Strayed or Stolen.

FROM M. HANLEY'S RANCH, ABOUT Aug. 10th, one bay horse, five years old, about 15½ hands high, star on forehead, white saddle marks, one white hind foot. A liberal reward will be paid for his recovery.

J. J. COMSTOCK.

4w.

NOTICE.

NOTICE is hereby given to shippers and consignees to or from Crescent City, that the Crescent City Lighter Company will not be responsible for any damage to goods or freight from and after this date.

WILLIAM SAVILLE.
Agent for C. City Lighters.

Crescent City, May 26th, 1869. ja5w4.

Oregon Sentinel.

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Legal Tenders received at current rates.

OVER THE WAY.

BY E. CORBET SMITH.

Gone is her child purity,
Out from the golden day;
Fading away in the light so sweet,
Where the silver stars and the sunbeams meet,
Paving a way for her waxen feet,
Over the silent way.

Over the bosom tenderly
The pearl white hands are pressed;
The lashes on the cheeks so thin,
Where the softest blush of the rose has been,
Shutting the blue of her eye within
The pure lips closed in rest.

Over the sweet brow lovingly
Twineth her sunny hair;
She was so full that Love sent down,
From his heavenly gems that soft bright crown,
To shade her brow with its waves so brown,
Light as the clinging air.

Gone to sleep with the tender smile
Frozen on her lips,
By the farewell kiss of her dewy breath,
Cold in the clasp of the angel Death,
Like the last fair bud of a fading wreath
Whose bloom the white frost nips.

Reclined under your shady leaf
Hid from the sunny day,
Do you miss the glance from the eye so bright
Whose blue was heaven in your timid sight?
It's beaming now in the world of light
Over the starry way.

Hearts where the darlings head hath lain,
Held by love's shining ray,
Do you know the touch of her gentle hand
Doth brighten the harp in the unknown land?
O, she waits for us with the angel band
Over the starry way.

Supreme Court.

Important Decision---Constructive Mileage Disposed Of.

SALEM, Sept. 21, 1869.

L. Howe, appellant, *vs.* Douglas county, respondent. Appeal from Douglas county.

The plaintiff, appellant, as Sheriff of Douglas county, from August 1, 1866, to July 1, 1868, averred that he performed certain services for which that county were liable to pay him, and set forth his claims thus:

Writing 84 notices for collection in each precinct, for the years 1866-7	$ 21 00
Posting the same	42 00
Mileage to and from, posting the same	445 20
Mileage to and from each precinct, to collect taxes for the years 1866-7	142 00
Serving venire of the 3 panels of jurors for May term Circuit Court 1868	45 00
Writing notices of the same	7 75
Mileage on same	67 60
Return on same	7 75
Mileage for serving subpœnas on 32 witnesses before grand jury	83 40
Mileage in serving 42 notices on judges of election, at the June election, 1868	331 00
Mileage in posting 42 notices of election for June election, 1868	331 80
Total	$1,536 00
And admitted a payment of	291 60

The answer denied any services for the county, except as stated in answer, thus putting in issue each averment of the complaint. It admitted service of venire of one panel of jurors, and alleged payment therefore in the sum of $15. For serving said venire for May term of court 1868, writing notices of same, return and mileage the defendant paid plaintiff all he was entitled to, $50 25. For subpenaing 32 witnesses for grand jury full payment is averred in the sum of $43. For serving 42 notices upon judges for June election, 1868, a payment is averred in the sum of $98 80, which defendant alleges "was accepted in satisfaction of service" by plaintiff.

For serving 42 notices of election, a similar payment of $93 80, and acceptance is averred, and the defendant declared that all the mileage for serving said notice of election, and upon judges, did not exceed 1,976 miles, and that the amount paid therefor fully discharged the same.

No replication was filed.

