THE WANTS

AND MISCELLANEOUS ADVERTISEMENTS.

WANTED—SITUATIONS.

WANTED—By a boy 15 years old, a place where I can finish learning type setting; about two months experience. Address Howard G. Wolf, Walton, Kas.

WANTED—By middle-aged lady, situation as housekeeper. Address "Housekeeper," care Journal.

WANTED—Position by middle-aged lady, to do sewing or general housework for light board. Address "H. A. S.," care Journal office.

WANTED—Work; I am in need of work. If any one wants any cisterns, wells or cellars built or repaired, address H. N. Wedding-ton, 1426 Quincy st.

WANTED—I would like to make a few more engagements to nurse in confinement; can give best of city references. Address Mrs. A. E. M., Journal office.

WANTED—MISCELLANEOUS.

WANTED—A good girl to go to Illinois to do house work. Enquire at 622 Buchanan street.

WANTED—Lady to do writing for me at her own home; $20 a week easily made; inclose stamp for terms. Lillian L. Digby, South Bend, Ind.

WANTED—Three or more furnished rooms, with heat, for light housekeeping. C. P. Rhoades, 409 Kansas ave.

WANTED—Watches, clocks and umbrellas to repair at 701 Kansas ave., upstairs.

WANTED—Traveling salesmen or have liquor side line on earth. Elgin Cigar Factory, Lynchburg, Va.

WANTED—Salesmen; good pay for honest workers. Beginners taught; 350 new articles just ready—cost 4 years labor and thousands of dollars, but worth all they cost—the finest ever used. We sell direct through our own salesmen. No bad debts. No Trade Dealers. STARK BROS., NURSERIES AND ORCHARDS CO., Louisiana, Mo.

WANTED—Furnace and tin work at Imsland, 519 Kansas ave. C. G. Lee.

WANTED—To move, STORE or any house hold goods. Height, etc. SALE & SKINNER, 123 E. 6th St.

MERCHANTS TRANSFER & STORAGE CO.

WANTED—Did you never hear of the ware so cheap, Riverside store, 722 Kansas ave.

WANTED—You to go to the Riverside store and save your money. 722 Kansas ave.

ROOMS TO RENT.

FOR RENT—Nicely furnished rooms at 501 Madison.

FOR RENT—A lodge room at 500 Kansas avenue. Address T. P. Kelly, 814 Lin.

FOR RENT—302 and 304 West Third street, 5 rooms, water and sewer connections in each tenement; 2 rooms at 229 Harrison st. Inquire of G. S. Evans, 500 Harrison st.

FOR RENT—HOUSES.

FOR RENT—House 1028 Harrison st. Pt. D. Rogers, 514 Kansas ave.

FOR RENT—A good six room house. Inquire of Mr. Hole, 314 West 6th st.

FOR SALE—MISCELLANEOUS.

FOR SALE—Harness set, jaby buggy, breaking cart, lawn mower, glass and hanging lamp at 311 Adams street.

FOR SALE—At auction, World's Fair Furniture, Hamilton Block, Quincy street, beginning p. m. Wednesday 14th, and continuing each day.

FOR SALE—Horseshoe iron, $3 to $5. Inquire A. C. Gossett, Capital coal yards.

FOR SALE—One phaeton, one top buggy and two single buggies, all nearly new. Call or address The J. Thomas Lumber Co., North Topeka.

FOR SALE—Garland trade, $2,500 stock shelf hardware and fixtures. S. H., care Journal.

FOR SALE—Good organ, cheap. 722 Lane st.

FOR SALE—The best Osage shaft coal, $3 per ton. 800 L. Ellis, S. O. Swartz.

FOR SALE—Golden popcorn in large or small quantities. by J. Q. A. Peyton, 1241 North Kansas ave.

FOR SALE—At special bargains. All kinds furniture, carpets, etc., at mortgagees sale, 714 Kansas avenue.

FOR SALE—Good hogsheads for wine and beer. Benedict & Co., 526 Kansas ave.

FOR SALE—No. 1 wash boiler, worth $1.50, only 50c. Riverside store, 722 Kansas ave.

MISCELLANEOUS.

STRAYED OR STOLEN—Bright white pony, weight about 700. His hoofs clipped. Return to S. W. corner of Monroe and Saywell streets, North Topeka.

