BATTLE IN BRAZIL.

The Soldiers of the Government are Defeated.

Most of Peixoto's Men Either Killed Or

TAKEN PRISONER.

Ten Thousand Men Engaged in the Fight.

LONDON, Jan. 10.—The Lisbon correspondent of the Press forwards the following mail advices from Brazil by the steamship Clyde:

RIO DE JANEIRO, Dec 26.—An important battle has been fought in the state of Sao Paulo, in which the government troops under General Argello were defeated by the insurgents. There were 11,000 troops engaged in the battle. Five hundred of the government forces were killed and the rest were taken prisoners. Among the captured are Generals Silva and Elias.

On December 22 an unsuccessful attack was made on Ilha Grande. The only means of communication with Rio is by a naval escort. Firing between the government and the insurgents goes is going on all the time. The government intercepts all inland communications. Santos has been blockaded since the beginning of December by the Republica and other insurgent vessels. The troops under the insurgent General Saravia, arrived eight or ten days ago, making a movement toward the west to fetch horses and forage.

SULLIVAN KNOCKED OUT.

The Ex-Champion's Wife Almost Kills Him With a Club.

BUFFALO, N. Y., Jan. 10.—John L. Sullivan has been knocked out again. This time it was not by a rival pugilist. His wife did the job. It all occurred early Sunday morning. The ex-champion of champions was laid out so clean and cold that it took a doctor a whole hour to bring him to. Bare knuckles or skin-tight gloves could not have done the trick any better.

It seems that after the show was over at the Court Street theater Saturday night John L. proceeded to have a "good time." John kept up the gait until nearly 3 o'clock when he took a cab to the Tifft house. It was all he could do to reach his room with the assistance of a hotel porter. The porter helped the mighty John L. to partially disrobe and then left him.

As he was proceeding down the stairs he heard a great racket as of the breaking of china. Hearing nothing more he proceeded down to the office. He had just reached there when a female figure flew across the lobby. "Send for a doctor quick. Mr. Sullivan is dying," she fairly screamed at the night clerk. At the same time she cried hysterically and fell to the floor. It was Mrs. John L. Sullivan.

Sullivan was found on the floor unconscious. He was lifted on the bed and it took a doctor sixty minutes by the watch to bring him to.

Amid hysterical tears Mrs. Sullivan said John L. had abused her, and in self-defense she had picked up an Indian club which was used in training and tapped him over the head. It was harder than she intended, and John went to sleep. All were pledged to secrecy, but the story leaked out. Mrs. Sullivan, it is said, was once a "strong woman" who swung clubs and lifted heavy weights.

FIELD DAY IN THE HOUSE.

The Spell Binding Tariff Orators Have Their Innings.

WASHINGTON, Jan. 10.—Yesterday was a field day in the house for the tariff. The galleries were thronged all day and the floor was crowded. Each side put forth its most brilliant orators for the day's session. Mr. Wilson, the chairman of the ways and means committee, completed his speech, and Mr. Burrows opened the debate for the Republicans with a three hours reply. General Black, of Illinois, and Mr. Hopkins, of Illinois, followed. The good points of all the speakers were liberally applauded by the respective partisans.

At the evening session Mr. Haines, a Democrat from New York in the name of collar and cuff industries, fired the first shot into the Wilson bill. He displayed a gigantic petition signed by 67,000 people protesting against the collar and cuff schedule, declaring that if it was to become a law it would ruin the great industry.

Mexico's National Pawnshop.

CITY OF MEXICO, Jan. 10.—The annual report of the director of the Monte De Piedada, the world famous national pawn shop of Mexico, has been tendered the secretary of state. During the year 1893 over $2,000,000 was loaned by the institution, mostly on jewels, valuable plate and ancient family heirlooms, which necessity may sometimes compel the nobility of Mexico to realize upon for present need. The business of the "Monte Pity" was not quite so large in 1893 as in the preceding year.

Arcadia, Kan., Almost Wiped Out.

