brought the Atchison, Topeka and Santa Fe railroad to book. It had been capitalized upon the basis of dollar wheat, helped to impoverish the sections it professed to serve, and, when it reached the repair shops of the United States courts with a receiver in charge, it carried $70,000 per mile of watered stock. It owned or operated 9,345 miles of track in fourteen states and territories, and had entered the the commercial field by investing in Aztec Land and Cattle company, the Ranton Coal and Coke company, the San Pedro Coal and Coke company, the Mineral Belt Coal and Iron company, etc. Its plant can be duplicated with a sum of money equal to the nominal value of its watered stock. But competition, with other systems, forced it into an indebtedness of $240,000,000. The time came when the problem of railroading became a problem of financiering, and lawyers and financial experts undertook to restore equilibrium. Other systems were bending under similar loads. While two years ago forty-two railroad systems controlled nearly half of the mileage of the country, one year ago forty-three systems controlled 57 86 per cent. of the mileage. In the wreck of roads that followed, seventy-one landed in receivers' hands, with freight rates rising and wheat and corn continually declining. These systems fought each other with one hand, as it were, and struck at the vitals of the people with the other.

Not the least demoralizing feature of this grand game of self-destruction, called free competition, is the incidental degradation of the legal profession. The law firm that had the Santa Fe receivership proceedings in hand has been known to charge as high as 5 per cent of the indebtedness of a road for foreclosing its mortgage. When the application for a receivership for the Santa Fe system was made before a federal judge at Little Rock, Ark., three ex-judges appeared as attorneys for the Union Trust company of New York, a fourth ex-judge for the Santa Fe system, and a fifth ex-judge for the St. Louis and San Francisco road. Some light is thrown on this round-up of retired judges by a remark of President Clark, of the New York, New Haven & Hartford road, concerning the appointment of an ex-judge for vice president of his road: "The directors see that the methods of managing the property must conform to its growth. Our experience is that of other railroad systems. Instead of having a technical railroad man as vice president, they have selected Judge Hall for that office." The chief justice of the state of Pennsylvania retired from the bench to become one of the Reading receivers. The roads of Nebraska last autumn forced the chief justice of that state into private life, because he rendered a decision against their interests.

An investigating committee of the Virginia legislature recently found that three railroads had spent $5,000 each in the legislative campaign of last year. The legislature has elected a railroad attorney to the United States senate. Ex-Governor Lee is reported to have said in this connection: "I believe the railroads have a right to contribute money for campaign purposes to protect their property and interests."

"If the moral character of state legislatures," observes the New York Journal of Commerce, "has deteriorated in the past forty years, as there is too little room to doubt, the decadence is partly due to the methods employed by railroad corporations for getting concessions, most of which they ought not to have had."

The ablest legal talent in the country is retained by the railroads and pledged to obstruct the evident intent of the interstate commerce law. The president of a road running into Chicago declares openly that his road is defying the commission, but the district attorney cannot force him to confess in court to the cutting of rates. Congress amended the act by exempting railroad officials from prosecution for any offences revealed as witnesses in an action to enforce the interstate commerce act; but a federal judge has recently declared the amendment unconstitutional. Thus has the policy of running railroads by ex-judges and politics lowered the moral tone of two professions, impoverished the farmer, oppressed 800,000 employes, and hastened the catastrophe of business generally. By a curious logic of events the economic disturbances have contributed to a wide-spread distrust of democratic institutions on the part of the very men who by their votes have permitted a political democracy to ripen into a monied aristocracy.

The conclusion to be drawn from the condition of the country is that the equilibrium of business has been broken. Monopolies, through combinations of private capital, special franchises and inventions permit the work of production to go on without employing more than a fraction of the people willing and able to work. The profits go largely to those who have but a remote connection with the essential functions of production. Over 50 per cent. of the wealth of the land is now in the hands of less than 1 per cent. of the population. The rising generation, under our system of property inheritance cannot start in life on even terms. The principle of free competition is therefore shorn of what virtue it ever had. There are 1,700,000 tenant farmers in the United States, and 700,000 of them pay one-half of the gross products of their farms in rent alone. The total debt of the country, public and private, is $31,000,000,000; that is, one-half of the wealth of the country is due, not to half the population, but to less than 1 per cent. of the population. This open account cannot be paid; and while the adjournment of congress may be followed by a revival of trade, it is the height of folly to look for permanent relief. Under the present system the equilibrium of business cannot be restored.

