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Abstracts of Cases Decided by the Kentucky Court of Appeals

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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

committed, denouncing the crime and demanding that speedy justice be administered, although admissible on the hearing of a motion for a change of venue, are not in themselves cause for the removal. There must be other and independent testimony that the condition of public sentiment in the county is such that the accused cannot have a fair trial.

Experimental Evidence.—On the trial of the accused for murder, where his defense was that a pistol in the hands of the deceased was discharged while he was striking the accused over the head with the butt of it, thereby causing his death, and the pistol could not be produced on the trial, it was competent for the Commonwealth to permit witnesses to testify and demonstrate before the jury that a pistol such as the deceased had could not be discharged unless the trigger was pulled and the safety device pressed at the same time, after circumstantial evidence that the deceased had such pistol when killed.

Misconduct of Juror.—A motion for a new trial on the ground that a juror had expressed sentiments of hostility toward the accused before his selection as a juror, should not be sustained unless the evidence is clear and convincing that the juror made the statements attributed to him, and in matters like this the ruling of the trial court is entitled to great weight.

It was not misconduct on the part of the officer in charge of the jury to permit a son of one of the jurors, who was under arrest to talk to his father in the presence of the officer and the jury in regard to the matter for which he had been arrested. Nor was it misconduct on the part of the officer to permit the jury to go to a moving-picture show when it appeared that no person talked with the jury about the case on trial while they were at the show.

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DUNN V. BLUE GRASS REALTY COMPANY.

Decided March 9, 1915. Appeal from Madison Circuit Court.

New Trial—When Will Be Granted.—Where the damages can be measured, and the verdict of the jury is such as to demonstrate that the proof was disregarded, and the law of the case as embodied in the instruction, was disobeyed, a new trial will be granted.

Judgment—Must Follow and Conform to Verdict.—A judgment must follow and conform to the verdict, not only as to the amount of the recovery, but also as to the nature and measure of relief and as to the parties; and, it cannot go beyond the verdict in settling the rights of the parties or admeasuring the recovery, or declaring or foreclosing liens, except that in cases where the evidence would have authorized the court to direct a verdict, it may, in rendering judgment, go further than the verdict in adjusting the equities of the parties.

Although the general rule is, that where the amount is not actually

in issue, a simple finding for the plaintiff, or the defendant, is usually sufficient without specifying any particular sum, this rule does not apply where the jury goes further and finds for the plaintiff a specific erroneous sum in damages.

Where a jury specifies the amount of its finding, which is erroneous under the instructions, the court is not justified in entering a judgment for a different amount, since, in that case, the judgment would not conform to the verdict, but would depart from it. In such a case all the court can do is to set aside the verdict as being contrary to the law of the case as contained in the instructions.

Newly Discovered Evidence.—A new trial will not be granted upon the sole ground of the discovery, after verdict, of parol testimony concerning a point litigated, or a fact known to the party; but, when the newly discovered evidence is of such a permanent and unerring character as to preponderate greatly, or have a decisive influence upon the verdict to be overturned by it, a new trial will be granted.

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KNIGHTS OF MACCABEES OF THE WORLD V. SHIELDS.

Decided January 28, 1915. Appeal from Nelson Circuit Court.

Counsel should never attempt to get before the jury matters beyond the record having no real bearing upon the case, merely to prejudice the jury; and while one act of such impropriety may be overlooked, if the court properly admonishes the jury not to regard it, should not be overlooked where he persistently attempts to inflame the jurors' minds. Where a lawyer, in argument to the jury, makes statements not supported by the record, the trial judge should, without waiting for objections, promptly reprimand the offending counsel, charge the jury to disregard his statements, and if the comments are of such prejudicial nature as improperly to influence the jury, he should set aside any verdict rendered in favor of such counsel. In a suit to recover on a policy against a fraternal insurance company, after admitting that it was a fraternal insurance company and predicating its case upon that idea, it was unfair for counsel to argue to the contrary. Argument by appellee's counsel that appellant, a fraternal insurance company, "had millions, with its home in Michigan, and referring to appellee as a weeping widow, and in need of money, and that the company took money that would buy bread for her and the little ones and used it to pay officer's salaries, and that if the jury denied such cry and wail of the widow as had been heard for almost three years, they would turn her back upon her husband's grave, and her children out crying for bread," precluded appellant from having a fair trial, and after such argument, counsel did not make amends by telling the jury to "put the children out of sight, forget them."

CHESAPEAKE & OHIO RAILWAY COMPANY V. DWYER'S ADMINISTRATRIX.

Decided January 29, 1915. Appeal from Boyd Circuit Court.

Widow Only Dependant—Entitled to Entire Amount Recovered.—In an action brought by the personal representative, under the "Employers' Liability Act," to recover damages of a railroad company for the death of an employe, caused by the negligence of the railroad company, if the widow of the decedent is the only dependent beneficiary under the act, she will be entitled to take all the damages that may be recovered. The damages recoverable under the "Employers' Liability Act" by or for a deceased employe's widow as sole beneficiary, is such a sum as will fairly and reasonably compensate her for the pecuniary loss, if any, sustained by her on account of his death; and an instruction which, as in this case, so told the jury, and also told them that, in fixing the amount, they were authorized to take into consideration the decedent's age, habits, business ability, earning capacity and the probable duration of his life, as well as the pecuniary loss, if any, the widow sustained by being deprived of such support and maintenance, if any, as the evidence may have shown she would have derived from the decedent, had he lived; but that the damages allowed should be confined to the period of the widow's dependency and not exceed the aggregate sum of the decedent's probable earnings during his expectancy of life, nor more than the sum sued for in the petition, properly advised them of the law as to the measure of damages in the meaning of the act. A verdict awarding an employe's widow $16,000.00 damages for his death, will not be regarded excessive, where it is made to appear from the evidence that he was a sober, industrious man, forty-five years of age; that his earnings as a locomotive engineer had averaged $160.00 per month and his life expectancy was 24.46 years, that of the widow practically the same; and the amount of the verdict it but little more than one-third of the aggregate sum of his probable earnings during life expectancy.

The Kentucky Intercollegiate debating contest was held in State University Chapel on the 12th of March, between State University and Georgetown College. The question for debate was: Resolved: "That the State of Kentucky should adopt the unicameral system of government." State University upheld the affirmative side and won a unanimous decision. S. S. Combs and J. N. Farmer, two junior law students were members of the Varsity team.