FORT SCOTT, Kan., Jan. 10.—Arcadia, Kan., a town of about 2,000 inhabitants, twenty miles south of this city, was almost burned out by fire yesterday. The fire caught in the rear of one of the largest stores, and could not be subsided until it had destroyed most of the best business houses of the town. The total loss is estimated at $40,000, with light insurance.

Big Hominy Mill Burned.

ST. LOUIS, Mo., Jan. 10.—The five story brick building located at Main and Wash streets used by Joseph Flannigan as a hominy mill was destroyed by fire last night. How the fire started is unknown. Loss $150,000. Insurance small.

THE DUVAL CLUB.

How They Intend to Outwit the Governor—Out in a Hot Reply.

JACKSONVILLE, Fla., Jan. 10.—A number of bets have been made within the last few days, all with odds slightly in favor of Corbett. A glove contest has been arranged with the same conditions under which Corbett and Mitchell are matched, to take place in this city the latter end of the week.

Although the Duval athletic club deny it, it is generally known that this will be in the nature of a challenge to Governor Mitchell. If the contest is allowed to go on without interference, then it will be taken for a certainty that the Corbett-Mitchell battle will take place, but if it is stopped the courts will be asked to decide the matter. This is thought to be the plan the Duval people have formed for a long time past and has been guarded with such secrecy.

Last night the Duval Athletic club gave out a statement to the public, in which they review their attempts to test the law and Governor Mitchell's action, and say:

"Governor Mitchell's whole attitude has been that of a bulldozer and will be until this contest is ended. Right here we wish to say to the public in most positive terms that barring accidents of a providential nature, and if Corbett and Mitchell appear at the ring-side on January 25, as they have contracted to do, and no doubt will, just so sure will this contest take place.

"We assure the public that the sentiment of the people of Jacksonville and state of Florida is in favor of the contest, and being legally assured that there is no law against contests of this kind we now assure all intending patrons of the sport that they can come to Jacksonville secure in the knowledge that they will see the greatest boxers of the world in a contest that will do nothing more than demonstrate which is the more scientific. We have added to the membership of the club some of the most influential and wealthy men in Jacksonville, Fla., and we know we have the means and ability to see this thing through.

"Further, we wish to say that no one knows who will be hurt financially or socially if an attempt is made to stop this affair until the attempt is made."

Purtell An Easy Victor.

LEAVENWORTH, Kan., Jan. 10.—The long talked-of glove contest between Patrick J. Purtell, known to the sporting world as the "Spring Kid," and Martin Durkin occurred last night at Crawford's opera house, which was packed with interested spectators at the rate of $1 per head, and Purtell was an easy winner in the second round. The contest was for a purse of $1,200, offered by the Leavenworth Athletic club, $300 to the loser, besides $200 placed by each of the principals, making a total purse of $2,000 for the victor.

Ives Defeats Slosson.

CHICAGO, Jan. 10.—In last night's billiard tournament Ives, with the aid of the famous anchor nurse, defeated Slosson by a score of 600 to 169. Ives and Schaefer play to-night.

One Killed and Four Injured.

CLINTON, Iowa, Jan. 10.—Edward Bentley of Clinton died yesterday of injuries received in the rear-end collision of Chicago, Burlington and Quincy and Northwestern trains on the bridge here Monday night. Martin Murray is dangerously injured. R. A. Robertson of Garrison, Iowa, shoulder dislocated and otherwise hurt. Elmer Shaffer and Kinney, same place, slightly hurt. Christie Nelson of Gordonsville received slight injuries.

Mrs. Lease, Peck and Rosslington.

ST. LOUIS, Mo., Jan. 10.—A most peculiar conference occurred in room 320 at the Southern hotel here yesterday. The participants were Mrs. Mary Ellen Lease of Kansas, Mr. George R. Peck, general solicitor of the Atchison, Topeka and Santa Fe road, and W. H. Rossington of Topeka. What brought this oddly assorted trio together it is impossible to learn, but rich developments may be expected.

Tribe of Ben Hur.

INDIANAPOLIS, Ind., Jan. 10.—The Supreme Tribe of Ben Hur is the name of a new secret order which was incorporated here yesterday. The society was christened by General Lew Wallace, author of the famous book "Ben Hur." The ritualistic features are founded on the principles laid down in the story. Several new departures from the old secret societies in its beneficial plans are made.

