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COURT OF APPEALS.

asis of the Becisions Rendered at he Auslin Sitting of the Court of Appeals.

tip from the Full and Official Report of the Rulings and Opinions Bendered,

of the Port Worth & Denver City Ballway vs. Stingl , from Tarrant County, Afflemed,

Fort Worth & Denver City way vs. Stingle, from Tarrant ty. This was a suit for damages pluries received by appelles while enger on appellant's train. It is eted that the court erred in receivwidence that one T., a fellow-paser with the appellee, was injured same collision The objection twell taken. The rule is that the forming a part of the incident. my are laid down in Abb. Trial sec. 46. Under these rules the ony of the attending physician disease, showing the serious nature ppelie's it jurie, was admissible, harge of the court must be con-ed as a whole and not in detached sions. In view of the fact that se two sections objected to are aghtup in the record, this court not hold the charge erroneous imed.

shman vs. the State, from Parker nty Towarrant an Inference o To warrant an Inference or ampion of guite rounting possible of property recently stolen, such assion must be personal, it at be recent, it must be explained, and it must involve a thet and conscious assertion of perty by the defendant Whar.-Ev, sec. 358 Barrell or Conpretty by the defendant Whar.-Er, sec. 358. Burrell on Circumatisl Evidence defines clearly the sping and extent of the word "persal," as applied to possession of really stolen property, which amounts sub-tance to an ex lusive possession. Wharton's Crim Ev., sections and 760 for a proper defluition of the ord "recent," as applied to possession stolen property. It was properly idin 40 Mich., 292 that "possession stolen goods immediately after the stolen goods immediately after the eft may sometimes be almost conftmsy sometimes be almost con-sive of guilt, but the presumption akensas the period of time lengthens tween the theft and the possession creases and may scarcely arise at all others be ides the accused have had usl access to their bearing upon characteristic of the phrase "the presumption". For a full interstation of the phrase "the presumption must be unexplained," see 43 x, 658; 14 Ct App., 83; 15 Tex 4. In general terms, the rule is sed thus: If a person in whose expective possession, goods, recently neive possession goods recently blen are furd, fails reasonably to count for his possession when called count for his possession when called not to explain, or when the facts are chasto require an explanation of m, the presumption arising from rentless and possession will warrant conviction without further proof utsuch inference or presumption is as of fact and should be submitted to be jury. The charge of the court duct in this case sufficiently present sive possession fund, fails reasonably to e jury. The charge of the court duct in this case sufficiently present Ray-rand and remanded. Hernandez vs the State, from Bexar unty. The indictment in this case 7. Alt 746 of the C. C. P. provides M. 'In tria's for perjury, no person albe convicted except upon the smany of two creditable witnesses Simony of two creditable witnesses one carroborated strongly by other eidence as to the falsity of the department's statements under eath, or non his own confession in open part." Art 745 of the same code in flect requires the court, if the requirement of Art. 746 be not complied with, a direct he jury to, find a verdict of

imborating evidence may be cir-imstantial, consisting of proof independent facts which to-mer tend to establish the main independent facts which to shifter tend to establish the main at that is the falsity of the oath, and the together strongly corroborste is furth of the testimony of the single fillness who has testified to such fals by. In this case the court did not error tefnsing to direct an acquittal. But cause the court erred in admitting the fettimony of A, who was the attempt of the defendance of the desired to receive the market value of the same, the market value would be the measure of the defendance ecause the court erred in admitting he fetimony of A, who was the atomey of the defendant in the cause sherin the all-ged false affidavit wands, in contravention of article 733 of he C.C.P. the judgment is reversed and the cause remanded.

