out of the car he told them that he did not intend to arrest them, and did not arrest them for any violation of the law, but that he intended to put them off the company's property, which he could not have done as deputy sheriff, but was authorized to do for the corporation. It therefore appears that at that time he was acting as the agent and servant of the railroad company. Brill v. Eddie, 115 Mo. 605, 22 S. W. 488. In the case last cited a policeman who was authorized to make arrests for violations of ordinances of the city took hold of a boy who was riding a train in violation of such ordinances and pulled him from the car. The policeman had the authority to arrest the boy for the offense, but he did not intend to arrest him, only intended to take him off the car and put him out of the yard. The policeman was also an employé of the railroad company, and charged with the duty of keeping boys off the yard and away from the company's property. It was contended that, he being a policeman, the railroad company was not responsible for his act, and the court said, in substance, that if it appeared from the evidence that he was acting officially and was arresting the boy, then the company would not be responsible; but as it appeared from the policeman's evidence, and also from other circumstances, that he did not intend to make any arrest, but simply to remove the boy from the car and from the railroad company's premises, the court held that his act was not official, but that of a servant of the company. We think the evidence in this case shows that at the time Futch marched the men, including the plaintiff, down the railroad track to put them off the company's property, he was acting in the capacity of watchman and agent of the company, and if he fired the shot which caused the injury while in the performance of or in furtherance of that duty, then the railroad company must be held liable for the consequences.

It is contended that Futch departed from the service of the railroad company and became involved in a difficulty with a third person, and that he did not fire the shot in the discharge of any duty due to the railroad company. The following charge was asked by the railroad company, and was refused: "Gentlemen of the jury, you are instructed that if you find from the evidence that, on the occasion of plaintiff's injury, the defendant Charles A. Futch had required the plaintiff and his associates to leave the premises and yard of the defendant railway company, and that while they were in the act of departing therefrom another person, unknown to plaintiff and his associates, approached the defendant Futch, and that a personal controversy thereupon ensued between such person and the said defendant Futch, and that as result of such controversy the defendant Futch discharged his pistol, and thereby inflicted injury upon the plaintiff, but that such injury of the plaintiff was not intentional, nor for the purpose of coercing him or his said companions to leave the said yard and premises of defendant railroad company, then, and in such event, the plaintiff is not entitled to recover, and, if you so believe, you will return your verdict in favor of the defendant railroad company." If the charge had been given, the jury must have found for the railroad company, although they believed Futch was negligent or reckless in firing the pistol. Futch had plaintiff under his control, and he owed it to him and his associates not to injure them through negligent or reckless use of his gun. Under the requested charge the jury must have found for defendant railroad company, although they believed Futch acted recklessly in firing his pistol, and the evidence would justify that conclusion. The charge was properly refused.

The facts stated by Futch show that at the time he fired the shot he did it for the purpose of compelling the man at whom he fired to return to the parties that he had under control and whom he was putting off the yards. Futch believed that the unknown man was one of the party that he had started to put off the yard, and, so believing, he had ordered him to rejoin the company in order that all might be put off the grounds, and upon his refusal to do so he fired at him. Futch's evidence does not show that he had at any time abandoned the purpose he had when he started with the men from the car to take them down the track to the end of it and across the bridge. To do this he sought to keep them together. The fact that he was mistaken as to the unknown man's relation to the others does not affect his relation to the railroad company.

We are of opinion that the evidence is sufficient to sustain the judgment of the court whereby the railroad company was held liable to Parsons for the injuries inflicted upon him by Futch. We therefore affirm the judgments of the district court and court of Civil Appeals.

MISSOURI, K. & T. RY. CO. OF TEXAS v. STATE.

(Supreme Court of Texas. Dec. 9, 1908.)

1. STATUTES (§ 110½*)—TITLE—SUFFICIENCY. Under Const. art. 3, § 35, requiring the subject of a bill to be expressed in its title, Act March 25, 1907 (Laws 30th Leg. pp. 92, 93, c. 41), making it unlawful for railroad companies to run trains outside of yard limits with less than full crews of a specified number of men each, is invalid for insufficiency of its title, "An act to protect the lives and property of the traveling public and the employés of the railroads in the state of Texas."

[Ed. Note.—For other cases, see Statutes, Dec. Dig. § 110½.*]

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2. STATUTES (§ 109*) — TITLES — REQUIREMENTS.