The number of manufacturing establishments in the United States is 253,852; number of persons employed, 2,722,595; wages paid, $947,953,795, or about 95 cents a day. These figures are taken from the tenth census report. A standing army of the unemployed is thus provided. These unhappy people, together with the distressed rural districts, are taken out of the purchasing classes, and disturb business by reducing its volume while the population increases.

"We must educate our masters," was Robert Lowe's famous remark after an extension of the elective franchise in England. We are beyond that in America. We must contend with what the Boston Herald calls "a lettered ignorance."

The political economy taught in the colleges is founded upon a false doctrine. It is not the purpose of this article to discuss a better one, but to show that the present system is not workable, and will bring disaster in the long run. It is economically insecure because ethically unsound. It presents an ocean swarming with privateers that are organizing into fleets of pirates. Competitive business is founded on a principle of war.

Samuel Adams won a place in the affections of Americans by raising his standard against what he called the tyranny of "a nation of shopkeepers." There is need of another Adams to resist the tyranny of one class of Americans over another.

Published April 11, 1894.

Supreme Court Syllabi

6867.

Emily C. Harrison vs A. L. Redden.

Error from Butler County.

AFFIRMED.

SYLLABUS. BY THE COURT. HORTON, C. J

In a petition filed by a plaintiff against a defendant it was alleged that the plaintiff was about to commence an action against her husband, who was then within the jurisdiction of the court, for alimony; that he was possessed of real and personal property of the value of $7,000 without any statement where the property was situated or that the defendant was a resident of the state; that the defendant, who was the district judge of the court where the action was about to be commenced, advised the husband to withdraw from the jurisdiction of the court to avoid service of summons, and to dispose of his property; that subsequently she brought her action and obtained service upon her husband and recovered a judgment against him for $1,500; that the execution issued thereon was returned unsatisfied. *Held*, That if the action were intended to be brought against the defendant, in his official position, as judge, that there could be no recovery, because a judicial officer is not liable in a civil action for any judicial act done in his jurisdiction. *Held further*, that if it were intended in the action to charge the defendant as a private person only then there could be no recovery because of the uncertainty of the plaintiff's damage; the injury complained of being too remote, indefinite and contingent to be capable of being established by legal proof.

All the justices concurring.

A true copy.

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

9388.

Fred Lewis et al vs. L. D. Lewelling, H. H. Artz, et al.

Error from Marion County.

AFFIRMED.

SYLLABUS. BY THE COURT. HORTON, C. J

1. Under the constitution of the state and chapter 142, session laws of 1885, providing "for the organization, government and compensation of the militia of the state," the governor, as commander-in-chief of the militia, has the power to disband and muster out at any time any company of the national guard, comprising the active militia of the state. Such power has always been exercised by the governors of the state since the adoption of said chapter 142.

2. Enlistment in the national guard, the active militia, is not to be construed upon the part of the state as a contract; but the state through the governor, as commander-in-chief, may put an end to the term of enlistment before it has regularly expired.

3. The provision in section 4, chapter 142, session laws of 1885, authorizing officers to be commissioned for a term of five years is violative of section 2, article 15 of the constitution, forbidding the legislature to create any office the tenure of which is longer than four years. Military officers are within the provisions of the constitution.

4. Where the statute fixes a term of office at such a length of time that it is unconstitutional, the tenure thereof is not declared by law, and the office is held only during the pleasure of the appointing power.

All the justices concurring.

A true copy.

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

7090.

A. J. Briggs vs. Henry F. Brown, George I. Thompson, W. E. Case, The Nebraska & Kansas Farm Loan Co. et al.

Error from Norton County.

AFFIRMED.

SYLLABUS. BY THE COURT. HORTON, C. J

It is a well established rule of the supreme court that the findings and judgment of a trial court will not be disturbed if there is sufficient testimony to sustain them, although the testimony introduced upon the trial is very conflicting.

All the justices concurring.

A true copy.

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

6807.

The Chicago, Kansas & Western Railroad Company vs. Morris D. Bockoven, as administrator of the estate of Ernest Bockoven, deceased.

