larger tract had the superior record title. The owner of the smaller tract established a possession on his tract, which he maintained for seven years, and thereby perfected his title to the extent of the boundaries called for in his deed. But it does not appear in that case, as it does in the instant cause, that the owner of the larger tract was maintaining actual possession thereon at the time the owner of the smaller tract established his possession. That fact distinguishes the two cases.

Both writs denied.

GLASSCOCK v. CITY OF CHATTANOOGA. BRANDON v. SAME. EDWARDS v. SAME.

Supreme Court of Tennessee. Dec. 8, 1928.

1. Weapons ⇐3—Ordinance unqualifiedly prohibiting carrying of pistol held unconstitutional (Const. 1870, art. I, § 26).

City ordinance, declaring it a misdemeanor "to carry on or about the person any pistol," etc., without qualification, *held* invalid, under Const. 1870, art. 1, § 26, guaranteeing citizens' rights to keep and bear arms for their common defense.

2. Indictment and Information ⇐110(38)—Conviction of "unlawfully carrying pistol" cannot be sustained, under ordinance carrying into municipal laws state law prohibiting carrying of any except army or navy pistol openly in hand (Const. 1870, art. I, § 26; Thomp.-Shan. Code, § 6641).

Conviction under city warrant charging only offense of "unlawfully carrying pistol," prohibited by ordinance violating Const. 1870, art. 1, § 26, cannot be sustained under ordinance declaring any one doing in city any act declared a misdemeanor by state laws a violator of ordinance, on ground that such ordinance carries into municipal laws Thomp.-Shan. Code, § 6641, prohibiting carrying of pistol, except army or navy pistol, openly in the hand; such charge being inadequate under latter section.

Appeal in Error from Criminal Court, Hamilton County; C. W. Lusk, Judge.

W. R. Glasscock, T. F. Brandon, and Dick Edwards were convicted of carrying pistols in violation of an ordinance of the City of Chattanooga, and from judgments affirming the convictions they appeal in error. Reversed, and cases dismissed.

Floyd Estill and R. J. Bork, both of Chattanooga, for plaintiffs in error.

J. W. Anderson, of Chattanooga, for defendant in error.

GREEN, C. J. These three cases were heard together in the lower courts and in this court. They are prosecutions starting in the city court of Chattanooga under an ordinance of that city directed against the carrying of a pistol. The defendants below in each case were found guilty in the city court. Each case was appealed to the criminal court of Hamilton county, and the judgment of the city court in each case affirmed, and appeals in error have been prosecuted to this court.

[1] Plaintiffs in error challenged the validity of the ordinance of the city under which they were convicted. The bill of exceptions shows this ordinance, section 675, Carden and Evans' Code, to be as follows:

"It shall be deemed a misdemeanor to carry on or about the person any pistol, sword cane, bowie knife, Spanish stiletto, dirk or other deadly weapon."

In the famous case of Andrews v. State, 50 Tenn. (3 Heisk.) 165, 8 Am. Rep. 8, an act of the Legislature (Acts 1870, c. 13) was under consideration which made it unlawful "for any person to publicly or privately carry a dirk, sword cane, Spanish stiletto, belt or pocket pistol or revolver." In view of the provision of the Constitution of Tennessee "that the citizens of this state have a right to keep and bear arms for their common defense" (section 26 of article 1, Constitution of 1870, also contained in earlier Constitutions), the court held the Legislature did not have the power to absolutely forbid the carrying of any sort of pistol under all circumstances, but only had a right to regulate this matter. Since this decision, and for many years, the law of the state has prohibited the carrying of a pistol "except the army or navy pistol, usually used in warfare, which shall be carried openly in the hand." Thomp.-Shan. Code, § 6641.

There is no qualification of the prohibition against the carrying of a pistol in the city ordinance before us, but it is made unlawful "to carry on or about the person any pistol"; that is, any sort of pistol in any sort of manner. Upon the authority of Andrews v. State, supra, we must accordingly hold the provision of this ordinance as to the carrying of a pistol invalid.

[2] On the trial below the city relied on another ordinance, section 672, Carden and Evans' Code, as follows:

"Any person doing or causing to be done in this City, any act or acts, which by the laws of Tennessee are holden to be a misdemeanor said person shall be considered a violator of this ordinance and on conviction shall be punished according to this Ordinance. All offenses against or violations of or infractions of any ordinance of this city which have been or may hereafter be defined to be a misdemeanor as provided in the Charter of the city of Chattanooga shall be punished by a fine of not less than two nor more than fifty dollars for each and every offense."

It is urged that this ordinance has the effect of carrying section 6641, Thompson's-

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Shannon's Code, referred to
municipal laws, and that the
can be sustained in this way.
If it be conceded that sect
and Evans' Code, is sufficien
has the effect ascribed to it,
city's case must fail. The ci
der which the defendants bel
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fense of "unlawfully carrying
is an inadequate charge und
Thompson's-Shannon's Code,
be a part of the law of Chatt
nunt v. State, 136 Tenn. 223,
this court held that the excep
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ment was bad which omitted
the pistol carried was not an
pistol carried openly in the ha
It follows that none of the
low were charged with any off
by a valid ordinance, and th
each case must be reversed,
dismissed.

