appellate case file identifies the game at which Crane was injured: August 17, 1911.<sup>105</sup> In 1911, August 17 fell on a Thursday.<sup>106</sup> But with night baseball still decades away,<sup>107</sup> how was Crane, a tradesman<sup>108</sup> in his prime

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mother. See *James J Crain*, FIND A GRAVE, at <https://www.findagrave.com/memorial/15050487/james-j-crain> and *Margaret “Maggie” Fitzpatrick Crain*, FIND A GRAVE, at <https://www.findagrave.com/memorial/15050493/margaret-crain> (indicating that Margaret died in 1930).

101. See KANSAS CITY DIRECTORY—FORTY-SIXTH ANNUAL EDITION, *supra* note 67, at 526.

102. See *supra* note 67 and accompanying text.

103. Stephen could both read and write, so illiteracy is not the answer. See Twelfth Census of the United States, Kansas City, Jackson County, State of Missouri, Supervisor’s District No. 5, Enumeration District No. 65, Sheet 5, Line 1 (June 4, 1900), *available at* <https://search.ancestry.com> (under “1900 United States Federal Census”) (answering “Yes” to the questions “Can read?,” “Can write?,” and “Can speak English?” for Steven J. Crane).

104. *Crane*, 153 S.W. at 1077.

105. See *supra* text accompanying note 25.

106. See *Calendar for Year 1911 (United States)*, at <https://www.timeanddate.com/calendar/?year=1911&country=1>.

107. The Blues did not begin playing night baseball until 1932. See *Night Baseball to Be Introduced at Kansas City Tonight*, ST. LOUIS POST-DISPATCH, July 6, 1932, at 2B (“The Kansas City Blues play their first night baseball game at home under the floodlights at Muehlebach Field tonight against Indianapolis.”). By this time, the Monarchs, the city’s black team, had been playing night baseball for two years. See WILLIAM A. YOUNG, J.L. WILKINSON AND THE KANSAS CITY MONARCHS: TRAILBLAZERS IN BLACK BASEBALL 74-76 (2016). For a further look at the development of night baseball, see DAVID PIETRUSZA, LIGHTS ON!: THE WILD CENTURY-LONG SAGA OF NIGHT BASEBALL (1997).

108. See *supra* text accompanying notes 60 (Samuel working as a plumber) and 61 (Stephen working as a laborer).

working years,<sup>109</sup> able to go to this particular game? As it turns out, on August 17, 1911 the Kansas City Blues played a doubleheader against the St. Paul Saints.<sup>110</sup> To get the word out, the team purchased large displays ads that advised:

K.C. Baseball Club, 20th and Olive  
BASEBALL TODAY  
Association Park,  
KANSAS CITY vs. ST. PAUL  
DOUBLE HEADER TODAY  
FIRST GAME AT 2 O'CLOCK.<sup>111</sup>

The next day, newspapers around the country carried the following Associated Press story, which said nothing at all about Crane's injury:

Kansas City, Aug. 17—St. Paul and Kansas City divided a double-header today, the visitors taking the first game. Pitcher Laroy successfully relieved Gehering and stemmed the tide of defeat in the first contest, but when he came to the relief of Pitcher Chech in the second contest the locals gathered in five hits and scored four runs in one inning. Corriden scored from second on an infield out in the second contest.<sup>112</sup>

According to the accompanying box scores, the first game, which the Saints won 9-7, took one hour and fifty minutes to complete, while the

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109. Because of the discrepancy in the birth dates on his World War I and World War II draft registration cards, see *supra* text accompanying notes 71 and 74, Samuel either was twenty-five or twenty-six in 1911. Likewise, because of the discrepancy in the birth dates on his World War I card and his headstone, see *supra* text accompanying notes 94 and 100, Stephen either was twenty-nine or thirty-two.

110. The Blues and the Saints were two of the American Association's eight teams; the other six were the Columbus Senators, Indianapolis Indians, Louisville Colonels, Milwaukee Brewers, Minneapolis Millers, and Toledo Mud Hens. After failing in its effort to be recognized as a major league, the American Association became one of baseball's most influential minor leagues and produced numerous future Hall of Famers, including Mickey Mantle, Willie Mays, and Ted Williams. In 1963, however, it folded, a victim of the major leagues' westward expansion (which had caused the displacement of the Blues, Brewers, and Saints and the demise of the Millers). In 1969, a new American Association was formed and played until 1997, when it disbanded. Since 2005, the league's name has been used by an "independent" league (*i.e.*, one not sanctioned by Major League Baseball). See American Association of Independent Professional Baseball, *History*, at <http://www.americanassociationbaseball.com/league/history>.