Iowa Senatorial Caucus.

DES MOINES, Iowa, Jan. 10.—Last evening a committee representing the various candidates for senator decided to hold the senatorial caucus on Monday evening next. Gear's men are still confident, and say no combination can be made by the other candidates which will beat him.

Tramp Killed by a Brakeman.

PUEBLO, Col., Jan. 10.—Llewellyn R. Williams was shot by E. E. Rhodes, a brakeman on the Denver and Rio Grande. Williams was one of four tramps who were stealing a ride. Rhodes ordered them from the train and they pulled guns on him. He then shot Williams, who died on the way to the hospital.

CAN HOLD BACK TAXES.

A Restraining Order Granted by Judge Caldwell at Little Rock.

George Sharitt, clerk of the United States circuit court, has received a dispatch from Judge Caldwell of Little Rock, saying that a temporary restraining order had been granted on application of the Chicago, Burlington & Quincy railroad restraining the officers of Washington, Republic, Barton, Decatur and Rawlins counties from collecting a portion of the tax levy of 1893 until a motion for an injunction could be heard.

Premature baldness may be prevented and the hair made to grow on heads already bald, by the use of Hall's Vegetable Sicilian Hair Renewer.

112 and 114 West 8th, Peerless Steam Laundry.

Published January 10, 1894.

Supreme Court Syllabi

6971.

Abram Coffelt vs. The First National Bank of Holton, Kansas.

Error from Jackson County.

REVERSED.

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

If the acts or statements of a person are not done or made for the purpose of influencing the conduct of a third party, and such third party has not relied upon the same, or been induced thereby to enter upon a course of action resulting to his injury, no estoppel arises in his behalf.

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

6746.

Joseph L. Sheldon and Lizzie S. Sheldon vs. Simon Pruessner, Lewis M. Motter, Henry S. Pruessner and Lizzie Pruessner.

Error from the Circuit Court of Shawnee County.

REVERSED.

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

1. The courts, in the due administration of justice, will not enforce a contract in violation of law, or permit a plaintiff to recover upon a transaction against public policy, even if the invalidity of the contract or transaction be not specially pleaded.

2. Where a mortgagee, residing in this state, owns and has in his possession a note for $1700, secured by a mortgage upon real estate, in this state, and pretends to transfer by merely endorsing his name thereon, but without actually delivering the same, such note and mortgage to his father in another state, without any demand being made upon him to do so, to secure $1300 and interest for prior borrowed money, but really for the purpose of evading the payment of taxes justly due to the state: *Held*, That in an action brought in the name of the father to recover upon the note and mortgage, the mortgagee, on account of his acts in evading the payment of taxes and thereby defrauding the revenues of the state, cannot have any recovery in the name of his father or otherwise on any part of the note or mortgage belonging to him: *Held*, also, That if the father did not have any knowledge of such alleged transfer, and his name is used to collect such note and mortgage without his consent, or if he merely accepted the note and mortgage as a pretext criminally to defraud the revenue laws, no recovery of any amount thereon can be had in his name.

3. Where a husband and wife jointly convey a homestead in exchange for other real estate to be occupied by them as a new homestead upon which there is a prior mortgage, and the husband, with the consent of the wife, takes the conveyance of such real estate in his own name, and separately assumes the payment of the mortgage thereon, the wife cannot, in an action to foreclose the mortgage, defend against it upon the ground that the real estate so purchased is a homestead, and therefore that the prior mortgage thereon at the date of the exchange is null and void.

4. Where a higher rate of interest is expressly contracted to be paid after maturity, such amount is recoverable, if not prohibited by statute.

5. Where a judgment is rendered upon two different notes, and for the foreclosure of two different mortgages given to secure the same, one in favor of the plaintiff, and one in favor of a co-defendant, and the judgment on the note and the foreclosure of the mortgage in favor of the plaintiff are erroneous for want of sufficient evidence, it is error for the trial court to provide that in the decree that upon the sale of the real estate all of the costs involved in the case, including the costs taxed upon the erroneous judgment, shall be first paid from the proceeds of such sale.

