

## CHANGE OF VENUE.

### Upon Motion of State Anderson Murder Case Removed to Ross County.

### Opinion of Judge Newby in Full Setting Forth Clearly and Succinctly the Means for Granting the Motion.

The Anderson murder trial, an account of which appeared in our last week's issue, came to an unexpected close on Friday morning. On Thursday morning the state made a motion for a change of venue, upon the ground that a fair and impartial trial could not be had in this county. The motion was supported by affidavits of Fred and Ben Warning, brothers of the slain girl. The motion was contested by the defendant and affidavits in opposition thereto were filed by several persons, which stated that they thought a fair and impartial jury could be secured. James Anderson, a brother of the defendant, also filed an affidavit setting forth that it would entail great hardship upon the defendant to change the trial to another county, as the defendant had already used up practically all of his own means and that of his friends.

Col. D. Q. Morrow and Prosecutor Smith spoke in favor of the motion and Col. H. A. Pavay and Mr. Sloane in opposition thereto. The state urged that it was apparent from the number of jurors examined, about one hundred, and only seven having been accepted that it was impossible to secure a fair and impartial jury in this county.

The defense argued that if there was any prejudice or bias by the people in this case it was against the defendant. That a removal in the case would entail great financial hardship upon the defendant. That he was entitled to a speedy trial by the people of the county when the offense, if any, had been committed. That if the people were prejudiced against the defendant it was not the part of the state to complain. That the request of the state for a change of venue was an unusual and extraordinary procedure and should not be granted upon the showing made by the state.

Judge Newby, in granting the motion, said:

Whatever question has heretofore existed in the minds of the profession respecting the power of a trial court to grant a change of venue in a criminal case on the application of the state is now settled by the decision of the supreme court in the case of the State ex. rel. vs. Durlinger 73, O. S. 147, upholding such power in the court. The language of the statute (Section 7263) is broad enough to extend the right to both the state and the defendant, and those who doubted the right of the state to the favor of the statute based their opinions upon a supposed conflict of the statute, when invoked by the statute, with Section 10 of Article 1 of the Constitution, guaranteeing to an accused the right of trial in "the county or district in which the offense is alleged to have been committed."

Our Supreme Court, though, decided in the case just referred to that no such conflict existed.

The statute, which it is now settled, is open to both the state and the defendant, reads as follows: "All criminal cases shall be tried in the county where the offense was committed, unless it appear to the court, by affidavits, that a fair and impartial trial can not be had therein; in which case the court shall direct that the person accused be tried in some adjoining county."

This statute, as I construe it, does not as argued by counsel for the defendant, require the state to show that either there exists in the county a feeling of hostility against the prosecution, or a feeling of sympathy or bias toward the defendant. But it will be sufficient if it be made to appear to the court in some proper manner that a condition exists, or can readily be created, rendering the task of obtaining a jury extremely difficult and expensive, and in the end leaving it in doubt whether all the members will be absolutely impartial and free from bias, thereby increasing the chances of a mistrial.

I suppose it will not be contended on the part of the state that it is wholly impossible, in course of time, to bring in from amongst the electors of the county and qualify the number of men required to make up a jury in this case, nor on the part of the defendant that an unreasonable amount of time and expense should be employed to accomplish that purpose.

It seems to me that this so clearly true that no disagreement on the point

will arise between lawyers. And if this be true, it follows that the party applying for the change of venue is not required to show that feeling runs so high that men will perjure themselves to get selected as jurors, but only that by reason of knowledge of the case possessed by the citizens generally, or that for other reasons the work of securing men whose examinations will be such that both parties can be compelled to accept as jurors will be so slow and tedious as to unreasonably prolong such work and add to the cost of the trial.

An indispensable pre-requisite to a fair and impartial trial is the procuring of a jury that is not only fair and impartial, but intelligent as well. A juror lacking intelligence is liable through ignorance to do an injustice, while one who is prejudiced may be expected to do injustice by reason of his bias. Juries should be composed of representative citizens if their verdicts are to command respect and confidence. So that if I am correct in the conclusions which I have announced, the question for me to determine now is narrowed down to this: Ought the court to believe upon the showing made, that not without unreasonable delay and labor and expense, if at all, can the panel for the trial of this case be filled with fair, impartial and intelligent men, thereby assuring the state and defendant alike the enjoyment of the right guaranteed to both by the constitution of a fair and impartial trial?