For a further look at the American Association, see, for example, DENNIS PAJOT, *BASEBALL'S HEARTLAND WAR, 1902-1903: THE WESTERN LEAGUE AND AMERICAN ASSOCIATION VIE FOR TURF, PLAYERS AND PROFITS* (2011); MARSHALL D. WRIGHT, *THE AMERICAN ASSOCIATION: YEAR-BY-YEAR STATISTICS FOR THE BASEBALL MINOR LEAGUE, 1902-1952* (1997); NEIL J. SULLIVAN, *THE MINORS: THE STRUGGLES AND THE TRIUMPH OF BASEBALL'S POOR RELATION FROM 1876 TO THE PRESENT* 115-31 (1990); see also Rex Hamann, *The American Association Almanac*, at <http://almanacpark.blogspot.com>.

111. KANSAS CITY STAR, Aug. 17, 1911, at 12 (bottom far right-hand column).

112. *St. Paul 9-6, Kansas City 7-9*, COURIER-J. (Louisville), Aug. 18, 1911, at 6.

second game, which the Blues won 9-6, lasted two hours.<sup>113</sup> The box scores make it clear that there had been plenty of action in both games: the teams combined for a total of thirty-one runs on thirty-five singles, eleven doubles, three triples, and three home runs.<sup>114</sup> There also were fourteen walks, a wild pitch, a passed ball, a hit batsman, and five errors.<sup>115</sup>

With the teams playing for almost four hours, it would have been easy for Crane to make at least one of the games regardless of his work schedule. This is especially true given that the first contest started at 2:00 p.m.,<sup>116</sup> which means that the second match did not begin until 4:20 p.m. and lasted until 6:20 p.m.<sup>117</sup>

If Crane went directly to the game from his house, he could have walked to the stadium, which was only about a mile away.<sup>118</sup> In 1911, Association Park, which had cost \$10,000 to build in 1903<sup>119</sup> and had been named by

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113. *Id.*

114. *Id.*

115. *Id.*

116. See *supra* text accompanying note 111.

117. I have arrived at these times as follows: 1) the *Star's* display ad, *id.*, indicates that the first game began at 2:00 p.m.; 2) the box scores, see *supra* text accompanying note 113, advise that the first game lasted one hour and fifty minutes and the second game took two hours, for a total of three hours and fifty minutes; and, 3) the *Journal's* article recapping the afternoon, see *infra* text accompanying note 131, says that the crowd was entertained for four hours and twenty minutes, which means there was a thirty-minute intermission.

Holding an intermission between the games of a doubleheader was a well-established custom by 1911. See generally CHARLIE BEVIS, DOUBLEHEADERS: A MAJOR LEAGUE HISTORY 5 (2010) (noting that a fifteen-minute intermission was taken during the country's very first doubleheader, an 1882 National League affair between the Providence Grays and the Worcester Ruby Legs); see also PAUL DICKSON, THE DICKSON BASEBALL DICTIONARY 458 (3d ed. 2011) (explaining that the word "intermission," when used in a baseball context, refers to "[t]he period (usually 20 minutes) between games of a doubleheader.").

As has been noted elsewhere, in the years before lights made night baseball possible, "[T]he first game [was] played in the early afternoon and the second in the late afternoon . . . if either game went into extra innings the second game was eventually called due to darkness." *Doubleheader*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, at [https://en.wikipedia.org/wiki/Doubleheader\\_\(baseball\)](https://en.wikipedia.org/wiki/Doubleheader_(baseball)). Sunset in Kansas City on August 17, 1911, occurred at 7:12 p.m. See NOAA Earth System Research Lab, *Sunrise/Sunset Calculator*, at <https://www.esrl.noaa.gov/gmd/grad/solcalc/sunrise.html> (using Latitude 39 degrees 4 minutes, 59 seconds and Longitude 94 degrees, 34 minutes, and 1 second). Thus, the Blues and the Saints could have played for another hour before the umpires would have had to stop them.

