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Kansas Territory versus Henry Kilbourn for theft

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Date: January 9, 1857

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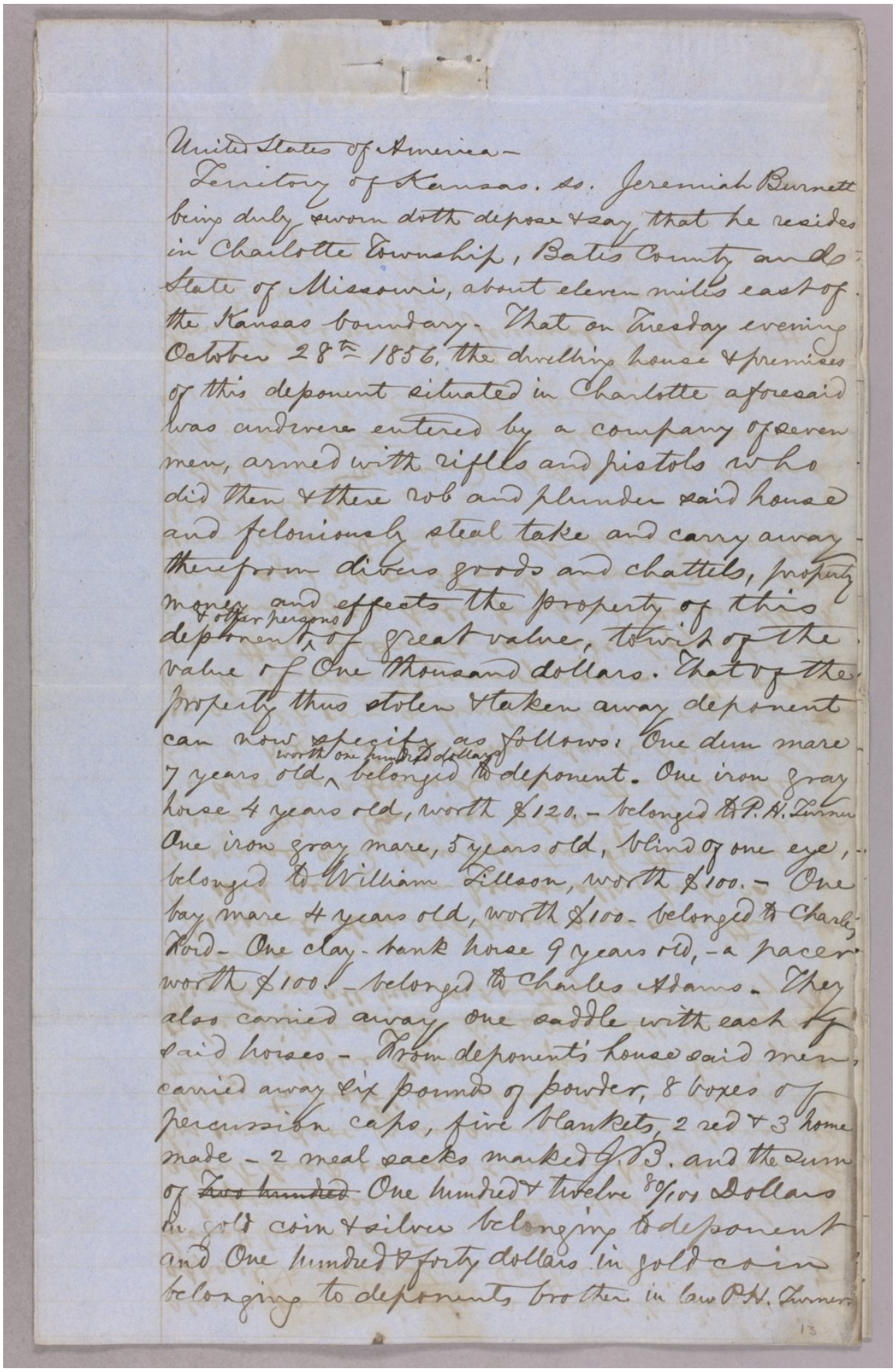
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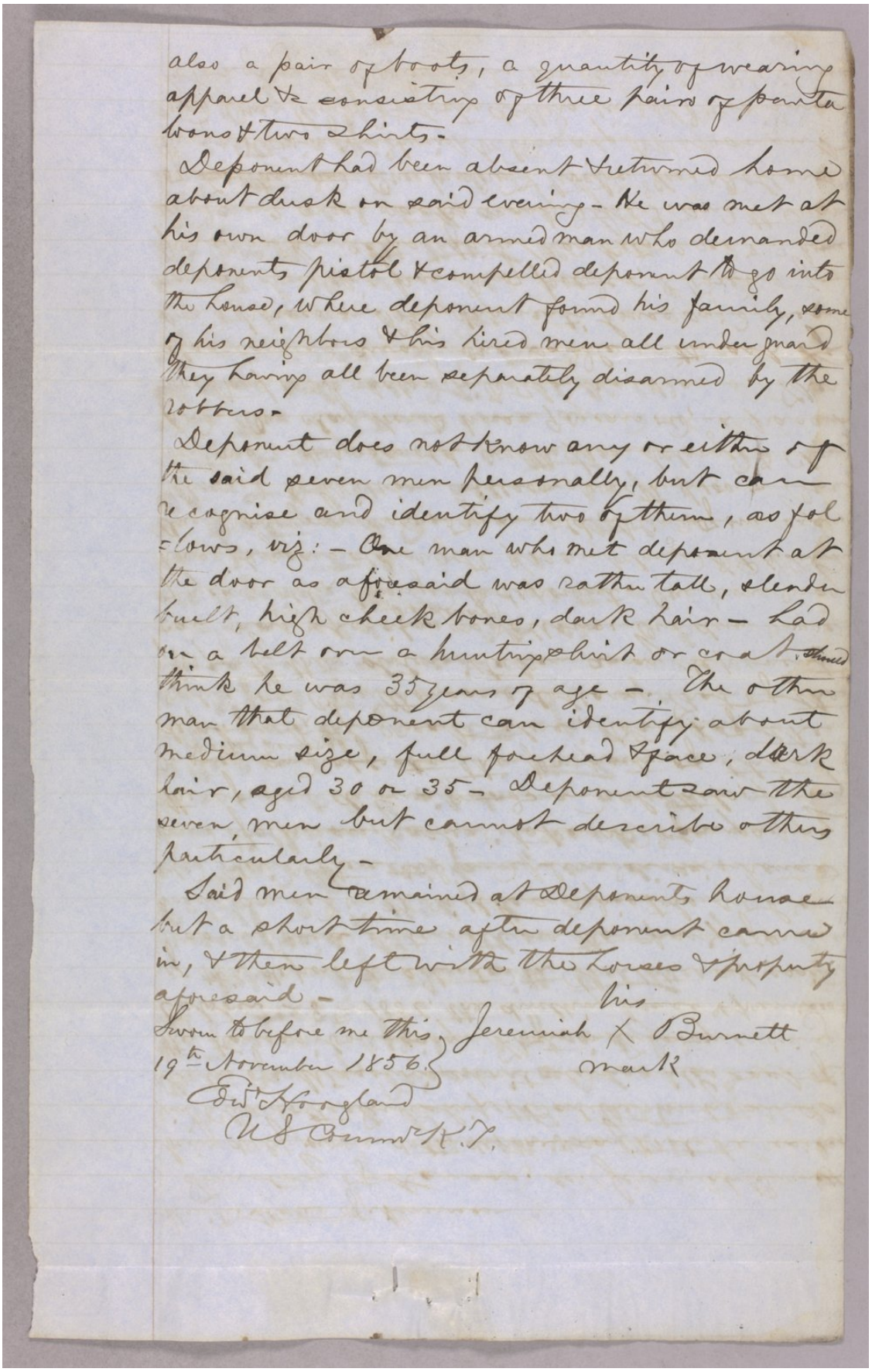
KANSAS HISTORICAL SOCIETY

