Weekly Times

THURSDAY, JANUARY 1, 1880.

—The state road laws, are ready in the county clerk's office for delivery.

PETE EVERHARDY killed a beef yesterday that weighed 1,736 pounds when dressed.

FIFTY refugees passed through Kansas City day before yesterday, en route from the south to Topeka.

—The extension of the Kansas Central railway has not been stopped by the recent changes in the stock of the road, but goes on and on; and Leavenworth watches the progress of her pet road with a great deal of quiet satisfaction.

Mr. Michael Jordan, who has since May been doing contract work, along the extension of the S. K. & W. road, between Grenora and Winfield, returned home yesterday. He says the road to Winfield will be finished about the last of January, and in Wellington about the first of April. He says that parties have begun the survey of another extension to Medicine Lodge, in Barbour county.

As Christmas fell on Thursday this year the following quotation from an ancient manuscript in the British Museum may be apropos:

"If Xmas-day on Thursday be,
A windy winter ye shall see;
Windy weather in each week,
And hard tempests, strong and thick;
The summer shall be good and dry,
Corn and beans shall multiply;
Neat year is good for lands to till,
Kings and princes shall die by skill;
If a child born that day shall be,
It shall happen right well for he;
Of deeds he shall be good and stable,
Wise of speech and reasonable;
Whom that day goes thieving about,
He shall be punished without doubt;
And if sickness that day betide,
It shall quickly from thee glide."

A Cutting Affray.

A young man named William Taylor got into an altercation with a party of men in South Leavenworth Christmas, morning and was severely cut in the left side of the face by one of the men, who used his knife with a vengence.

Real Estate Transfers.

The following transfers were recorded by Register Crowder yesterday:

Ellen T. Johnson to Lucien Scott, the south thirty acres of the east half of the northwest quarter of section 14, township 9, range 22; also the north twenty acres of the east half of the southwest quarter of section 14, township 9, range 22, containing, in both pieces, fifty acres; $1,200.

James M. Holland and wife to Albert R. Holland; the southwest quarter of the southwest quarter of section 35, township 11, range 22, east of the 6th principal meridian, containing forty acres; $700.

Singular.

Abel Wibbenhorst, a very prosperous butcher who lives on the southwest corner of Kiawa and Third streets, left his home early Tuesday morning to go to the slaughter house to work. Before going he blew out the light that was burning in the room, in a most careful manner. He was absent all day and returning late in the evening he found the house closed as he had left it, but on opening the door to his surprise and horror he found the light burning, as though it had not been touched. As no one had been in the house, and he is positive he extinguished the light, he is naturally full of speculation on the subject.

The Military Prison.

A Washington correspondent for the Atchison Chamaion writes to hil paper as follows, regarding matters at the Fort Leavenworth military prison: "New regulations have been made for the government of the Fort Leavenworth military prison, and published in general orders of the War Department. Hereafter the general estimates for appropriations for the support and improvement of the prison will not be included in any of the estimates for appropriations for the support of the army, but will be made out separately in detail by the commandant of the prison. Army rations are not to be issued to the prisoners, but subsistence stores will be purchased from the prison appropriations."

FOSTER'S DOLL.

Drawn By William Beal, of Fairmount.

There has been considerable interest manifested during the last week, as to who should draw J. H. Foster's doll, a chance on which was given to every party who bought $5 worth of goods, at one purchase in his store, for the last seven days. The drawing took place at 9 o'clock, sharp, as advertised in THE TIMES, and a large crowd was present. There were four hundred and ten tickets in the hat, and the lucky number was 100 held by William Beal, of Fairmount, in this county. When Mr. Beal bought his goods a few days ago, he said, "Mr. Foster, I am a lucky fellow, and I think I will get the doll." He not only is lucky, but he seemed to know it pretty well.

This is a new enterprise in this city, and Foster carried it out sucessfully. Every one received the value of goods for his money, and had in addition, a chance to receive a $25 doll. All present last night were happy and pleased.

THE COURTS

DISTRICT COURT.

TUESDAY, DEC. 23.

State vs O B Lattin, on trial.

Helmers vs Helmers, decree entered as decree of this term; decree on ground of former marriage.

Schmeckle vs Pickett, time to file amended petition extend to Monday, 9 A. M.

WEDNESDAY, DEC. 24.

State vs O B Lattin, jury called, all present. Case argued and jury retired. No verdict at four P. M.

Mr. Stillings made the opening speech for the prosecution. He was followed by Mr. Baker, who being in ill-health, during his speech became faint and did not complete his speech. The court on this account, adjourned the court. Mr. Baker being confined to his bed was not in court yesterday morning, and Mr. Fenlon argued the case in behalf of the defendant.

The jury were out about eight hours, and last night at 9 o'clock P. M., returned a verdict of "not guilty," and this ends the case.

F. G. Lowe vs Wm. Shepherd, county treasurer. Parties appeared. Leave to plaintiff to file amended affidavit by January 10, 1880.