118. See Whittaker Report, *supra* note 50, at 7, 18; GOOGLE MAPS, at <https://www.google.com/maps> (showing that the distance on foot from Samuel's home at 2126 Highland Avenue, Kansas City, MO 64108 to Blues Park, 2000 Prospect Avenue, Kansas City, MO 64127 was 0.8 miles and the distance on foot from Stephen's home at 2648 East 7th Street, Kansas City, MO 64124 to Blues Park was 1.3 miles); see also GERALD C. WOOD, SMOKY JOE WOOD: THE BIOGRAPHY OF A BASEBALL LEGEND 342 n.24 (2013) (explaining that "Kansas City Blues Association Park was located in the square between Olive Street and Prospect Avenue, Nineteenth and Twentieth Streets southeast of the downtown area. . . . Although the field was reshaped when the railroad cut through in 1923, it remains as Blues Park.").

119. See PAJOT, *supra* note 110, at 159.

fans voting in a contest conducted by the *Kansas City Journal*,<sup>120</sup> was in its eighth season as the Blues' home field.<sup>121</sup>

Association Park was typical of early 20th century baseball stadiums: it was built out of wood, had a single-deck grandstand, and tempted left-handed batters with an extremely short right field.<sup>122</sup> According to one source, the "bleachers [accommodated] 4,500 [and the] grandstand [had] seating [for] 3,500."<sup>123</sup> Another source adds that the ballpark "was enclosed by a 12-foot board fence. A large grandstand included a box seat area along one side. Bleachers extended into the LF corner; a narrow bleacher section ran from the LF corner to the CF wall."<sup>124</sup> A third source reports that the "right-field wall [was] only 245 feet from home plate, with a ten-foot fence thirty feet long to reduce home runs."<sup>125</sup>

120. See *Hunting a Name: Fans of Kansas City to Name the New Ball Park*, TOPEKA DAILY HERALD, Mar. 18, 1903, at 3. The moniker "Association Park" (35.7%) barely edged out "Bluefield" (34.4%):

The Kansas City Club's new ball park has been named "Association Park" by popular vote taken by the Kansas City "Journal." The vote was as follows: Association Park, 6149; Bluefield, 5938; Gear Park, 4764; Union Park, 287; New Exposition Park, 85; Dale Park, 60; Athletic Park, 27; Olivette Park, 21; total, 17,241.

*American Association News*, SPORTING LIFE, Apr. 18, 1903, at 14. Based on these results, nearly ten percent of all Kansas Citizens participated in the vote. See WALTER WILLIAMS, THE STATE OF MISSOURI: AN AUTOBIOGRAPHY 547 (1904) (reporting that Kansas City's population in 1903 was 173,064).

121. Association Park opened on April 22, 1903 with an 8-4 Blues victory over the Minneapolis Millers. See *Millers Lose First Game: Wilmot's Men Downed by Blues at Kansas City—Score is 8 to 4*, MINNEAPOLIS TRIB., Apr. 23, 1903, at 4. As one would expect, the afternoon had been quite festive:

It was a gala day in local baseball circles. The game was preceded by a parade which, headed by a band and a tally-ho, consisted of city officials, the two teams and a delegation of rooters from the stock yards.

The teams reached the park shortly after 3 o'clock, but the stands were already comfortably filled before the band gave the signal of their approach. The park which, when completed, will be one of the prettiest in the country, still showed many places unfinished, although the stands were ready for the most part for the inflow of the enthusiasts.

*Id.*

122. See RONALD M. SELTER, BALLPARKS OF THE DEADBALL ERA: A COMPREHENSIVE STUDY OF THEIR DIMENSIONS, CONFIGURATIONS AND EFFECTS ON BATTING, 1901-1919, at 8 (2008). Like all wooden ballparks, Association Park was vulnerable to fire, and, as explained *supra* note 23, it burned to the ground in 1912; see also *Tebeau's Park Burns*, BELLOIT DAILY CALL (Kan.), Sept. 26, 1912, at 5 ("The fire started only a few hours after Kansas City and St. Paul had played a doubleheader at the park, the closing games of the American Association season.")

123. PAJOT, *supra* note 110, at 159. Reflecting the times, "African Americans were restricted to the top 14 rows[.]" YOUNG, *supra* note 107, at 40.

124. *Association Park*, STATS CREW, at <https://www.statscrew.com/venues/v-1303>.

125. WOOD, *supra* note 118, at 51. For a further look at Association Park, see Rex Hamann, *The Ball Parks of Kansas City, Part 1*, 4 AM. ASS'N ALMANAC 1 (Summer 2005).