Kansas Territory versus Henry Kilbourn for theft



United States of America—
Territory of Kansas. ss. Jeremiah Burnett being duly sworn doth depose & say that he resides in Charlotte Township, Bates County and State of Missouri, about eleven miles east of the Kansas boundary. That on Tuesday evening October 28th 1856, the dwelling house & premises of this deponent situated in Charlotte aforesaid was andwere entered by a company of seven men, armed with rifles and pistols who did then & there rob and plunder said house and feloniously steal take and carry away therefrom divers goods and chattels, property money and effects the property of this deponent & of great value, to wit to the value of One Thousand dollars. That of the property thus stolen & taken away deponent can now specify as follows: One dun mare 7 years old, worth one hundred dollars belonged to deponent. One iron gray horse 4 years old, worth $120.— belonged to P. H. Turner One iron gray mare, 5 years old, blind of one eye, belonged to William Tillson, worth $100.— One bay mare 4 years old, worth $100— belonged to Charles Ford— One clay-bank horse 9 years old,—a pacer worth $100.— belonged to Charles Adams. They also carried away one saddle with each of said horses— From deponent's house said men carried away six pounds of powder, 8 boxes of percussion caps, five blankets, 2 red & 3 home made— 2 meal sacks marked J. B. and the sum of ~~Two hundred~~ One hundred & twelve 8/100 Dollars in gold coin & silver belonging to deponent and One hundred & forty dollars in gold coin belonging to deponents brother in law P. H. Turner

13



also a pair of boots, a quantity of wearing apparel & consisting of three pairs of pants two & two shirts.

Deponent had been absent & returned home about dusk on said evening. He was met at his own door by an armed man who demanded deponents pistol & compelled deponent to go into the house, where deponent found his family, some of his neighbors & his hired men all under guard they having all been separately disarmed by the robbers.

Deponent does not know any or either of the said seven men personally, but can recognise and identify two of them, as follows, viz:- One man who met deponent at the door as aforesaid was rather tall, slender built, high cheek bones, dark hair - had on a belt over a hunting shirt or coat. Deponent think he was 35 years of age. The other man that deponent can identify about medium size, full forehead & face, dark hair, aged 30 or 35. Deponent saw the seven men but cannot describe others particularly.

Said men remained at deponents house but a short time after deponent came in, & then left with the horses & property aforesaid.