Court adjourned to January 3d, for motions and divorce cases, and jury excused until January 5th, 1880.

TWICE DIVORCED.

A Lady Marries a Man Before she is Divorced from Another. Then seeks to Legalize the Latter Marriage—But the Last Husband Takes a Hand and Asks to be Freed.

A case appeared on the docket of the District Court on Wednesday which in being copied for publication was made to read Helmers vs. Helmers, which was an error made in copying; it should have read

HELMS VS. HELMS.

This case, as nearly as can be ascertained, is a most singular one. Several years ago, the story goes, a young lady named Chanfrau, of this city married an insurance agent named Phillips. Time wore on, and they moved to Kansas City. They afterward, it seems, became estranged to each other, and they finally separated, without, however, having obtained the sanction of the law to the future marriage of either.

Not heeding this important fact, Mrs. Phillips was shortly after the separation married to a man named Helms, who was at the time employed on the Chicago, Rock Island and Pacific railroad.

TRYING TO FIX IT.

Not long after the large marriage Mrs. Helms, or rather Phillips, began to see that she was in rather an unpleasant situation, and began at once to seek the strong arm of the law to help her out of the difficulty. She applied for a divorce from Mr. Phillips. While the case was pending, Helmes, who seemed to have been in ignorance of the state of affairs, discovered what was going on. He immediately dashed a wave of

COLD WATER

over the suit by making application to the courts for a divorce from Mrs. Helms, on account of the former marriage. Shortly after his application was made the wife had obtained her decree separating her from Phillips, which, however, came too late, and on Wednesday she found that Helms had the law on his side when the docket read:

"Helms vs Helms—Decree entered as decree of this term; decree on ground of former marriage."

Dr. Lyon's Tooth Tablets
Whiten the teeth, if used daily.

Use Walter Baker & Co.'s CHOCOLATE if you desire the best in the market. The verdict of experts, both in Europe and America, has for many years testified to its great excellence.

In vain the eyes are filled with light;
In vain the cheek with beauty glows
Unless the teeth are pure and white,
Unless the breath is like the rose;
And SOZODONT alone supplies
These beauties that we all do prize.
dec1 3eod4w

Orange.

Dr. Price's Special Flavoring Extract of Orange is obtained from the finest fruit. To flavor cakes, puddings or creams, it is found one of the most delicious flavors, and in all regards equal to Dr. Price's Lemon and Vanilla Extracts, which have become so popular.

OSWEGO RAILROAD TRAINSER CO., OSW. THIRD AND WYANDOTTE, KANSAS CITY, MO., August 18, 1879.

Indian Herb Bitters Co:

Dr. Stark, my family physician, prescribed *Indian Herb Bitters* for my wife, who had for years been a martyr to sick headache. It affords me pleasure to bear testimony that since she commenced the use of the medicine her dull sick headache has departed, and that I attribute her recovery wholly to your remedy. W. W. BROWN, Superintendent.

Caution Not Necessary.

Dr. Price's Cream Baking Powder produces better bread, biscuits, cakes, etc., than any other. Its purity admits of any quantity being used with perfect safety, and without detriment to the articles prepared. Households where true economy is studied will use Dr. Price's Cream Baking Powder. 2td&w

EASE by day and repose by night are enjoyed by those who are wise enough to apply THOMAS' ECLECTRIC OIL to their aching muscles and joints. A quantity easily held in the palm of the hand is often enough to relieve the most excruciating pain. This incomparable remedy has many other uses, explained in the advertisement of it, which all shall peruse. Note—Eclectric, selected and electrized.

JUST think of it—you can relieve the twinges of rheumatism, or the most painful attack of neuralgia—you can check a cough, and heal bruised or broken skin, with a bottle of THOMAS' ECLECTRIC OIL, costing only 25 cents. The advertisement of this leading remedy in another column, is well worth a careful perusal. Note—Eclectric, selected and electrized.

$10,000 Reward.

"I was so sick and low-spirited that I thought I would give anything to get well and if any one had ensured me the good health produced by Simmon's Liver Regulator, and charged me a thousand dollars, I would willingly have paid it if I had had it; in fact, ten thousand dollars would be worth less to me than what it has done for me. eod&w

A Modern Miracle.

It has long been stated as a scientific proposition by medical men that a third stroke of paralysis is necessarily fatal. What, then, shall be said of John Appell, of North Sanford Conn., who had twelve, and who is today a strong vigorous man? The phenomenon is ascribed by Mr. Appell to his constant application of Giles' Liniment. Iodide Ammonia.

Giles' Pills cures Painful Menstruation.

Sold by Arnold & Hunt. Send for pamphlet to DR. GILES, 120 West Broadway, N. Y.

Trial size 25 cents. eod&w

Something Elegant.