If, on the other hand, Crane travelled to the game not from his home but from a more distant job site, he likely did so by streetcar: not only were they the principal form of public transportation in Kansas City in 1911,<sup>126</sup> but Association Park was served by three different lines.<sup>127</sup> During the ride, Crane would have found himself surrounded by other Blues fans, all of them excited by the fact that after years of futility, their team finally was in the thick of a pennant race:

In 1903, Tebeau built a new ballpark in Kansas City called Association Park and this facility was the home of the Blues for the next twenty years. In the American Association's first sixteen seasons, Kansas City finished in the first division only four times, second in 1911 and fourth in 1902, 1907 and 1912.<sup>128</sup>

Indeed, as play began on August 17, the Blues were just 1.5 games behind the league-leading Minneapolis Millers, with the standings as follows:

Team	Wins	Losses	Pct.	GB
Minneapolis	66	50	.569	---
Kansas City	64	51	.557	1.5
Columbus	65	52	.556	1.5
St. Paul	57	59	.491	9
Milwaukee	57	62	.479	10.5
Indianapolis	56	64	.467	12
Louisville	54	62	.466	12
Toledo	51	66	.436	15.5 <sup>129</sup>

126. See MONROE DODD, *A SPLENDID RIDE: THE STREETCARS OF KANSAS CITY, 1870-1957*, at 104 (2002) ("Kansas City's population skyrocketed 30 percent in the decades of the 1910s. For the vast majority of these people, the way to get around town was by streetcar."). As Dodd reports, during 1911 Kansas City's streetcars carried 118,547,520 fare-paying riders. *Id.* at 86. Given that Kansas City's population was only 258,009, see DEPARTMENT OF COMMERCE—BUREAU OF THE CENSUS, *ESTIMATES OF POPULATION 1910-1914*, at 14 (1914), this works out to 459 trips per person.

127. See WOOD, *supra* note 118, at 50.

128. Bill Weiss & Marshall Wright, *Top 100 Teams: 18. 1923 Kansas City Blues*, MILB.COM, at <http://www.milb.com/milb/history/top100.jsp?idx=18>.

129. *Standings of the Clubs—American Association*, L.A. DAILY TIMES, Aug. 17, 1911, at 2 (pt. III). I have added the "Games Behind" data, which in 1911 was not yet a standard newspaper statistic. See generally DICKSON, *supra* note 117, at 357. In the end, the Blues (94-70) fell just short, finishing 4.5 games behind the Millers (99-66). See *1911 American Association*, BASEBALL REFERENCE, at <https://www.baseball-reference.com/register/league.cgi?id=9cf0c0dd>.

Rather than reprint the Associated Press's story, the *Kansas City Journal* carried its own account,<sup>130</sup> with the opening paragraph colorfully summing up matters:

By splitting a double header with the Saints, the Blues yesterday bid farewell to a howling mob of nearly 8,000 people who crowded the old Olive street park to see the big bargain matinee, the scores being 9 to 7 in favor of the Saints in the opener and 9 to 6 in the final in favor of the home club. Real baseball was not in evidence, both of the games being weird affairs, although there was enough hitting and fielding during the four hours and twenty minutes of pastiming [sic] to keep the fans in an uproar.<sup>131</sup>

As part of its coverage, the *Journal* ran an enormous cartoon entitled, "They Whacked Up."<sup>132</sup> In it, two ballplayers (one with "Blues" written on his sleeve and the other with "Saints" on his back) are seen using bats to drive a stake labeled "double header" into a log that has the word "game" carved on two sides.<sup>133</sup> Like the Associated Press, however, the *Journal* made no mention of Crane or his injury.

Because it was the city's evening paper,<sup>134</sup> the *Star* did not carry a story about the doubleheader, which ended too late to make its August 17 issue and was old hat by the time its August 18 issue hit the newsstand. Instead, it printed a long piece about the Blues' upcoming four-city, thirteen-game road trip.<sup>135</sup> Next to this story, however, was a large cartoon drawn by Archibald B. Chapin, the paper's famed sports cartoonist.<sup>136</sup> Called

130. See *Blues Win, 9 to 6 and Lose One, 9-7: Saints Bat Maddox Out in Opening Game of Double Header; Hitting Takes Second; After Saving First Combat Laroy Throws Away Last in One Inning*, KANSAS CITY J., Aug. 18, 1911, at 5.