his
Jeremiah X Burnett
mark

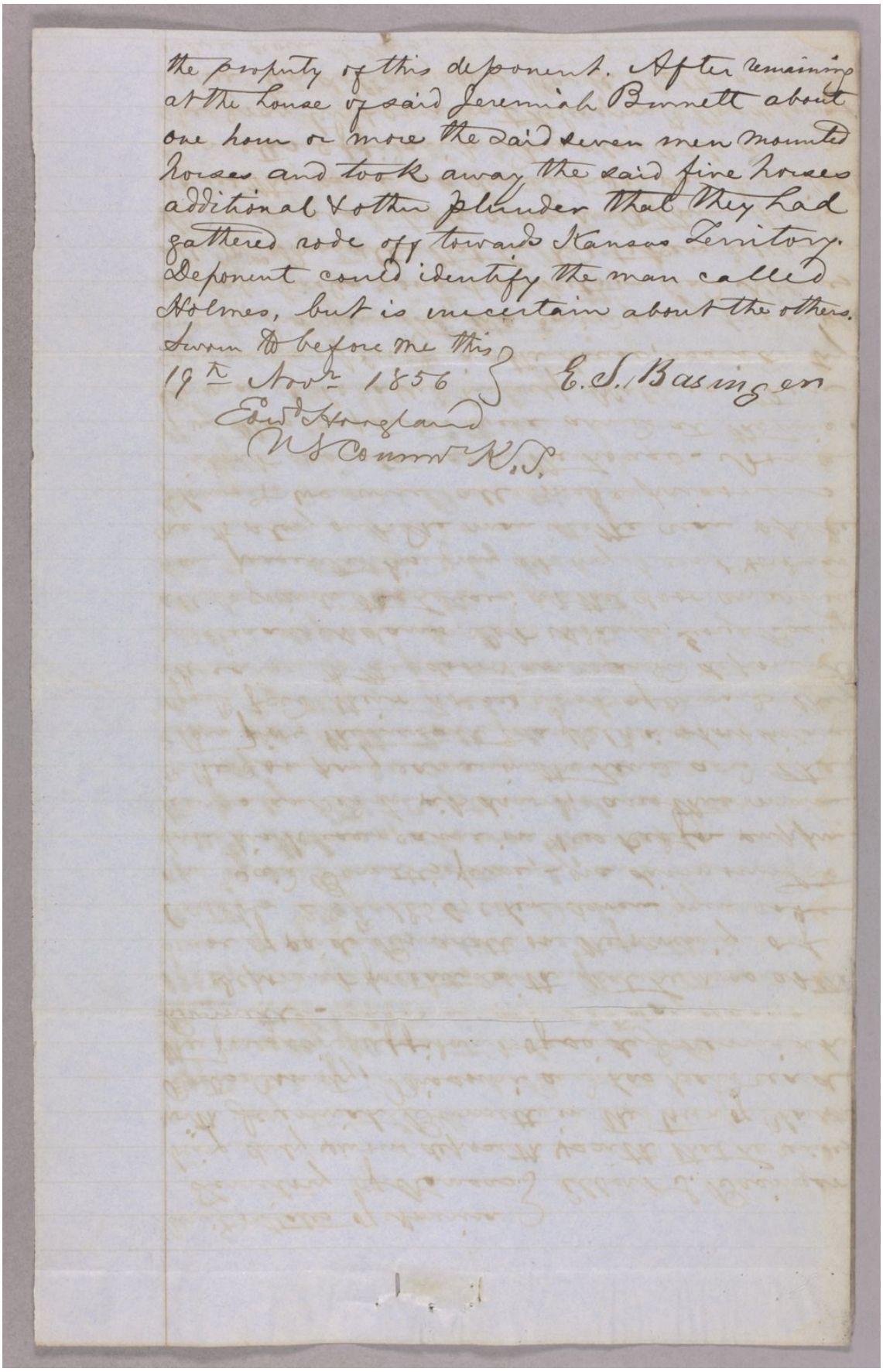
Sworn to before me this
19th November 1856.
D. W. Hoagland
U.S. Comm'r K.T.

Kansas Territory versus Henry Kilbourn for theft

United States of America
Territory of Kansas } Elbert S. Basinger being duly sworn deposeth & saith that he resides with Jeremiah Burnett in the town of Charlotte Bates County, Missouri and has heard read the foregoing affidavit of said Jeremiah Burnett -

Deponent further saith that he was at the house of said Burnett on the evening of October 28th - 1856, when seven men rode up to said Burnett's fence, - one dismounted from his horse, came in & asked for supper - he was asked to sit down, - another man of the company came in the house and the other five then went to a field a short distance off to feed their horses. Soon afterwards they all came to the door & commanded deponent and Isaac Adams, Lot Adams, George Basinger all to go into the house; at the door an armed man presented his gun at my breast & ordered me to stay out. The man in the rear spoke to him & we were all made prisoners without resistance in the house. Some of us thus captured were armed at the time. A man who called himself Holmes then commenced plundering the house, assisted by one of his men. They then carried away five saddles, several bridles, some blankets, - heard Holmes tell Mrs Burnett that he had taken $110 - said men also took away with them five horses the same as described in said Jeremiah Burnett's affidavit - They also took away one gray linsey overcoat belonging to this deponent value ten dollars, one black cloth coat value seven dollars; they destroyed one rifle gun

Kansas Territory versus Henry Kilbourn for theft



the property of this deponent. After remaining at the house of said Jeremiah Bennett about one hour or more the said seven men mounted horses and took away the said five horses additional to other plunder that they had gathered rode off towards Kansas Territory. Deponent could identify the man called Holmes, but is uncertain about the others.