Upon the trial, the issues tried were submitted to the jury for special findings, and their verdict was as follows:

We, the jury, find that the plaintiff actually traveled as follows:

	Miles
For collecting taxes for 1867	315
For serving notices upon Judges of election (total)	397
For serving notices on one panel jury, May term, 1868	204
Posting notices (tax) 1867	309
Total number of miles actually traveled in performing all the above mentioned services	1,134

We, the jury, find that the plaintiff traveled actually and constructively, as follows:

	Miles
For collecting taxes for the year 1867, and serving notices on judges of election for 1868	4,484
Serving notices on one panel of jury for May term, 1868	1,412
Posting tax notices for 1867	4,420
Total number of miles as actually and constructively traveled in performing the above service	10,316

(Signed) WM. VICKERS, Foreman.

Upon this verdict the Court found the law to be with the defendant, and gave judgment against the plaintiff for costs, etc.

Plaintiff appealed from that judgment, setting forth as the grounds of error, in his notice of appeal—

"1. The Court erred in refusing to admit the evidence offered by the plaintiff as to the writing and posting of notices for the collection of taxes, as appears by the bill of exceptions filed and made a part of the record in said cause.

"2. The Court erred in rendering a judgment against plaintiff, in favor of defendant, for its costs and disbursements.

"3. The Court erred in not rendering a judgment in favor of plaintiff, against defendant, for the sum of $740 60."

Willis and Watson for appellant. Strahan & Burnett for respondent.

WILSON, J. As the appellant filed no bill of exceptions, we must confine our examination of this case to the second and third ground alleged to have been error; and, in fact, from the verdict of the jury, it seems that the only issue tried was whether the appellant was or was not entitled to constructive mileage for certain alleged services. As in the case of Crawford *vs.* Abraham, 2 Ogn., 163, this Court is to give a construction to certain sections in the code, and thus establish a certain rule, which shall operate alike in the different counties in this State. We are aware that great differences of opinion exist as to the true meaning and operation of such sections, and that the different county courts have applied the law in their varying discretions.

This case exhibites but a few of the questions that have arisen in the different districts under the fee bill, and we regret that we cannot now give a full construction to that law, which could cover all those matters. The sections mainly calling for construction here are these:

Sec. 14, p. 738: "Every officer or person whose fees are prescribed in this act, who shall be required to travel in order to execute or perform any public duty, in addition to the fees hereinbefore prescribed, shall be entitled to mileage at the rate of ten cents per mile, in going and returning from the place where the service is performed."

Sec. 15, p. 739. Mileage for any service by Sheriffs shall in all cases be computed from the county seat or place of holding court, in the county in which the officer performing the service resides, &c.

Sec. 31, p. 903. That the Sheriff of each county shall be the tax collector thereof.

Sec. 32, p. 904—*proviso*. The Sheriff, before entering upon the duties of collector of taxes, shall execute an additional bond in such sum as the County Court of the county may direct.

Sec. 33, p. 903. It shall be the duty of the Sheriff upon receipt of the tax roll from the County Clerk, immediately thereafter to give notice by posting up written or printed handbills, three in each precinct within his county, to the effect that he or his deputy, will attend at the usual place of voting in each election precinct in his county for the purpose of collecting taxes, &c.

Sec. 35, p. 905. The Sheriff shall be allowed three per centum on all taxes collected by him, &c., which percentage shall be paid by the county.

It will be seen that sections 14 and 15 cited, undertake to declare the persons to whom mileage shall be allowed and the rate thereof, and the manner of compensation thereof as to the beginning and ending of travel. There is no general provision found elsewhere in the Code applicable to the mileage of a person whose fees are not named and fixed by chapter 18, in which two sections are found. Other laws either provide specially for such compensation, or by their silence lead to the conclusion that none was to be given.

By section 31, cited, a new duty is imposed on the person who may happen to be Sheriff; he is made tax collector—is compelled to give a new bond, wholly different from his official bond as Sheriff—and nothing is said in chap. 18, commonly called the fee-bill, as to any fees as such tax-collector. His office was created at the same time with the passage of the fee bill, but made no reference to it, and under said section 31, he has to perform certain duties invoking the necessity of traveling. That duty, however, abridges the necessity for far more extended journeying in that, by posting such notices as are required, the tax-payers are obliged to wait upon him in paying their taxes, instead of his waiting upon them. Section 35, as cites, provides the compensation which the tax collector is to have, and the act of which it is a part undertakes to fully define the duties and liabilities of such officer. We think it was intended by the Legislature that the allowance of compensation should cover all the expenses and labor he might incur or perform in collecting taxes. He is not in such capacity, a *person* included in and provided for in sec. 14, of Chap. 18. The Legislature provided that by a less amount of travel he could obviate the necessity of a greater, and by a gross amount of percentage indicated their intention of making that a full compensation. Upon the first and last points in the special verdict we think the Court below found correctly as to the law.