131. *Id.*

132. See *They Whacked Up*, KANSAS CITY J., Aug. 18, 1911, at 5. The cartoon's artist was John T. "Jack" Wilson (1884–1968), who later became the editor of the *Rutherford American* in New Jersey. See *John Thomas Wilson 1884–1968*, at <https://search.ancestry.com> (under "Staples Family Tree"). For a profile of Wilson, see *The Story of a Former Ottawan*, EVENING HERALD (Ottawa, Kan.), Dec. 9, 1912, at 5. In 1922, Wilson created the short-lived "Radio Ralf," one of the country's first radio-related comic strips. See Allan Holtz, *Radio Ralf*, STRIPPER'S GUIDE, Nov. 23, 2012, at <https://strippersguide.blogspot.com/search?q=jack+wilson>.

133. *They Whacked Up*, *supra* note 132. Underneath this cartoon are several smaller drawings showing the day's key plays. Their collective caption is "Split Even." *Id.*

134. See *supra* note 51.

135. See *The Last Eastern Invasion: One More Trip North, Too, and Then the Blues Finish at Home*, KANSAS CITY STAR, Aug. 18, 1911, at 13 (explaining that the Blues would be traveling to Columbus, Indianapolis, and Louisville for three games in each city and to Toledo for four games, including a Sunday doubleheader).

136. Chapin (1875–1962) had a celebrated career as a cartoonist for newspapers and magazines in Kansas City, New York, Philadelphia, and St. Louis. For a detailed summary of his life, see Alex Jay, *A.B. Chapin*, STRIPPER'S GUIDE, Jan. 30, 2014, at <https://strippersguide.blogspot.com/2014/01/ink-slinger-profiles-by-alex-jay-ab.html>.



“Yesterday’s Thriller!”<sup>137</sup> the single-panel sketch depicts two boys piloting a Wright Brothers-type glider.<sup>138</sup> Both have on baseball caps, with one bearing the letters “K.C.” and the other “S.P.” On the underside of the glider’s lower wing are emblazoned the words “Double Header,” while far below the plane is a baseball stadium whose exterior wall says “Association Park.” Above the field are three puffy clouds; the lowest one contains the words, “Mingled Voicings of Joy and Sadness.”

Because of the silence of the appellate case file and the lack of newspaper reporting, there is no way to know whether Crane attended both games or just one;<sup>139</sup> during which game he was injured; or who the batter was that hit the ball that struck him. There also is no way to know whether Crane was taken to a hospital; who his doctor was; how he came to hire Laughlin as his attorney;<sup>140</sup> or whether Laughlin took the case on an hourly or contingent fee basis.<sup>141</sup>

One thing we do know, however, is that Crane paid fifty cents for his seat along third base,<sup>142</sup> the present-day equivalent of \$13.36.<sup>143</sup> As will be recalled, in 1911 Samuel was working as a plumber,<sup>144</sup> and the typical Kansas City plumber at that time was making 62.5 cents an hour.<sup>145</sup> Thus, while the ticket was not cheap, Samuel likely did not struggle to afford it, especially as he was single and therefore did not have to worry about

137. See *Yesterday’s Thriller!*, KANSAS CITY STAR, Aug. 18, 1911, at 13.

138. For photographs of what the Wright Brothers’ gliders looked like during this time, see, for example, *Wright Airplanes*, WRIGHT BROTHERS AEROPLANE COMPANY, at [http://www.wright-brothers.org/Information\\_Desk/Just\\_the\\_Facts/Airplanes/Wright\\_Airplanes.htm](http://www.wright-brothers.org/Information_Desk/Just_the_Facts/Airplanes/Wright_Airplanes.htm).

139. That Crane probably went to just one of the two games is hinted at by his appellate brief: “Plaintiff states that on the 17th day of August, 1911, he applied for admission to said park of defendant to attend a game of baseball and paid an admission fee to defendant for the purpose of entering said park.” See *supra* text accompanying note 25 (emphasis added). Likewise, Judge Johnson makes no mention of Crane attending two games. See *Crane*, 153 S.W. at 1076–78.

140. Given that Laughlin was a successful civil litigator, see *supra* text accompanying notes 34–36, it is probable that Crane simply received a referral to him. It is possible, however, that Crane already knew Laughlin—perhaps he had installed or repaired something in Laughlin’s office or home. The short period of time between Crane’s accident on August 17, see *supra* text accompanying note 25, and the filing of the complaint by Laughlin on August 25, see *supra* text accompanying note 26, makes this idea at least somewhat plausible.