AGENTS make $5.00 a day. Greatest kitchen utensil ever invented. Sells to every family in every home. Sample, postage paid, five cents. Forshee & McMakin, Cincinnati, O.

FINE THOROUGHBRED Jersey bull at Lane and 28th sts.

INVESTMENT—If you have got $500 to spare can make you a large profit per month during the new year. A sure investment—better than a savings bank. A. Langfeldt, 501 Kansas ave., Topeka, Kas.

REAL ESTATE—If you have for sale any kind of real estate that wants quick sale, leave it at once with A. Langfeldt, 501 Kansas, Topeka, Kas.

A REGISTERED Holstein bull at the orchard 15th and Kansas ave.

NOTICE—To whom it may concern—Be it known that my section is on file in the office of the probate judge of Shawnee county, Kansas, asking for a permit to sell intoxicating liquors at Richland, Monmouth township, Shawnee county, Kansas. Hearing set for the 26th day of February, 1894, at 10 a. m.

CHARLES MEAD.

Topeka, Kansas, January 22, 1894.

MRS. E. K. LITTLE, nurse, can be found at 1125 West Sixth street.

WE WANT boxes to store. TOPEKA TRANSFER CO. 519 Kansas avenue. Tel. 339.

TOPEKA TRANSFER COMPANY, 519 Kansas ave. Tel. 339.

SPECIAL Attention to Tel. orders. TOPEKA TRANSFER CO. 519 Kansas avenue. Tel. 339.

Published February 13, 1894.

Supreme Court Syllabi

6820.

W. W. Hays vs. John V. Farwell & Co. and L. D. Skillman as Cashier.

Error from the Court of Common Pleas of Sedgwick County.

AFFIRMED.

SYLLABUS. BY THE COURT. HORTON, C. J.

1. Where the mortgagees of two chattel mortgages executed, delivered and filed simultaneously upon the same personal property agree that the liens thereof shall be concurrent, the mortgagees become thereby tenants in common of the property so mortgaged and may join in an action for the unlawful conversion of the same.

2. Instructions are to be considered and construed together as a whole, and if not erroneous when so construed, no one of them will be held erroneous.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

9172.

The State of Kansas vs. Joseph Glynn.

Appeal from Stafford County.

AFFIRMED.

SYLLABUS. BY THE COURT. HORTON, C. J.

1. When a person intentionally and personally publishes of another what is libelous, by the general doctrine he is held to have malice in law against him whatever the motive in fact.

2. Where a person is informed against in a criminal action for the publication of a libelous article charging another with having been posted before a robbery, as to the time it would occur, and upon the trial the court permits the defendant, who was a witness in his own behalf, to testify fully with regard to when, where and how he obtained the information concerning the matters published, and as to all the facts and circumstances relevant to such publication, and also permits such witnesses to testify that when he published the article he believed its statements were true. *Held*, That this trial court committed no prejudicial error in refusing to permit the defendant to testify as to the purpose or motive he had in view in writing the article for publication.

3. The information examined and held to be sufficient and not indefinite.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

7029.

Davis and Rankin vs. the Dexter Butter & Cheese Company.

Error from Cowley County.

REVERSED.

SYLLABUS. BY THE COURT. HORTON, C. J.

Where a firm of contractors entered into a written contract with some fifty-six subscribers to construct a creamery for $3,000, conditioned that the subscribers accepting such creamery would pay that amount for the same, and the written contract had the further provisions that the first would hold such subscriber for the amount he subscribed and no more, and that as soon as $2,000.00 was subscribed, or in a reasonable time thereafter, the subscribers would incorporate under the laws of the state. *Held*, That such contract did not limit or prevent the corporation, after it was fully organized and in operation, from agreeing to assume and pay the balance due to the contractors not collected from the subscribers, for the construction of the creamery, if such creamery were turned over and accepted by the corporation upon such an agreement.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6887.

J. W. Conner, sheriff of Cowley County vs. W. P. Hardwick, Assignee of the Estate of C. W. Ridgeway.

Error from Cowley County.

AFFIRMED.

SYLLABUS. BY THE COURT. HORTON, C. J.

1. Frankhouser vs. Elliott, 22 Kas. 127; Werner vs. Bergmann, 29 Kas. 60; Inskeep vs. Faulkner, 38 Kas. 402, followed.

2. Where evidence is conflicting as to whether a mortgagee took actual possession of the property described therein, the finding of the jury is conclusive in favor of the successful party.

