relied upon by the district attorney, and it is believed that none exists. Numerous authorities might be cited which lay down a different rule. Belverman v. State, 16 Tex. 130; Reeves v. State, 7 Tex. App. 276: Spencer v. State, 31 Tex. 64; Sneed v. State, 4 Tex. App. 514; People v. Hinchman, 42 N. W. Rep. 1006; Nuckolls v. State, 11 S. W. Rep. 646. But it seems useless to collate or recite authorities on a principle of law so purely elementary. The law does not sanction or permit rumors or reports, however well authenticated, to be introduced. If the fact to which they relate become material, it may be proven, not by showing that some person reported it or narrated it, but by the introduction of a witness who knows such fact, and can testify concerning it. What the jury might have done without this evidence, it is not our province to inquire. It is sufficient for us to know that the evidence was not competent, and that its introduction might have injured the prisoner. I think the better rule, in criminal cases, is that where improper evidence is admitted, the legal intendment ought to be that it did injure the prisoner, unless the record itself affirmatively shows the contrary, which could only occur in rare instances.

3. The next objection is that there is a fatal variance between the indictment and the evidence offered by the state as to the time when the alleged false oath was taken, and the evidence given upon which the perjury is assigned. The indictment alleges that the defendant was sworn, and testified in the police court, on the 10th day of December, A. D. 1888. Judge TANNER, of the police court, testified that the defendant was sworn as a witness before him on the 14th day of December, A. D. 1888. The memorandum made by Judge TANNER at the time of Ah Lee's evidence, and used by him, when on the stand, to refresh his memory, stated that the case of Pon Long was heard on the 11th day of December, 1888. E. H. Peery, the short-hand reporter in the police court, testified that Ah Lee was examined as a witness in the police court on the 12th day of December, 1888. In each of these cases, as soon as it appeared from the evidence that Ah Lee testified in the police court on a different day from that alleged in the indictment, counsel for the prisoner objected to all of the evidence given by each of said witnesses, or that they should be permitted to relate what took place in the police court on a day other than that alleged in the indictment; but their objections were overruled, to which exceptions were duly taken. The general rule is that the time of the commission of an offense laid in an indictment is not material, and does not confine the proofs within the limits of that period, and the indictment will be satisfied by proof of an offense on any day anterior to the finding. Whart. Crim. Ev. § 103. But it is said there are several exceptions to this rule. Wherever deeds, bills of exchange, bank-notes, or promissory notes, of any kind whatever, are set forth, it is essential that the date, if stated, should correspond with the evidence. Where, also, any time stated in an indictment is to be proved by matter of record, a variance will be fatal. Thus, in an indictment for perjury, the time when the crime was committed must be truly stated. Id. § 103*a*. Several other authorities seem to indicate the same rule. U. S. v. Bowman, 2 Wash. C. C. 328; U. S. v. McNeal, 1 Gall. 387; Com. v. Monahan, 9 Gray, 119; State v. Oppenheimer, 41 Tex. 82; People v. Parsons, 6 Cal. 487; McMurry v. State, 6 Ala. 324. Whether section 1274, Hill's Code, has changed or abrogated this rule, *quære?* As to this, we do not deem it absolutely necessary to express an opinion at this time. For the errors already referred to, the judgment of the court below must be reversed, and a new trial awarded.

(14 Colo. 286)

TODD *v.* STEWART.

(*Supreme Court of Colorado.* Feb. 14, 1890.)

ELECTION CONTEST—PLEADING.

A petition in an election contest averred, generally, that, in four election precincts, corruption, fraud, and intimidation were practiced, and mentioned, specifically: *First*, the striking off of 27 or 28 names from the poll-books, thereby depriving such persons of the privilege of voting, but with no averment that the parties thus prevented from voting would have cast their ballots for contestor; *second*, the action of certain mine owners and managers, who endeavored to turn their employes' votes against contestor by unfair argument and implied threats of discharge from employment; *third*, the circulation by contestee of the report that a certain independent ticket, containing the name of contestor, was fraudulent, whereby numerous persons were prevented from exercising their free choice. The petition did not state the total number of votes cast in the county for the office in controversy, nor the total vote polled in the precincts complained of. It did not state the number of candidates for said office, nor the number of votes given for either candidate; nor was there any averment tending to show that the matters complained of altered the result of the election. *Held*, that a demurrer to the petition should be sustained.

Original contest proceeding.

George R. Todd, pro se. Stirman & Emerson, John Kinkaid, and *S. L. Carpenter*, for contestee.

