7104.

Laura L. Ferree vs. C. E. Walker, et al.

Error from Wyandotte County.

DISMISSED.

SYLLABUS. BY THE COURT. JOHNSTON J.

1. When the time for making and serving a case-made has elapsed, the judge is without power to extend the time for that purpose or to settle and sign a case which may thereafter be presented.
2. The jurisdiction of the judge to settle and sign a case having been lost by lapse of time, it can not be restored by the agreement of the parties nor by any action which the judge with their consent may take.
3. A statement certified to be correct by the clerk of the district court and which is not a record of the court is not competent proof of the alleged facts therein contained.

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

7133.

Julius Winkelmeyer Brewing Association vs M. K. Wolff and John Wolff.

Error from Barton County.

AFFIRMED.

SYLLABUS. BY THE COURT. JOHNSTON, J

Error cannot be predicated upon the overruling of a motion for a new trial where the record fails to show that such motion was filed within three days after the judgment was rendered.

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

9582.

Charles W. Dutton, County Clerk of Cloud County vs. The Citizens' National Bank of Concordia.

Error from Cloud County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J

1. The word credit as defined in paragraph 6847, of the gen. stat. of 1889, and used in the chapter providing for the assessment and collection of taxes, does not include shares of stock in a national bank, and the owners of such shares have no right to deduct from their assessed value the amount of their debts.
2. The statute of this state which permits debts owing in good faith by any person, company or corporation to be deducted from the gross amount of credits belonging to such person, company or corporation, in listing their property for taxation, when the owners of shares of stock in a national bank are not allowed to deduct their indebtedness from the value of such shares, is not in conflict with section 5219 of the general statutes of the United States, does not operate to tax such shares at a greater rate than other moneyed capital in the hands of individual citizens and is valid; the law providing that all corporate stocks, all moneys secured by judgment, or lien on real estate, all moneys on deposit in any bank, subject to withdrawal on demand, and substantially all moneyed capital of every description invested for profit shall be subject to taxation without deduction of indebtedness.
3. Injunction can not be maintained to prevent the collection of a tax which the plaintiff justly ought to pay, for mere irregularities in the proceeding of the assessor, or other taxing officer,

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

7116.

Mary Buchtella vs. Frank Stepaneka.

Error from Republic County.

MODIFIED.

SYLLABUS. BY THE COURT. ALLEN, J

1. A fraudulent transaction in which both parties have knowingly participated will neither support a cause of action in favor of the plaintiff, nor a counter claim or judgment for affirmative relief in favor of the defendant.
2. Where parties purposely engage with equal guilt in illegal, immoral or fraudulent dealings, the court leaves them where it finds them, and will not lend its aid to either party.

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

7120.

Daniel Hennigh and Mary Hennigh vs. Commercial National Bank.

Error from Labette County.

AFFIRMED.

SYLLABUS. BY THE COURT. ALLEN, J

In this case a petition in error was filed in the district court to reverse a judgment of a justice of the peace for error in excluding testimony, but as neither the motion for a new trial, notice of the time of hearing the same, nor the action of the justice of the peace thereon is incorporated in the bill of exceptions, such errors could not be considered, and the district court rightly affirmed the judgment.

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

9458.

State of Kansas, ex. rel. J. D. Naylor, County Atorney, vs. The Dodge City, Montezuma and Trinidad Railway Company, et al.

Error from Gray County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J

The road bed and superstructure of a railroad built under a charter, obtained in accordance with the laws of the state, is charged, not only in the hands of the original corporation, but of purchasers as well, with the burden of the company's charter obligations and cannot be diverted from the purpose to which it was devoted, nor relieved from this burden without the consent of the state duly expressed by the legislature, or other competent authority.

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

7127.

Morgan County in the State of Missouri vs John D. McRae.

Error from Linn County.

AFFIRMED.

SYLLABUS. BY THE COURT. ALLEN, J

Sureties on a bond conditioned for the erection in accordance with certain plans and specifications and keeping in repair of bridge abutments, are released from liability by a substantial change in the plans of the work made by the principal, and accepted by the obligee of the bond, without their knowledge or consent.

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

9528.

The State of Kansas vs, Fred Miller.

Appeal from Douglas County.

AFFIRMED.

SYLLABUS. BY THE COURT. ALLEN, J

1. To constitute the crime of robbery by forcibly taking money from the person of its owner, it is not necessary that violence to the person of the owner should precede the taking of the money, it is sufficient if it be contemporaneous with the taking.
2. Where the court charged in substance that the violence to the person of the owner of the money must have been with intent to rob, and that the money must have been "obtained from the money drawer" in the presence of the owner, by means of force and violence to his person and against his will, *Held*, That under the facts of this case, the word "obtained" fairly expressed the same idea as the word taken, and that no error was committed by the use of the word.

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

7073.

Noyes Spicer vs. Martin L. Wheeler.