3. When the assignee of an estate has full authority to sell the goods and personal property of the estate and to accept notes with securities therein in payment therefor, and such notes, or any part thereof, are not paid when due, the assignee, in the interest of the estate, has full authority to accept a chattel mortgage from the maker of the note ordinarily taken therefor to secure the payment of the same.

4. Where notes secured by a chattel mortgage represents valid and bona fide indebtedness from the mortgagor to the mortgagee, and there is no suggestion that the mortgage is given to secure more than actual indebtedness, and the mortgagee makes actual possession of the property, under the terms of the mortgage, before other creditors of the mortgagor levy thereon, such a mortgage, although a preference in favor of the mortgagee as against other creditors, is valid and binding and may be enforced to satisfy the lien secured thereby.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6906.

C. W. Ament vs. Lottie G. Lowenthal.

Error from Shawnee County.

REVERSED.

SYLLABUS. BY THE COURT. HORTON, C. J.

1. Where an action is brought for the unlawful conversion of personal property and the petition is somewhat uncertain as to the time of such conversion, which is material in the case, and a motion is made by the defendant to compel the plaintiff to state the exact date of conversion, and such motion is overruled, and the plaintiff and defendant both offer evidence as to whether the action was commenced in time, and the defendant at the close of plaintiff's testimony and before offering his evidence asks leave to file a supplemental answer raising the question of the statute of limitations, but this is overruled, and thereafter questions are submitted to the jury as to when the action accrued and of the date and service of the summons. *Held*, That the case must be regarded as having been tried as if the statute of limitations were involved, or that the refusal of the trial court to permit the plea of the statute of limitations to be made parties in the supreme court upon proceedings in error to have the case disposed of upon its merits.

Allen J. concurring.
Johnston, J. dissenting.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

9390.

The State of Kansas vs. Angie Triplett.

Appeal from Finney County.

AFFIRMED.

SYLLABUS. BY THE COURT. HORTON, C. J.

1. Where a defendant is charged with an assault with intent to kill, and that offense is ignored by the jury, and the defendant is found guilty of an assault only, it is immaterial upon a motion for a new trial whether the information sufficiently charges an assault with intent to kill.

2. Where a person standing about fifty feet from another fires his revolver in the direction of such other person without any intention of shooting such person, but for the purpose of frightening or alarming him, intending thereby to create the impression that he will injure him by shooting, he is guilty of an assault.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

9502.

Mary E. Lease vs. J. W. Freeborn.

Original Proceedings in Quo Warranto.

DEMURRER TO PETITION OVERRULED AND JUDGMENT OF OUSTER ENTERED.

SYLLABUS. PER CURIAM.

The governor has no power, without notice and a hearing, to remove arbitrarily or capriciously a member of the board of trustees of the charitable institutions of the state after confirmation by the state senate, as the tenure of office of such trustees is declared by law to be three years. Sec. 2, art. 15, of the state constitution; sec. 2, chap. 130, laws of 1876.

A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

7001.

The Burlington Insurance Company vs. W. W. Mortimer.

Error from Coffey County.

AFFIRMED.

SYLLABUS. BY THE COURT. JOHNSTON J.

In an action against an insurance company in any county service of summons may be made upon the chief officer of the agency which the company may have in such county, as provided in section 18 of the Justices' Code, which provision was not repealed by the enactment of section 41, chapter 93, laws of 1871, nor by section 4, chapter 113, of the laws of 1872.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6825.

The Atchison, Topeka & Santa Fe Railroad Company, and The Southern Kansas Railway Company vs. Orla Davidson.

Error from Sumner County.

MODIFIED.

SYLLABUS. BY THE COURT. HORTON, C. J.

1. An abutting lot owner, within an incorporated city of the second class, has a right to have the street adjoining his property maintained as a street so that access to his lot may not be entirely cut off or destroyed.

2. If the road bed and track of a railroad company is completed upon a street of a city of the second class, in accordance with the provisions of a city ordinance, or with the consent and under the direction of the city officials, and is treated by the railroad company, the city officials and the lot owners as a permanent taking or appropriation of a part of the street for railroad purposes, and thereby the access to an abutting lot is completely obstructed, the lot owner may recover of the railroad company damages for the consequent depreciation in the value of the lot.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6827.