Mr. Alex. Collier received yesterday, from J. Cunningham Sons & Co., Rochester, New York, a $1,500 carriage, which eclipses anything of the kind ever brought to this part of the country. It shows an amount of enterprise in Mr. Collier that is commendable, and that he is determined to keep the best stock that money will obtain at his stables.

Wicked for Clergymen.

"I believe it to be all wrong and even wicked for clergymen or other public men to be led into giving testimonials to quack doctors or vile stuffs called medicines, but when a really meritorious article is made up of common valuable remedies known to all, and that all physicians use and trust in daily, we should freely commend it. I therefore cheerfully and heartily commend Bop Bitters for the good they have done me and my friends, firmly believing they have no equal for family use. I will not be without them." REV. ——, Washington, D. C.

Bronchitis.

Throat diseases often commence with a cold, cough, or unusual exertion of the voice These incipient symptoms are allayed by the use of "Brown's Bronchial Troches," which if neglected often result in a chronic disease of the throat. tues thur sat&w

A Queer Head-Pantryman.

The Jesse Hoyt, a famous New York steamboat, used to have for head pantryman a bent and crippled darkey, whose face was as full of humor as his form was of kinks and knobs. His name was Robert Smith, and his malady was chronic rheumatism. He tried Giles' Liniment Iodide Ammonia for a week of the present winter, and next season intends to astonish his old acquaintances on the Hoyt by his appearance as a sound man.

Giles' Pills cures Erysipelas.

Sold by Arnold & Hunt. Send for pamphlet. DR. GILES, 120 West Broadway, N. Y.

Trial size 35 cents. eod&wlt

AMPLE warning is given us by our lungs when they are in danger. It foolhardy enough to neglect the warning signal, we incur imminent peril. Check a cough at the outset with THOMAS' ECLECTRIC OIL—which is a sovereign pulmonic—besides being a remedy for soreness, lameness, abrasions of the skin, tumors, piles, rheumatism, etc. Another column contains our advertisement.

A Roof Scorched.

About 3 o'clock Thursday afternoon the south side of the roof of Mr. M. O'Donnell's frame building on North Main street, caught fire from a defective flue, and was considerably scorched before it was extinguished by some neighbors and men about the house. No alarm was given to the fire department.

Special Local Notices.

The Ute Question Settled.

The people of Colorado have determined to use none but Brown's Family Medicines in the future, and the Utes give it up.

Sold by druggists every where. d&w

It Is Wearing You Out.

And annoying your friends; we mean your cough. Brown's Cough Balsam the Great Western Lung Healer, will cure you.

For sale by all Druggists in Leavenworth and the West. d&w

Some of Your Family

Have need of Brown's Arnica Salve at all times, for healing cuts, burns, bruises, frost bites, old sores, and inflamed eyes.

For sale by all Leavenworth and western Druggists. d&w

on Can't Sing.

Can hardly talk: You are hoarse, and your throat is sore. Brown's Tar Troches will cure the soreness, and clear and strengthen the voice. All Druggists keep them. d&w

Don't Rub off the Enamel

Of the teeth with gritty preparations. The teeth are too valuable to be trifled with. When gone, you must have false ones or "gum" yourself through life. Use SOZODONT, which contains no grit. It cleanses the mouth and vitalizes the secretions.

Shiloh's Catarrh Remedy.

A marvelous cure for Catarrh, Diphtheria, Cankermouth and Headache. With every bottle there is an ingenious nasal injector for the more successful treatment of the complaint without extra charge. Price fifty cents. Sold by Arnold & Hunt. sun&w

Five Hundred Thousand Strong.

In the pastfew months therehas been more than 500,000 bottles of Shiloh's Cure Sold Out of the vast number of people who have used it, more than 7,000 cases of Consumption have been cured. All Coughs, Croup, Asthma and Bronchitis yield at once, or it is that every body speaks in its praise. To those who have not used it, let us say, if you have a Cough, or your child the Croup, and you value life, don't fail to try it. For Lame Back, Side or Chest, use Shiloh's Porous Plasters. Sold by ARNOLD & HUNT, druggists tues&w

Sure Thing.

Dr. King's Syphilitic Remedy is warranted to cure Syphilis in the primary, secondary and tertiary stages, and in all its varied and complicated forms, and will cure the worst cases of venereal diseases; cases which have resisted the treatment of the most eminent physicians of America. It cures the first stage and heals the ulcers in a few days. It cures ulcers in the mouth, nose, throat, head, arms and legs; also hard pains in the bones and joints, swelling of joints, syphilitic rheumatism, etc., in a short time. Price five dollars per package. Sent everywhere by express. A treatise on sexual diseases, free Sent mailed for two stamps. Sold by Dr. J Dinsbeer, 415, North Seventh street, St. Louis Mo. Cures guaranteed or the money refunded. Theo. Egersdorff, agent, Leavenworth Kansas.

The Latest Discovery.