Under Const. art. 3, § 35, requiring the subject of a bill to be expressed in its title, a title is not bad for comprehensiveness; but it is bad if it is so indefinite as to express no subject, or if it does not express the particular subject of the act.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 139; Dec. Dig. § 109.*]

Error from Court of Civil Appeals of Third Supreme Judicial District.

Suit by the State of Texas against the Missouri, Kansas & Texas Railway Company of Texas. From a judgment of the Court of Civil Appeals (109 S. W. 867), affirming a judgment for plaintiff, defendant brings error. Reversed and dismissed.

Coke, Miller & Coke, A. H. McKnight, and Fiset & McClendon, for plaintiff in error. R. V. Davidson, Atty. Gen., Claude Pollard, Asst. Atty. Gen., Jno. W. Brady, Co. Atty., W. D. Williams, and F. M. Spann, for the State.

WILLIAMS, J. The state brought this action and recovered the judgment under review for penalties under an act of the Legislature approved March 25, 1907 (Laws 30th Leg. pp. 92, 93, c. 41). The defense involved the contention that the act is invalid for the reason that the subject of which it treats is not expressed in its title, as required by article 3, § 35, of the Constitution, which provides: "No bill * * * shall contain more than one subject which shall be expressed in its title." The title of the act is: "An act to protect the lives and property of the traveling public and the employés of the railroads in the state of Texas." The first, second, and third sections of the act make it unlawful for railroad companies to run any passenger train, freight train, or light engine outside of yard limits with less than full crews of the number of men specified for each.

What is the subject expressed in the body of the act? It is the prescribing of the crews to be employed upon trains and engines, or it might be said to be the regulation of the running of the trains and engines by prescribing the crews thereof. Is that subject expressed in the title? We think it clear that it is not. The title no more expresses and directs attention to that subject than it would to any other legislation which might have been written under it the tendency of which might have been to protect the lives and property of the traveling public and of railroad employés, such as laws directed against robbers, the obstruction of or injury to tracks, interference with cars and engines, or regulating the conduct of persons at crossings, or the giving of signals, and numerous others that might be instanced. A title so general as that of this act gives no intimation of the particular subject to which the body of the act is confined. That which is expressed in the title is not the subject of the act, but the general end or purpose to be subserved. In the case of Clark v. Commissioners, 54 Kan. 634, 39 Pac. 225, the court had before it a statute the title of which was, "An act to protect fruit trees, hedge plants and fences," and the body of which authorized "the county commissioners of any county of this state to pay a premium for gopher scalps taken in their county." Of this the court said: "There is nothing in the body of the act referring to fruit trees, hedge plants, or fences. In support of the act, it may be urged that the killing or extermination of gophers may tend to protect fruit trees, hedge plants, and fences; but we do not think the subject of the act is clearly expressed in its title, as required by section 16, art. 2, of the Constitution. The title does not suggest gophers, or bounties for their scalps, or the levying of taxes to pay the same. The title is too general. It no more suggests gophers than it does prairie fires, or malicious trespassing; not, in fact, so much. If the title of the act referred to bounties for scalps of animals or rodents, although gophers were not named therein, a different question would be presented."

These remarks apply in their full force to the statute now under consideration. In the application of the provision of the Constitution above quoted to particular cases the courts have often used very broad language as to the discretion of the Legislature in constructing titles to statutes, and undoubtedly that discretion is very broad. Sometimes it is said that the Constitution does not undertake to prescribe the degree of particularity with which the subject of the bill is to be expressed in its title, but leaves that to the Legislature; and this is largely true. A title is not bad merely because of comprehensiveness; but it is bad if it is so indefinite as to express no subject, or if it does not express the particular subject of the act. The title must not only express a subject, but must express that which is dealt with in the body of the act. No authority but the plain language of the Constitution is needed for that proposition. But the authorities recognize, as they must, that a title may be so indefinite as not to express any subject of legislation sufficiently, or that it may fail to express the subject of the body of the act. Sutherland on Stat. Cons. § 90, and cases cited. The expressions in the books which are relied on to sustain this act were generally used in considering whether or not the titles of acts which sufficiently expressed a subject were comprehensive enough to embrace details in the body of the act as incidental or subsidiary to the subject expressed, and it was for the purpose of pointing out that the comprehensive way in which the subject was stated in the title was no objection. The principle applied was that under a general statement of the subject of the act all provisions germane to that subject may be in-

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troduced. Nearly all of the cases relied on are of this class, and the general language used was with reference to titles such as were under consideration. Other cases deal with statutes treating in a comprehensive way of subjects which are themselves comprehensive and which require titles equally broad. For instance, the title "An act to adopt the common law of England" is regarded as sufficient for a statute the body of which corresponds with it. Other instances might be given. The reason is that the titles truly and adequately express the subjects of the acts—that which they purport to do. We should have a different question if, under the title just stated, an act were passed merely to adopt the rule in Shelley's Case. The question then would be whether or not the title expressed the subject of the act. While it is true that the Constitution does not define the degree of particularity with which the title of an act shall express the subject, it is equally true that it does require the subject of the act to be expressed in the title. In this the statute under consideration so clearly fails to comply with the requirement that we must hold it to be invalid.