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

6956.

St. Louis & San Francisco Railway Co. vs. Elizabeth Hurst and Alfred Hurst.

Error from Cowley County.

REVERSED.

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

1. An appeal from the judgment of a justice of the peace is complete upon the filing and approval of the appeal bond or undertaking within ten days from the rendition of the judgment.

2. The successor of a justice of the peace has the power, under the direction of the district court to supply omissions in a transcript of his predecessor, and for that purpose may file with the clerk of the district court a new and completed transcript from the official records in his possession.

3. Where an appeal bond filed and approved by a justice of the peace is insufficient in form or amount, the party appealing should be given an opportunity by the district court, where the appeal is pending, to change or renew the bond before the case is dismissed for a defect therein.

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

6954.

S. G. Bigelow vs. D. Wysal, et al.

Error from Miami County.

AFFIRMED.

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

Where a jury are correctly instructed by the trial court upon all the law questions involved in the case, and the court in addition gives a slightly contradictory instruction which clearly appears from the special findings of the jury not to have misled them, such additional instruction will not, under the circumstances, entitle the defeated party to a new trial.

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

6845.

The Kansas City & Pacific Railroad Company vs. William Ryan.

Error from Miami County.

REVERSED.

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

1. Between the railroad company and its employes, the railroad company is required to exercise reasonable and ordinary care and diligence, and only such, in furnishing to its employes reasonably safe machinery and instrumentalities for the operation of its road. A. T. & S. F. Rld. Co. v. Wagner, 33 K. 662.

2. It does not necessarily follow that the special inspection given by a manufacturer or by a repair shop by the expert iron workers therein employed to discover any latent or concealed defect in a tool or instrument for use, like a lifting jack, before the same is sent out for sale, or use, is demanded by railroad companies, bridge-builders, house-raisers or other persons using such a tool in their work, but, of course, a railroad company and every other person is liable for injuries to their employes from a defect in their tools and other appliances used in their work, when such defect is visible or known, or might have been known by the exercise of reasonable and ordinary care and diligence.

3. If a railroad company purchases an ordinary tool or implement, like a lifting jack, of a well known and reliable dealer in such tools, and at the time of the purchase there is a latent or concealed defect therein, consisting of a defective weld of the foot attached to the jack, which is not visible, yet if after use there of by the railroad company, such jack, on account of its cars being off the track, is sent in for repairs to the railroad shops of the company, and if in repairing the jack, it was, or ought to have been the practice at the shops, before the jack is sent out again for use, to examine and inspect all the parts to ascertain if any other defects exist necessary to be repaired, and any reasonable examination or inspection by the iron workers at the shops would have disclosed the defective weld of the foot of the jack; then the railroad company is negligent in sending out from its own repair shops the jack for use in a defective condition, even if the defect is not visible.

4. Where an express special finding of the jury, which would of itself be sufficient to sustain a verdict and judgment, is wholly unsupported by any evidence, and such special finding is the probable support for other important and material findings, and the verdict is against the great preponderance of the evidence, it is clear that the case was unfairly tried and that a new trial should be granted.

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

6908.

M. A. Pounds vs. A. E. Rogers, Treasurer of Shawnee County, et al.

Original Proceeding in Mandamus.

WRIT REFUSED.

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

1. All matters relating to the sale and conveyance of land for taxes under any prior statute shall be fully completed according to the laws under which they originated, the same as if such laws remained in force. Par. 7010, Gen. Stat. 1889; section 144, chap. 87, laws of 1876; section 135, Ch. 107, Gen. Stat. 1868.

2. The sale of land for delinquent taxes, under the statute constitutes a contract between the purchaser and the state—the terms of which are found in the law then in force.