Of more value than any Silver Mine in Colorado, is German Catarrh Cure: a remedy prepared especially for the cure of Catarrh and Severe Colds in the head, that invariably lead to Catarrh, which are so common in this climate. Remember that Catarrh, if no checked promptly, goes to the lungs, and ends in Consumption. Each day's delay lessens the chances of cure. Price only 50 cts. For sale by the Manufacturers, Brown Medicine & Manufacturing Company, Leavenworth, Kansas, and all wholesale and retail druggists in the west.

A Sure Thing.

Dr. Hunter's Specific and Injection No are warranted to cure Gonnorrhea, Gleet, Coodee, Stricture, Diseases of the Kidneys, Bladder and Urinary organs of males and females.

Dr. Hunter's Specific No. 2 is a sure remedy for the Spermatorrhoea, Seminal Weakness, nightly emissions, the loss of power, caused by self-abuse or excessive indulgence. Price of Dr. Hunter's Specific $2 per bottle In.ection, $1 per bottle. Sent everywhere by express. Dr. J. Dinsbeer, sole proprietor No 415, North Seventh street, St. Louis, Missouri Send two stamps for treatise. Cure guaranteed or the money refunded.

Theo. Egersdorff, Agent, Leavenworth Kansas. may13-eod&w

A Card.

To all who are suffering from the errors and indiscretions of youth, nervous weakness, early decay, loss of manhood, &c., I will send a recipe that will cure you, FREE OF CHARGE. This great remedy was discovered by a missionary in South America. Send a self-addressed envelope to REV. JOSEPH T. INMAN, Station D., New York City. eday&wkmo

A Very Good Idea.

[Independence Courier.]

Mr. Robt' Venis just north of the city had to kill his dog this morning. The dog was evidently mad; he tried to bite several but did not succeed in doing so. A few days ago we mentioned that several dogs had been killed in the south part of the county for the same reason. It stands our people in hand to keep a close watch on their dogs and kill them on the first symptom of that dread disease. In fact we think it would not be a bad idea to kill the most of them on suspicion.

Rape.

[Fredonia Cor. Neosho Free Press.]

A terrible case of rape occurred on morning of the 13th inst., at New Albany, on the person of Mrs. Devina, a delicate married lady, while sleeping with a Miss Helms, 12 years of age, by a young man, a boarder, named Hellfelch, who with drawn knife threatened to sever their heads, and in the effort for relief the lady's hand was cut and both parties severely cheked. The villain made good his escape on the next morning train. The sheriff followed him as far as Oswego, but caught the wrong man.

KANSAS NEWS.

—A party of one hundred of Mr. Whitelaw Reid's homeless boys will arrive in Ottawa on the 9th of January, 1880.

The New Adjutant.

[Topeka Capital.]

A commission was this morning issued to Wirt W. Walton as adjutant of the First regiment or the Kansas State militia, with the rank of first lieutenant. It appears that he accepts.

Lively Around the Depo.

[Winfield Telegram.]

Sixteen car loads of wheat, and one of flour were billed from Santa Fe station in this city yesterday. Seven car loads of freight were teestved during the same time. Things are lively around the depo, and station agent Garvey and his assistants are kept constantly busy receiving and discharging freight.

The Mosaic Law.

[Stockton Recorder.]

Although the scriptures expressly prohibit the yoking of the ox and ass together, a team, answering in some points to that description, was seen to enter town on Saturday. Such horrible violation of the Mosaic law should meet with the most condign punishment. The foundations of society will be undermined by such fiendish acts.

A Good Market.

[Galena Miner.]

Galena, as a market for wood, coal, corn, oats, hay and produce generally is the best market in Cherokee county, as regards both the quantity disposed of and the price realized. There is not a day when the streets are not lined with wagons loaded with the above mentioned commodities, and the market never seems to be over-burdened.

Robbing a Roadster.

[Stockton Record.]

Thursday evening a travelling man left his valise in a wagon in front of the Randall house for a few moments, and when he returned it was gone. The next day the valise was found lying near the creek, but the contents had evidently found egress through the side which was cut open. They consisted principally of underclothing and shirts.

As Bad as being a Captive.

[Atchison Globe, 22.]

Andrew Drake, a white boy who has been a captive for five years among the Comanche Indians, was put off a K. C. train opposite this city last night, his money having given out. Both his feet are frozen and he hobbled across the bridge to solicit aid. This was given him by kindly disposed persons about the city hall, and he went on this afternoon to join his people in Arkansas.

In the Midst of Sweetness.

[Ellsworth Reporter.]

Sweetly were they drinking in the words of love from the lips of each and dreaming of a happy future, when all of a sudden the happy pair found themselves in the decline of life in the bottom of a cellar on Douglass avenue, having made a leap in the dark. Sorely and sadly did youth and maiden rise from their unlooked for fall and wander homeward. It was Monday night and the secret is ours as regards the names.

The Central Branch.

[Atchison Globe.]