In determining this question I am not restricted to the affidavits and the language there used. The Supreme Court has very wisely decided that a judge may not close his eyes and ears to what occurs in his presence during the course of a trial over which he presides, but he should take cognizance of those things which fall under his own senses during the trial and make use of them in conducting the trial. Therefore, the affidavits submitted must be weighed in connection with what has taken place under the notice of the court in the work of empanelling the jury. Now, take the affidavits filed by both parties. In so far as they have a competent bearing on this question, they consist principally in expressions of opinions of the affiants as to whether a jury can be secured in this county. These opinions will have weight with the court in proportion as they harmonize with impressions forced upon the judge through the medium of his senses, and as the affidavits may have means of forming accurate opinions. Three well known citizens of the town make affidavits confined solely to their belief that out of another venire of one hundred a jury could probably be secured. For these gentlemen I have the highest personal respect. I do not question the honesty of either of them in any statement contained in their affidavits. Indeed, I have such confidence in their candor that I doubt not that they would admit I am in a much better position than they to say what the chances of getting a jury are.

It may be helpful in determining this question to look at what we have accomplished so far, and to consider what we may have to do to get a jury.

More than one hundred men have been sent for and ninety-six of these have appeared and been examined. Of this number fourteen have passed for cause, seven of whom were challenged peremptorily and the remaining seven have been accepted. If the five jurors necessary to complete the panel were all that we would need to qualify, the prospect of securing a jury would be much more encouraging. As, under the law, twenty jurors—four by the state and sixteen by the defense—may be challenged peremptorily and without cause, it follows that we may be compelled to qualify thirty-two jurors in order to complete the panel and satisfy the peremptory challenges of the parties. So that instead of our being in need of only five more men, we may need to secure eighteen more, fourteen being secured out of the first one hundred brought in. In other words we have not been able to secure out of the first list of more than one hundred men one-half the number of men we may require, and if the proportion established keeps up it will require approximately one hundred and fifty more men from whom to select the remaining jurymen. The jurors I have sent for have been taken from the portion of the county farthest away from the scene of the occurrence, and a large portion of those drawn from the box by the officers for the first venire were from the same section of the county and future venires would be filled therefrom because it is the more favorable by reason of the distance from the place of the homicide to obtain jurors. Since this part of the county has been so thoroughly picked

(Continued on Page Four.)

## REMINISCENCES

### Of Ye Olden Times Furnished by One Who Grew Up in a Pioneer Home.

### Incidents Illustrating Customs of the Early Settlers of the County Are Entertainingly Recounted.

(Continued from last week.)

Towns are necessary for the farmers and farmers are necessary for the town's prosperity. And generally speaking it would be preferable for those "to the manor born," to be content with the sphere in which Providence has placed them, unless they find their inclinations are entirely different. Then as Abram said to Lot, "Let there be no strife for we be brethren." "So Abram came and dwelt in the plain of Mamre and Lot dwelt in the cities of the plain."

And as "we are brethren" why should townspeople discriminate against their country cousins? There should be a more friendly and fraternal feeling cultivated between them than oftentimes exists. Townspeople should more frequently visit farmers in their pretty and oftentimes elegant homes and insist upon them returning the visits and should occasionally attend their churches and visit their schools and thus show their interest in them, and many would doubtless be surprised to see how well their young men and women compare with those of towns, (with supposedly far greater advantages) in looks, in neatness of attire, in good manners and in education.

I feel pretty certain that from the beginning of these articles, my readers, both in country and in towns, have thought that I was in love with the country and with farm life and was trying to make a plea for it. I want you to not only think so, but to know that such is the case. To me it was a source of grief when I saw the statement that within the last thirty years the population has decreased thirty per cent in the Eastern States. (In my article a few weeks back, a typographical error made me say in the United States) and that there were at least 1200 abandoned farms there. To my mind, out of that number, could be found many a disappointed and unhappy one, especially among the dear children who had been used to so much freedom.

I feel like exclaiming with the poet:

"Oh, know he but his happiness; of men  
The happiest he! who far from public rage,  
Drinks the pure pleasures of the rural life  
Sure peace is his! a solid life, estranged  
To disappointment and fallacious hope."

The very soul of poetry, it seems to me, is more often found in descriptions of rural life and in the delineation of the beauties of nature than in any other. How beautifully James Whitcomb Riley,

"Has sung of the humble ways,  
And people, others passed unnoticed by,  
And has in faithful manner,  
In old art's long galleries hung  
Perfect pictures of God's mountains,  
And His rivers and His sky."