Sworn to before me this
19th Nov. 1856

E. S. Basinger

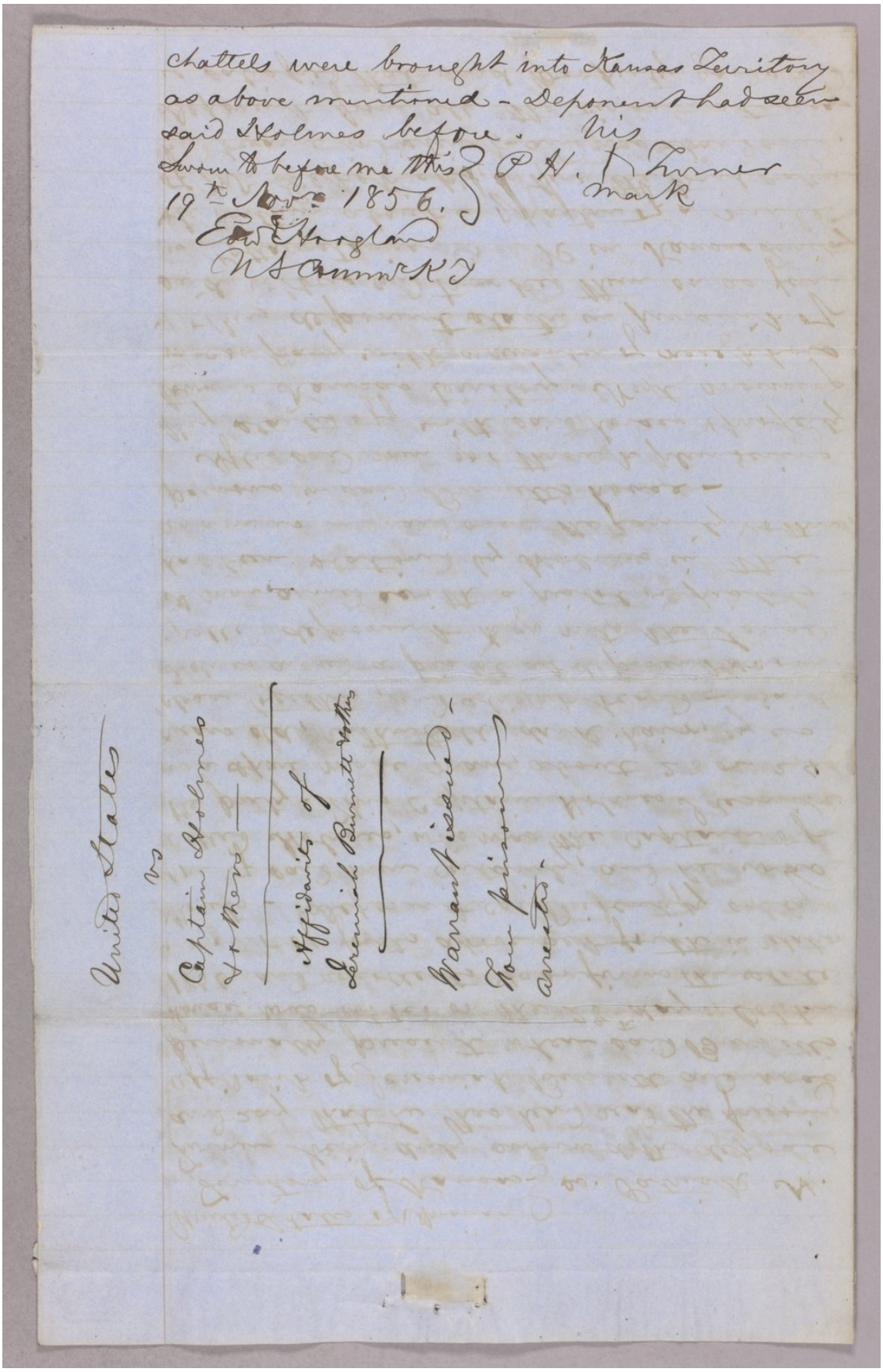
Edwd Hoagland
U.S. Comm. K.T.

