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Synopsis of Some of the Leading Cases Recently Decided by the Kentucky Court of Appeals During December

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Synopsis of Some of the Leading Cases Decided by the Kentucky Court of Appeals During December.

GOTT VS. BEREA COLLEGE. et al.

This appeal is prosecuted from a judgment rendered in the Madisou Circuit Court, in which county Berea College is located.

Appellee Gott owned a restaurant across the street from the premises of Berea College, and some of the students were patrons of this restaurant. It appears that the College authorities objected to their students going to the restaurants of the town, and along with other rules governing the student body, they adopted one in the following language,

"Eating houses and places of amusement in Berea, not controlled by the College, must not be entered by students on pain of immediate dismission. The institution provides for the recreation of its students, and ample accomodation for meals and refreshment, and cannot permit outside parties to solicit student patronage for gain."

Some of the students continued to visit the restaurant after the adoption of the rule, and were expelled from the institution for disobedience. Gott then brought suit to enjoin the college anthorities from enforcing this rule, alleging injury. The injunction was dissolved, and Gott appealed.

Other questtons of minor importance were passed on by this court, but the larger question, and the one here to pass upon, is whether the rule forbidding students entering eating houses was a reasonable one, and within the power of the college authorities to enact, and the further qustion whether, in that

event, appellant Gott, will be heard to complain. That the enforcement of the rule worked a great injury to Gott's restaurant business cannot well be denied, but unless he can show that the college authorities have been guilty of a breach of some legal duty which they owe to him, he has no cause of action against them for the injury. One has no right of action against a merchant for refusal to sell goods, nor will an action lie unless such means are used as of themselves constitute a breach of legal duty, for inducing or causing persons not to trade, deal, or contract with another, and it is a well esta lished practice that when a lawful act is perfomed in the proper manner, the party performing it is not liable for mere incidental consequences injuriously resulting from it to another. (38 Cyc., pp. 418-423.)

College authorities stand *in loco parentis* concerning the physical and moral welfare, and mental training of the pupils, and we are unable to see why to that end they may not make any rule or regularion for the government. or betterment of their pupils that a parent could for the same purpose. Whether the rules or regulations are wise, or their aims worthy, is a matter left solely to the discretion of the authorities, or parents as the case may be, and in the exercise of that discretion, the courts are not disposed to interfere, unless the rules and aims are unlawful, or against public policy. Section 881, of the Kentucky Statutes, applicable to corporations of this character, provides that they may " adopt such rules for their government and operation, not inconsistent with law, as the directors, trustees, or managers may deem proper." The corporate charter of Berea College empowers the board of trustees to "make such by-laws as it may deem necessary to promote the interest of the institution, not in violation of any laws of the State or the United States." This reference to the college powers shows that its authorities have a large discretion, and they are similar to the charter and corporate rights under which colleges and such institutions are generally conducted. Having in mind such powers, the courts have without exception held to the rule which is well settled in 7 Cyc. 288. as follows:

"A college or university may prescribe requirments for admission and rules for the conduct of its students, aed one who enters as a student impliedly agrees to conform to such rules of government"

The only limit upon this rule is as to institutions supported in

whole, or part, by appropriations from the public treasury. In such cases their rules are viewed somewhat more critically, but since this is a private institution it is unnecessary to notice further the distinction.

A further consideration of the power of school boards is found in Mechem on Public Officers, section 730, from which we quote: "There is no question that the power of school authorities over pupils is not confined to school room or grounds, but to extend to all acts of pupils which are detrimental to the good order and best interest of the school, whether committed in school hours, or while the pupil is on his way to or from school, or after he has returned home "

Of course this rule is not intended to, nor will it be permitted to interfere with parental control of children in the home, unless the acts forbidden materially affect the conduct and discipline of the school.

There is nothing in the case to show that the college had any contract, business, or other direct relations with the appellant. They owed him no special duty, and while he may have suffered an injury, yet he does not show that the college is a wrongdoer in a legal or any sense. Nor does he show that in enacting the rules they did it unlawfully, or that they exceeded their power, or that there was any conspiracy to do any thing unlawful. Their right to enact the rule comes within their charter provision, and that it was a reasonable rule canot be very well disputed.

In further support of tha above opinion, the Court puts great value upon the case of People Vs. Wheaton College, 40 Ill., 186, In wnich a very similar state of facts existed.