The Atchison, Topeka & Santa Fe Railroad Company, and The Southern Kansas Railway Company vs. J. K. Luesing and Hertzine Holtz.

Error from Sumner County.

REVERSED.

SYLLABUS. BY THE COURT. HORTON C. J.

A railroad company constructed its road across First street in the city of Wellington, a city of the second class. First street intersected Washington avenue, upon which a lot owner's house fronted. Partly on account of the construction of the railroad on First street across Washington avenue, and partly for the purpose of enabling a street railway to lay its tracks over Washington avenue and across the railroad on First street, the surface of grade of Washington avenue was slightly lowered or changed by the railroad company with the consent and under the direction of the city authorities. This change of grade did not completely obstruct or materially destroy the ingress to or egress from the lots fronting on the avenue. *Held*, That the owner of the lots was not entitled to recover damages from the railroad company on account of such change or grade of the avenue.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6973.

M. V. B. Van Demark and C. W. Van Demark vs. F. E. Barons.

Error from Cloud County.

REVERSED.

SYLLABUS. BY THE COURT. HORTON, C. J.

1. The general rule is that shares of stock of a corporation are personal property and may be transferred like any other property, unless the transfer is restrained by the charter or articles of association, and that a *bona fide* transfer terminates the liability of the transferrer either to the company, or to creditors.

2. The liability of a stockholder of a corporation against whom an execution may be issued under the provisions of par. 1, gen. stat. 1889, is measured by the number of shares held by him at the time the execution against the property or effects of the corporation is found to be ineffectual.

Johnston, J., concurring.
Allen, J., concurring specially.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

7003.

The Equitable Mortgage Company vs. John W. Lowe, et al.

Error from Phillips County.

AFFIRMED.

SYLLABUS. BY THE COURT. HORTON, C. J.

1. Where a mortgagee or creditor holds security upon two properties or funds with perfect liberty to resort to either for the payment of his debt and another mortgagee or creditor holds a junior security upon only one of these properties or funds, equity will compel the former mortgagee or creditor to exhaust the property or fund upon which he alone has security before coming upon the latter property or fund, and thereby depriving the latter mortgagee or creditor of all of his security.

2. Where a judgment cannot be disturbed or reversed without affecting all of the defendants in the court below, all of such defendants may be made parties in the supreme court upon proceedings in error to have the case disposed of upon its merits.

Allen J. concurring.
Johnston, J. dissenting.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

7011.

The Southern Kansas Railway Company and the Atchison, Topeka & Santa Fe Railroad Company vs. Aaron S. Drake.

Error from Franklin county.

REVERSED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

An employe, possessed of full knowledge of the services to be performed by him and of the dangers which they involve, who voluntarily accepts the employment and continues in the service of the employer, will generally be held to have assumed the risk of the hazards of such service and to have absolved his employer from liability for damages in case of injury. Rld. Co. v. Schroeder, 47 Kas., 375.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

9288.

The State of Kansas vs. O. J. Burwell

Appeal from Norton County.

AFFIRMED.

SYLLABUS. BY THE COURT. JOHNSTON, J

1. A remark made by the court concerning a statement made by one of the witnesses which, though open to criticism, is not deemed to have affected the result, will not require a reversal of the judgment.

2. The testimony examined and held to be sufficient to sustain the conviction.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

7029.

J. N. Limbocker vs. William P. Higinbotham

Error from Riley County.

REVERSED.

SYLLABUS. BY THE COURT. JOHNSTON, J

A creditor may maintain an action upon the original claim against an assignee who has made an assignment for the benefit of creditors, which is still open, and recover a personal judgment against him for the amount due, notwithstanding such creditor has presented and had allowed in full a claim against the estate upon which no payment has been made.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6965.

The Miami County National Bank of Paola, Kansas, vs. George D. Barkalow.

Error from Miami County.

AFFIRMED.

SYLLABUS. BY THE COURT. JOHNSTON, J

1. A failing firm transferred a stock of merchandise by chattel mortgage to the plaintiff. Subsequently it was seized by the sheriff under executions issued upon judgments obtained against the firm. Plaintiff then, claiming under its mortgage, brought an action of replevin to recover the possession of the goods. The sheriff answered by a general denial. No substitution of the judgment creditors was asked for or obtained. *Held*, That the sheriff as the representative of the creditors was entitled to make any defense which they might have made had substitution been effected. *Held further*, That the sheriff under the general denial might prove that the mortgage to plaintiff was a fraud upon the creditors of the failing firm.