Terrell vs. Barrack et al., from Wise

Terreli vs. Barrack et al., from Wise ounty. It is well settled that an dreement by the principal to pay astrious interest with not discharge he attriby. Such a promise being sold in law, does not constitute a valuable consideration, and an agreement by the creditor to extend the time of the collects not the deb, in consideration of usury, without the knowledge of conshe collects n of the deb, in consideration of usury, without the knowledge or concent of the surety, will not discharge the latter, W. & W. Con. R., see 185. In this case it was not stipulated in the written contract, the note, either directly or indirectly, that the makers should pay usury. The rate of interest stipulated for was legal, and the usarious contract between B. Bros and appellant was independent of the note, and could have no legal effect upon the liability of the sureties (R. art 2079). Reversed and rendered in favor of appellant. So ordered.

in art 2079) Reversed and rendered in favor of appellant. So ordered Houston & T. xas Central Railway as Simpson, from Dailas county. This was a suit to recover the value of a row killed by appellant's trato. The company pleaded in excuse for not facing their road near the depot in the town of R the great inconvenience to the company in operating their trains, and the only question is whether or not the appelled should have pleaded and proved negligence on the part of the company in the transaction of its business cannot be company of its business cannot be company.

sidered a valid excuse, when the November, 1883, nevertheless that dis-

remanded.
Railway Company vs. Patterson, from Tarrant county The submission of an appeal on suggestion of delay opens the case as to all errors of record, whether assigned or not; 44 Tex. 381. The suit was for the recovery of damages for busing the grass, and the consequent injury of the turf of appeller's land. The measure of damages in this grations of any persons present, sequent injury of the turn of appenders trations of any persons present, land. The measure of damages in this class of ca-es, considering the purposes to which the land had been devoted be proved as part of the res gester.

That Ev. Sec. 19. Evidence of ground and declarations of others in the respect of the record brings up no statement of facts. The court finds, in its conclusions of facts that the grass was destroyed on thirty acres of ground, and was worth \$3.50 per acre, and that the precised it juries at the same accident, is added to the respect of the same accident, is added to the respect of the same accident, is added to the respect of the same accident, is added to the respect of the same accident, is added to the respect of the same accident, is added to the respect of the same accident, is added to the respect of the same accident. The respect of the same accident is added to the same accident in the same accident. The respect of the same accident is added to the same accident accide land, or that it was or was not in-closed. The rule requires proof of the use of the land. Reversed and re-

Miles vs. the State, from Bastrop county. Upon the subject of murder in the second degree the court charged as follows: Every rash and inconsiderate killing under some sudden istpulse, wherein there is no sedate mind and formed design to kill, is murder in the second degree. The law implies malice Every voluntary killing of a human being is murder of the second degree, unless the circum-tances attending upon hand show express malice, which would then be murder in the first degree, or, upon the other, such as would reduce the offense to manelsughter, or which would excuse or justify the homicide Held errone ous, because such killing as that described in the first clause is not murder of the second degree. Nor does the law in such case imply malice, because the rash and inconsiderate act may have arisen from tending upon hand show express malice, which would then be murder degree. Nor does the law in such case imply malice, because the rash and inconsiderate act may have arisen from adequate cause, in which event the in the mail service. He will go on considerate act may have arisen from adequate cause, in which event the offense would have been manelaughter. The charge upon manslaughter instead of instructing the jury, in arriving at their conclusion as to the adequacy of the cause, to look to what occurred at the time should instruct them to look to all the facts in the case. To justify self-defense by threats, it must be shown that at the time of it must be shown that at the time of the homicide the person killed, by some act then done, manifested an in-tention to act on the threats. In quali-fying this rule by charging * * 'some act manifesting an intention to enact the threats' the court erred. Reversed and remarked. and remanded