It follows that the judgment should be reversed, and that the cause should be dismissed.

WINN v. STATE.

(Court of Criminal Appeals of Texas. Nov. 18, 1908.)

1. WITNESSES (§ 345*) — CHARACTER — PRIOR CONVICTIONS—REMOTENESS.

Where, in a prosecution for homicide, accused was a witness in his own behalf at the trial in May, 1908, it was error to permit the state, in order to discredit him, to prove that he had been indicted for killing a Mexican in 1887 or 1888, and had pleaded guilty to theft in 1894, in the absence of evidence that he had not reformed.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. § 1126; Dec. Dig. § 345.*]

2. HOMICIDE (§ 166*)—TRIAL—EVIDENCE.

Where, in a prosecution for homicide, the state claimed that the killing resulted from defendant's animosity toward decedent and W., because he believed they had burned his barn, it was incompetent for the state to prove a complete alibi for deceased and W. so far as the barn burning was concerned, unless the circumstances so proposed to be proved were known to defendant when he accused deceased and W. of burning the barn.

[Ed. Note.—For other cases, see Homicide, Dec. Dig. § 166.*]

3. HOMICIDE (§ 116*)—SELF-DEFENSE.

Where accused claimed that he killed deceased in self-defense, the circumstances surrounding the killing must be viewed from defendant's standpoint, and it is immaterial whether subsequent evidence showed him to have been in danger or not.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. § 159; Dec. Dig. § 116.*]

4. HOMICIDE (§ 116*)—SELF-DEFENSE.

If the danger appeared real to the defendant, and under the belief that it was real he shot and killed deceased, believing his own life was in danger, or his person of serious bodily injury, the homicide was justified.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. §§ 158–163; Dec. Dig. § 116.*]

5. HOMICIDE (§ 39*)—MANSLAUGHTER.

If defendant met deceased, and defendant's previous belief that deceased had burned his barn and threatened his life caused sudden anger or resentment, rendering his mind incapable of cool reflection, and defendant thereupon killed deceased as deceased pointed a pistol at defendant, the offense was manslaughter.

[Ed. Note.—For other cases, see Homicide, Dec. Dig. § 39.*]

Appeal from District Court, Limestone County; L. B. Cobb, Judge.

S. H. Winn was convicted of manslaughter, and he appeals. Reversed and remanded.

James Kimbell and Harper, Jackson & Harper, for appellant. F. J. McCord, Asst. Atty. Gen., for the State.

BROOKS, J. Appellant was convicted of manslaughter, and his punishment assessed at three years' confinement in the penitentiary.

Bill of exceptions No. 1 shows that after the state had closed its evidence counsel for appellant asked the court to retire the jury, and requested the court to instruct the state's counsel not to ask the defendant, when he was put on the stand as a witness in his own behalf, about having been indicted for killing a Mexican in Leon county, Tex., in or about 1887 or 1888, nor to ask the appellant about having pleaded guilty to theft of hogs in Robertson county in the district court in 1894, unless the state expected to further attack the appellant's character, either for his general reputation for truth and veracity, or by showing other offenses committed by defendant after said time, because said transactions were committed too long ago to affect defendant's standing now. The court refused to so instruct the state's counsel, and notified counsel for appellant the same was a proper question for the state to ask the appellant. Thereupon the jury was recalled, and the appellant was placed upon the stand as a witness in his own behalf, and upon cross-examination counsel for the state asked the appellant if he did not kill a Mexican in Leon county in or about 1887 or 1888, and was indicted and tried therefor, and he further asked him if he did not in July, 1894, plead guilty to theft of hogs in Robertson county. Appellant then and there objected. The court permitted the same to be asked appellant, to which ruling of the court appellant excepted, because said testimony was immaterial to any issue in the case, and would not tend to prove any fact, and it was not permissible to prove these two isolated transactions, happening so long ago, because they were too remote to show moral turpitude. The trial took place in May, 1908, and under a long line of author-

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