2. The decision of a court vacating an attachment obtained by the creditors upon the ground that the transfer was fraudulent, is not such an adjudication as will prevent a re-examination of the same subject matter in a regular form of action in the same or a subsequent controversy.

3. While the plaintiff was entitled to take security from the failing firm for the amount actually due from them, the inclusion in the mortgage of a large debt due to plaintiff from one who was not a member of the firm, and which amounted to more than the entire assets of the firm, rendered the mortgage void *in toto*.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

7004.

John W. Russell vs. Mary E. Seery, Administratrix of the Last Will of James Seery, Deceased.

Error from Shawnee County.

REVERSED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

1. Awards of arbitrators made in pursuance to the statute are to be liberally construed, and should not be set aside upon any grounds other than those named in the statute.

2. Error of judgment by arbitrators as to the effect or weight of evidence is not a ground for setting aside an award.

3. Where the contending parties expressly agree that no oaths shall be administered to arbitrators, and that the testimony of witnesses unsworn shall be received, neither of them will be allowed to make the omission to administer oaths to arbitrators and witnesses a ground of objection to the award after a result adverse to him has been reached.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6984.

The Bolen Coal Company vs. The Whittaker Brick Company.

Error from Wyandotte County.

AFFIRMED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

1. Where a creditor splits up a running account which constitutes a single cause of action and recovers upon a part of the same, such adjudication constitutes a complete bar to a recovery on the remaining portion of the account.

2. In an action before a justice of the peace upon a verified account no bill of particulars or verified denial was filed by the defendant. *Held*, That while the correctness of the account was admitted by the defendant, it did not prevent him from setting up and establishing the defense of *res adjudicata*.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6991.

George W. Frey vs. Amon Butler and George N. Kingsbury.

Error from Norton County.

REVERSED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

Unless a debtor has by express declaration or unequivocal act relinquished the right to claim an exemption of personal property seized upon execution, he may make the claim at any time before the day of sale; and the fact that a debtor who was entitled to claim two horses only claimed one of them at the time of levy, and informed the officer that he would not claim another "at the present time," will not constitute a waiver nor preclude him from claiming another at any time prior to the sale.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6990.

The Chicago Lumber Company vs. E. J. Allen E. G. Allen et al.

Error from Norton County.

REVERSED.

SYLLABUS. BY THE COURT. JOHNSTON, J

1. Under the mechanics' lien law as it existed in 1888, if the consideration agreed to be paid by the owner of land to a contractor for the construction of a building on such land is insufficient to pay for all the labor and material expended thereon any sub-contractor who has obtained a legal lien against the property is entitled to a pro rata share of the contract price, which lien may be enforced against the owner's property, although the owner may have paid the full amount of the contract price to the contractor or to a part of the sub-contractors.

2. Where some of the material findings of the court are inconsistent with each other, and not in harmony with the testimony, and it is manifest that the case was tried upon an incorrect theory, the findings and judgment will be set aside and a new trial granted.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6994.

John B. Lafayth vs. The Emporia National Bank.

Error from Lyon County.

REVERSED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

B., who owned a herd of cattle, gave to L. a first mortgage upon fourteen of them, and to a bank he gave another mortgage on some of these as well as upon the remainder of the herd. Both mortgages were duly recorded, the bank's debt being overdue. And supposing that its mortgage covered the whole of the cattle and was superior to all other liens, it agreed with B. that he should make a public sale of them, and that the proceeds should be applied in payment of the mortgage debt which it held against B. The bank sent one of its officers to the sale to assist B., but mainly to protect the interests of the bank, as it claimed the cattle under its mortgage, and at the sale two of the cattle included in the mortgage to L. were sold and the proceeds of the sale taken to and retained by the bank. *Held*, That the action of the bank in aiding and assisting B. in the sale made it liable to L. as for a conversion of the two animals wrongfully sold.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

7014.

The First National Bank of Clay Center, Kansas, vs. S. D. Beegle.

Error from Clay County.

