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Examinations in Evidence

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where the verdict does not settle upon the proof or the fact omitted or defectively stated, and such defect under the Code of Practice, may be taken advantage of by demurrer or answer; and although such defect is not taken advantage of by demurrer or by answer, yet it is not waived and may be taken advantage of by motion for an arrest of judgment, or by writ of error. (Code of Prac. p. 31, sec. 146-9.)”

It will be noticed that the Kentucky has adopted by construction of the court, and by section 93 of the Code, almost the exact statement as set forth by Mr. Stephen above. Many other comparisons can be made of the common law procedure and the pleading set forth in the Civil Code, which will show that the Code is only declaratory of the common law procedure. The main and material change of the demurrer under the Code of Kentucky, being in the definition and application of the special demurrer,

—BASIL DUKE SARTIN.

EXAMINATIONS IN EVIDENCE

List of examination questions given by Judge Lyman Chalkley, of the University of Kentucky, to his class at the conclusion of the course in Evidence.

I. In the pleadings and in the introduction of evidence before the jury, what things may counsel take it for granted the court knows without proof?

II. State the rules by which the production of evidence to the jury is governed, and explain the circumstances under which facts collateral to the issue may be proved.

III. The action is debt against a sheriff for illegal fees taken on a writ of execution: plaintiff alleges, in effect, that a judgment was recovered by A. B. vs. C. D., on a certain day and upon that judgment, execution was issued, and that under cover of that execution the sheriff exacted the illegal fees. Will the plaintiff have to prove the recovery of the judgment? State the rule of law and give your reasoning.

IV. State both the Common Law and the Kentucky Statute rules as to Burden of Proof, and explain the different meanings which are given to the term “Burden of Proof.”

V. (1) State the rule under which evidence is classified as “Primary” and “Secondary.”

(2) Upon his examination before the magistrate upon a criminal warrant, the prisoner made a confession, which is taken down in writ-

ing by the magistrate and signed by him. The Code provides that the substance of the testimony of each witness shall be taken down in the minutes of the examination. Upon the trial in the Circuit Court, the prosecution offers to prove this confession by the testimony of bystanders, but defendant demands the production of the writing. Decide the question raised and give your reasoning.

VI. (1) What does the term "Hearsay" denote?

(2) The action is for libel in exhibiting a caricature in a window on a public street. The issue is whether the caricature was made and exhibited as of the plaintiff. The plaintiff offers testimony that passers-by, seeing the picture, exclaimed: "It is—————" (the plaintiff): "It is very much like (the plaintiff)": "It is a shame to permit such an insult on (the plaintiff)" This testimony is objected to by defendant. Shall it be admitted? Give your reasoning, stating the rule of law.

VII. State the principal points to be considered in determining whether evidence is admissible as part of the Res Gestae and explain each point.

VIII. AB sues CD for the value of goods sold and delivered. To prove the delivery, AB offers his day book showing the charge against CD, but admits on cross examination that the entry in the day book was transcribed by his clerk from a slate kept by the driver of his delivery wagon for the purpose of checking deliveries made by him. The admission of this book is objected to by defendant on the ground of hearsay. State the rule of law and give your reasoning in support or against the admission.

IX. The note is dated July 1, 1900 payable one day after date. The period in which action may be brought is three years. There is an endorsement by the holder of a credit on the back of the note bearing date June 1903: another of July 15, 1903. The action is debt on the note, and the plea is the statute of limitations. The plaintiff offers the two endorsements as evidence to show that the bar of the statute has not fallen by reason of the acknowledgements contained in the payments. The defendant objects to the admission of both entries. Decide the question. Give your reasoning, stating the rules of law applicable.

X. AB vs. CD in assumpsit for money laid out and expended. AB claims that he and CD (who was starting on a sea voyage as passenger), approached the captain of the ship and AB paid to the captain CD's passage money on CD's behalf which he now seeks to recover. AB offers XY, the ship owner to testify that the captain (who is beyond the seas at the time of the trial) told him before the ship sailed that AB had paid CD's passage money to him. CD objects to this evidence. Decide the admissibility, giving your reasoning and stating the rules of law applicable.

XI. AB sues CD in ejectment. CD's claim is adverse possession

for statutory period. The issue is whether CD's possession was adverse. CD offers XY to prove that W, under whom AB claims, said that he had sold the land to CD. AB objects to this testimony. Decide the admissibility, giving your reasoning and stating the rules of law applicable.

XII. T conveyed land to S in Alabama in 1863 and S executed his promissory note to T in part payment. The note was for \$10,000.00 in these words: "Montgomery, Alabama, November 1, 1863. One day after date, I promise to pay to T., Ten Thousand Dollars." Action is brought on this note in 1867, and at the trial, S offers to prove that at the time of the execution of the note, it was the agreement of the parties that the words "Ten Thousand Dollars" meant "Ten Thousand Dollars in Confederate money." T objects to this evidence. Decide the admissibility, giving your reasons and stating the rule of law applicable.

XIII. An insolvent, AB, executed an assignment on October 17. The books of AB show fifteen entries by AB on the sixteenth, in each case the entry showing payment made to AB by the respective persons, upon whose accounts the entries were made, the result of the entries being to show that AB was indebted to the respective persons in a large amount, whereas without those entries, the persons would be indebted to AB. Defendant introduces assignor who testified that the entries were not based on any actual transaction of the date of the entries. Defendant then asked the assignor for an explanation of the entries, and the assignor gave an explanation, which, if true, was sufficient in law to justify making the entries. Defendant offered XY to testify (1) that the explanation was untrue, (2) that assignor was not worthy of belief upon general reputation. But the Court refused to admit this evidence. Should it have been admitted? Answer the question, giving your reasoning and stating the rule applicable.

XIV. Detail in order the stages in the procedure necessary to have a private writing considered as evidence by a jury.

ABSTRACTS OF CASES DECIDED BY THE KENTUCKY COURT OF APPEALS

MANSFIELD V. COMMONWEALTH.

Decided March 11, 1915. Appeal from Barren Circuit Court.

Change of Venue. The matter of granting a change of venue is largely in the discretion of the trial court, and unless it affirmatively appears that this discretion has been abused, the ruling of the trial court will not be interfered with.

Articles in newspapers published at the place where the crime was