

Lily v. O'Brien  
65 W. 27 714

FLOYD CIRCUIT COURT

ELSON KENDRICK

CONTESTANT

VS MEMORANDUM FOR CONTESTEE, WILLARD MAY

HARKINS LAW OFFICES

TROY B. STURGILL ET AL

CONTESTEE

On the oral argument of this case, counsel for contestant undertook to dispose of the case of Ward vs. Howard, 197 SW 506, holding that the contestee could file a special demurrer and without waiving it, file answer, by the contention that the case of Ward vs. Howard, supra was based upon an entire different statute. The contention can not be sustained because a contest case still is a special proceeding, as contestee is required to plead within ten days and cannot thereafter plead. The only material difference between the statute in force at the time the case of Ward vs. Howard, supra was decided and the present statute is in the fact that now a contestant is only required to file a suit and have summons issued, while by the old statute, he was required to give notice of the time that the contestee must plead. Under the present statute, the law fixes the time when the contestee is required to plead, under the old statute that time was fixed by the contestant. This being the only material difference in the two statutes, it is apparent that the case of Ward vs. Howard cannot be disposed of in the manner attempted by opposing counsel.