Superintendent Sargent, of the Central Branch, who returned last night from a trip over the road, believes that the connection with the St. Joe & Denver will be made between Waterville and Blue Rapids, thus settling all rivalry between the two places. There are two sloughs or "draws" running up from the Blue Valley that can be used to about equal advantage; one a little the nearest Waterville, and the other a little the nearest to Blue Rapids. It is not yet known which one will be adopted.

Has Changed His Mind.

[Pleasanton Observer.]

A fellow only has time to pen a two-line item without getting off the tripod these cold days, for there is so much warming between times. In summer we want to start a paper near Devil's Lake, in northern Dakota; but now we anxious to negotiate for the South Florida *Journal*, an exchange which talks about the effulgent rays of the December sun, about strawberries and cream, fishing and boat riding parties, house flies, mosquitos, bedbugs and other things incident only to the summer season with us.

Preparing to Skate.

[Pleasanton Observer.]

The few persons whose education in the skating branch has not been neglected are getting ready for an occasional enjoyment of that exhilarating pastime. In every northern village but Pleasanton old and young, stout and slim, long and short, engage in the healthful exercise of skating o'er the glistening ice; here very few other than the small boy know of the joys incident to racing over the frozen water at a breakneck speed, with an occasional lesson in astronomy thrown in for variety, and the adding of an extra backhead bump to confound phrenologists.

Death of an Atchison.

[Atchison Globe.]

Rev. David G. Lett died suddenly last evening at 7 o'clock, of heart disease, while sitting in his chair. He had been feeling poorly for a day or two, but was up and about the house, and his sickness was not considered dangerous. Mr. Lett was 68 years old, and came here from Detroit, Michigan. He has been an ordained minister for 38 years, although we believe he had given up preaching as a profession, being engaged with his son in the conduct of the barber shop. He was one of the best known and best educated colored men in the west, and was highly esteemed by all classes. Funeral from the First Baptist Church (W. T. Fleesonis) tomorrow afternoon at 2 o'clock.

Sure Way to Kill.

[Ellsworth Reporter.]

1. Put up no more buildings than you can occupy yourself. 2. If you should have an empty building to rent, demand three times its value. 3. Look sorrowful; be little; insult every new comer; give the cold shoulder to an underrate mechanics who tries to come among you. 4. Go abroad for your own goods and wares. By no means purchase from your own merchants and manufacturers even at the same price or less. 5. Finally, give a thorough finish to your work by working against your local paper. Be mean to every one connected with it; refuse to subscribe for or advertise in it; so that persons living at a distance will not know that any business is being done in your town; they may want to come and settle among you, or buy something from you, and that would give you trouble.

SUPREME COURT SYLLABI.

STATE OF KANSAS, SUPREME COURT, } ss.

No. 1024—T L Bond, S M Palmer, and C W Jones vs The Wood Sewing Machine Company, and James B McGonigal and T C Henry—Error from Dickinson county—Affirmed.

BY THE COURT, VALENTINE, J.

In an action on a penal bond, where the breach alleged was, that one of the defendants, who was the principal obligor, had failed to pay over to the plaintiff, who was the obligee, certain money, which the bond required should be paid, and it was shown by the petition and its exhibits that this money was merely a balance due on several items of account, all covered by the bond; *Held*, that only one cause of action was stated.

All the Justices concurring.

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

No 1,329, State of Kansas vs Michael Roark—Appeal from Butler county—Reversed.

BY THE COURT. HORTON, C J

1 Whereupon the trial of a defendant, charged with the commission of felony, an affidavit for a continuance is filed by such defendant, on account of the absence of witnesses, and the prosecution consents that on trial the facts alleged in the affidavit shall be read and treated as a deposition of the absent witness such affidavit cannot afterwards be impeached for want of diligence on the part of the defendant in procuring the attendance of such witness, or in taking his deposition as prescribed by law; nor by showing that the defendant had good reason to believe if the witness were present and gave such testimony, it would be untrue; nor by proving the non-existence of the witness therein named; and further, held, that such affidavit should be read and treated in all respects as the deposition of the absent witness.

2 A defendant in a criminal prosecution, is entitled, under the constitution, to compulsory process to compel the attendance of witnesses within the jurisdiction of the court, in his behalf.

3 Where material and necessary witnesses are duly subpoenaed in behalf of an accused, in a criminal prosecution, and such witnesses are within the jurisdiction of the court, held error to force said accused to trial and to conclude the trial, against his protest, before the return of the compulsory process issued to bring the disobedient witness into court, in the absence of any reason for it not being executed and returned.

All the justices concurring.

A true copy attest: C J BROWN, (L S) Clerk Supreme Court.

No. 1 029—George Brunner vs Nicholas Egly—Error from Atchison county—Reversed.

