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Recent Cases

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Neil, 92 Tex., 400, 49 S. W., 219; Blaisdell, Jr. vs. Citizens Nat. Bank, 75 S. W., 292. Matters of evidence should not be alleged and should be stricken from the pleading. Anglin vs. Barlow, 45 S. W., 827, etc. The petition must not be ambiguous, but must be clear, certain and consistent. Orange Lumber Co. vs. Thompson, 126 S. W., 604. The petition must not contain any irrelevant or surplus matter. Tandy vs. Fowler, 150 S. W., 181; Tex. N. O. R. R. Co. vs. Barber, 71 S. W., 393, etc.

Thus we see that common law pleading is used every day, whether under that name or not, and that the highest courts of the state are enforcing all the requirements and requisites of common law practice, although the manner of pleading is limited to the petition and answer. Hence I submit it to any one that the state of Texas is a thorough common law state, subject only to statutory enactments of her legislative assemblies, and that the effect of the civil law system has been swallowed up in the glorious triumph and victory of the common law.

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IMPORTANT CASES DECIDED BY THE COURT OF APPEALS OF KENTUCKY.

Wheeler, By et al. v. Cincinnati, New Orleans & Texas Pacific Railway Company.

(Decided October 11, 1916.)

Appeal from Grant Circuit Court.

1. Appeal and Error—Law of the Case.—The rule is thoroughly established that the opinion of the Court of Appeals delivered on a first appeal, is the law of the case, and that all questions of law then presented are conclusively settled.

2. Appeal and Error—Former Appeal.—The judgment of the Court of Appeals on a former appeal is equally binding on that court, as well as upon the parties to the appeal.

Illinois Central Railroad Company v. Louisville Bridge Company.

(Decided October 12, 1916.)

Appeal from Jefferson Circuit Court
(Common Pleas Branch, Fourt Division).

1. Contribution—Torts—Joint Tort Feasors—Indemnity.—The general rule is that where an accident is caused by the contributing negligence of two or more persons. and the injured party recovers damages against one of them, the tort feasor against whom the recovery is had cannot look to the other tort feasors for indemnity or contribution. But there are exceptions to this general rule.

2. Contribution—Torts—Joint Tort Feasors—Indemnty.—"S" was wrongfully forced to leave a moving train, and when he was put off his foot was caught in an unblocked frog under the control of a bridge company. He sued the bridge company and recovered a judgment. In a suit by the bridge company against the railroad company for indemnity, held that as the accident was caused by the co-operating, wrongful acts of both companies, the bridge company could not have indemnity against the railroad company.

3. Negligence—Proximate Cause.—Two agencies acting entirely independently of each other may jointly and concurrently be the proximate cause of the injury when it would not have happened except for the concurrence at the same time and place of the two negligent acts.

Norfolk & Western Railway Company v. Short's Administrator.

(Dcided October 24, 1916.)

Appeal from Boyd Circuit Court.

1. Master and Servant—Railroads—Employers' Liability Act—Death.—Under the Employers' Liability Act the contributory negligence of a servant will not relieve the railroad company from liability for his death *if it was guilty of negligence and the contributing and concurring negligence of the employe and the company caused his death.*

2. Master and Servant—Railroads—Employers' Liability Act—Sole Negligence of Employe.—*If the negligence of the employe was the*

sole cause of his death or if the railroad company did not commit any breach of duty that it owed him, there can be no recovery in his behalf. In every case before a recovery can be had it must be shown, either by direct or circumstantial evidence, that the railroad company was negligent.

3. Master and Servant—Railroads—Rules—Blue Lights.—A rule of the company requiring employes working between cars at night to put out blue lights has no application to a state of case in which an employe is only passing between the cars.

4. Master and Servant—Railroads—Railroad Yards—When Servant in Line of Duty.—An employe working in a railroad yard can hardly be said to be out of the line of his employment at any place in the yard where he goes to find something needed in the work in which he is engaged. Especially is this true in the absence of a rule forbidding employes to go certain places.

5. Master and Servant—Railroads—"Running Switch" in Yards —Duty of Warning.—It is the duty of a railroad company, in yards where a great number of employes are at work and constantly crossing the tracks, to have some person on the front end of cars shunted in on a track by the "running switch" method to give notice to employes of their approach and to control their movement.

6. Master and Servant—Railroads—"Running Switch"—Duty of Warning.—Where an employe, in passing between standing cuts of cars, carried a lighted lantern that would disclose his presence, the fact that his person was concealed between the cuts of cars will not excuse the company from having a brakeman on the front end of a cut of cars that was shunted in on the track where the cars were standing between which the employe was passing.

7. Master and Servant—Railroads—Custom in Movement of Cars That is Dangerous Will Not Excuse Company.—The fact that a railroad company had a custom of making "running switches" in its yards without any person in charge of the moving cars to give notice of their presence, will not relieve the company of the duty it was under to protect its employes from the danger attending operations like this. A rule or custom that endangers life or puts in peril the safety of employes or others cannot be approved.

Pond Creek Coal Company v. Riley Lester & Brothers.

Same v. Same.

(Decided October 31, 1916.)

Appeals from Pike Circuit Court.

Consolidated Actions.

1. Master and Servant—Wages and Other Remuneration—Coupons.—Under the provisions of section 244 of the constitution and section 2738r of the Kentucky Statutes, 1915 edition, which was enacted to carry out the provisions of the constitution, employers of ten or more employes must pay the wages of such employes at the time they are due and payable, in lawful money of the United States; and if coupons, letters of credit, merchandise script or other thing should be issued for the accommodation of the employe by the employer so as to enable the former to obtain credit between pay-days, such evidences of credit, or that portion which is not used, must be redeemed by the employer in lawful money of the United States if presented on a pay-day when the wages for which they were issued are due.

2. Master and Servant—Wages and Other Remuneration.—It is incompetent for the employer in such cases to stipulate that such evidences of credit or other thing shall be payable only in merchandise, or that they shall not be transferable by the employe to whom they are issued, and if such employe should transfer them, or any portion of them, the transferee obtains all rights which the employe had, and at a proper pay-day may present them to the employer and demand and receive the cash therefor.

3. Master and Servant—Wages and Other Remuneration.—Where the employer issues a coupon book to his employes whereby the latter may obtain merchandise at the former's store with the coupons which are not payable to any particular person or at any particular time, and stipulated not to be payable in money, such coupons are not negotiable so as to vest title in an assignee by delivery only, and an assignee obtaining title by delivery only should in a suit based upon the coupons, make the transferrors or assignors thereof parties to the suit.