Kansas Territory versus Henry Kilbourn for theft

United States of America
Territory of Kansas } ss. Patrick A. Turner being duly sworn doth depose and say that he has heard read the foregoing affidavit of Jeremiah Burnett and was personally present when said Burnett's house was robbed on the 28th day of October 1856, and recollects & confirms the statement of facts above set forth in relation thereto - Deponent could identify only one of said men certainly, and he was called Holmes, who was the Captain of the party - This Captain Holmes I describe as a spare made man, about 23 or 24 years old, rather tall, dark hair, eyes close together, and slight beard - said Holmes aimed a pistol at deponent & compelled deponent to go into the house. A man armed with a pistol or pistols had been stationed by Holmes in the room as a guard over the family & other persons in said Burnett's house -

After said men got through plundering they started off with said horses & property towards Kansas territory. Next morning in company with a number of neighbors & others deponent started in pursuit of said robbers and tracked them on as far as Pottawatamie Creek in Kansas Territory & to within about a quarter of a mile of Mr Gilpatrick's, where the trail scattered and became indistinct and was abandoned. Deponent from all the circumstances is satisfied that said property goods and

Kansas Territory versus Henry Kilbourn for theft



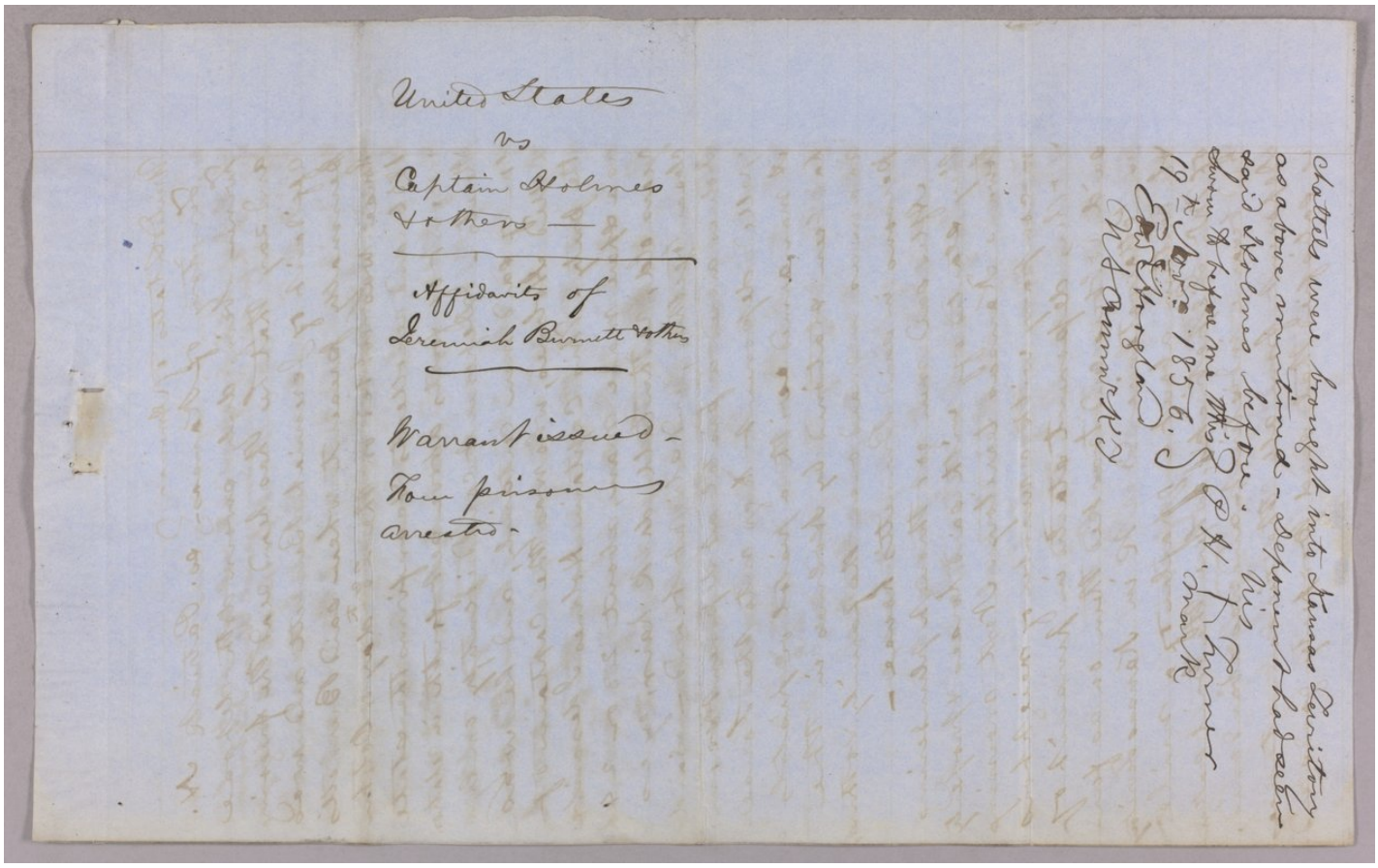
chattels were brought into Kansas Territory as above mentioned - Deponent had seen said Holmes before. his
Sworn to before me this 19th Nov. 1856. P. H. Turner mark
Edw Hoagland
N Com KT