3. On September 1, 1885, the owner tendered to the county treasurer the amount for which the land was sold, with interest at the rate of twenty-four per cent. from the date of sale to the 15th day of May, 1885, the day on which chapter 190, of the laws of 1885 reducing the interest payable on redemption, to fifteen per cent., went into effect, and interest from May 15, 1885, to Sept. 1, 1885, at the rate of fifteen per cent.; also the amount of half tax of 1882, sold by the purchaser June 21, 1886, with interest from the latter date to the time of tender, at the rate of fifteen per cent. *Held*, That the tender was insufficient—*and further held*, that to redeem said land the amount for which the land was bid off, and all the subsequent taxes, paid by the purchaser thereon, with interest at the rate of twenty-four per cent. per annum on the taxes and charges from the date of sale, and the same interest on all subsequent taxes so paid by the purchaser from the date of payment must be paid or tendered.

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

9132.

The State of Kansas vs. L. H. Yates.

Appeal from Brown County.

AFFIRMED.

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

1. The rule is that where a defendant has pleaded guilty in a criminal cause and sentence has been passed upon him, it is within the sound discretion of the trial court to permit the plea to be withdrawn, and to allow a plea of not guilty to be entered, and if the court abuses its discretion, error may be assigned therefor.

2. Where a defendant, being an intelligent person and the owner of a drug store, was charged with an offense under the prohibitory liquor law, punishable by a fine of not less than $100 or more than $500, or by imprisonment in the county jail not less than thirty days or more than six months, and was represented in court by able counsel; and upon arraignment plead guilty and was sentenced to pay $50 fine and the costs, and also to be committed to the county jail until the fine and costs were paid; and the next day presented his motion to the court to retract his plea of guilty upon the ground of the misconduct of the prosecuting attorney in inducing him to enter a plea of guilty under the belief that he would be sentenced to pay a fine of $100 only, and upon the hearing of the motion it was shown that no definite promise was made by the county attorney to the defendant or his attorneys, or to anyone for him, and that such attorney did not urge the defendant or his attorneys to enter a plea of guilty, but that from an interview between the county attorney and one or two of the friends of the defendant it was understood by them and so communicated to the defendant, that if he would plead guilty he would be sentenced to pay a fine of $100 only. *Held*, The refusal to permit the defendant to withdraw his plea was not an abuse of sound discretion of the trial court.

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

6956.

F. R. Newberry and Charles F. Noell vs. The Arkansas, Kansas & Colorado Railway Company.

Error from Ford County.

REVERSED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

1. A ruling quashing the summons and setting aside the service made upon the defendant is a final order which is reviewable in the supreme court.

2. Such a ruling is not available as error where more than one year has intervened between the making of the order and the commencement of proceedings to error.

3. An action against a railroad company for injury to property upon the road or line of the company may be brought in any county through or into which the road passes, and when rightly brought the summons may be issued to any other county of the state and there served upon the president of the company.

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

9121.

Joseph L. Sheldon and Lizzie S. Sheldon vs. Simon Pruessner, Lewis M. Motter, Henry S. Pruessner and Lizzie Pruessner.

Error from Shawnee County.

REVERSED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

1. Greenwood v. Butler, 50 Kan. followed.

2. Where land is advertised to be sold for cash in pursuance of a judgment of foreclosure, and the sheriff accepts a certified check as cash, which is afterward paid, the acceptance of the certified check for cash is not of itself a sufficient reason to defeat the sale.

3. Where a judgment under which land has been sold is held to be erroneous and is reversed, and it appears that the land was bid in at the sale by a third person who was acting for and in behalf of the judgment creditor, and that the purchase was actually made for such judgment creditor, the purchaser is not entitled to the protection provided for in section 467 of the civil code. The reversal of the judgment defeats the title of the purchaser and the sale should be set aside.

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

6974.

Newton Kreamer and David J. Matter vs Sarah Kreamer.

Error from Jewell County.

AFFIRMED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

Where an executor who is a residuary legatee executes a bond to pay all the debts and legacies of the testator, he and the sureties become absolutely liable to the extent of the penalty of the bond for all debts and legacies, regardless of the amount or value of the assets of the estate; and where a specific legacy is not paid when due, the legatee may, without obtaining an order of allowance by the probate court, and upon demand and refusal of payment, maintain an action for the recovery of such legacy against the obligors of the bond.

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

6976.

Martin Brooks and James Brooks, heirs of Calvin K. Brooks, deceased, vs. Silas N. Brooks, administrator of the estate of Calvin Brooks, deceased.

