arisen out of the alleged partnership. We think the statute of limitation would run only from the date of said alleged adjustment and the promise of appellant to comply with the terms of same and the question of partnership was an immaterial issue in this case. Whether appellee was a partner in the business as alleged or not, he claimed to be such, and claimed an interest in the profits of the business of said firm and also claimed other indebtedness due him by appellant, and to effect a settlement and adjustment of these claims and of the counterclaims asserted against him by appellant, it was agreed that Mr. Hardman should adjust the matters in dispute. When Hardman made this adjustment and it was agreed to between the parties, and appellant promised to pay the amount found by Hardman to be due appellee, in the absence of pleading and proof of fraud, mistake, or accident, the adjustment or compromise so made is binding between the parties, and appellant's promise to comply with the terms of said adjustment became a new obligation.

We think none of the assignments point out any reversible error, and the judgment of the court below will be affirmed.

[Court of Civil Appeals, Fifth District. Opinion Delivered January 12, 1901.]

DYER et al. v. PIERCE.

Husband and Wife—Wife's Separate Estate—Homestead—Descent and Distribution—Limitation—Evidence—Bill of Exceptions.

1. Where land was purchased for the benefit of the wife and conveyed to her, the first payment being made with her separate money, and the husband during her life treated it as hers and after her death as the children's, it not being shown what funds discharged the deferred payment, the conclusion is warranted that, if community funds were so used, the husband intended it as a gift to the wife and that the land was to remain her separate property.
2. Where land is purchased for the wife and the possession taken by virtue of the conveyance to her, no limitation in favor of the husband will run against her.
3. Where the separate property of the wife is occupied as a homestead, and after her death the husband continues to occupy it as his homestead, limitation will not run in his favor against the children, there being no claim on his part that he was claiming adversely to them.
4. The admission of improper evidence will not be considered in the absence of a bill of exceptions, and the rule applies when the trial is without a jury.
5. Where land occupied as a homestead is the separate property of the wife, the title at her death descends to the children subject to the homestead interest of the husband, and at the death of the latter no interest will vest in the second wife surviving.

Error from the District Court of Johnson County; James W. Brown, Special Judge.

Action by Sarah A. E. Dyer, joined by her husband, A. J. Dyer, against C. A. Pierce. From a judgment in favor of defendant, plaintiffs bring error. Affirmed.

Geo. D. Green and O. T. Plummer, for plaintiffs in error.

J. A. Stanford and F. M. Ball, for defendant in error.

RAINEY, CHIEF JUSTICE.—A. J. Pierce and wife, Nancy Pierce, moved to Texas from Georgia in the year 1866 or 1867. They had ten children born unto them, the appellee being one of them. In 1870 the land in controversy was purchased and the deed made to Nancy Pierce. The consideration recited in the deed was $2250 cash paid. There was, however, only $1000 paid in cash and the balance on time. The cash payment was made with money the separate property of Nancy Pierce. The balance was paid, but when, how, or by whom is not definitely shown. The purchase of the land was negotiated by Clem Pierce, appellee, for and on behalf of his mother, Nancy Pierce. It was intended at the time that it should be her separate property and A. J. Pierce so treated it, never claiming any interest therein, and after the death of his wife he recognized his children as the owners thereof. Soon after the land was deeded to Nancy Pierce she and her husband moved upon and improved it and lived thereon until her death, which occurred in 1878. A. J. Pierce continued to occupy the land until his death in 1892. In 1881 he married the plaintiff Sarah A. E. Dyer, who lived with him on the land until his death. In 1894 plaintiff intermarried with A. J. Dyer, her coplaintiff. The appellee purchased all the interest of the other children of A. J. and Nancy Pierce in the land.

1. The evidence in our opinion is sufficient, though not clear, to show that the land in controversy was the separate property of Nancy Pierce at her death. The fact that $1000 of her separate money was paid at the time of purchase and that the land was intended for her separate property, while it is not shown what funds discharged the deferred payment the fact appears that the husband recognized and treated it as hers during her life and after her death as the children's, from which we think we are justified in concluding that if community funds were used in discharging the deferred payment, the husband intended it as a gift to the wife and that the land was to remain her separate property.

2. The land having been purchased for the wife and the possession thereof having been taken by virtue of the conveyance to her, no limitation in favor of the husband would run against her. After her death the husband had the right to occupy the land as his homestead, and no limitation run in his favor against the children, there being no claim on his part that he was claiming adversely to them.

3. We can not consider the assignment of error that the court erred in admitting improper evidence, as no bill of exceptions was taken to its introduction. Because the case was tried without a jury does not vary the rule that the objection to the admission of evidence must be reserved and appear in the record to warrant a review of the trial court's action in that particular by this court.