Error from Greenwood County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J

A petition filed under chapter 89, of the laws of 1877, to obtain a sale of lands for delinquent taxes, which does not mention all the lands sought to be sold, either in the title or body of the petition, but refers to an exhibit as attached thereto, and made a part thereof, as containing a description of the lands, but where no exhibit is in fact attached to the petition, but a loose paper indorsed with the title of the case is filed with the clerk, which in fact contains a description of the land, and a statement of the taxes, etc., claimed to be a lien on it, is not sufficient as a basis of jurisdiction for the court to render any judgment for the sale of the lands not described in the petition, and where a judgment is rendered under such a petition, and lands not mentioned in any manner except in the exhibit are sold thereunder, such sale is void, and confers no title on the purchaser.

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

7111.

Thomas W. Gaunt vs. K. W. Harkness.

Error from Linn County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J

1. On the trial of an action on a promissory note, where the principle issue is as to the genuineness of the defendant's signature thereto, it is error to permit the defendant to present to plaintiff's witnesses, who are called to testify as experts, false signatures to notes prepared for the purpose of testing the ability of the witnesses to detect a forgery, and to cross examine such witnesses as to such false signatures, and thereafter to introduce such signatures in evidence, and prove by another witness the fact that he wrote them himself.
2. The rule that writings to be used as a basis for the comparison of hand writings must be admitted to be genuine by the party against whom they are sought to be used, or at least clearly proven to be so, applies as well to writings used on the cross examination of witnesses as on the direct.

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

7108.

James Woodman vs. Richard Hunter.

Error from Republic County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J

1. Hearsay testimony alone is not sufficient to uphold a judgment.
2. A mortgagee of personal property who surrenders the note secured, and cancels the mortgage in consideration of the note of a third party, secured by a new mortgage including new and different security, without the knowledge or consent of the original mortgagor, is bound by his own bargain, and cannot thereafter resort to the first mortgage as security for the debt.

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

6776.

City of Kansas City vs. Eugenia A. Brady et al.

Motion for a re-hearing.

ORDER FOR JUDGMENT SET ASIDE AND NEW TRIAL DIRECTED.

SYLLABUS. BY THE COURT. ALLEN, J

1. The former opinion in this case upon the questions of law involved is adhered to. Horton, C. J., dissenting.
2. Where the answers of the jury to special questions submitted to them are not only inconsistent with the general verdict, but with each other as to material matters no judgment can be entered, but a new trial should be ordered.

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

9510.

State of Kansas vs. W. H. Whitmore.

Appeal from Osborne County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J

On the trial of a criminal prosecution for libel the jury after having received the direction of the court, have the right to determine at their discretion, the law and the fact, par. 2449, gen. stat. 1889, and counsel has the right to fairly argue his theory of the law of the case to the jury. State vs. Verry, 36 Kas. 416, and in the course of his argument may read from law books recognized as authorities bearing upon the case, and it is error for the court to deny this right.

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

7098.

The Chicago Lumber Company vs. Ella Limerick.

Error from Waubaunsee County.

AFFIRMED.

SYLLABUS. BY THE COURT. ALLEN, J

In an action to foreclose a lien claimed for materials furnished to a contractor, under a sub-contract, where the plaintiff's account, duly verified, is set up in the petition, and the answer of the owner of the property contains a general denial, and also denies specially any indebtedness from the contractor on account of the materials furnished, and the plaintiff offers evidence in chief to prove that the account has not been paid, and the defendant without objection offers proof that it has been paid, and after such proof objection because payment is not pleaded is first made when a check, by which the payment is claimed to have been made, is offered in evidence, and where the whole case is tried through from first to last as though the principle issue was the question of payment, and the court finds adversely to the plaintiff, such finding will not be disturbed because the pleadings strictly construed do not present an issue of payment.

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

7068.

The Southern Kansas Railway Company vs. W. W. Painter.

Error from Sumner County.

REVERSED.

SYLLABUS. BY THE COURT. ALLEN, J

1. Where the plaintiff in action to recover damages for personal injuries makes statements on the witness stand concerning matters vital to the case, substantially different from those contained in a deposition which he admits having signed, but denies the entire correctness of, it is error for the court to refuse to permit the defendant to read in evidence those parts of the deposition tending to contradict his testimony, and it is wholly unimportant whether such deposition has been filed with the clerk, or is admissible as a deposition.
2. Declarations of a conductor of another train, made at the time of a similar accident at the same place, and proof of the facts connected with such other accident, are held to have been improperly admitted in this case.

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

6778.

Helen A. Berry vs. The Kansas City, Fort Scott & Memphis Railroad Company.

Error from Bourbon County.

Motion for a Re-hearing.

DENIED.

SYLLABUS. PER CURIAM.

Where one or more corporations are consolidated into a new corporation with a new name, and the old corporations go entirely out of existence, if no arrangements are made respecting the property and liabilities of the corporations that cease to exist concerning the debts and obligations of such corporations, the consolidated or new corporation will be answerable for the liabilities of its constituent companies. In such a case, the new corporation succeeds to all the property of the old corporations, and the debts of the old corporations become by implication the obligations of the new corporation.

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 9th day of May, 1894.

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