burning of the planing-mill was not the proximate cause of the burning of the Crandall house, or that Kimball, the occupant of the house, was guilty of negligence that contributed proximately to its loss, then your verdict will be for the defendant.

* * * * * * * *

It is admitted that the value of the Crandall building at the time it was burned was $5,846.81, and if you should find for the plaintiffs your verdict should be for that sum, with interest thereon at 7 per cent. from the twenty-sixth day of August, 1881, which was the time when this action was commenced.

WITHERS *v.* BURKETT and another.*

(*Circuit Court, E. D. Texas.* January, 1883.)

TRESPASS ON REAL ESTATE.

By the common law, and by the statute law of the state of Texas, neither a devisee of real estate nor the universal legatee of the testator can bring or maintain an action for damages for a trespass committed on said real estate during the life of the testator.

Texas Code, arts. 3128, 4858, 1201.

On Demurrer.

Chilton & Chilton, for plaintiffs.

Herndon & Crain, for defendants.

PARDEE, J. This case has been heard upon a demurrer to action brought by devisee of land and residuary legatee for damages committed during life of testator. The devisee claims by virtue of assignment from residuary legatee, who joins *pro forma* in the suit for the use of assignee. By the common law such action survives to neither heirs nor executors and administrators. 2 Wat. Tresp. § 980. The common law is the general rule of decision in this state. Texas Code, art. 3128. The law of the state does not authorize the devise of a claim for damages for trespass to real estate. See article 4858, Texas Code. But such action is saved to the executor or administrator. Article 1201, Texas Code.

It follows that neither of the parties now before the court as plaintiffs have authority to bring the action, and the demurrer should be sustained.

MORRILL, J., concurs.

*Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

CAREY, JR., *v.* ROCHEREAU and others.*

(*Circuit Court, E. D. Louisiana.* February, 1883.)

AGENT—LIABILITY TO THIRD PERSONS.

An agent is liable only to his principal for non-feasance. Whether an agent *per se* is liable to third persons on any account, doubted. *Delaney* v. *Rochereau*, 34 La. Ann. 1123, followed.

At Law.

Joseph P. Hornor and *Francis W. Baker*, for plaintiff.

Charles E. Schmidt, for defendants.

PARDEE, J. An agent is liable only to his principal for *non-feasance*. At common law this proposition is not disputed. That the same rule prevails under the law of Louisiana is settled by the very able and exhaustive opinion of Chief Justice BERMUDEZ, of the supreme court of Louisiana, in the late case of *Delaney* v. *Rochereau*, 34 La. Ann. 1123. It is very doubtful if an agent *per se* is liable to third persons on any account. A person acting as agent for another is liable for his own *misfeasance*, but this results not from the agency but in spite of it.

The exception in this case should be maintained.

MOORE and another *v.* LAWRENCE and others.*

(*Circuit Court, N. D. Texas.* January, 1883.)

1. COTTON FACTOR—CONTRACT FOR RECEIVING AND SELLING COTTON.

When defendants make a contract that *all* their shipments of cotton to a certain place during the season shall be made to plaintiffs, and that said shipments shall amount to at least 200 bales, the contract is not fulfilled by the shipment of 200 bales to plaintiffs, and plaintiffs are entitled to recover commissions upon all other shipments of cotton made by defendants to that place during the season.

2. SAME—COMMISSIONS.

Such commissions allowed should be the full commissions; it appearing that plaintiff's main expenses were in skill, experience, and judgment previously acquired, and that all other expense was nominal.

On Rule for a New Trial.

Wellborne, Leake & Henry, for plaintiffs.

Crawford & Smith, for defendants.

*Reported by Joseph P. Hornor, Esq., of the New Orleans bar.