THE CAPITAL JOURNAL

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dismiss would more properly be a

matter to be brought to the court's attention by the appellant in the an-

wering paper mentioned in the rule.

of this court in a communication re-sponding to appellant's request to

have time extended in which to file

his adversary.

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REFUSES TO REINSTATE

same day the respondent, claiming by knowledge of the fallure of the apart an unverified statement in his motion pellant to file its brief for more than not filed in time. The essence of

notice that the brief had not been appellant's brief and by the letters of filed, moved to dismiss the appeal. Although this motion was served on present with its brief on the first. counsel for appellant at the time of day of the Pendleton term, the first filling no opposition to it was made in Monday in May, they would argue the any way for more than 10 days there-case on appeal, the respondent to after and on July 5, 1911, there still take further time to file his brief, being no opposing paper presented to Whether the others of appellant sat-

and serve an answering paper against the motion of respondent to gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances, redismiss the appeal within 10 days at gence under the circumstances. cept to the sureties in the undertaking or from the justification thereof, if excepted to, the appeal shall be deemed perfected." L. O. L. Sec. 550 deemed perfected. L. O. L. Sec. 550 have confessed the motion. It contains now, among other things, that Rule 37 governing the practice in tends now, among other things, that this court, 50 Ore, 589, requires that, "in cases for hearing at Pendleton, the appellant, except in equity cases to be tried anew, must serve a brief had been filed because none had containing a concise statement of the containing the practice in tends now, among other things, that the containing the practice in tends now, among other things, that the speak of his associates, without three years," he will availing himself of the offer of respondent to argue the case and others like it cited pal Chas. B. Allen, above before him, the affiant, not to speak of his associates, without three years," he will be contained to the containing above before him, the affiant, not to speak of his associates, without three years," he will be contained to the containing above before him, the affiant, not to speak of his associates, without three years, "he will be contained to a contain the containing the conta to be tried anew, must serve a brief containing a concise statement of the errors relied upon, within 30 days after the appeal is perfected." Under this rule the brief of the appealant was due to be filed on or before March 15, 1911, but it was not filed until May 2nd of that year. On the same day the respondent had same day the respondent classing by

> ter the appeal is perfected." True and should be taken at the first un-enough, the transcript was filed in natural loosentss of tht bowels. It that case January 20th, and the court is equally valuable for children and said the brief was due on February adults. It always cures, Sold by all 20th, although, as the files of this dealers. well have stated that the brief was overdue February 20th. It was in fact due as early as February 3rd. that being within 30 days after the serfection of the appeal on January Because the court said it was due February 20th or as elsewhere in the statement set down as "before February 20th," the converse does not follow that it was not due before then. The perfection of an appeal is given a statutory definition by our code, L. O. L. Sec. 550, sub. 4 under the terms of which it dates from five days after the service of the undertaking on appeal if no objections to the sureties appear. We cannot rightly give these words a different meaning in the face of that statute. So far as Shafer v. Beecher may be construed to give another significa tion to the perfection of an appeal it should at least be distinguished. is also contended by appliant that in asmuch as this court could not have acquired jurisdiction over the cause until the transcript was filed, L. O. L. Sec. 554, it could not have made an effectual order after the appeal, was perfected, so that an application to this court for that purpose would have been useless. The conclusion proved is that the omission to file the brief does not affect the appellant unless the delinquency oc-curred after this court acquired jur-isdiction by the filing of the transcript and hence that the court could not dismiss the appeal. The answer to that reasoning is that the court did not undertake to make the order dismissing the appeal until after the transcript was filed and it then had the same authority to make the order for that shortcoming of appellant as for any other possessing had

ourt for an extension of time.

Beecher pointedly says that the proper course is for the appellant to apply here for further time to file its We do not think the array of counsel for appellant should be allowed to make a scapegoat of one of their number who happened to be other-wise engaged to the detriment of the case in hand so as to avoid the operation of the plain terms of rule It has been enforced in other cases is well as in Shafer v. Beecher and should not be overruled in the case

lant as for any other occurring be-fore filing the transcript, as for in-

stance, a defective notice of appeal

or undertaking or want of service of notice and the like. Besides, Shafer

The motion of the appellant to re-instate the appeal is denied.

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The party filing a motion is not required to negative in advance the Sarsaparilla possibility that for more than 10 days

he has had notice of the defects of which he complains. His waiver is Acts directly and peculiarly a matter of defense to be urged by on the blood; purifies, enriches By the affidavit of one of appel- and revitalizes it, and in this lant's counsel, it is represented to the court that he was misled into the court that he was misled into the tem. Take it. Get it today, what he claims would amount to ex-cusable neglect on his part by the language of this court in Shafer v. Beecher 54 Ore. 273, by the construc-tion placed upon rule 37 by the clerk In usual liquid form or in choc coated tablets called Sarsatabs.

LEISHMAN PUT **UP THE PRICE** FOR THE PLACE

THE APPEA

Attacks School Principal. A severe attack on School Princi-pal Chas. B. Allen, of Sylvania, Ga., this case and others like it cited three years," he writes, "I suffered indescribable torture from rheumaspondent to argue the case at the tiam, liver and stomach trouble and opening of the Pendleton term, with-diseased kidneys. All remedies drew his application for an extension failed till I used Electric Bitters, but the judgment of the circuit court on ness and for new health and vigor, motion because appellant's brief was Try Them. Only 50c at J. C. Perry's.

The essence of appellant's conten-Klamath Falls barbers are sore betion, however, is that Shafer, v. cause a Portugese has opened a shop Beecher places a construction on and reduced the price of a shave rule 37 relating to the Pendleton from 25 cents to 15 cents. erm to the effect that the 30 days

within which the appellant must file its brief means that period of time after the transcript or abstract of record is filed and not in the language of the rule "within 30 days after the appeal is perfected."

Chamberlain's Colic, Cholera and Diarrhoea remedy is today the best known medicine in use for the results and cure of bowel complaints. It guage of the rule "within 30 days after the appeal is perfected."

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so know of other people who have taken this remedy for kidney troub with the best of results."

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Ely's Cream Baim has been tried and not found wanting in thousand immediate relief and a day or John Cougar., \$45 North Seven-treatment will put a stop to a teenth street. Salem, Oregon, says: which might, if not checked be "Doan's Kidney Pills have been used chronic and run into a bad ca in my family with great benefit. I al-catarch. chronic and run into a bad case

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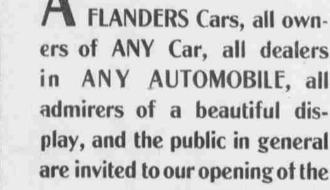
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