reason he was not entitled to have submitted any right in the property by virtue of the community interest of his mother. The original petition filed by plaintiff does not allege by what right or title he claims the property. It is general in form. Appellee's answer pleads not guilty, and also that the land in controversy is the community property of Jim and Mary Coleman, and further avers that appellant is one of the heirs of Coleman and his wife, Mary,—he being their son,—and, further, that the property was sold by Jim Coleman after the death of his wife for the purpose of paying community debts. Appellant, by supplemental petition, avers that the property is of the separate estate of his mother, Mary Coleman, "and, further, that, if the property was the community property of James and Mary Coleman, as defendants allege,—which plaintiff wholly denies,—that the same was bought of James Coleman to the extent of only one-half interest." The supplemental petition also contains a general denial. Construing the entire pleadings, we think the issue joined presents the question whether the land is the separate or community estate of Mary Coleman. The original petition asserts claim to the land, without stating the title. The answer alleges the title to be the community property of the parents of appellant. Appellant, by supplemental petition, denies this, and alleges that the property was of the separate estate of his mother, and denies any debts owing by the community, and, in the alternative, says that, if the land belongs to the community estate, his father could only sell one-half thereof. We think this is a case in which the pleadings of both parties can be looked to to ascertain the issues presented, and that the facts alleged in the answer, in connection with the averments of the supplemental petition, can be looked to in aid of the cause of action pleaded by the appellant. Railway Co. v. Anderson, 76 Tex. 252, 13 S. W. Rep. 196; Lyon v. Logan, 68 Tex. 524, 5 S. W. 72; Thomas v. Bonnie, 66 Tex. 637, 2 S. W. Rep. 724; Grimes v. Hagood, 19 Tex. 249; Hill v. George, 5 Tex. 89; Cattle Co. v. State, 68 Tex. 536, 538, 4 S. W. Rep. 865. We think there was error in giving such charge, and that the court erred in failing to submit to the jury the question of appellant's interest in the community property of Mary Coleman, if any.

Under the facts as presented here, we think the charge of the court correct in virtually construing the title of the property as lodged in the community estate of James and Mary Coleman. No evidence was offered showing that Coleman intended, in having the conveyance made to his wife, to create a separate right in her. The deed that conveys the land does not by any recital negative the presumption that the property belongs to the community estate of Coleman and wife. The fraudulent purpose of Coleman in having the conveyance made to his wife with the intent to shield the property from claims of his creditors would not have the effect to vest the title in her, in her separate right, unless the deed contained recitals sufficient to create in her a separate right in the property, or unless the purpose of Coleman was clearly shown to create in her a separate title. Of course, this undisclosed purpose of Coleman would not affect the right of a purchaser for value from him, who had no notice of such intention to create a separate right in the wife. We conclude the case should be reversed and remanded, and so report.

PER CURIAM. Reversed and remanded, as per opinion of commission of appeals.

STANFIELD v. STATE *ex rel.* MCALLISTER.

(*Supreme Court of Texas.* Feb. 12, 1892.)

CONSTITUTIONAL LAW—DELEGATION OF LEGISLATIVE POWERS—LOCAL LAWS.

1. Act April 2, 1887, created the office of county superintendent of public instruction, and empowered the commissioners' court of any county, "when, in their judgment, it may be advisable," to provide for the election of such officer. Act April 6, 1889, empowered the commissioners' court to abolish such office "when, in their judgment, such court may deem it advisable," and directed that on the abolishing thereof the county judge should perform the duties of such office. *Held*, that the latter act was constitutional, since the legislature is not forbidden to bestow on municipal organizations certain powers of local regulation.

2. Nor is the act of April 6, 1889, a local or special law, since it relates to the state at large.

Appeal from district court, Bexar county.

Information in the nature of *quo warranto*, by the state of Texas, on the relation of S. W. McAllister, against R. L. Stanfield. Judgment for plaintiff. Defendant appeals. Affirmed.

Minor & Powell, for appellant. *C. A. Culberson*, Atty. Gen., for the State.

HENRY, J. This was an information in the nature of a *quo warranto* to remove appellant from the office of county superintendent of public instruction of Bexar county. It appears from the petition that the appellant had been duly elected to the office for a term which has not yet expired, and that the only ground of complaint was that the county commissioners' court of Bexar county had abolished the office, in pursuance of an act of the legislature of this state, approved April 6, 1889, one section of which reads as follows: "That the county commissioners' court of any county in this state shall have the power and authority, when, in their judgment, such court may deem it advisable, to abolish the office of county superintendent of public instruction in their county, by an order entered on the minutes of their court at a regular term thereof. Whenever such office is abolished the county judge of such county shall, from the date of said order, perform the duties of such office; and the county superintendent shall immediately turn over to such county judge all the books, papers, records, and other school property in his possession." It is contended that this law is unconstitutional, because the legislature cannot delegate its legislative functions to any other body or authority.