Another poet speaking of him, says:

"Men may praise the lines of Milton,  
And the thoughts that Keat let fall;  
But I love the human feeling,  
That from Riley's lyre sings;  
And the poet of the cornfields,  
Will one day be crowned by all,  
As the Master, God inspired,  
To make us love the lowlier things."

It is a pleasure to know that the tide seems to be returning since farming is becoming so much more remunerative as farmers are learning to work more scientifically. And since they are able and are willing and strive to make farm work easier and more pleasant, and to beautify their homes and educate their children to the extent of their ability.

Many in Highland county, as in other counties of our state, are trying to restore to some extent the beautiful forests which have been destroyed, by the planting of trees. Principally, so far, locust, as they are of rapid growth, which will not only add to the beauty of the landscape greatly, but will prove to be very profitable also, as they are so highly prized for fence posts.

The question of government making it compulsory for farmers to set out and cultivate and carefully guard forest trees, has become one of the leading questions of the day, as it is considered that large forests are necessary for obtaining the best results in agriculture, and to keep our rivers and creeks flowing. After a little more agitation of the subject, the farmers will see the reasonableness of it, and will enter into the

(Continued on Page Eight.)

## GUATEMALA

### Frank Gillette Revisits His Old Home After Long Residence in Central America.

### Interesting Description of the People and Customs and Changes of Government Related by Him.

Frank Gillette, of Guatemala, has been renewing old acquaintances here for several days. He is one of the largest farmers in this Central American Republic owning a large plantation of 450 acres. Until the last few years he has been engaged in the coffee business, but is now doing general farming, and is the only farmer in that country that uses American methods and machinery. He has lived in Guatemala a longer time than any other foreigner.

We called on Mr. Gillette at the Hotel Dillon Tuesday afternoon and found him taking things easy in the lobby. He has all of the appearances of the prosperous and successful American and like most old Hillsboro boys who have left home, has made good in his chosen line in his new field. He speaks very highly of Hillsboro and Hillsboro people and says that some of the happiest years of his life were passed in this community and that he has a very warm spot in his heart for Hillsboro and its people.

This is his first visit here in 23 years and he is thoroughly enjoying again meeting his boyhood friends and visiting the familiar haunts of his youth. In reply to our inquiries in regard to his adopted home, he said:

Guatemala, which lies just south of Mexico, is the only Republic in Central America. It has about 1,600,000 inhabitants, of whom about 600,000 are Indians, 60,000 pure Spanish and the balance a mixture of the two races. Inter-marriage being very common among the people of the two races. Spanish is the national language.

The climate is very healthful and we have only the two seasons the wet and the dry. The temperature remaining the same the year round. The wet season will commence in a short time now about the first of May and will rain almost every day until the first of November. I have seen more rain fall there in the course of three days than will fall here in the course of a year. But the soil being of a volcanic character it soon dries out. Guatemala City has an altitude of about 5000 feet. It is growing very rapidly and now has a population of about 100,000 people.

The main products of the country are coffee, sugar and rubber and most of the people are engaged in one of these occupations. The soil is very fertile and will raise fine crops of all kinds.

A large portion of the country just south of Mexico is almost entirely undeveloped. I think this is the best part of the country. There are large forests of mahogany, spanish cedar, rubber and dye wood in this section. It is very well watered and any one who is willing to undergo the hardships that necessarily follow the opening of a new country, would have a golden opportunity to make his fortune there. He must of course have tact, push and an ability to get along with the natives and not be discouraged by rough living. The raising of chicle out of which chewing gum is made is developing into quite an industry there.

Manuel Estrada Cabra is now president of the Republic. He is a man of ability and high character and is giving the people an honest and efficient administration of affairs. His administration is deservedly popular with the people and I think that the present peaceful and prosperous conditions will continue throughout his term. Both the government and the people are very friendly to all foreigners and especially so to Americans. If Guatemala ever loses its independence, which is not probable, I think it will become a part of the United States as the people and the government look upon Uncle Sam as their best friend.

There are many very wealthy people in Guatemala and many swell social affairs take place there. The women dress elegantly and expensively and the wealthy society women have most of their clothes made in Paris.

The people are addicted to the use of intoxicating liquors and I believe that Guatemala is the wettest town in the world.

It is a great country, inhabited by pleasant people and opportunities for

success are many. Any young man who is willing to work hard and take a few hard knocks without flinching certainly could not find a better field for his talents than the undeveloped part of Guatemala.