Error from Rooks County.

AFFIRMED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

1. The claim of a creditor against an estate was duly allowed and ordered to be paid by the probate court, but the probate judge neglected to make a complete entry of the allowance and order of payment. After payment had been made and another probate judge had succeeded to the office it was discovered that no entry had been made of the order. Upon motion a *nunc pro tunc* order was made authorizing the entry of the allowance and order for payment which had been made by the former probate judge. *Held*, That there was power in the court to correct the records so that they should speak the truth.

2. The evidence examined and found to be sufficient to sustain the finding and judgment of the court.

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

6967.

The First National Bank of Cobleskill, New York, vs. David Emmitt.

Error from Saline County.

REVERSED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

1. The plaintiff, being in possession of a negotiable note, properly indorsed, it will be presumed that he owns and acquired the note in good faith, for full value in the usual course of business, before maturity, without notice of any circumstance that would impeach its validity; and where the defendant who is the maker of the note, claims that the plaintiff does not so hold it, it devolves upon him to prove his claim.

2. The evidence examined and held to be insufficient to sustain the finding that the holder was not an innocent purchaser of the note in suit.

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

9016.

The Union Terminal Railroad Company vs. The Board of Railroad Commissioners of the State of Kansas.

Error from Shawnee County.

AFFIRMED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

The board of railroad commissioners in pursuance of chapter 184 of the laws of 1885, upon the application of a railroad company granted it the right to cross the roads of two other railway companies and prescribed the terms and manner of crossing and also fixed the compensation to be paid by the crossing company. No appeal was taken from the order. At the end of about four months, and before the crossing was made, the companies over whose roads the crossing was allowed applied to the board of railroad commissioners for a rehearing of the case and to set aside the order allowing the crossing to be made. The crossing company objected to the consideration of the application, claiming that the board had no power to grant a rehearing. The objection was overruled and the board was proceeding to re-hear the case when an action for injunction was begun against the board alone to enjoin it from further hearing the application. *Held*, That the railroad commissioners are only nominal parties, that the railroad companies who are invoking the action of the board and whose rights will be seriously affected by the action which the board may take are necessary parties, and that no injunction should be allowed until they are brought into court and given opportunity to be heard.

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

9231.

In re H. W. Lewis.

Original proceeding in habeas corpus.

PETITIONER REMANDED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

1. Under the fifth subdivision of section 254 of the civil code a receiver may be appointed at the suit of a stockholder where the business and affairs of a corporation have been so mismanaged that it has become insolvent, and where it is made to appear that all the officers and directors of the same have conspired together to divert its business to another company, dissipate its funds, and fraudulently abscond and apply its assets to the individual benefit of such officers.

2. In such a case the property and assets of the corporation may be placed in the hands of a receiver to be preserved and rightfully applied under the supervision of the court, and it may be restored to the officers when there has been a change of management or when it is deemed by the court to be prudent and safe to restore the property and affairs of the corporation to its duly constituted officers.

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

9294

The Board of County Commissioners of the County of Graham vs. R. Van Slyck, Jerome Shoup and William Wells.

Error from Graham County.

AFFIRMED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

1. Under the general statute relating to fees and salaries county clerks are entitled to no more compensation than the salaries fixed by law; and all fees received by them for official services should be accounted for and deducted from each quarterly allowance of salary.

2. A cause of action for fees not accounted for and wrongfully retained by such officer accrues at the end of each quarter when the allowance of salary is made.

3. An action upon the official bond of a county clerk to recover for fees received and not accounted for was commenced more than four years after the last allowance of salary was made to him by the board of county commissioners. *Held*, That the action was barred by the three year statute of limitations. Civil code, sec. 18, subdiv. 2; Ryus v. Grable, 31 Kan. 767.

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

6745.

The Board of Railroad Commissioners of the State of Kansas, et al. vs. The Syrups Grocer Company, et al.

Error from Atchison County.

REVERSED.

SYLLABUS. BY THE COURT. JOHNSTON, J.