BY THE COURT. VALENTINE, J

1. E sued A and G in Atchison county for money on a promissory note. A and G both resided in Doniphan county, but E procured a personal service of summons on A in Atchison county first, and then procured services of summons on G in Doniphan county. A answered setting up that a judgment had previously been rendered against him on said note, in E's favor, and setting up that he signed said note as surety only, and asking that his rights be protected under section 697 of the civil code, and also asking that if judgment should not be rendered against A, that the action should be dismissed as to him, G. The court found on the trial that the plaintiff could not recover as against A, and dismissed A from the case; that A was principal, and G as surety; that A was insolvent; that there was then due on the note $1,009.87; that a judgment had previously been rendered on the note against A, which judgment was still in force wholly unsatisfied; that G had received no benefit from the note, and as a conclusion of law from the foregoing, found that the plaintiff was entitled to recover a judgment against G for said amount and costs. The court permitted the plaintiff to dismiss his action against A, but overruled a motion made by G to dismiss the action as to him. This motion was made on the grounds of the manner of said service of summons, and said dismissal as to A, and all the facts were shown on the hearing. The court rendered judgment against G in accordance with said conclusion of law. *Held* error; that the action should have been dismissed as to G, after the plaintiff failed to obtain judgment against A.

2. In no case can an action for money on a promissory note or other joint and several contract be brought outside the county where the defendant resides or may be summoned, by merely uniting with him as a co defendant some unreal or imaginary party against whom no judgment could be properly rendered. And if, in such a case, the defendant that was served with summons in the county where the action was brought, obtains a judgment in his favor, or if the plaintiff voluntarily dismisses his action as to him, it will be presumed that such defendant was not a real or proper party to the action, but that he was made a party merely for the purpose of suing the other and the real party, in a county in which he did not reside, nor could be summoned. Civil code sections 35, 60, Compiled Laws of 1879, page 608.

All the Justices concurring.

A true copy. Attest: C. J. BROWN. (L. S.) Clerk Supreme Court.

No. 1 037—D C. Gillespie vs. R M Thomas—Error from Osage County—Affirmed.

BY THE COURT. VALENTINE, J.

In an action to compel the specific performance of a contract, the plaintiff prayed for a judgment, ordering the defendant to execute to him a good and sufficient deed for certain real estate, and that the defendant and all persons claiming under him be barred of all interest in the property, and that on failure of the defendant to execute such deed that the judgment stand in lieu thereof and operate as such; and service of summons was made by publication in a newspaper upon the following affidavit, to-wit:

"William Thomson, of lawful age, being first duly sworn, deposes, upon his oath, and say: That he is one the attorneys in the above entitled cause for said plaintiff. That said defendant is a non-resident of the state of Kansas, and that service of summons cannot be had in said action upon said defendant within said state of Kansas. That said action relates to real property in said county of Osage, in the State of Kansas, in which property said defendant claims and has an interest; that the relief demanded (among other things) is the exclusion of said defendant from his interest to said real property, and further deponent saith not.

WILLIAM THOMSON."

And judgment is afterward rendered by default against the defendant and in favor of the plaintiff, in accordance with the prayer of the plaintiff's petition; and afterwards the defendant moves the Court to vacate said judgment and to set aside said service, because of defects in said affidavit, which motion the Court overrules; *Held*, that, although said affidavit is defective in not stating the plaintiff's cause of action more specifically and correctly, still, that it is sufficient.

All the Justices concurring.

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

No. 1,662—Henry T Green vs M L Bolkley—Error from Leavenworth county—affirmed.

BY THE COURT HORTON, C. J.

1. It is not necessary that the trial of cases involving issuing of facts shall be in order in which they are placed on the trial docket. Precedent cases may be continued or laid at the heel of the docket, or other definite dispositions made of them, and subsequent cases be then regularly taken up and tried.

2. If a trial judge refuses to settle and sign a true bill of exceptions in a case tried before him, any party tendering the same can enforce, by an action, the settling and signing of the bill, but the failure or refusal of the trial judge to settle and sign a bill of exceptions is no ground for the reversal of the judgment rendered in the case.

3. A party having a matter in litigation before a District Court, who relies upon the opinion or statement of an attorney, in no way connected or interested in his cause, as to the time precedent cases will consume in their trial, before his case can be reached, does so at his peril. If the opinion or statement of such attorney does not prove correct, then, although the party is surprised at the early trial of his case, he has no valid reason to complain.

4. A party who is suitor and attorney in a case pending in the District Court for trial upon certain issues of fact, and which has been assigned for trial on a definite day, must, in order to protect his rights, be present at the court during all the session on said specified day and at hours of the court every subsequent day, until there is a final disposition of the cause.

5. A defendant who was suitor and attorney in a case at issue in the district court, was absent when his case was called between 2 and 3 o'clock p. m at the re-convening of the court at the expiration of a noon recess. Soon after the case had been disposed of and after the court had entered upon the transaction of other business the said defendant came into court and demanded a trial. This was refused. He then filed a motion for a new trial. On hearing this was denied. It appeared that his absence, at the time was owing to a belief on his part that prior cases, appearing on the published list of causes assigned for hearing, would consume a great portion of the afternoon and that he, also relied on the statement of an attorney in the case pending before the court, at the noon adjournment, that such cases would consume an hour and a half upon the re-convening of court after dinner, and therefore, that it was not necessary for him to be present before 3 o'clock p m to attend to his case; held, As the case was called and disposed of in its regular order on the docket and as the trial court with a full knowledge of all the facts in the case, has refused to re-open the case and denied a new trial that this court cannot say, under the circumstances, that there was any abuse of discretion on the part of the trial judge, or such surprise as demanded the ruling of the court to be reversed.