The question as to posting notices of election does not seem to have been submitted to the jury, probably from inadvertance; for, if the duty of serving notices of appointment upon judges of election could carry mileage, certainly that of posting notices of election in each precinct is equally meritorious. Our decision, however, of the one will be an indication of the construction on that point, upon which County Courts may hereafter act.

Sec. 14, giving the right to mileage, applies its privileges to witnesses and Sheriffs alike. Their fees are contained in the same act, and similar cases cases should have similar allowances. This Court held in 2 Ogn., 165, our rule to be thus: "The claim for disbursements must be for the number of miles actually traveled, and the number of days in actual attendance as a witness only," and as a rule still further delineating the rights of a witness, that "in two or more cases, between the same parties, at the same term, a witness would be allowed but single mileage and attendance &c." The full force of these rules does not apply here, but the intention there manifested is plain, that the claim must be for the number of miles actually traveled, and serves some purpose in guiding our findings here.

Sec. 14 we think means this if in executing a public duty an officer, of that class of persons provided for, must necessarily travel any distance, he is to be allowed ten cents per mile for his actual going to and returning from the place where he executes that duty. And we think that section 15, read in connection with section 14, provides in the case of the Sheriff, that no matter where he may be when a process is put into his hands, he may in estimating his mileage count from the county seat. This evidently arises from the fact that his office is there by law, and he is supposed to be present there ready for any business connected with that office. That is his official home, and the Legislature intended his official travel should begin there.

Applying this construction to the case under consideration, the notice to the judges in each precinct is required. It is one act in which the county is the sole party made liable. In fact the notice to be served is but a single paper on which the returns must be made. While in the precinct the Sheriff is where the three persons live who are to be served, and it is supposed he executes his duty speedily and carefully. He travels but once, with a single paper in his possession, sent by but one party and following the spirit of our ruling, as cited, we think the law does not intend to pay him for labor which he does not perform. The services of no one can be required without just compensation, but unless plainly provided for, that which requires no service, no outlay of labor or expense, is not a claim upon which we ought to give an unusual construction to the law. We think the Sheriff could claim his mileage for serving the notice belonging to or necessary to be served in each precinct from the county seat to the residence of the farthest one named in such notice to be served. No evidence is here to show other than the truth of the finding of the jury as to the actual number of miles traveled by appellant, and certainly the amount alleged to have been paid him by respondent more than covers the claim due upon verdict.

The jury very properly found that the appellant served a venire of one panel of jurors, and found the miles actually traveled in executing that service, and from that finding we think the court paid appellant all he should be entitled to receive. The constitution of the statute must be made in subordination to the rules so long known and well established, and to than construction the court must bring an exercise of common sense and reason. Suppose the Sheriff has a venire for a panel of jurors, in a single process or paper, and it turns out, as may happen, that ten jurors live in the same part of the county, say fifty miles from the county seat. At furthest three days are sufficient to serve them and make return. He may travel enough additional miles in going to each juror to make the whole distance traveled 120 miles. For this he receives an allowance under our construction of twelve dollars besides the serving of venire on each juror. If he were entitled to a mileage for each man served, as is claimed in this case, the number of miles so claimed could not be less than 1000; and then his three days labor would realize him about 35 dollars per day. We know hardships may arise on either hand; but we find no analogous case in the statutes in which any other officer or person has such extensive rights as are claimed by appellant. On the contrary the constitution of Oregon and the Legislature have sought to obtain services in almost every other officer at low rates therefor. Were we to give the construction claimed by appellant, the counties of large territory in this State would become hopelessly involved, and such result is manifest in this case.