BROOKSIDE MILLS et al. v

Supreme Court of Tennessee.

1. Master and servant ⇐39
ployee's action must be dismi
failed to give statutory notice
stipulated time (Acts 1919, c.

Action by injured employee,
Acts 1919, c. 123, must be di
employee failed to give written
within 30 days, as required by s

2. Master and servant ⇐398-
men's knowledge of injury can
to employer (Workmen's Com

Knowledge of injury by f
cannot be imputed to employer.
men's Compensation Act (Acts 1

3. Master and servant ⇐398
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Injured employee's ignoran
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ten notice of injury within 30
regarded as valid excuse for failu
notice.

Appeal in Error from Circui
County; A. C. Grimm, Judge.

Action by John Harrison
Brookside Mills and another.
plaintiff, and defendants app
Reversed and dismissed.

Hodges & Creekmore, of
plaintiffs in error.

Myers E. Hartman, of Kno
fendant in error.

Shannon's Code, referred to above, into the municipal laws, and that the conviction below can be sustained in this way.

If it be conceded that section 672, Carden and Evans' Code, is sufficiently definite and has the effect ascribed to it, nevertheless the city's case must fail. The city warrants under which the defendants below were prosecuted only charged the commission of the offense of "unlawfully carrying pistol." That is an inadequate charge under section 6641, Thompson's-Shannon's Code, if said section is a part of the law of Chattanooga. In Wehunt v. State, 136 Tenn. 223, 188 S. W. 939, this court held that the exception was part of the description of this offense, and an indictment was bad which omitted to charge that the pistol carried was not an army or navy pistol carried openly in the hand.

It follows that none of the defendants below were charged with any offense denounced by a valid ordinance, and the judgment in each case must be reversed, and each case dismissed.

BROOKSIDE MILLS et al. v. HARRISON.

Supreme Court of Tennessee. Dec. 8, 1928.

1. **Master and servant ⇐398—Injured employee's action must be dismissed, where he failed to give statutory notice of injury within stipulated time (Acts 1919, c. 123, § 22).**

Action by injured employee, brought under Acts 1919, c. 123, must be dismissed, where employee failed to give written notice of injury within 30 days, as required by section 22.

2. **Master and servant ⇐398—Fellow workmen's knowledge of injury cannot be imputed to employer (Workmen's Compensation Act).**

Knowledge of injury by fellow workmen cannot be imputed to employer, within Workmen's Compensation Act (Acts 1919, c. 123).

3. **Master and servant ⇐398—Injured employee's ignorance of statutory requirement for notice of injury cannot excuse failure to give such notice (Acts 1919, c. 123, § 22).**

Injured employee's ignorance of requirements of Acts 1919, c. 123, § 22, requiring written notice of injury within 30 days, cannot be regarded as valid excuse for failure to give such notice.

Appeal in Error from Circuit Court, Knox County; A. C. Grimm, Judge.

Action by John Harrison against the Brookside Mills and another. Judgment for plaintiff, and defendants appeal in error. Reversed and dismissed.

Hodges & Creekmore, of Knoxville, for plaintiffs in error.

Myers E. Hartman, of Knoxville, for defendant in error.

GREEN, C. J. John Harrison was an employee of the Brookside Mills, and brought this suit under chapter 123 of the Acts of 1919, claiming to have sustained injuries arising out of and in the course of his employment. The insurer of the Brookside Mills was joined as a defendant, and both parties answered, denying liability on various grounds. There was a judgment in favor of the employee, from which the employer and the insurer have appealed in error.

[1] Without discussing other questions, we think this suit must be dismissed by reason of the failure of the employee to give the written notice required by the statute. He testified that he was ruptured on February 5, 1927, by reason of some lifting that he did in connection with his duties; that he worked or tried to work a few days longer before quitting; that he gave no written notice of his injury to his employer until May 25th following.

The employee further testified that one Dave Roland was his foreman, but admitted that nothing was said to Roland about the injury. Proof was introduced on behalf of the employee tending to show that one Homer Hill had notice of the employee's injury within 30 days thereafter. The employee himself, however, said that Hill was not his foreman at the time, and proof introduced for the defendant indicates that Hill never was a foreman at all.

It appears without controversy on the record that no official of the employer had notice of the alleged injury until May 25th, nor did Roland, the employee's foreman, have any such notice prior to May 25th.

After receiving notice of the injury on May 25th, the employer did nothing further than notify its insurer of the accident, and the insurer undertook the defense. Some criticism is made of the conduct of representatives of the insurer in procuring a statement about the matter from the employee, but there is nothing in the statement different from the employee's testimony on the question of notice.

The language of section 22 of chapter 123 of the Acts of 1919 is imperative, as we have frequently held.

"There must be written notice within thirty days, or there must be a satisfactory excuse. Otherwise compensation cannot be enforced. To hold otherwise would be to disregard the provisions of the act." Black Diamond Collieries v. Deal, 144 Tenn. 465, 234 S. W. 322.

"It is true that written notice is not necessary to entitle the employee to compensation prior to the time notice must be given, but unless notice is given within the 30-day period the right to compensation ceases. In other words, a mere knowledge upon the part of the employer of the accident does not operate in favor of compensation indefinitely,