HELM, C. J. Contestor and contestee were opposing candidates at the last general election for the office of county judge of Ouray county. Contestee received the certificate of election, and the present proceeding is instituted to try his right to the office. The principal ground of contest stated by the petition is that, in the registration of voters in six election precincts of Ouray county, preceding the election referred to, some of the specific requirements of the statute were not complied with by the boards of registration. The petition also avers, generally, that, in four of the six election precincts mentioned, corruption, fraud, and intimidation were practiced. But the only specific acts of corruption, fraud, or intimidation mentioned are: *First*, the striking off of 27 or 28 names from the poll-books, thereby depriving such

persons of the privilege of voting; *second*, the action of certain mine owners and managers, who endeavored to turn the votes of their employes against contestor by unfair argument and implied threats of discharge from employment; *third*, the circulation by contestee and his law partner of the report that a certain independent ticket containing the name of contestor was fraudulent, whereby numerous persons were prevented from exercising their free choice for the office of county judge. The foregoing petition is challenged by demurrer upon the ground that no sufficient cause of contest is therein stated, and also upon the ground that the same is ambiguous, unintelligible, and uncertain.

A general averment of election frauds, or the intimidation of voters, should be treated as insufficient; and the pleading of proper ultimate facts should be required, under the rules of this court, in election contests, as in other cases. The allegation that 27 or 28 names were stricken from the poll-book does not aid contestor, since there is no averment that the parties thus prevented from voting would have cast their ballots for him. The alleged reprehensible conduct of mine owners and managers would, if true, be a proper subject for denunciation by good citizens, and possibly for legislative action; but it is not within the realm of judicial cognizance in determining election contests. Nor can rumors circulated and arguments advanced against particular candidates during political campaigns, however false or malicious, affect the determination of such cases.

The sole remaining ground of contest rests upon contestor's assertion that the specific requirements of the law in relation to the registration of voters are conditions precedent to a legal ballot, and that where any of these requirements are omitted, either through ignorance, inadvertence, or evil design, the registration is void, the votes cast are illegal, and the returns should not be counted. Without passing upon the correctness of the foregoing propositions, we must hold that the petition is in this respect, also, insufficient; for, if we assume, for present purposes only, that contestor's position is sustained by authority, nevertheless, certain other matters must be averred and proved in order to successfully contest an election. If contestor does not show that, by reason of the illegal casting or rejection of votes, the result is different from what it would otherwise have been, the contest proceeding should not be entertained. Cooley, Const. Lim. (5th Ed.) 780; McCrary, Elect. (2d Ed.) § 281; First Parish v. Stearns, 21 Pick. 148; People v. Cicott, 16 Mich. 282.

The petition under consideration does not state the total number of votes cast in the county for the office in controversy at the election mentioned, nor the total number of votes polled in either or all of the six precincts complained of. It does not state the number of candidates in the field for said office, nor the number of votes given for either of the candidates. It does not state, or attempt to state, the number of electors who were prevented from casting their ballots for contestor by reason of fraud, intimidation, or other misconduct. It does not even specifically aver that the board of canvassers considered or counted the returns from the six precincts objected to. In short, there is a total absence of averment tending to show that the matters complained of altered the result of the election. The mere declaration in the pleading that contestee was not elected, and that contestor is entitled to the office, does not supply the foregoing omissions. The demurrer to the petition is sustained.

(20 Nev. 443)

BRAGG v. STATE. (No. 1,314.)

(*Supreme Court of Nevada.* Feb. 25, 1890.)

EXPENSES OF ELECTION—INDEMNITY BY STATE.

A legislative act appropriating a certain sum "for the purpose of paying the expenses of the various counties in this state of the special election," does not create a fund applicable to the payment of a demand for publishing proposed amendments to the state constitution, to be voted upon at such special election.

Appeal from district court, Ormsby county; RICHARD RISING, Judge.

Action by plaintiff against the state to recover $616 balance alleged to be due for publishing proposed amendments to the constitution. Judgment for plaintiff. Defendant appeals.

J. D. Torreyson, for the State. *S. D. King*, for appellee.

BELKNAP, J. The law providing for the submission of certain proposed amendments to the constitution of the state at a special election upon the 11th day of February, 1889, required the state board of examiners to publish the proposed amendments in a daily newspaper of general circulation for the period of two weeks preceding the election. In compliance with this requirement, the board entered into a contract with the plaintiff, by which he agreed to make the publication in the Reno Evening Gazette, a newspaper of which he was proprietor and publisher. The law regulating rates to be paid for official advertising provides that for the publication of each square of 10 lines there shall be paid not to exceed the sum of $2.50 for the first insertion, and not to exceed $1 for each subsequent insertion; "an insertion being held to be one publication per week." St. 1887, p. 135. It was agreed that compensation under the contract should be governed by the provisions of this statute, but as the contract required a daily publication, and the statute contemplated only one publication per week, plaintiff reserved the right to seek additional compensation at the hands of the legislature. This branch of the contract is expressed in the records of the board as follows: "* * * It being understood that Mr. A. C. Bragg, the proprietor of the Gazette, shall only hold this board responsible for such compensation as