The office of county superintendent of public instruction was created by an act of the legislature approved April 2, 1887, reading: "The office of county superintendent of public instruction is hereby created, and the county commissioners' court of any county in this state may, when, in their judgment, it may be advisable, provide for the election at each general election of some person, * * * who shall hold his office for the term of two years," etc. The act provides that such county superintendent of public instruction shall perform all the duties in regard to the public free schools of his county imposed by law upon the county judges of such counties as have no county superintendents of public instruction, and that he shall have and may exercise all powers and authority vested by law in such county judge in respect to matters appertaining to the public free schools; and that in addition thereto he shall take the scholastic census of his county. It will be seen that the act for the creation of the office was made to depend in each county upon the action of its county commissioners' court as to its taking effect there; and we are not able to see any material distinction, in regard to their constitutionality, between the act that authorized the county commissioners' court to bring the office into existence, and the one that authorizes it to abolish it. It has been said by this court, in a general way, that laws can only be made by the votes of the representatives of the people in their legislative capacity. State v. Swisher, 17 Tex. 448. There seems to be a well-recognized distinction, in respect to the question under consideration, between laws affecting only the municipal subdivisions of the state and such as affect the state at large; and, whatever differences of opinion there may be about the application of the rule to the general laws that affect alike the whole state, it seems to be well established that the maxim that the legislative power is not to be delegated is not trenched upon when the legislation merely bestows upon the municipal organizations of the state certain powers of local regulation. Cooley, Const. Lim. p. 143; Werner v. City of Galveston, (Tex. Sup.) 7 S. W. Rep. 726. Our constitution and statutes each provide for the adoption of laws in particular localities according to and dependent upon the expressed will of the people to be affected, and such statutes have not in every instance been expressly directed by the constitution. It would be tedious, and would serve no useful purpose, to undertake here to enumerate all instances of such legislation. A city containing 1,000 inhabitants or over may, by a vote of its council, accept or reject the general incorporation law of this state for cities and towns. The inhabitants of a town or village may by vote accept or reject the incorporation act provided for them, (chapter 11, tit. 17, Rev. St.,) and, having once incorporated such towns and villages, may by their own vote abolish the corporation, including the offices. We can see no more in the two acts in question than a delegation of authority to the county commissioners' courts to employ an agent when his services may be useful to the public, and to discharge him when they cease to be such. The office not being founded in the constitution, and its creation depending originally upon the will of the county commissioners' court, no good reason why it may not be dispensed with in the same way is apparent to us. It is not the case of depriving the lawful incumbent of any office that continues to exist, and conferring it upon another. When the extended area of this state is considered, as well as the diversity of the pursuits of its inhabitants and the great differences in population and resources of the different counties, it would be unfortunate if the legislature did not have the power to enable the different counties to adopt or decline some of the agencies of government according to the exigencies of their situation; and such acts must be very clearly in contravention of the fundamental law before we shall feel ourselves warranted in so declaring them. It was the legislature, and not the county commissioners' court, that made the law giving to the court the power to abolish the office. The court abolished the office in pursuance of a law of the legislature; but it cannot be said that, because it exercised that power under the law, it made the law itself. The objection that the county judge was interested, and therefore disqualified to act, cannot be treated as good. It was not a "case," in the meaning of the constitution, and there is nothing to indicate that his vote was necessary to the decision.

The acts in question are both general laws, in the sense that each of them relates to the state at large, and the one last enacted is not subject to the objection urged against it, that it is a local or special law. We find no error in the proceedings, and the judgment is affirmed.

TURNER v. CROSS *et al.*

(Supreme Court of Texas. Feb. 5, 1892.)

NEGLIGENT KILLING—ACTION AGAINST RECEIVERS.

A receiver is not a "proprietor, owner, charterer, or hirer," within Rev. St. art. 2899, giving a right of action for injuries resulting in death caused by the negligence of the proprietor, owner, charterer, or hirer of a railroad, etc., or by the negligence of their servants or agents.

Appeal from district court, Williamson county.

Action by S. S. Turner against H. C. Cross and George A. Eddy, as receivers, for damages on account of injuries resulting in the death of her son. Judgment for defendants, and plaintiff appeals. Affirmed.

J. W. Parker, for appellant. *Fisher & Townes*, for appellees.

STAYTON, C. J. Appellant brought this action to recover damages for an injury received by her son, which she alleges was caused by the negligence of the receivers, and resulted in his death, and it is agreed that the only question to be decided is: As the law (article 2899, Rev. Civil St.)