

In the Kansas Court of Appeals, Southern Department, Western Division.

No. 258.

S. G. Clark, as County Treasurer, et al.,
plaintiffs in error.

vs.

The Atchison, Topeka & Santa Fe Railway
Company, defendants in error.

Error from Edwards County.

REVERSED.

Syllabus. Schoonover, J.

1. The case of J. H. McIntire, Receiver of the Wichita & Western Railway Company, vs. J. H. Williamson as Sheriff of Pratt county, just decided, cited and followed.

2. The tax levied under chapter 273, laws of 1896, for the "prevention of prairie fires," held to be a general tax, and further held that it is collectable under the general laws of the State for the collection of taxes.

A true copy.
Attest: E. J. WESTGATE,
[Seal.] Clerk.

In the Kansas Court of Appeals, Southern Department, Western Division.

No. 261.

Otho Nowland, plaintiff in error.

vs.

City of Horace, defendant in error.

Error from Greeley County.

DISMISSED.

Syllabus. Milton, J.

A petition in error which is fatally defective by reason of an entire failure to state any cause for reversal of the judgment complained of cannot be amended more than one year after the rendition of such judgment, but must be dismissed.

A true copy.
Attest: E. J. WESTGATE,
[Seal.] Clerk.

In the Kansas Court of Appeals, Southern Department, Western Division.

No. 262.

Union Township and Mitchell Township,
plaintiffs in error.

vs.

Benjamin F. Heater, defendant in error.

Error from Rice County.

AFFIRMED.

Syllabus. Schoonover, J.

1. Before a demurrer can be sustained to a petition, upon the ground that the petition shows upon its face that the plaintiff is guilty of contributory negligence, the facts stated must raise such a presumption of negligence that the court would be bound as a matter of law to declare that no recovery can be had.

2. Where the defendant in a case which is being tried by a jury, filed a demurrer to the plaintiff's evidence, on the ground that the evidence does not prove any cause of action: Held, that unless the plaintiff has utterly failed by all his evidence to prove his case, or some material fact in issue in the case, the demurrer should be overruled. (Joseph Brown, Admr. v. The A. T. & S. F. R. Co., 31 Kan., pg. 1.)

3. The special instructions asked for examined: Held, that they are, so far as applicable to the facts in this case, covered by the general charge, and further held that the general charge fully states the law of the case.

A true copy.
Attest: E. J. WESTGATE,
[Seal.] Clerk.

In the Kansas Court of Appeals, Southern Department, Western Division.

No. 268.

State of Kansas, appellee.

vs.

Samuel F. Archer, appellant.

Error from Ness County.

AFFIRMED.

Syllabus. Milton, J.

The pointing of a revolver which is not loaded, in a threatening manner at another, is an assault when the party at whom it is pointed does not know that it is not loaded, or has no reason to believe that it is not and is by the act of the menacing party put in fear of bodily harm.

A true copy.
Attest: E. J. WESTGATE,
[Seal.] Clerk.

In the Kansas Court of Appeals, Southern Department, Western Division.

No. 268.

School District No. 40, of Finney County,
Kansas, plaintiff in error.

vs.

H. W. Cushing, defendant in error.

Error from Finney County.

AFFIRMED.

Syllabus. Milton, J.

1. Sec. 3, Ch. 48, laws of 1879, while pre-

viding that school district bonds shall state on their face "to whom issued," also provides that bonds signed by the proper district officers and registered by the County Clerk shall be negotiable and transferable by delivery and may be sold by the district board at not less than a stated price: Held, that making bonds payable "to or bearer" was a substantial compliance with the terms of the statute.

2. Where school district bonds purport to have been signed on the first day of a certain month and to have been registered by the County Clerk on the thirtieth of the same month: Held, that such bonds were not invalid in the hands of an innocent purchaser thereof by reason of their failing to specify on their face the date when issued.

3. "The payment of negotiable county bonds in the hands of an innocent purchaser for value cannot be avoided on the ground that the elections authorizing their issue were irregularly called and held, although the irregularities were such that, had the question been raised in the proper manner and at the proper time, such bonds would have been held invalid." The State v. Scott County, 58 Kan. 491.

A true copy.
Attest: E. J. WESTGATE,
[Seal.] Clerk.

State of Kansas, ss.

I, E. J. Westgate, Clerk of the Kansas Court of Appeals, Southern Department, Western Division, do hereby certify that the above and foregoing are full, true and correct copies of the syllabi of the court, handed down at Wichita, Kansas, on the 15th day of October, A. D. 1898, and filed in this office on the 30th day of October, A. D. 1898.

Given under my hand and the seal of said court, this the 29th day of October, A. D. 1898.

[Seal.] E. J. WESTGATE,
Clerk of the Kansas Court of Appeals,
Southern Department, Western Division.

Southern Department, Central Division.

In the Kansas Court of Appeals, Southern Department, Central Division.