141. In 1906, the Missouri Bar Association adopted the state’s first code of ethics. See *Proposed Code of Ethics*, in PROCEEDINGS OF THE TWENTY-FOURTH ANNUAL MEETING OF THE MISSOURI BAR ASSOCIATION HELD AT ST. JOSEPH, MISSOURI—FRIDAY AND SATURDAY, SEPTEMBER 28 AND 29, 1906, at 31, 42 (1907). It permitted lawyers to accept contingent fees, but did so grudgingly. See *id.* at 41 (“Contingent fees may be contracted for; but they lead to many abuses and certain compensation is to be preferred.”).

142. See *supra* text accompanying notes 3, 25.

143. See Friedman, *supra* note 43.

144. See *supra* text accompanying note 60.

145. See I INVESTIGATION RELATIVE TO WAGES AND PRICES OF COMMODITIES 59 (1911) (61st Cong., 3d Sess., S. Doc. No. 847).



supporting a family.<sup>146</sup> The same would have been true for Stephen, who also was a plumber<sup>147</sup> and also was single.<sup>148</sup>

The absence of any media coverage of Crane's injury is puzzling. On the day before he was hurt, Lawrence Burton, a 24-year-old amateur baseball player in Michigan, was killed by an errant throw that hit him in the head while he was trying to score from third on an infield hit.<sup>149</sup> The details of Burton's death were carried by newspapers as far away as Florida, New York, and Canada.<sup>150</sup>

As explained above, Crane's appellate brief admitted that his injuries had healed by the time of trial.<sup>151</sup> That there were no long-lasting effects is made clear by Samuel's and Stephen's World War I draft registration cards.<sup>152</sup> On both, there is a blank below Question 29, which asks: "Has [this] person lost [an] arm, leg, hand, eye, or is he obviously physically disqualified? (Specify)."<sup>153</sup>

#### V. ECHO L. WELLS AND CHARLES A. EDLING

Without a doubt, the most remarkable aspect of Crane's story is how close he came—twice—to being an also-ran in the race to become the father (or mother) of the baseball rule. In both instances, the other aspirant was a fellow American Association fan.

In *Wells v. Minneapolis Baseball & Athletic Association*,<sup>154</sup> Echo L. Wells's collarbone was shattered when a foul ball hit her during a Millers game on July 9, 1910.<sup>155</sup> It was Ladies' Day, which meant Wells had been admitted

146. See *supra* note 86 and accompanying text.

147. We cannot be certain that Stephen was working as a plumber in 1911, because the city directory for that year lists him as a "laborer." See *supra* text accompanying note 61. However, in the 1910 census, he is listed as a plumber. See Thirteenth Census of the United States, Kansas City, Jackson County, State of Missouri, Supervisor's District No. 5, Enumeration District No. 86, Sheet No. 10B, Line 72 (Apr. 22, 1910), available at <https://search.ancestry.com> (under "1910 United States Federal Census"). Due to an obvious mistake by the enumerator, Stephen's last name appears as "Craein." *Id.*; see Whittaker Report, *supra* note 50, at 12 ("It was common for the census taker to spell names as they heard them or how they thought they were spelled.")

148. See *supra* text accompanying note 96. In addition, Stephen's World War I draft registration card lists his closest contact as his mother rather than a spouse. See *supra* note 94.

149. See *Player Killed by Thrown Ball: Lawrence Burton, Struck on Head, Dies Instantly*, LANSING ST. J. (Mich.), Aug. 17, 1911, at 2.

150. See *Ball Player Struck on Head by Ball and Killed*, PENSACOLA J., Aug. 18, 1911, at 5; *Killed by Baseball*, BROOKLYN DAILY EAGLE, Aug. 17, 1911, at 20; *Ball Player Killed While Stealing Home*, OTTAWA EVENING J., Aug. 17, 1911, at 4.

151. See *supra* text accompanying note 42.

152. See *supra* text notes 71 and 94.

153. *Id.*

154. 142 N.W. 706 (Minn. 1913).