6 A defendant, by not appearing at the time his case comes on to be heard on a regular call of the docket waives his right to a jury trial. (Sec. 39, civil code.)

7 On motion for a new trial, the misconduct of the prevailing party was alleged to consist of obtaining judgment in his favor by his own perjury. He testified orally in the court. Afterwards ex parte affidavits were filed pro and con as to his testimony. Such affidavits were conflicting. The trial judge denied the motion. Held, This court under the showing made, will not disturb the decision of the trial court.

All the Justices concurring.

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

No. 1,690—The State Bank of Council Grove vs. Susan E. Rude, Administratrix, &c—Error from Morris County—Reversed.

BY THE COURT. HORTON. C. J.

1. R sued a bank for the wrongful conversion of a promissory note deposited with it by one S, who transferred his claim against the bank therefor to R. The bank answered that it received the note for collection from S; but while it was in its possession it sold and disposed of it for its actual value and held the proceeds to apply to the satisfaction of certain debts due and payable by S. to the banks which debts, it alleged, were in excess of the note, and were due at the time of the sale of the note, and at the assignment of S. to R. To the answer, R. replied by a general denial. Upon the trial, the Court found that the bank had not wrongfully converted the note, and rendered judgment in favor of the bank for costs. Afterwards, R. brought a second action against the bank for money had and received to the plaintiff's use, but being in fact an action for the recovery of the proceeds of the sale of said note. The latter pleaded the former judgment in bar. R demurred to the answer. The Court sustained the demurrer and gave judgment in favor of it. *Held*, Error, as the answer set forth a good defense. The matter being *res adjudicata*.

All the justices concurring.

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

No. 1,632—Sarah Flemming and others vs John W Bale—Error from Allen county—Affirmed.

BY THE COURT VALENTINE, J.

On the 18th day of January, 1877, an administrator filed in the office of the Probate Court of Allen county a petition, asking for authority to sell certain real estate belonging to the widow, or so much thereof as might be necessary (after exhausting the personal property), to pay the debts of the estate, and setting forth sufficient reasons therefore. The Probate court then (after entering certain recitals) made the following order, to-wit:

"Whereupon it is ordered that said administrator cause notice of the pendency of this proceeding and of the time of hearing the same by publishing a notice in the Humboldt *Union* two consecutive weeks, and it is further ordered that the said petition be set for hearing on the 20th day of January, at one o'clock p. m.

The "Humboldt Union" was a weekly newspaper published in said Allen county, and the Administrator published a notice therein on January 20th and 27th, 1877, stating, among other things, that the petition would "come on for final hearing on the 20th day of January, A. D. 1877, at the hour of 10 o'clock a. m., at the Probate Court room, in the county aforesaid." The Probate Court heard said petition on January 29, 1877, and ordered that said property, or so much thereof as might be necessary, be sold "at public or private sale for cash in hand or on deferred payments, not to exceed two years, with interest," &c. The Probate Court at the same time appointed the appraisers, who were disinterested householders, and competent in every other respect to act. After qualifying they appraised the property—it being a certain quarter section of land. They appraised the east half at $996 65, and the west half at $900. The Administrator then sold the property at private sale for $960—that sum being $150 more than three-fourths of the appraised value. The Administrator then made a return of his proceedings to the Probate Court: and the Court, after carefully examining the same, confirmed the sale, and ordered the Administrator to make a deed for the property to the purchaser, which the Administrator did, and the purchaser afterwards took possession of the property under such deed. Afterwards the heirs at law of the Administrator's intestate commenced this action to eject the purchaser from the premises. *Held*, that the action can not be maintained; that the proceedings of the Probate Court and said sale and deed are valid; that none of the defects or irregularities in the proceedings of the Probate Court or in the appraisement or sale of said property, are sufficient to deprive the Probate Court of jurisdiction, or to deprive its jurisdiction, or to render its proceedings, or said sale or deed, void.

All the justices concurring.

A true copy attest: C. J. BROWN, (L. S) Clerk Supreme Court.

No. 1,642—R. E. Heller vs. the Board of County Commissioners of Shawnee County—Error from Shawnee County—Reversed.

BY THE COURT: HORTON, C. J.

1. Clerks of District Courts are entitled to receive from their respective Counties for their services in furnishing certified statements of the attendance and mileage of jurors and witnesses of the District Courts to the County Boards of such Counties, the statutory fee of five cents for each name. Sec. 4, chap. 32, Comp. Laws 1879; sec. 21, chap. 39, Comp. Laws 1879.