The board of railroad commissioners made a finding and decision reducing rates of freight upon car load lots of sugar, coffee, beans and canned goods, making them considerably less than the rates upon the same commodities when shipped in less than car-load lots. A shipper, whose business mostly required the use of the rates fixed for less than car loads, and who claimed that the proposed rates would operate to his injury and to the benefit of other shippers who would use the car-load rates, brought an action against the board to enjoin it from promulgating and putting in force the new schedule of rates, contending, not that they were unreasonably low or unremunerative to the carrier, but that the enforcement of them, without making a reduction of the rates for the shipment of smaller quantities, was a discrimination against him which should be enjoined. *Held*, That the plaintiff had no such interest as entitled him to enjoin the board from putting in force its finding and decision, and that he was not entitled to the relief demanded.

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

6947.

Benjamin F. Horne vs. Hegwer Salt and Lumber Company.

Error from Reno county.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J.

Where there is any evidence fairly sustaining all the facts necessary to a recovery, a demurrer to the evidence ought not to be sustained.

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

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

6977.

Amanda Jenkins vs. James J. Henry.

Error from Graham County.

AFFIRMED.

SYLLABUS. BY THE COURT. ALLEN, J.

J. owned a quarter section of land which he occupied as a homestead with some of his children for a number of years. Plaintiff was his wife. After all of his children had left the land, J. alone executed a deed for it to defendant, and then abandoned his homestead. Plaintiff, who had never before been in Kansas, soon after joined her husband, and after his death took possession of the land, and brought this suit to set aside the deed. The trial court made a general finding for the defendant and rendered judgment thereon in his favor. This judgment is upheld.

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

6008.

N. B. Thompson, et al, vs. Michael Niggley, et al.

Error from Marshall County.

AFFIRMED.

SYLLABUS. BY THE COURT. ALLEN, J.

Written securities extorted by means of threats of prosecution for criminal offences of which the party threatened was guilty in fact, but which were in no manner connected with the demand for which compensation was sought, may be avoided by the parties executing them, not only in the hands of the original payee, but of his assignees having notice of the circumstances under which such securities were taken.

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

6955.

Mary A. Yount, Administratrix of George W. Yount, Deceased vs. Walter Dunning, et al.

Error from Cowley County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J.

1. The mayor and council of the city of Winfield, provided by ordinance that no person should carry on the business of a real estate agent without having obtained a license so to do, imposed a semi-annual license tax of $10 on each person engaged in the business, and a fine for a violation of the ordinance. The plaintiffs below carried on the business of real estate agents in said city without having paid the license tax, and in violation of the provisions of the ordinance.

2. In this case they came for a commission on a sale negotiated by them while so carrying on said business. *Held*, That the transaction is unlawful on their part and they cannot recover.

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

9211.

The City of Hutchinson vs. Pat Holland.

Error from Reno County

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J.

On the trial of a prosecution for the unlawful sale of intoxicating liquor under a general charge, where the prosecution offers testimony to prove two distinct sales, and at the close of the plaintiff's testimony, is requested to elect on which sale it will rely, it is error for the court after the conclusion of the defendant's testimony to set aside the election and instruct the jury that they have only to consider the evidence as to the other sale, on which plaintiff had not elected to rely.

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

9269.

School District, No. 8, of Jefferson County vs J. M. Gibbs, as County Clerk, and Others.

Error from Jefferson County.

AFFIRMED.

SYLLABUS. BY THE COURT. ALLEN, J.

A school district cannot by injunction restrain the collection of taxes on lands regularly detached from its territory, and included in a newly formed school district, nor restrain the school district officers of such newly created district from acting as such, nor control the action of the county superintendent in the discharge of his official duties in relation thereto.

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

9255.

Board of Education of the City of Caldwell vs. Ezra Spencer, County Treasurer, and Others.

Original Proceeding in Mandamus.

Motion to Quash Writ Sustained.

SYLLABUS. BY THE COURT. ALLEN, J.

Where it appears from the alternative writ of mandamus, that a long and complicated accounting must precede a final disposition of the case, the court will not attempt by mandamus to determine the rights of the parties.

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 8th day of January, 1894.

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

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