155. *Id.* at 708.

for free,<sup>156</sup> and the Millers were hosting the Milwaukee Brewers in a show-down that was called after three innings because of rain.<sup>157</sup> Two days earlier, Wells had celebrated her 19th birthday.<sup>158</sup>

At trial, the jury awarded Wells \$825,<sup>159</sup> but on appeal the Minnesota Supreme Court, in a decision dated July 3, 1913,<sup>160</sup> ordered a new trial.<sup>161</sup> In the course of his opinion, Justice Andrew Holt<sup>162</sup> took note of Judge Johnson's opinion, which had been released nearly five months earlier<sup>163</sup> despite Wells having been injured more than a year before Crane.<sup>164</sup> In particular, Judge Holt wrote:

And if it had appeared clearly that plaintiff knew the dangers incurred by taking a seat in the open, it should be held that she assumed all risk of injury from balls thrown or batted in the game. We do not think this knowledge conclusively appears. In the Crane Case, *supra*, one of the stipulated facts was this: 'Baseball is our national game, and the rules governing it and the manner in which it is played and the risks and dangers incident thereto are matters of common knowledge.' But we do not think that all who attend baseball games would, or should, enter such a stipulation. Only those who have been struck with a baseball realize its hardness, swiftness, and dangerous force. Women and others not acquainted with the game are invited, and do attend. It would not be either a safe or reasonable rule to hold that, in these games to which the general public is invited, no duty rests upon the management to protect from the dangers incident thereto, other than by a proper screening of part of the seats. What precaution the ordinarily prudent person, furnishing a public amusement of this kind, should take to warn and protect the spectators from the attendant dangers of which they may be ignorant, we think a question for the jury.<sup>165</sup>

156. *Id.* at 706. For the history of Ladies' Day, see Karen E. Holleran, "Ladies' Day," in *1 AMERICAN SPORTS: A HISTORY OF ICONS, IDOLS, AND IDEAS* 683–84 (Murry R. Nelson ed., 2013). As Holleran explains, baseball teams began holding such promotions in 1883 and ended them in 1971. *Id.*

157. See *American Association*, TOPEKA DAILY CAP., July 10, 1910, at 16.

158. Wells was born in Minneapolis on July 7, 1891, and died in Boca Raton, Florida on October 29, 1966. See *Echo Wells Holesworth*, FIND A GRAVE, at <https://www.findagrave.com/memorial/87091435>; see also *Deaths in Boca Raton—Mrs. Echo Holesworth*, BOCA RATON NEWS, Nov. 3, 1966, at 13A (reporting that Wells moved from Minneapolis to Boca Raton in 1962 after retiring from her job as a millinery buyer).

159. See *Baseball Spectators Risk Hurt by Ball: State Supreme Court Holds Park Management Not Liable for Injury*, MINNEAPOLIS MORN. TRIB., July 4, 1913, at 2.

160. See *Wells*, 142 N.W. at 706.

161. *Id.* at 708–09.

162. For a biography of Holt, see *Justice Andrew Holt, Veteran Jurist, Dies at Age of 92*, 5 BENCH & B. MINN. 21 (Feb. 1948).

163. Compare *Crane*, 153 S.W. at 1076 (decision dated February 17, 1913), with *Wells*, 142 N.W. at 706 (decision dated July 3, 1913).

164. Compare *supra* text accompanying note 155 (Wells injured July 9, 1910), with *supra* text accompanying note 25 (Crane injured August 17, 1911).

165. *Wells*, 142 N.W. at 708. For a further discussion, see Hylton, *supra* note 12, at 500 (observing that "[l]arge portions of the *Crane* opinion were quoted verbatim, and the [*Wells*] court accepted the Missouri court's formulation that the operator of the ballpark had a duty of reasonable care upon which spectators could rely").

Crane's other rival for the title of progenitor of the baseball rule was a Kansas City attorney named Charles A. Edling.<sup>166</sup> On May 31, 1911, while watching the Blues beat the Brewers 5-4,<sup>167</sup> Edling suffered a broken nose when a foul ball hit him.<sup>168</sup> A jury awarded him \$3,500,<sup>169</sup> and the Kansas City Court of Appeals, in an opinion again authored by Judge Johnson, affirmed.<sup>170</sup> Unlike Crane and Wells, Edling had been sitting in a screened part of the grandstand, but because of a hole in the netting, which the Blues had failed to repair, the ball was able to strike him.<sup>171</sup>

Although Edling filed his lawsuit two months before Crane,<sup>172</sup> Crane beat Edling to the finish line by nearly sixteen months.<sup>173</sup> Once again, this was because Edling, like Wells, had opted for a jury trial instead of a bench trial.<sup>174</sup>

## VI. CONCLUSION

It is a pity that we do not know more about the circumstances surrounding S.J. Crane's inopportune decision to sit in an unprotected seat. Nevertheless, as long as fans continue to risk injury by going to games,<sup>175</sup> Crane's place, in both baseball history and the development of tort law, will be secure.