The jury found that the sheriff acually traveled, in executing the duties in items two and three, 511 miles, which at ordinary rates, would call for an allowance of $51 10, exclusive of the fee for serving. We may fairly presume that these services could have been made within nine days. Under the second part of the verdict, upon the same claims and the number of miles is 5,896, calling for an allowance of $589 60, exclusive of service; in the one case about six dollars per day, and in the other about sixty-six.

The Legislature has left it to some extent uncertain as to the proper construction of sections fourteen and fifteen taken together; but we encline to that view which is most in consonance with equality and right, and with the intention manifested in the economical character of our constitution and laws. If the Legislature had expressly provided for, or made it apparent, that the better construction should have been in favor of the constructive mileage claimed by appellant, we should then have been constrained to hold differently.

Under our construction we think the court below was correct in its holding the law to be with the defendant, and we affirm this judgement.

Imitating the Chinese.

The Chicago *Tribune* thinks that our Democratic Governor and Senator are all likely to increase the reputation of California for sagacity or common sense, by their policy in regard to the Chinese, and deals them and their adherents the following heavy rap:

"Governor Haight, of California, and Senator Casserly, are so opposed to the Chinese that they propose to adopt the cardinal policy of the Chinese Government, viz: the exclusion of foreigners. This would indicate that Haight, Casserly and the Chinese, are about on the same level of political inteligence, and, therefor, if the Chinese were extensively admitted into the State, they might beat the Democracy in the race of life. Hence their alarm. The Democratic party always labored under a chronic fear that the negro, if left free to run the race of life, would come out ahead of the Democrat. But only the rear nags in a drove of horses are afraid of their flanks being kicked in a race with donkeys. However, the Democratic party in California, as in the South, are the best judges of their own capacity, and if they think they cannot earn a livelyhood in competition with the diamond-eyed worshipers of Boodh and Josh, by all means let them prove their inferiority to the Chinese by both fearing and copying them. Let them build a high wall around their State for the exclusion of Asiatics, and let them inscribe on this wall, "Erected by the Democracy of California, in humble imitation of the Chinese."

PROGRESS IN HINDOSTAN.—The latest story of progress in Hindostan has a certain grim picturesqueness which is almost humor. The great festival of Jugernaut was held at Serampore, in July. We all know what this used to be—for is it not in all the missionary story-books and pictorial geographies?—the priests upon the platform of the huge cars dancing and shouting, hundreds of worshipers pulling at the ropes, and crazy devotees flinging themselves beneath the wheels. This year the crowd attracted by the spectacle was small. The cars were dragged a short distance, by hired men, and then left half in a muddy ditch, with the idols still in them, and the flags flying. When the priests urged the people to pull, the irreverent populace cried out, "Why don't you come down and pull yourselves?" Nobody was crushed, nobody was hurt, and only three men got drunk!

FREDERICK WILLIAM the Third, of Prussia, was in the habit of riding out in the streets of Berlin in a very unostentatious carriage. One day his coachman drove him through a very narrow street, in the middle of which they were met by the splendid equipage of a wealthy Mecklenburg nobleman, Count Hahn. The King's coachmon, of course, refused to drive aside so as to allow the Count's carriage to pass on. The Count's coachman, who did not know who was seated in the plain little carriage before him, was equally unwilling to give way. Suddenly Count Hahn sprang to his feet and shouted, indignantly, to the King's coachman, "Sirrah, do you not know that I am the rich Count Hahn?" Whereupon the King, on his own part rose, too, and said, quietly, "And you, sir, do you not know that I am the poor King of Prussia?"

AT the Democratic Convention in Appanoose county, Iowa, the other day, a resolution was introduced to have the proceedings published in the *Loyal Citizen*, the Democrats having no paper of their own. One zealous delegation requested that in deference to the sentiment of the convention, the *Loyal* be left out of the *Loyal Citizen*.

NOTING the fact that Rosecrans is going to build a railroad from the city of Mexico to Acapulco, on the Pacific coast, the Detroit *Tribune* says that Pendleton had better follow his example and make tracks too.

A MRS. LEWIS, of Penn Yan, has been offered £1,000, by a London publishing house, for the advance sheets of a new story.

ONE of the punsters contends that the anti-Byronic thesis just broached was not written by human *fingers* but by Harriet Beecher's *toes!*