quested, such issue must be deemed, under article 1985 of the Revised Statutes, to have been found in favor of defendants in error, in order to sustain the trial court's judgment.

For two reasons, this contention of defendants in error cannot be sanctioned. First, no presumption will be indulged, under article 1985, which is expressly contradicted by the record. By the charge, sanctioned by defendants in error in withholding objection thereto, the court made the right of defendants in error to recover the 160 acres of land depend wholly on the jury's decision of the question submitted by the court. Second, no other conclusion is warranted in this case than that defendants in error waived any right to recover, under the law as applied to controverted facts in evidence, save as found by the jury in answer to the question submitted to them. Texas Drug Co. v. Cadwell (Tex. Civ. App.) 237 S. W. 976; San Antonio Public Service Co. v. Tracy (Tex. Civ. App.) 221 S. W. 638.

It is ordered that the judgments of the district court and of the Court of Civil Appeals be reversed and that this case be remanded to the district court for a new trial.

PHIL H. PIERCE CO. v. WATKINS, District Judge, et al. (No. 4022.)

(Supreme Court of Texas. June 28, 1924.)

1. New trial ⟸117(1)—Judgment cannot be vacated and set aside on motion after 30 days, without motion for new trial filed in time.

Where no motion for new trial was filed within time prescribed by Acts 38th Leg. (1923) c. 105, § 1, subds. 15, 16, court was without authority to vacate and set aside judgment on motion made more than 30 days from entry.

2. Statutes ⟸93(8)—Enactment making judgment final after 30 days held not invalid as "special or local law."

Acts 38th Leg. (1923) c. 105, § 1, subds. 15, 16, regulating practice and procedure in civil district courts in counties having two or more district courts with civil jurisdiction only, and providing that judgments should become final within 30 days, if motion for new trial is not made in 10 days, does not violate Const. art. 3, § 56, relating to "local and special laws."

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Special Law.]

3. Statutes ⟸68—Legislature has power to classify subjects, and act applying to such subjects as a class is a "general law," not violation of Constitution.

Legislature has power and authority to classify subjects, and an enactment that applies to such subjects as a class is a general law and not violative of Const. art. 3, § 56 (citing Words and Phrases, Second Series, General Law).

4. Constitutional law ⟸106—Statutes ⟸264—Litigant has no vested right in a remedy; remedial statutes control from date they become law.

A litigant has no vested right in a remedy, and remedial statutes are valid and control litigation from date they become a law.

5. New trial ⟸117(1)—Enactment relating to time judgments become final applied to judgment previously entered.

Acts 38th Leg. (1923) c. 105, relating to time for motion for new trial and time after which judgments become final in certain courts, applied to a judgment entered several days before it went into effect.

Mandamus proceeding by Phil H. Pierce Company, praying that writ issue commanding Royal R. Watkins, District Judge, to vacate an order granting a new trial and directing him to give effect to a judgment against the Popular Amusement Company. Writ granted.

J. L. Zumwalt, of Dallas, for relator.

Gresham & Willis and Alvin H. Lane, all of Dallas, for Popular Amusement Co.

H. M. Garwood, J. W. Lockett, J. F. Wolters, Sam Streetman, and Lewis R. Bryan, all of Houston, amici curiæ.

PIERSON, J. On June 28, 1923, in the district court of the Ninty-Fifth judicial district of Texas, of which court the Honorable Royal R. Watkins is the judge, judgment was entered in cause No. 47006 in favor of relator Phil H. Pierce Company against respondent Popular Amusement Company. Thereafter, on the 16th day of August, 1923, respondent Popular Amusement Company filed in said court a motion for a new trial, praying that the judgment rendered on June 28th be set aside and held for naught. In its said motion it alleged that the judgment purports to be one by default, that before judgment was taken it had filed its answer, that it had no notice of the setting of the case, and "that it has a meritorious defense to said suit."

The answer of respondent Popular Amusement Company, referred to by it, consisted of a general demurrer and a general denial. Its motion for a new trial alleged that it had a meritorious defense, but did not set out the character or nature of its defense.

Relator Phil H. Pierce Company resisted the motion for a new trial, primarily upon the ground that under chapter 105, General Laws of the Thirty-Eighth Legislature, which act by its terms went into effect July 1, 1923, the judgment had become final, and that respondent Watkins was without authority to grant a new trial or to set said judgment aside.

