DE QUEEN & EASTERN RAILWAY COMPANY *v.* THORNTON.

Opinion delivered February 27, 1911.

1. APPEAL AND ERROR—WHEN ADMISSION OF EVIDENCE HARMLESS.—The improper admission of evidence is not prejudicial if the fact it tended to prove is otherwise established by undisputed evidence. (Page 62.)
2. SAME—PRESUMPTION FROM FAILURE TO ABSTRACT EVIDENCE.—The refusal to give a certain instruction cannot be relied upon as error unless all of the instructions given are set out in appellant's abstract, as otherwise it will be presumed that the theory embraced in the refused instruction was fully covered by other instructions that were given. (Page 63.)
3. SAME—SUFFICIENCY OF APPELLANT'S ABSTRACT.—Appellant cannot insist upon appeal that the trial court erred in submitting a certain issue to the jury because it was not raised by the pleadings or evidence, where appellant fails to abstract the pleadings and evidence so that it can be seen what issues were properly before the jury. (Page 63.)

Appeal from Howard Circuit Court; *James S. Steel,* Judge; affirmed.

Sain & Sain and *John S. Kirkpatrick,* for appellant.

W. P. Feazel, for appellee.

There is no abstract of the pleadings, nor of the motion for new trial; only a portion of the evidence and only two of the