Nos. 9401 and 358.

National Mortgage and Debiture Com-
pany, plaintiff in error.

vs.

The St. John Marsh Company, defendant
in error.

Error from Reno District Court.

AFFIRMED.

The opinion of the court was delivered by
Dennison, P. J.

1st. The construction of the statutes relative to the powers of a judge to settle a case after his term of office expires, contained in Waterfield vs. Hutchinson National Bank, 6 Kan. App. 743, 50 Pac. 971 and Farmers' Alliance Insurance Co. vs. Nichols, id. 525, 50 Pac. 949, modified.

2nd. When the term of the trial judge expires before the time fixed for making and serving a case, he should settle the case the same as if his term had not expired, and if his term expires after the time fixed for making and serving a case; yet if the time for settling a case had been fixed before the expiration of his term which time did not expire until after the expiration of his term he should also settle the case.

3rd. We have carefully examined the arguments of counsel and the record and are unable to say that the trial court committed error requiring the reversal of the judgment.

A true copy.
Attest: W. A. AYRES,
[Seal.] Clerk.

In the Kansas Court of Appeals, Southern Department, Central Division.

No. 304.

O. S. Gibson and J. W. Mann, plaintiffs in
error.

vs.

Fred C. Gross, defendant in error.

Error from Cowley District Court.

REVERSED.

The opinion of the court was delivered by
Milton, J.

Where the plaintiff after the death of his wife, placed his two children with relatives, disposed of nearly all of his household goods, and lived at different places as a boarder but did not reside with either of his children; held, that he was not the head of a family within the provisions of sec. 3, ch. 115, Gen. Stat. of 1897 as construed in Zimmerman v. Franke, 34 Kan. 650.

A true copy.
Attest: W. A. AYRES,
[Seal.] Clerk.

In the Kansas Court of Appeals, Southern Department, Central Division.

No. 355.

Edward Clark, plaintiff in error.

vs.

The St. Louis & San Francisco Railway
Company, defendant in error.

Error from Butler District Court.

AFFIRMED.

The opinion of the court was delivered by
Milton, J.

1. Following the doctrine announced by the Supreme court in the case of Eddy v. Weaver 67 Kan. 540, it is held, that the

trial judge was without authority to permit the case-made to be amended by the plaintiff in error over the objection of the defendant in error, on the day such case-made was settled and signed, and long after the time granted for making and serving the same, had expired, by inserting therein the following statement: "The foregoing is all the evidence introduced and offered upon the trial of this case and all objections thereto and the exceptions"; and further held, that the statement so inserted must be disregarded by the appellate court.

2. A case-made duly settled and signed imports verity in all its parts including the endorsements upon an appeal bond whereby the defendant in error carried the case to the District court on appeal from a Justice of the Peace.

A true copy.
Attest: W. A. AYRES,
[Seal.] Clerk.

State of Kansas, ss.

I, W. A. Ayres, Clerk of the Kansas Court of Appeals, Southern Department, Central Division, do hereby certify that the above and foregoing are full, true and correct copies of the syllabi of the court handed down at Wichita, Kansas, on the 15th day of October, A. D. 1898, and filed in this office on that date.

Given under my hand and the seal of said court, this the 21st day of October, A. D. 1898.

[Seal.] W. A. AYRES,
Clerk Kansas Court of Appeals, Southern
Department, Central Division.

Northern Department, Western Division.

In the Kansas Court of Appeals, Northern Department, Western Division.

No. 31.

Immanuel's Gemeinde, et al., plaintiffs in
error.

vs.

Fred Kell, et al., defendants in error.

AFFIRMED.

By the Court. Syllabus. McElroy, J.

Where a church is organized and a building erected by an independent religious organization, and afterwards dissension arises among the members thereof as to which, if either, of two branches of the parent organization they should unite, and by reason of such dissension it becomes impracticable to longer remain together, it is not error for the District court to decree a division of the property.

All the Judges concurring.

Opinion filed September 29, 1898.

A true copy.
Attest: P. J. GOSS,
[Seal.] Clerk.

In the Kansas Court of Appeals, Northern Department, Western Division.

No. 153.

Ansel Gifford, plaintiff in error.

vs.

Jacob Ammer, defendant in error.

Error from Phillips County District Court.

AFFIRMED.

Syllabus. By the Court. McElroy, J.

1. A motion to suppress depositions made and filed in due time was by the court overruled. During the progress of the trial the court reconsidered his decision thereon and sustained the motion. Inasmuch as it does not appear from the record that either party requested the court, before the commencement of the trial, to hear and decide the questions arising on exceptions: Held, that this, of itself, is not such an irregularity as to necessitate the reversal of the judgment in the absence of any showing that the defendant was injured, or placed at a disadvantage by reason thereof.