The Ninety-Fifth district court comes within the terms and provisions of chapter 105, General Laws of the Thirty-Eighth Legisla-

ture, which regulate the practice and procedure "in civil district courts in counties having two or more district courts with civil jurisdiction only, and whose terms continue for three months or longer."

On August 27th, and before the term of court had ended under limitation of law, respondent Watkins entered his order granting a new trial and setting aside the judgment.

Relator Phil H. Pierce Company brought this action praying that a writ of mandamus issue commanding respondent Watkins to vacate his said order granting a new trial and directing him to give effect to said judgment.

The part of chapter 105 which affects the rules of procedure applicable to this case is found in subdivisions 15 and 16 thereof. They read as follows:

"Subd. 15. A motion for new trial, where required, shall be filed within ten days after the judgment is rendered or other order complained of is entered, and may be amended by leave of court at any time within twenty days after it is filed before it is acted on.

"Subd. 16. Judgments of such civil district courts shall become as final after the expiration of thirty days after the date of judgment or after a motion for new trial is overruled as if the term of court had expired. After the expiration of thirty days from the date the judgment is rendered or motion for new trial is overruled the judgment cannot be set aside except by bill of review for sufficient cause, filed within the time allowed by law for the filing of bills of review in other district courts."

Subdivision 19 provides:

"All inconsistent laws and rules of practice and procedure shall be inoperative in the civil district courts of the class included within this act."

Section 2 of the act reads:

"This act shall take effect and be in force on and after the first day of July, 1923."

[1] As no motion for a new trial was filed within the time prescribed by chapter 105, and thirty days having expired before the court vacated and set aside the judgment, the judgment was final under the provisions of chapter 105.

If said statute is a valid and constitutional enactment, and if its terms apply to this judgment, relator is entitled to the writ. Under the provisons of chapter 105 a motion for new trial filed more than 30 days after the entry of a judgment would be as one filed after the term of court had expired. The only remedy would be, as in similar cases and as provided by said chapter, by a bill of review.

[2] We will first give consideration to the defense of respondent Popular Amusement Company that chapter 105 is unconstitutional and void, because violative of article 3, § 56, of the Constitution of the state of Texas, wherein it provides:

"The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law * * * regulating the practice or jurisdiction of * * * any judicial proceeding or inquiry before courts * * * or other tribunals. * * * And in all other cases where a general law can be made applicable, no local or special law shall be enacted."

The Constitution does not prohibit the regulation of the practice or jurisdiction of judicial proceedings or inquiries before courts by a general law; neither does it require that the practice and procedure shall be the same and uniform in all judicial tribunals. It declares only that the Legislature shall not regulate them by local or special law.

Chapter 105, General Laws of the Thirty-Eighth Legislature, under its terms and under the well-recognized rules of law is not a special or local law. Its introductory paragraph provides:

"Article 1969a. The following rules of practice and procedure shall govern and be followed in the civil district courts in counties having two or more district courts with civil jurisdiction only, and whose terms continue for three months or longer."

[3] That the Legislature has the power and authority to classify subjects, and that an enactment that applies to such subjects as a class is a general law, is well recognized.

It has been held by this court in a number of cases that a law is general if it apply uniformly to all of a class. Clark, Sheriff, v. Finley, Comptroller, 93 Tex. 171, 54 S. W. 343; Reed v. Rogan, 94 Tex. 177, 59 S. W. 255; Ex parte Dupree, 101 Tex. 150, 105 S. W. 493; Beyman v. Black, 47 Tex. 558.

For a law to be general it is not necessary that it apply to all persons or things alike. Indeed, as said by Chief Justice Gaines in Clark, Sheriff, v. Finley, Comptroller, supra, "most of our laws apply to some one or more classes of persons or of things and exclude all others." He quoted with approval the following definition by the Supreme Court of Pennsylvania in the case of Wheeler v. Philadelphia, 77 Pa. 338:

"Without entering at large upon the discussion of what is here meant by a 'local or special law,' it is sufficient to say that a statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special, and comes within the constitutional prohibition."