AFFIRMED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

A crop of corn was planted and grown upon mortgaged land by the mortgagor. In accordance with a judgment of foreclosure the land was sold without reservation on the last day of September. Four days before the sale of the land the mortgagor sold the crop of corn to another. The corn was then mature, but there had been no physical severance of the same from the land at the time of the judicial sale. *Held*, That the vendee of the mortgagor was entitled to the crop, and that the same did not pass with the soil to the purchaser of the land. *Held, further*, That the sale of the corn by the mortgagor constituted a constructive severance of the same from the land.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6998.

J. P. Kingsley vs. R. M. Purdom.

Error from Allen County.

AFFIRMED.

SYLLABUS. BY THE COURT. ALLEN, J

1. A principal debtor, whose debt is secured by mortgage on property owned by another person, cannot by purchase of the obligation given to secure the payment of the debt, and causing the same to be assigned to his agent, foreclose the mortgage and subject the mortgaged property to the payment to him of the debt. Such attempted purchase operates as a payment of the debt.

2. The evidence in this case supports the findings of fact made by the court.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

7002

D. F. Roe vs. Adelia Roe.

Error from Montgomery County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J

1. Where a husband obtains a valid decree of divorce from his wife, in another state, and no order is made with reference to alimony, or a division of the property of the parties, the wife cannot, long afterwards, in an action brought in this state by her to obtain a divorce and alimony, obtain a decree for alimony alone in the absence of any showing that the law of the state where the divorce was granted is different from that of Kansas.

2. The final judgment in an action granting a divorce settles all property rights of the parties, and is a bar to an action afterwards brought by either party to determine the question of alimony, or any property rights which might have been settled by such judgment.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

7012.

The Missouri Pacific Railway Company vs. J. A. Yawger.

Error from Rush County

DISMISSED.

SYLLABUS. BY THE COURT. ALLEN, J

Chapter 245 of the laws of 1889, deprives this court of jurisdiction to review an order made by a district court on a motion to re-tax costs where no other matter is brought here for review.

Horton, C. J., concurring.
Johnston, J., dissenting.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

7030.

The St. John & Marsh Company vs John G. Cornwell.

Appeal from Stafford County

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J.

1. An agent of a non-resident corporation having general charge of its local business in a Kansas town, has no implied authority to collect debts due his principal by a contract for his own personal board, and a person owing such principal a debt, who furnishes the agent board, under an agreement that such agent shall give him credit for the amount thereof on the principal's debt, does so at his own risk.

2. Where under such a contract the agent gives the debtor credit on the books of the principal the price of his board and charges such amounts against himself, and deducts the same from his salary, and these credits are made known to the principal, who makes no objection thereto, or inquiry concerning the same, these facts alone do not amount to a ratification of the agent's unauthorized contract binding the principal for the amount due from the agent for board and not so credited.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

9432.

In re John E. Carr.

Original proceeding in habeas corpus.

PETITIONER DISCHARGED.

SYLLABUS. BY THE COURT. ALLEN, J.

Chapter 121, of the laws of 1877, does not authorize a survey by order of a district court of the tract of a mine which is located beyond the state line, in the state of Missouri, even though the only means of access thereto is by a deep shaft located in Kansas.

Horton, C. J., concurring.
Johnston, J., concurring specially.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6826.

The Atchison, Topeka & Santa Fe Railroad Company, and The Southern Kansas Railway Company vs. W. M. Arnold and S. M. Arnold.

Error from Sumner County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J.

Plaintiffs owned lots fronting on W. avenue 150 feet from First street. Defendants lawfully constructed their railroad along F. street, crossing W. avenue. Under direction of the city authorities defendants graded W. avenue, in front of plaintiff's premises, as directed by the city engineer. *Held*, That defendants are not liable to plaintiffs for injuries to their property caused by such grading.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6881.

Scott E. Poor vs. M. M. Turton, et al.

Error from Dickinson County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J

Case reversed on the authority of *Moore vs. Wafer*, 29 Kas., 279.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6848.

The City of Topeka, et al vs D. W. Boutwell.

Error from Shawnee County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J

1. Where pertinent questions of fact are stated in writing and handed to the court by a party at the conclusion of the testimony to be submitted to the jury for their findings thereon, it is error for the trial court to refuse to submit them.