Error from Pratt County.

REVERSED.

SYLLABUS. BY THE COURT. HORTON, C. J

1. Where a railroad company had recently built stock yards on the outskirts of a little town containing a population of about a hundred people, which were not located upon any traveled wagon road, but two hundred yards from the main street of the town and with only two or three houses in the neighborhood, the nearest being distant between 100 and 150 yards, which stock yards were fully inclosed and had safe and secure gates through which to enter, but upon the inside there was a defective gate in a dangerous condition, if any weight was brought to bear upon it, such company would not be liable for the death of a child (whose parent lived in plain view of the yards, and as close to them as the depot of the company), caused by the falling of such defective inside gate, while the child was playing or swinging upon it, although the company knew that children played in the vicinity or on the outside of the yards, if the child injured, in order to play or swing upon the inside gate, entered the stock yards without the consent or knowledge of the railroad company by climbing over an outside gate for the purpose of playing or swinging on the inside gate.

2. Under certain circumstances, the railroad company might be liable on the ground of negligence for the death or personal injury of a child of tender years from the falling of a defective inside gate of the stock yards. If the company consented to or had knowledge that children frequently climbed over the outside gate or inclosure of the yards to play or swing upon a defective and dangerous inside gate, and took no means to keep children away and no means to prevent accidents, or if with the knowledge that children of tender years were in the habit or practice of resorting to the vicinity of the stock yards for play, the outside gate of the yards was left open by the railroad company at the time of the injury or if opened without its authority, it was negligently permitted to remain open so that children might enter and play.

All the justices concurring.

A true copy.

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

7066.

James Downing and Tempty Downing vs. W. J. Gow & Bros. Mortgage Investment Company.

Error from Graham County.

AFFIRMED.

SYLLABUS. BY THE COURT. HORTON, C. J

Where a special appearance is made by a defendant through his attorney before a justice of the peace merely for the purpose of contesting the regularity of the summons, the alleged service thereof, and to dismiss the action therefor, such appearance cannot be construed into a waiver of jurisdiction, or a waiver of service, or a general appearance by the defendant.

All the justices concurring.

A true copy.

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

9472.

In re Henry Sanders.

Original proceeding in habeas corpus.

PETITIONER DISCHARGED.

SYLLABUS. BY THE COURT. HORTON, C. J

1. Chapter 129, session laws of 1881; (pargs. 6513-6529, gen. stat. of 1881), is not unconstitutional by reason of conflict with section 16, article 2 of the constitution; and the title of the act providing "for the organization and management of the state reform school" is broad enough to include the provisions of the act permitting boys under the age of sixteen to be placed in or committed to the school by courts of record, including probate courts.

2. The words "who may be liable to punishment by imprisonment" in the first sub-division of section 4, chapter 129, session laws of 1881, may be construed as "who may be subject to punishment by imprisonment;" with this construction that provision of the act is also constitutional.

3. A probate judge has no authority under the first sub-division of section 4, of chapter 129, session laws of 1881, to commit a boy under sixteen years of age, without his consent and against the objections of his parents, to the reform school, who is charged only upon a complaint filed with him with the specific crime of burglary, when such boy has not been previously convicted of the offense by some court having jurisdiction to hear and try the same.

All the justices concurring.

A true copy.

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

7025.

J. T. Renoe, administrator, etc. vs. Western Star Milling Company.

Error from Norton County.

AFFIRMED.

SYLLABUS. BY THE COURT. HORTON, C. J

Where a merchant receives a consignment of flour, or other goods, to sell on commission only for the benefit of the owner thereof, he does not hold the property under a conditional sale; therefore, section 1, chapter 255, session laws of 1889 has no application.

All the justices concurring.

A true copy.

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

7091.

Edwin Latshaw and Alexander Latshaw, partners as Latshaw Brothers vs O. S. Moore and A. J. Moore, partners as Moore Brothers.

Error from Ellsworth County.

REVERSED.

SYLLABUS. BY THE COURT. JOHNSTON, J

1. Real estate brokers employed to procure a purchaser or a trade for property for a specified commission, are not entitled to recover the commission agreed upon unless they were the primary, proximate and procuring cause of the sale or exchange which was made.

2. Where such brokers introduce another