Bouvier's Law Dictionary, vol. 2, p. 1347, defines general laws as follows:

"Laws which apply to and operate uniformly upon all members of any class of persons, places, or things, requiring legislation peculiar to themselves in matters covered by the laws. Binney, Restrictions upon Local and Special Legislation, quoted in Com. v. State Treasurer, 29 Pa. Co. Ct. R. 578.

"Statutes which relate to persons and things

as a class. Wheeler v. Philadelphia, 77 Pa. 348. Laws that are framed in general terms, restricted to no locality, and operating equally upon all of a group of objects which, having regard to the purpose of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves."

For definitions and many citations see Words & Phrases, vol. 2, pp. 716 to 720; Abbott's Law Dictionary, vol. 2, p. 14; Black's Law Dictionary (2 Ed.) pp. 537 and 701.

It is not asserted that the classification in this instance is a fictitious one. That it is a bona fide classification, based upon facts and real conditions, is apparent in its terms, and supported by the fact that it applies and is operative over a number of civil district courts in many of the large counties of the state.

The law is a valid exercise of legislative authority, and well designed to have a wholesome effect upon the dispatch and finality of litigation in the courts in our congested centers. Legislative prerogative has always extended to fixing the time when judgments become final and the time when the necessary steps in the procedure must be taken.

While the act is a departure from the former regulations respecting motions for new trial, when the judgment becomes final, and other matters of procedure, yet its terms are reasonable and generous. Instead of two days, as heretofore allowed, ten days are allowed in which a motion for new trial may be filed. It may be amended within twenty days after it is filed. The judgment does not become final until after the expiration of thirty days from the date of the judgment, or after a motion for new trial was overruled, at which time the term of court is at an end as far as the immediate case is concerned.

There are many terms of court in this state which extend only two weeks, some three weeks. When the court adjourns, or when the term expires by operation of law, judgments become final and can be set aside or reopened only by a suit for that purpose.

Respondent Popular Amusement Company presents that chapter 105 became effective July 1, 1923, two days after the judgment herein was rendered, and that it does not apply to this judgment; that to so apply it would make it retroactive.

[4, 5] This is a procedural statute. It is the settled law that a litigant has no vested right in a remedy, and that remedial statutes are valid and control the litigation from the date they become a law, and all proceedings taken thereafter must be under the new law.

"It is competent for the Legislature to deprive the courts of their powers under existing law to modify or vacate judgments rendered prior to the passage of the act." 12 Corpus Juris, p. 984; Bagby v. Champ, 83 Ky. 13.

It was said by Chief Justice Willie in the case of Collins v. Warren, 63 Tex. 314:

"The repeal of a statute leaves unaffected all rights in the nature of contract which have vested under the original statute. Sedgw. Const. & Stat. Law, 113. As to the effect of such repeal upon remedies existing under the former law, some difference of opinion has existed, but the weight of authority seems to be that, without some saving clause contained in the repealing law, remedies existing under the former statute must give way to those provided by the new one. The new law cannot take away all remedies previously existing, but must leave a substantial one according to the course of justice. Dwarris on Statutes, 474; Cooley on Lim. 289."

Chapter 105 was approved March 21, 1923, and its section 2 provides that it shall take effect and be in force on and after July 1, 1923, three months and eleven days after it was passed. As was suggested by Judge Brown in Odum v. Garner, 86 Tex. 377, 25 S. W. 18, doubtless the time when the act should take effect was postponed so as to give opportunity to file motions in cases wherein judgments had been rendered, as well as for other reasons. Eaton v. Supervisors, 40 Wis. 668. Respondent Popular Amusement Company could have filed its motion for new trial within two days, as provided under the old law, or within ten days after judgment under the new, and the court could have vacated the judgment at any time before it became final within thirty days.

Under the law as it existed before this statute went into effect, this judgment so rendered would have become final upon the termination of the term of court, either by its expiration under the law or by final adjournment.

If the term had ended by adjournment at any time after the rendition of the judgment, this judgment would have become final. It is no less final upon the end of the term for this case under the terms of the new statute.

The only legal way to review it is the way provided by this statute, and which would be the way in the absence of the statutory provision after the judgment had become final; that is, by bill of review for sufficient cause, filed within the time allowed by law for the filing of bills of review.

The act here operated prospectively. Its provisions had no effect upon the action of the court in entering the judgment. It applied only to future acts of the court in reference to the judgment, and as to when the court's control over it should cease.