2. Counties are not liable for the services of such officers for their entries on their journals of the orders of the District Courts in opening and closing their daily sessions. Such services, and others of like kind, in the absence of any statutory regulation for their payment, may be regarded as incident of their official positions.

All the justices concurring.

A true copy. Attest, C. J. BROWN, [L S] Clerk Supreme Court.

The National Land Company vs Thomas Perry et al—Error from Dickinson county—Affirmed.

BY THE COURT: BREWER, J.

1 While contracts for the sale of land, in which time is made of the essence of the contract are valid and enforceable at law or in equity; yet, where the circumstances are such that it would be grossly inequitable to enforce a forfeiture, courts of equity will, upon slight grounds therefor, relieve a party therefrom, and enforce the contract as merely one of sale. And, *Held*, that under the circumstances of this case, the District Court committed no error in refusing to enforce a forfeiture.

All the justices concurring

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

STATE OF KANSAS, SUPREME COURT, } ss

I, C. J. Brown, Clerk of the Supreme Court of the State of Kansas, do hereby certify that the foregoing is a true and correct copy of the syllabus in each of the above entitled cases, as the same appears on file in my office.

Witness my hand and official seal, hereto [SEAL] affixed, at my office in Topeka, this 19th day of December, A. D. 1879.

C. J. BROWN, Clerk Supreme Court.

STATE SCHOOLS.

Interesting Statistics, Compiled from the Annual Report of the State Superintendent.

TOPEKA, Kan, Dec. 24.—State Superintendent Lemmon has issued a circular, taining a summary of the common school statistics for Kansas for the year ending the 31st of last July. From this circular these facts are gleaned:

Kansas has a school population of 311,310; increase for the year, 44,735—or 33 per cent. more than for any other year of the State's history. This increase of the school population represents an immigration to the State of from 160,000 to 175,000 people in one year.

During the year the school enrollment included about 30,000.

The average daily attendance was about 20,000.

The average school term for the State twenty-four weeks; this being a half month more than ever before.

Sixty-six normal Institutes were held last year, for a term from four to six weeks, in which 6,050 of the 6,707 Common school teachers of the State received instructions.

The school revenues for the year amounted to $1,878,563 02 of which $1,052,699.16 was expended for teacher's wages.

Four hundred and fourteen new school houses were built during the year, at a cost of about $300,000.

At the close of the last fiscal year, June 30th, 1879, the permanent school fund of the State in the State Treasury was $1,601,631.92, nearly all of which was invested in Kansas State and school district bonds, bearing from six to ten per cent. interest.

HEAVY RAINS.

The Ohio River on a Big Rise. Together With Its Tributaries.

CINCINNATI, Dec. 24—The heavy rains of yesterday and to-day have been general all along both sides of the Ohio river, and the prospects are that there will be almost a flood. The river has gone up here nine feet in the last twenty-four hours.

In Kentucky the rain of to-day is said to be the heaviest in twenty years, and much damage is done along the Licking river by the sudden rise

The Little Miami river is higher than it has been for a long time.

The bridge over Walnut creek, on the Dayton & Southeastern Railroad, was washed out by the sudden flood.

Reports from points up the Ohio river indicate heavy rains everywhere.

The Big Sandy river has risen ten feet in twelve hours, and to-night it is rising a foot an hour. Large quantities of staves, lumber and logs that were collected on the bank for shipment are caught by the sudden rise and are floating down the river, entailing much loss.

Reports from the head waters of the Ohio indicate a rapid rise there, so that what is known as the "coal boat stage" at Pittsburg is assured for to-morrow, letting out the largest coal vessels that are used.

The rain here is beginning to freeze as it falls.

CHAPTER OF CASUALTIES.

A Train Wrecked on the C. & A.—Loss of Life.

ST. LOUIS, Dec. 26.—The passenger train on the Chicago & Alton Railroad, which left here last night for Kansas City, ran off the track between Kane and Berdan stations.

The following dispatch from Superintendent Stager, contains all the information of the accident yet received by the railroad officials here:

BERDAN, Ill., Dec. 26—The Kansas City night express was thrown from the track two miles west of here by a broken rail. Twenty-five persons were injured, most of them slightly. A porter of the sleeper and Col. L. P. Bond were killed. The smoking and reclining car burned. The injured passengers were taken to Jacksonville and placed in the hospital, there being 10 cared for. The accident occurred to the train which left here at 9:50 last night for Kansas City, and happened at 10:55 p. m.

The train consisted of a baggage, smoking, chair car and sleeper. There was but one passenger in the sleeper. The chair car was well filled and here was where the injury was done. As soon as the car ran off the stove upset and that end of the car was almost instantly a blaze. The passengers, many of whom were injured, rushed to the other end of the car to escaped, but finding the door locked a panic seized them, and for a few moments the scene was a terrible one. Finally the door was broken and all got