166. For a profile of Edling (1866–1925), see *Charles A. Edling Is Dead: Lawyer Dies Unexpectedly While Walking on the Street*, 2 KANSAS CITY B. BULL. 3 (Feb. 1925). For his death certificate, see [https://www.sos.mo.gov/images/archives/deathcerts/1925/1925\\_00001245.PDF](https://www.sos.mo.gov/images/archives/deathcerts/1925/1925_00001245.PDF) (attributing Edling's death, at the age of 58, to a heart attack).

167. See *Kansas City 5—Milwaukee 4*, DES MOINES REGISTER & LEADER, June 1, 1911, at 6.

168. See *George Tebeau Is Sued*, PITTSBURGH PRESS, June 28, 1911, at 16 ("Kansas City, Mo., June 25—George Tebeau, owner of the Kansas City baseball team (American association), was today sued for \$20,000 by Charles A. Edling, whose nose was broken when hit by a foul ball. Edling was injured when sitting back of home plate in the grandstand of Association park, May 31 last.").

169. See *For a Broken Nose: A Baseball That Broke Though the Wire Will Cost Tebeau \$3,500*, KANSAS CITY GAZETTE GLOBE, May 29, 1913, at 1.

170. See *Edling v. Kansas City Baseball & Exhibition Co.*, 168 S.W. 908 (Mo. Ct. App. 1914).

171. *Id.* at 909.

172. Edling filed his lawsuit on June 25, 1911, see *supra* note 168, while Crane filed his on August 25, 1911. See *supra* text accompanying note 26.

173. Compare *Crane*, 153 S.W. at 1076 (decision dated February 17, 1913), with *Edling*, 168 S.W. at 908 (decision dated June 1, 1914).

174. For a further discussion of Edling's case, see Hylton, *supra* note 12, at 498–500.

175. In 2018, the amount of netting at all major league ballparks was increased to reduce the number of fan injuries. See Wallace Matthews, *All 30 Teams Will Have Extended Netting Next Season*, N.Y. TIMES, Feb. 1, 2018, at B11. This change was partially made because of *Payne v. Office of the Comm'r of Baseball*, 2016 WL 6778673 (N.D. Cal. 2016), *aff'd*, 705 F. App'x 654 (9th Cir. 2017), a class action lawsuit that, while unsuccessful, brought widespread attention to the subject. Despite the enhancements, in August 2018, a fan at a Los Angeles Dodgers game was killed when a foul ball struck her in the head. As a result, calls are being made for even more netting. See Tyler Kepner, *Fan's Death by Foul Ball Prompts Cry for High Nets*, N.Y. TIMES, Feb. 6, 2019, at B7.

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APPENDIX A

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI,  
AT KANSAS CITY  
MAY TERM, 1912

August 17, 1912 – W.O. Thomas, Judge – [Two illegible handwritten words]  
.....  
.....

S. J. CRANE,

Plaintiff,

-vs.-

Number 61103

THE KANSAS CITY BASEBALL AND EXHIBITION  
COMPANY AND GEORGE TEBEAU,

Defendants.  
.....  
.....

RECORD ENTRY.

Now on this day this cause comes on regularly for trial, plaintiff appearing in person and by L. A. Laughlin, his attorney, and the defendants appearing by Cooper & Wilson, their attorneys. Thereupon, a jury is waived and this cause is submitted to the Court for trial without a jury upon the pleadings and an agreed statement of facts, and the Court being fully advised in the premises doth find the issues doth find the issues in favor of the defendants and against the plaintiff.

WHEREFORE, IT IS CONSIDERED, ORDERED AND ADJUDGED by the Court that plaintiff take nothing herein and that the defendants be discharged and go hence without day and recover of and from the plaintiff the costs hereof, for which let execution issue.

Thereupon, plaintiff files motion for new trial which is submitted to the Court, and upon consideration thereof, the Court doth over-rule the same, to which action and ruling of the Court the plaintiff at the time excepted.

Thereupon, plaintiff filed application and affidavit for appeal from the said judgment of this Court to the Kansas City Court of Appeals, which said application is heard and sustained and appeal allowed to the Kansas City Court of Appeals.

Plaintiff now presents to the Court his Bill of Exceptions to the orders, actions and rulings of the Court herein, which is now by the Court signed, sealed and approved, and ordered to be filed and made a part of the record of the case, which is now accordingly done.