4. The land being the separate property of Nancy Pierce, the title thereto at her death descended to her children subject to the homestead interest of the husband, subject to his one-third life estate, if he did not see proper to occupy it as a homestead.

After A. J. Pierce's death no interest vested in plaintiff by virtue of being his surviving widow.

Plaintiffs having shown no interest in the land, the judgment is affirmed.

[Court of Civil Appeals, Fourth District. Opinion Delivered December 19, 1900.]

SAN ANTONIO TRACTION CO. v. WHITE.

Trial—Excused Juror—Party Consenting Can Not Complain—Charge of Court—Death of Child—Compensation—Reasonable Expectations—Evidence.

1. Where a juror is excused by consent and the case tried without him, a party will not be heard to complain of an adverse verdict and judgment upon the ground that he was induced to excuse the juror from fear that his retention would, after the remarks of the court and opposing counsel in relation to excusing him, prejudice the juror, there being nothing in the record indicating that the juror, had he not been excused, would have been prejudiced or unfair.
2. Plaintiff sued to recover for the death of her son, who at the time of his death was twelve years old. The court, after instructing as to a recovery for services until he would have reached his majority, gave the following charge: "And if you believe that plaintiff had a reasonable expectation of receiving from said son, had he lived, considering his position and ability, contributions to her wants and necessities after he reached his majority, then plaintiff is entitled to recover whatever pecuniary aid she had a reasonable expectation of so receiving, if any." Held, that the charge is correct.
3. A jury can estimate the damages to the parent from the negligent killing of a child upon evidence of his health, strength, aptitude or willingness to perform service, the reasonable benefit resulting therefrom, etc., without a statement of any definite sum by a witness.

Appeal from the Thirty-seventh District Court of Bexar County; Robt. B. Green, Judge.

Action by Bettie White against Thomas Johnson, as receiver of the San Antonio Street Railway Company. After the suit was brought the San Antonio Traction Company was impleaded as the purchaser at receiver's sale of the property and franchise of the street railway company, and judgment prayed for against said traction company. From a judgment in favor of plaintiff, the San Antonio Traction Company appeals. Affirmed.

A motion for rehearing was overruled January 16, 1901.

Houston Bros. and R. J. Boyle, for appellant.

Keller & Williams, for appellee.

NEILL, ASSOCIATE JUSTICE.—This suit was brought by the appellee, Bettie White, against Thomas Johnson, as receiver of the San Antonio Street Railway Company, to recover damages in the sum of $25,000 for the death of her son, William H., caused by the alleged negligence of its servants in operating a street car of said company.

The appellant company, after the suit was filed, was impleaded as the purchaser at receiver's sale of the property and franchises of the San Antonio Street Railway Company, and judgment prayed for by appellee against said traction company.

The case was tried before a jury and the trial resulted in a verdict and judgment in appellee's favor for $5000, from which the traction company has prosecuted this appeal.

Conclusions of Fact.—It is not contended by appellant that it is not liable as the purchaser at the receiver's sale of the franchises and property of the San Antonio Street Railway Company for the damages claimed, in the event it is shown that the San Antonio Street Railway Company was before said sale itself liable for such damages. Therefore it is not necessary for us to state the facts upon which appellant's liability rests in that event. It is sufficient to say that if the street railway company was liable, such liability was assumed by appellant by virtue of its purchase at said sale.

On the 20th day of February, 1900, William H. White, the son of appellee, a boy 12 years old, was by the negligence of the servants of the San Antonio Street Railway Company, operating one of its street railway cars on Avenue C, in the City of San Antonio, Texas, run over by the car so negligently operated by them, and killed; that deceased was not guilty of any negligence proximately contributing to his death, and by the negligence of said company through its servants, in killing the boy, his mother has been damaged in the sum of $5000.

Conclusions of Law.—1. There was no error in the court, after the jury had been impaneled, excusing, with the consent of counsel of appellant and appellee, the juror Walter Vasbinder from the jury, and trying the case with the remaining eleven jurors. If appellant wanted Vasbinder to continue as a juror in the case, it ought not to have consented to his discharge. After he was excused, and the case tried without him, appellant ought not to be heard to say that it was induced to excuse him from fear that the juror's retention would, after the remarks of the court and counsel for appellee in relation to excusing him, prejudice Vasbinder against appellant, if he continued to sit as a juror in the case. There is nothing in the record that indicates that the juror, had he not been excused, would have been prejudiced by such remarks, and not have been a fair and impartial juryman in the trial of the cause. It can not be assumed that a man of the qualifications required of a juror would violate the sacred obligation of his oath, and be prejudiced against a party in the case he was to try, and allow such prejudice to influence him in his verdict because the trial judge and counsel for plaintiff had, in the juror's presence, expressed a willingness to excuse him when defendant's counsel would not consent to his discharge. If, however, counsel for the appellant apprehended that the juror