2. Where the defendant by his answer and evidence admits all the allegations of plaintiff's petition, all that is necessary for plaintiff to prove to entitle him to a recovery in the action, the court may very properly instruct the jury to return a verdict for plaintiff.

Filed October 17, 1898.

A true copy.
Attest: P. J. GOSS,
[Seal.] Clerk.

In the Kansas Court of Appeals, Northern Department, Western Division.

No. 157.

Simon Motz and Bertha Motz, plaintiffs in
error.

vs.

A. R. Henry and M. E. Dixon, defendants
in error.

Error from Ellis County District Court.

AFFIRMED.

Syllabus. By the Court. McElroy, J.

1. The writ of assistance is an effective and appropriate process to issue from a court of equity to place the purchaser of mortgaged premises, under its decree, in possession after he has received the Sheriff's deed as against parties who are bound by the decree and who refuse to surrender possession pursuant to its direction. The assignee of the purchaser's bid stands in the purchaser's place as to the remedy for possession.

Filed October 17, 1898.

A true copy.
Attest: P. J. GOSS,
[Seal.] Clerk.

In the Kansas Court of Appeals, Northern Department, Western Division.

No. 152.

W. C. Olson, plaintiff in error.

vs.

The Board of County Commissioners of
Trego County, Kansas, defendant in
error.

Syllabus. Wells, J.

Where the term of office of a member of the Board of County Commissioners has expired and his successor has been duly elected and qualified and is ready and willing to perform the duties of the office, said person has no color of right to the office and his pretended official acts are void.

Filed October 17, 1898.

A true copy.
Attest: P. J. GOSS,
[Seal.] Clerk.

In the Kansas Court of Appeals, Northern Department, Western Division.

No. 155.

Henry Johnson, plaintiff in error.

vs.

Frank Borin, defendant in error.

Syllabus. Wells, J.

Land entered under the provisions of the United States homestead acts after they have been abandoned as a homestead, are liable to seizure and sale under proper proceedings in attachment for the satisfaction of debts contracted by the homestead claimant between the date of final proof and certificate and the issue of the patent.

Filed October 17, 1898.

A true copy.
Attest: P. J. GOSS,
[Seal.] Clerk.

In the Kansas Court of Appeals, Northern Department, Western Division.

No. 146.

W. H. Brawley, plaintiff in error.

vs.

Felix Smith, Melvina Smith, Geo. O. Farr,
and The Exchange Bank of Stockton,
Kansas, defendants in error.

Syllabus. Wells, J.

1. The petition in this case examined and held to state a valid cause of action against all the defendants.

2. In this state the distinction between actions at law and suits in equity are by statute expressly abolished; and it is error for a court to compel a plaintiff to elect whether he will proceed in equity or at law.

Filed October 17, 1898.

A true copy.
Attest: P. J. GOSS,
[Seal.] Clerk.

For GENERAL STATUTES OF KANSAS 1897, compiled by Judge W. C. Webb by authority of Legislature (price \$5), address Kansas Statute Co., Topeka, Kas.

Sheriff's Sale.

Case No. 19235.

In the District Court of Shawnee county,
State of Kansas.

Emma L. Davenport, plaintiff.

vs.

Mary J. Washington, et al., defendants.

By virtue of an order of sale issued to me, out of said District court, in the above entitled action, I will, on Monday, the 5th day of December, A. D. 1898, at 10 o'clock a. m. of said day, at the east front door of the court house in the city of Topeka, in the county of Shawnee, in the State of Kansas, offer at public sale, and sell to the highest and best bidder, for cash in hand, all of the following described real estate, to-wit: Lot numbered One Hundred and Four (104) on Kline avenue in the city of Topeka, Kansas, lying and situate in the county of Shawnee, in the State of Kansas.

The above described real estate is taken as the property of said defendants, and is directed by said order of sale to be sold, and will be sold without appraisal to satisfy said order of sale.

PORTER S. COOK,
Sheriff of Shawnee county, Kansas.
J. S. Ensminger, Plaintiff's Attorney.

PROCLAMATION OF REWARD.

\$3000 REWARD.

State of Kansas, Executive Department,
Topeka, October 20, 1898.

Whereas, between Saturday night, September 17th, 1898, and Sunday morning of September 18th, 1898, in the county of Norton, State of Kansas, a person by the name of Mrs. Clara Oliver was murdered; and Whereas, the perpetrator of said crime has thus far evaded arrest and conviction, and is unknown;

Now therefore, I, John W. Leedy, Governor of Kansas, by virtue of the authority in me vested by law, do offer a reward of THREE HUNDRED DOLLARS for the arrest and conviction of said murderer.

In testimony whereof, I have hereunto subscribed my name and caused to be affixed the Great Seal of the State of Kansas.

Done at the city of Topeka on the day and year first above written.

[Seal.] J. W. LEEDY, Governor.
Attest: W. E. BUSH, Secretary of State,
By C. M. Ross, Assistant Secretary of State.