No motion for new trial was filed under the old or the new statute, and the judgment became final as if the term of court was at an end.

If there was a hardship placed upon respondent Popular Amusement Company, it was not because of the statute changing the

time when judgments in these courts should become final, but because of the alleged wrongs in entering the judgment, and perhaps in respondent's not discovering it until after it had become final under the statute.

Respondent Popular Amusement Company's motion for a new trial in the district court failed to contain some of the essential elements necessary to constitute it a bill of review. No defense to relator's claim was pleaded. It alleged that it had a meritorious defense, but its nature and character was not set out. The motion lacked this essential, and cannot be considered as a bill of review.

The other issues raised by respondent have been considered, and are deemed to be without merit.

The writ is granted.

AMERICAN INDEMNITY CO. v. FELLBAUM. (No. 3602.)

(Supreme Court of Texas. June 28, 1924.)

Insurance ⟸514—Insurer, assuming to defend action, liable to insured, though judgment not paid.

Insurer agreeing to settle or defend suits, by assuming to defend action, was made unconditionally liable for any judgment rendered against insured up to amount of indemnity, and insured was not compelled to pay judgment in order to recover from insurer, by reason of clause in policy that no action should lie against insurer unless judgment against insured was actually paid.

Error to Court of Civil Appeals of Fourth Supreme Judicial District.

Suit by Ernest Fellbaum against the American Indemnity Company. From a judgment of the Court of Civil Appeals (225 S. W. 873), affirming a judgment for plaintiff, defendant brings error. Affirmed.

Arnold & Cozby, of San Antonio, for plaintiff in error.

Randolph Carter, Perry J. Lewis, H. C. Carter, Champe G. Carter, and McAskill & Mauermann, all of San Antonio, for defendant in error.

CURETON, C. J.; On September 27, 1915, and prior thereto, M. D. Carr, now deceased, was a contractor engaged in constructing a bridge in San Antonio. In the prosecution of this work he negligently made a deep excavation at one end of the bridge, and, on the date named, Miss Douglas Stough, while walking along the avenue where the bridge was being constructed, fell into the excavation and suffered injuries, for which she brought suit against M. D. Carr. Prior to the date of the accident the American Indemnity Company had prepared, executed, and issued to M. D. Carr, for a valuable consideration, a certain policy of insurance indemnifying Carr against accidents and injuries of like kind and character as the accident and injury to Miss Douglas Stough. The policy limited the liability of the indemnity company to $5,000 on account of any accident to any one person. This policy was in existence and in full force and effect at the time of the accident named. Due notice of the accident was given to the company. The indemnity company conducted negotiations for the settlement of Miss Douglas Stough's claim against Carr, but no settlement was ever made. A suit against Carr was filed February 25, 1916, and he was served with citation, and notice of the suit was sent to the American Indemnity Company. The American Indemnity Company appeared in answer to the suit against M. D. Carr. Subsequent to the filing of the suit, and before the case was tried, Carr died. Ernest Fellbaum, after certain proceedings not necessary to be discussed, became the administrator of his estate. On October 21, 1916, an amended petition was filed in the original suit, setting up the death of Carr and impleading Fellbaum, the administrator, and praying judgment against him for $20,000 damages. This suit was pursued, and on March 3, 1917, Miss Douglas Stough recovered a judgment against Fellbaum, as administrator of the estate of Carr, for the sum of $4,000, with 6 per cent. per annum interest from the date of the judgment until paid and all costs of court. The indemnity company, through its attorneys, appeared and conducted the defense in said cause for said Carr and for said administrator, and had complete charge of the defense. No appeal was taken from the judgment, and it became final. On March 12, 1917, the claim of Miss Douglas Stough, based on this judgment, was filed with Fellbaum, the administrator, and allowed by him as a valid claim against the estate. A certified copy of the judgment was thereupon duly filed in the administration proceedings which were pending in Travis county, and the claim duly noted on the claim docket. The allowance of the claim was approved and classified by the probate judge.

Certain other matters are shown with reference to this claim, but for the purposes of this opinion it is not necessary to notice them.

The policy issued by the American Indemnity Company contained, among other provisions, the following:

"This insurance is subject to the following conditions:

"*Limits.* A. The company's liability on account of an accident to one person is limited to five thousand and no/100 dollars ($5,000.00), and, subject to the same limit for each person,