2. The city council of the city of Topeka has the power by ordinance to require the keepers of boarding houses, restaurants and hotels to furnish the street commissioner the names of persons liable to pull the boarding or lodging in their houses, and to impose a fine for refusal to do so.

3. A judgment duly rendered by the police court of a city cannot be held void because of defense of which the prisoner did not avail himself.

4. Ordinance No. 81 of the city of Topeka, approved May 12, 1886, permitting prisoners committed to the city prison for the violation of a by law or ordinance of the city, necessary for the preservation of order and the welfare of society, to be employed by the city marshal at labor either on the streets or public work of the city, or in a public or private place, being credited $1 a day on the judgment for each day's work performed, is not in conflict with sec. 6 of the bill of rights of the constitution of the state, or article 13 of the constitution of the United States prohibiting slavery and involuntary servitude.

5. The marshal and policeman of a city, and any persons aiding and abetting them, are liable in damages for unnecessary cruelties and indignities inflicted by them on prisoners in their charge.

Horton, C. J., and Johnston, J., concurring specially.

Allen, J., dissenting from 4th par. of syllabus.

A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6879.

L. M. Hiller vs. The Wichita Overall and Shirt Manufacturing Company.

Error from Cowley County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J

1. The fact that a debtor voluntarily secures bona fide debts due to some of his creditors by chattel mortgages is not such evidence as to support an attachment against his property, on the ground that he has disposed of his property with the intent to hinder and delay his creditors.

2. Where an attachment is issued on negotiable promissory notes not due, it is error for the court to enter judgment thereon before the last day of maturity.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6988.

W. A. Erving vs. The Phelps & Bigelow Windmill Company et al

Error from Kiowa County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J.

Where a party seeking to obtain foreclosure of a mechanic's lien, makes service by publication on the parties who appear from the records to be the holders of prior mortgages, and where the lien mortgage is owned by a person whose assignment has not been placed on record, and on application of the second mortgagee, before any sale of the encumbered premises, the judgment is opened and such second mortgagee let in to defend, and afterward without any motion or court proceeding for leave to answer, and also leave to interpleed, and the court grants leave to interpleed, but refuses leave to answer, and afterward revokes the order granting leave to interpleed, and refuses all right to be heard, and where no intervening rights have been acquired on the faith of such judgment, *Held*, That the court should have permitted the first mortgagee to answer and have his rights protected.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

7018.

C. A. Hopper vs. C. S. Calhoun.

Error from Pratt County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J.

1. To create a personal liability on the part of a grantee in a deed to pay a prior mortgage on the lands conveyed, where there is no evidence to explain the language used or showing a mistake, the words deed must clearly imply that the grantee assumed such payment, and *Held*, That the words, "except a mortgage of $2,000 and one interest mortgage of $1000, both mortgages given to C. S. Calhoun, which mortgages of said second party accept and agree to pay," should be explained by other evidence are not sufficient to show an assumption of the mortgages referred to, by the grantee named in the deed.

2. The assumption of such mortgages may be shown by competent evidence outside of the deed.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

6992.

Gottlieb Hofman vs. Peter Demple.

Error from Shawnee County.

AFFIRMED.

SYLLABUS. BY THE COURT. ALLEN, J.

In an action brought by a wife to set aside a conveyance of the homestead which was subject to a mortgage, where it appears that her signature to the deed was obtained by duress, but that she took no steps for more than a year and a half to set it aside, but on the contrary that its validity was acquiesced in by herself and husband, and the grantee before any attempt was made to cancel or set aside said deed, paid off such mortgage, and the existing tax liens on the premises, *Held*, That it is not error for the trial court in rendering a judgment cancelling such deed, to subrogate the grantee to the rights of the original mortgagee, and order a sale of the mortgaged property, to repay to the grantee the amount expended by him in payment of the mortgage and taxes.

All the justices concurring.
A true copy.
Attest: C. J. BROWN,
[SEAL] Clerk Supreme Court.

IN THE SUPREME COURT OF THE STATE OF KANSAS.

I, C. J. Brown, clerk of the supreme court of the state of Kansas, do hereby certify that the foregoing are true and correct copies of the syllabi of the decisions in the above entitled cases as the same appear on file in my office.

Witness my hand and the seal of the supreme court, this 12th day of February 1894.

[SEAL] C. J. BROWN,
Clerk Supreme Court.