Brunswig & Co. vs. Kramer, from Tarrent county. This was so appealed suit from the justice's to the county court on account for goods fur dahed Substantially, the facts are that K procured B & Co to order for him a lot of plate glass, bearing his, K s, m moogram. When the glass arrived is & Co d-manded payment in the sum of \$171.81, claimed as the reasonable mar-\$171 St, claimed as the reasonable market value of the goods in the market. K. declined to pay and refused the glass. The glass was worthless to any one but K, because of the monogram and dimensious, and was not selected to other parties. It was proved that the market value of the glass at Fort Worth was \$171 St, or would be but for the monogram atc. The commensure the monogram, etc. The compensation sught to be re-covered of K. was the market value of the glass at F rt Worth Upon this state of facts the court held confession in open feet requires the court, if the requires the court, if the requires the pury to find a verdict of couldist, and the jury is bound by the instruction. As to what is corrected in the court of country and the jury is bound by the instruction. As to what is corrected as an action on account for goods sold, etc., nevertheless it is, under the evidence results in the property of the court held could not be sustained. Proceedings in justice courts are not required to be in writing, and great liberality is indulged with respect to them. Although, technically speaking, this might be characterized as an action on account for goods sold, etc., nevertheless it is, under the evidence results in the court held could not be sustained. Proceedings in justice courts are not required to be in writing, and great liberality is indulged with respect to them. Although, technically speaking, this might be characterized as an action on account for goods sold, etc., nevertheless it is, under the evidence required to be in writing, and great liberality is indulged with respect to them. Although, technically speaking, this might be characterized as an action on account for goods sold, etc., nevertheless it is, under the evidence required to be in writing, and great liberality is indulged with respect to them. Although, technically speaking, this might be characterized as an action on account for goods sold, etc., nevertheless it is, under the evidence required to be in writing, and great liberality is indulged with respect to them. Although the characterized as an action on account for goods sold, etc., nevertheless it is, under the evidence required to be in writing, and great liberality is indulged with respect to them. appear that the party has a substantial right of action for the value of the goods. Ordinarily in a mass-like this the party would be entitled to recover the cost and carringe, with a reasonable compensation for the trouble

> dence of such custom in this record. Rever-ed and remarded Missouri Pacific R diway Company vs. Michell, from tarrant county. Failing to show an exercise of due di-igence to secure the absent witness. the appellant was not entitled to a continuance this being an action for damages for breach of contract for shipment of cattle, it was not error to permit a winess to state that the appellant's agent premised to furnish appellee good care, well bedded in which to ship his cat the Aside from to is view, in the absence of a coverage contract. well bedsed, in which to ship his cat
> the Aside from tole view, in the absence of an express contract, the law
> would require the company to furnish
> snitable and serviceable cars in which
> to transpert the cattle. A charge of
> the court, even if erroneous, if the error
> was ciently immaterial and worked no
> prejudice to the appellant, is not
> ground for reversal. There was no
> error in the failure of the court to explain the meaning of such terms as
> "good and suitable cars." "want of
> ordinary care." used in the charge
> The appellee having withdrawn an
> objection to a question propounded by
> the appellant, and the appellant refusing to re propound it, he cannot be
> heard to complain. Affirmed
> oruggs & Veal vs. Quellman, from
> Dallas caucty. The first sround assigned as error is not supported by the
> record, but, on the contrary, is against
> the record and need no, he considered
> It alleged the misdescription of the
> note in the pstition. If, however, the
> note had been misdescription of the
> note had been guisdescribed, and it had
> been made to appear that it was drawn
> payable on its face on the lat day of

sidered a valid excuse, when the statute makes it negtigence per se to kill or injure stock when the railroad is not fenced R 8 Art 4245; W & W Con. Rep. 149, 293, 315, 844, 1300 And see W's 2 Con. Rep. sec. 3.3

Affirmed.

Campon vs. the State, from Free-Cannon vs. the State, from Free- 1883 It was not set forth in hace Cannon vs. the State, from Freestone county. In a prosecution for theft of hogs, the state proved the value of the animals to be over the value of twenty dollars by reason of their peculiar qualities. The defense proposed to prove the market value of the hogs, but was not permitted to do so. Held, errer, that the defendant was entitled, if he could, to show their market value to be less than \$20. Having proved the weight of the hogs, and that they were common range hogs, the delense proposed to prove the market value of mast-fed tork per pound. Held, that the court erred in excluding such proof. Reversed and remanded.

Railway Company vs. Patterson.