MARSHALL'S ADMR. VS. MARSHALL.

This case comes up on appeal from Green Circuit Court, and deals with the law as to the creation of a trust in personal property by parol, and sustaining same by parol evidence.

The facts are as follows: Mrs. Martha Marshall was the owner of a note for $400 signed by S. A. Anderson. She went to the Greeusburg Deposit Bank, where she did her banking business, ane had the cashier of the bank write an indorsement on the note in the following language "I hereby assign this note to my son W. J. Marshall to be given him at my death, reserving ownership and control of same to myself until that time". She then signed the indorsement, the note was then

placed in an envelope with the following indorsement on it: "Note of Mrs. Martha Marshall on S. A. Anderson to be delivered to W. J. Marshall in case of the death of said Mrs. Martha Marshall". This indorsement was dictated by Mrs. Marshall.

Some time after this transaction W. J. Marshall died, and Mrs. Marshall left the note in the same condition in the bank, up to the time of her death, nothing more being said or done with reference to the note. All these facts are supported by parol testimony. The question is, whether or not the note now belongs to the estate of W. J. Marshall, or to the estate of Mrs. Martha Marshall. It is decided that the note belongs to the estate of W. J. Marshall.

It is conceded that it could not pass as a gift inter vivos, such a gift must go into immediate effect, and no future control over same must be retained by the donor, nor is it a gift causa mortis.

It is contended that the transaction of Mrs. Martha Marshall created a trust estate in the note for the benefit of her son, and that the trust once created could not be subsequently revoked dy her. The court sustains this view of the case and cites, Berry vs. Noris 1 Dana, 303, and Barkley 2 vs. Lanes Excr. 6 Bush 587, In commenting upon the latter case, which is very similar to this case, the court holds that the donor held the note that he might have the benefit of the interest. The court cites Hill on Trustees page 55 and Lewin on Trusts and Trustees, page 56, and holds that no trustee need be named to complete the trust, which is in accord with the established law of this state. That the general doctrine is well settled that a completed parol voluntary trust is enforceable. The donor need not use any technical words or language in express terms creating or declaring the trust, but must employ language which shows unquestionable an intention on her part to create or declare a trust in herself for the donee, if a trustee is not named.

In the case before us there is no doubt that Mrs. Martha Marshall unquestionable declared the trust for the benefit of W. J. Marshall. The meaning of all that occured, was that he was to have the note, she receiving the ownership and control of the note during her life for the purpose of collecting the interest only. Further authority in support of this conclusion is found in case Frankel's Extx, v. Frankel 104 Ky. 745.

MUIR VS. EDELEN et al.

The opinion delivered in this action raises and settles a very important point in practice growiug out of the following facts: Appellant purchased from appellee, Clark Motor Car Company of Louisville, a Maxwell Automobile at the price of $1400.00, and paid for same. Afterward the machine failing to give satisfaction, appellee company in accordance with its agreement so to do, took this machine back, and gave appellant credit for the purchase price thereof $1400.00 on a Columbia automobile, which it then sold to appellant for $2900.00, he executing his note for 1500.00 to the company for the balance of the purchase price.

This note was by the appellee company assigned and transferred to appellee Edelen. This appellee on Nov. 22, 1911 brought suit on the note against appellant in the Nelson Circuit Court. The Clark Motor Car Company was made a party and summons was served on it in Jefferson County (Louisville Ky.) where its principal office and place of business was located, it having no agent in Nelson County upon whom process could be served.

On Nov. 30th, 1911 appellant filed an answer to said petition making same a cross-petition against his co-defendant appellee company. He admitted the execution of the note sued on, but charged that it was obtained upon false representations made to him by the officers of the company in connection with the sale of the Columbia automobile, and further charged that all of which representations were false and untrue. That appellee Edelen was at that time and now president of the company, and knew the defects in the automobile, and knew of the false representations above referred to, by reason of which he Edelen was not an innocent purchaser of the note, nor for value, nor before maturity. Appellant also asked for the cancellation of the note sued on, and for judgment against the company for the amount paid $1400.00. There were many other allegations in the said answer and cross-petition but not of importance in so far as the point here made is concerned. The lower court gave judgment on the note, and dismissed appellants cross-petition against the company.