I regretted very much my inability to attend the Home Coming last fall. I had all of my plans made to come but a few days before I intended to leave a revolution broke out and I felt that I had better stay at home and look after my affairs.

Mr. Gillette has come to the United States on a business trip and stopped off here at his old home for a few days visit before going on to New York City.

### Mistaken Identity.

The trial of Lon Delaney and John Hancock for robbing John Foster of one quart of whisky last Friday was held before Mayor Elton on Tuesday. The defendants were discharged.

John Foster, an old soldier who resides on Squire Underwood's farm, north of town, got his pension voucher from the government last week. He came here Friday, the 13th, and had his voucher cashed. At once left for Fayetteville when, after taking a few drinks of beer he purchased two quarts of whisky, one for which he paid 75 and the other 50 cents. He returned to Hillsboro and started to walk home. He was followed by two colored boys who asked him for a drink several times. He refused to give them one. When he got just the other side of the Saunders nursery the colored men slipped up behind him and one of them grabbed the quart for which he paid 75 cents, and both then took to their heels. Mr. Foster followed them, but lost sight of them at the Fair Grounds. He then came to town and told his troubles to a policeman. He identified Delaney and Hancock as the men who had followed him and taken his whisky.

The defendants denied having taken the whisky and proved by many people that they could not have been in the neighborhood when the offense was committed. The alibi of the defendants was complete and Mayor Elton discharged them.

Mr. Foster has our sympathy for his loss. If it had been the 55 cents quart the people who stole it would have deserved sympathy. Mr. Foster should have known better than to have made such valuable purchases on Friday and the 13th day of the month. We suppose that his favorite song in the future will be, "All Gons Look Alike to me."

### Daniel Cummings.

Daniel Cummings, a prominent farmer of near Pisgah Church, died last Friday after a lingering illness. He was an old soldier and on the day of his death his family received notice that his pension had been increased to \$30 a month. He early united with the Methodist Church and was always a faithful and consistent Christian worker. The funeral services were held on Monday and interment was made in Pisgah cemetery. The funeral was largely attended. A widow, four sons and one daughter survive him.

Death has been a frequent visitor in this family recently, one son, Joel, having been scalded to death last June, and his son, Wesley, and daughter, Mrs. C. M. Rhoads, having died in the last four months.

## STREET EXPOSITION

### Of Live Stock and Agricultural Products May Be Held in Hillsboro

### Under the Auspices of the Business Men's Association if the Citizens Give the Project Proper Support.

The Business Men's Club expect to have a street exposition in Hillsboro this fall. As the name would indicate the exposition is to be given in the streets within the business section of the town.

The county fair, which in past years gave the farmers an opportunity to display their products of all kinds, is now practically an unknown thing. The exposition here this fall, it is hoped, will have all the good things of the county fair, and many new features with all of the bad eliminated.

The present plan is to have an exhibition of fine horses, cattle, sheep, swine and poultry, and also all kinds of agricultural products that are raised in this county. Liberal premiums will be offered for the best in each department. Highland county is already famous for its fine cattle and swine, and we believe that with the proper interest displayed by the farmers that the people will be treated with the sight of as fine display of agricultural products as can be seen anywhere in the country. If we have the best in one line, why not show that we have the best in many lines?

Another feature of the exposition, which we are sure will appeal to every one, will be the music. The intention is to have one of the best bands in the state as an attraction. Probably "Smitties" famous military band, which so delighted all who heard it at the Home Coming and Centennial last fall.

No one who was present at the Home Coming could help from seeing its beneficial effects to the town. It developed a new feeling of good fellowship and good will among our citizens. Gave the town and its business the best advertisement it ever had. Made us all aware that we had a better town and better people in it than even our most optimistic citizens had believed. Awakened some of us who were inclined to fall asleep and made us all proud to be able to claim Hillsboro as our home.

The exposition this October will be under the same management as that which made the Home Coming and Centennial such a success. This assures the same capable, energetic and efficient direction and must remove all doubt from the minds of even the most pessimistic that it will be an unequalled success.

Let every one by word and deed from this time on at every opportunity do his part towards advancing this laudable enterprise. If you think there is no opportunity make one.

To make this the success it should be means that the people of Hillsboro must get together and work. Do your part.

Absolutely Pure

From Grapes, the most healthful of fruits, comes the chief ingredient of

# ROYAL BAKING POWDER

The only baking powder made from Royal Grape Cream of Tartar

Costs a little more than the injurious alum or phosphate of lime powders, but with Royal you are sure of pure, healthful food.