PILOT POINT.

Nuptials-A Sunday-School Picnic

PILOT POINT, TEX., May 9,-Mr. Monroe Mann and Miss Mattle Mann were united in wedlock last evening at the residence of F. Miles, E-q.,

at the residence of F Miles, E-q., who performed the ceremony.

The Baptist Sunday school had a plenic to-day at Dripping Springs, two miles north of the city. The usual pleasures on such occasions passed the time very pleasantly.

Col. W W Ross of Dallas came up yesterday and stopped over to-day. The colone has a young fruit orchard adjoining the city.

received.

DENTON.

A Baptist Sunday School Picnic-Other Notes.

DENTON, TEX , May 9 - The Baptist Sunday-school plente which was held to-day near Elm creek was well attended and proved a highly enjoyable affair.

Mr S J. Woods, who died yesterday,

duty probably Monday morning.

J. U. Kearby, a leading attorney of Dallas, is among our visitors to-day.

N. C. Herod, a prominent merchant of Crafton. Wise county, after nearly two years' absence, is on a visit to our city.

The weather has grown warmer and is again quite plea-a-t

LITTLE WE THOUGHT. B . SAWNIE CANDELL.

Little we bought in innoce ce's bours Of the dark ut rity;

We threw away youtn's sweetest flowers, And sighed for maturity. Little w- thought when blossomed the rose That it would wither in a day:

Would so quickly flee away. Little we thought the smile on the face In a flasu would change to a frown; Little we thought our friends would mis-

Our friends "for we communed with those,"

Their love for a glittering crown.

Little we thought the cart's could be so, All devoid of friendship and love; Little we th ught this cannering wee Forever around us would rove.

Little we thought, as children we played, How soon our severance would be we thought our friends would have

strayed, And that this hypocrisy could be. We thought then of pleasure shen of a goal; now early Time bends the knees; The bowl is empty that once was so full,

A Dangerous Case

* * Rochesten June 1, 1881 "Ten Years ago i - as attacked with the most Intense and deathly pains in my back and -Kidneys. 'Extending to the end of my toes and to

my brain!

And bitter as gall are I s lees.

"Which made me delich us? "Fro a sgony. "It took three men to hold me on my bed at times !

but to n . purpose Marphine and other opiates! "Had no effect!

"After two mo that was given up to dis!

"The D ctors tried in valu to relieve me,

"When my wife heard a ne ghbor tell what Hop Bitters had

heard a ne ghbor tell what Hop Bitters had done for her, she at once got and gave me some. The first dose eased my brisin and seemed to go hunting the ugh my eys emfor he pain.

These cond dose cased me so much that I siept two horts, a mething i h d not cone for two months. Hence i had used five boths i was well and as work as hard as any man coold, for over three weeks; but wo ked in hard for my stren th, and taking a hard coid i was taken with the montacute a quainful retinant m all throngs my system that ever was kin w. "I call of the do hors again and after several seeks, they left me a cripple on crut nes for life, as hey said, met a friend and told him my case and he said top filters had cut do mad would cure me. I cooked at him, but he was so earnest I was induced to use them again.

To less than four weeks I throw away my rutch a and went to work I ghtly and kept on as ng the bitters for five weeks, until I tecame as well as any mai tiving, and have been so for six years since.

It has also cured my wife, who had been

It has also cared my wife, who had been sick for y-ars; and has kept her and my children, well and healthy with from two to ture bottl a per year. There is no need to be ack a all of these bitters are used J. J. Hank, 6 .- apervisor.

J. J. Bank, S. "Supervisor.
"That poor invalid wife.
"Interpoor invalid wife.
"Mother!
"Another!
"Or daughter!
" as be made the picture of health!
"Will you let them suffer?"
"Will you let them suffer?"

None genuine without a burch of green Hops on the white label, "shun all the wise, personnes stuff with "Hop" or "Hops" in their name.

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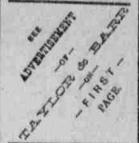
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