The question was raised in this case as to whether or not the appellee company could be brought before the Nelson Circuit Court, on summons served in Jefferson County which issued from the Nelson Circuit Court. The company filed answer denying the jurisdiction of the court by reason of the service of summons in Jefferson county on the cross-petition, and then filed a motion

to quash the summons and to return thereon for the same reason. The court over-ruled the motion to quash the summons and the return thereon, and over-ruled a general demuerr filed by the company. The company in each motion saved its pleas to the jurisdiction of the court, saving its plea to the jurisdiction, the company moved to strike from the files, the cross-petition filed by appellant, which was over-ruled, the conpany then filed its answer to the cross-petition on its merits.

This court holds that the company did not enter its appearance so as to give jurisdiction to the Nelson Circuit Court, in any of the motions made, and laid down this law:

That when the court over-ruled the motion to quash the summons and return, it passed upon same objection raised by the answer and asserted its jurisdiction over the appellee company, It was unnecessary thereafter that appellee ccmpany should at every step reiterate its objection to the jurisdiction of the court; and after the court had ruled on its objection to the jurisdiction thereof, the filing of an answer on the merits cannot be considered as a waving of such objections. Civil Code section 79, refered to, and coustrued to mean, that if defendant objects to the jurisdiction of the court. he may thereafter defend on the merits without entering his appearance.

H. G. NUNNELLY VS. PRATHER.

This was an appeal from the Scott Circuit Court, decided January 28th. The important point is decided upon the question of contributory negligence. The facts are as follows:

Appellee is aman of thirty-three years of age, and at the time of the injury herein complained of had been doing different kinds of carpenter work for twelve years. He alleges that while at work for appellant in the construction of a house at Georgetown he was directed by appellants' foreman to get on the top of a nail keg so that he could reach up and do certain things in the construction of the house; that while so engaged the keg which was insufficient and dangerous for the purpose for which he was directed to use it, slipped from under him, causing him to fall to the floor and break his arm.

Appellant answered denying the material allegations of the petition, and pleaded in separate paragraphs contributory negligence and assumed risk. The Court held that:

A workman standing on an empty nail keg that had been opened at one end assumed the risk he took in doing so, even at the direction of his foreman, and in an action for damages sustained from a fall caused by the nail keg slipping from under him, where the evidence showed no latent defect, the jury should have been epemptorily instructed to find for the defendant.

CHEASPEAKE AND OHIO RAILROAD VS. PREWITT.

This cause was appealed from the Johnson Circuit Court and decided by the Court of Appeals on January 27th last in which the following rule of law was laid down with reference to the termination of the relation of a cerrier to a passenger. When the relation of carrier to passenger is once established, it continues until the passenger has alighted from the train, and has had a reasonable time to leave the premises, unless he be detained by the further necessity of relation with the servants of the carrier. But this rule will not be construed so as to include within its operation one who was drinking intoxicants and flourishing a revolver on a passenger train, and who after arrival at the point of destination alighted from the train, and walked across a side track to a point probably 25 or 30 feet fro mthe train for the purpose of recovering from the conductor the revolver which said passenger had flourished and which the conductor had taken from him and which weapon the conductor had informed the passenger would be turned over to the sheriff. In such case the carrier is not liable for injuries received by the former passenger, for it had at the time no connection or privity with him.

In Kentucky the conductors of passenger trains occupy a peculiar position. In addition to the duty which they owe to the carrier, they also owe a duty to the Commonwealth, imposed upon them by express statutory enactment; and that duty is not imposed on other citizens. And in the discharge of the imposed duty on reasonable presumption will be denied in favor of the bona fides of a conductors acts in respect thereof.

SCHOOL NOTES

The Henry Clay Law Society has organized itself into a Senate. The members have secured the rules and parlimentary law governing the Senate through. The various Senators and Representatives of the state, who have been prompt and generous in granting their reguest. Under the direction of Judge Lyman Chalkley they are fast becoming acquainted wit hthe procedure.

The College of Law has completed negotiations with the Law School of Cincinnati University for a intercollegate debate. The question submitted by Cincinnati is, Reshau: That when internal dissentions menaces the perpetuity of government in Mexico, the United States should interfere and establish stable government.

The terms are that each school will have two teams, one to argue each side of the question, which is to be debated at both Universities on the same night. The time for having the debate has not been agreed upon, but will likely be during the last of April.

A certain student of the College of Law, from some mysterious