United States
vs
Captain Holmes
et Rovo —

Affidavit of
Jeremiah Burnett &c

Warrant issued -
Four prisoners
arrested.

Kansas Territory versus Henry Kilbourn for theft



United States
vs
Captain Holmes
& others —

Affidavits of
Jeremiah Burnett & others

Warrant issued —
Four prisoners
arrested —

chattels were brought into Kansas Territory
as above mentioned — Defendant had also
said Holmes before
me this 12th day
of Nov. 1856.
Sam'l Lecompton
W. J. Barnes

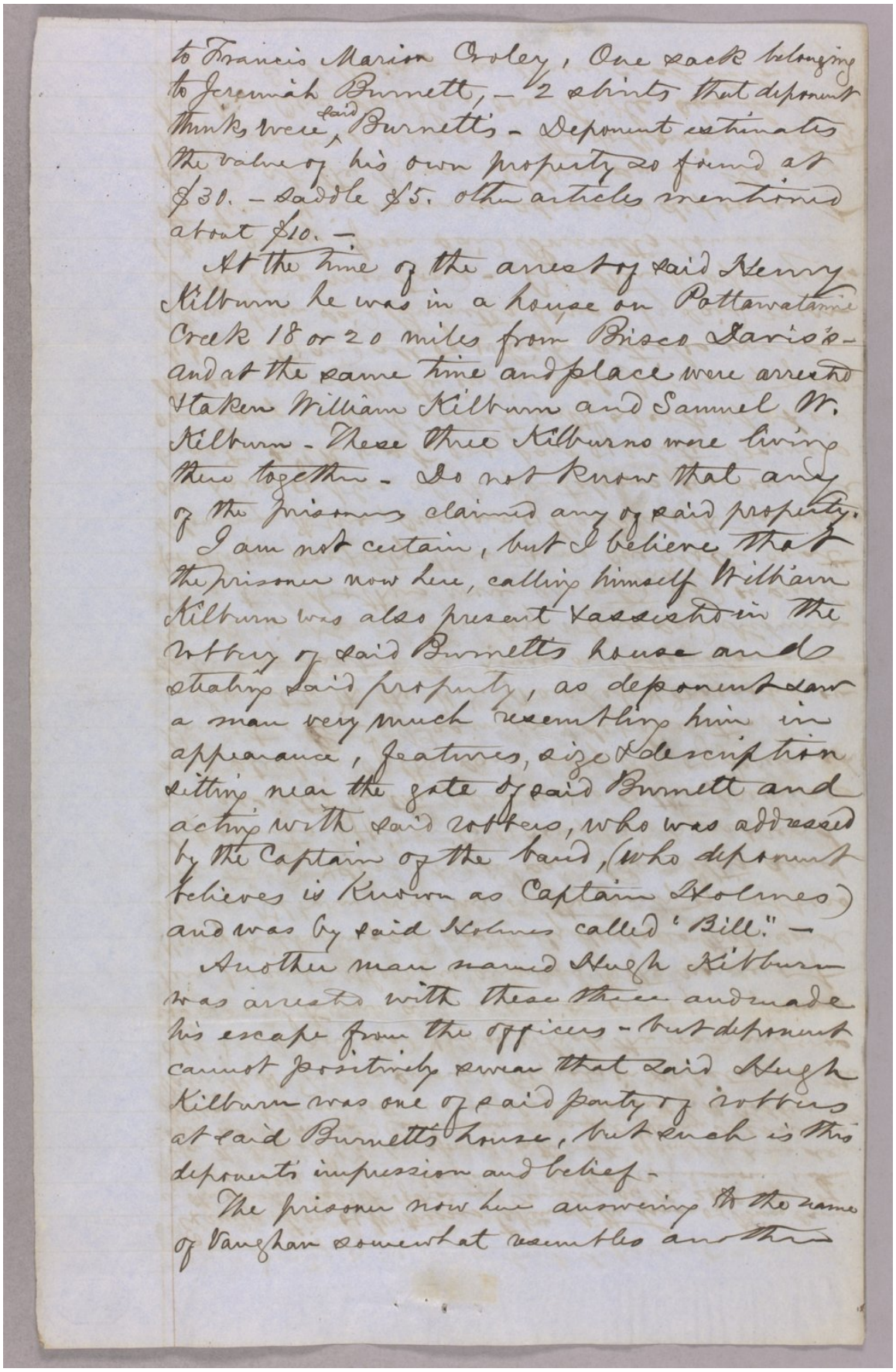
Kansas Territory versus Henry Kilbourn for theft

Examination of Witnesses taken at the house of Bisco Davis in the Second District of Kansas Territory on the 24th day of November 1856 before E. Hoagland United States Commissioner within & for the District & Territory aforesaid in the matter of complaint made upon oath before said Commissioner against Henry Kilbourn William Kilbourn & others who are charged upon oath with Robbery & Larceny.

Patrick H. Turner sworn. Repeats in substance the affidavit now read & upon which the warrant was issued. I know and recognise one of the prisoners here present, who now answers to the name of Henry Kilbourn, and positively declares that said Henry Kilbourn was one of the party of robbers mentioned & described in said Burnetts and deponents affidavits of complaint just read and assisted in the plundering of the premises and stealing of the said property of Jeremiah Burnet, U. S. Basinger & deponent.

I went with the U.S. Marshal & dragoons on Saturday last to the house on Pottawatamie Creek in Kansas Territory where said Kilbourn & his two brothers were arrested, and on searching for stolen property there found one dark cloth coat belonging to me, one pair of black cloth pantaloons, one pair of blue cloth pantaloons, one double breasted silk vest, one pair of white drawers one heavy white blanket with a dark spot in the same, — all the individual property of this deponent, and all of which articles were taken from said Burnetts house by said men at the time mentioned. Of other property also taken away from said Burnetts house at the time & in manner aforesaid deponent found at the house where said Henry Kilbourn was arrested, the following property to wit:- One saddle, one bridle, one ~~blanket~~ belonging to Wm S. Tillson. - One linen coat belonging

Kansas Territory versus Henry Kilbourn for theft



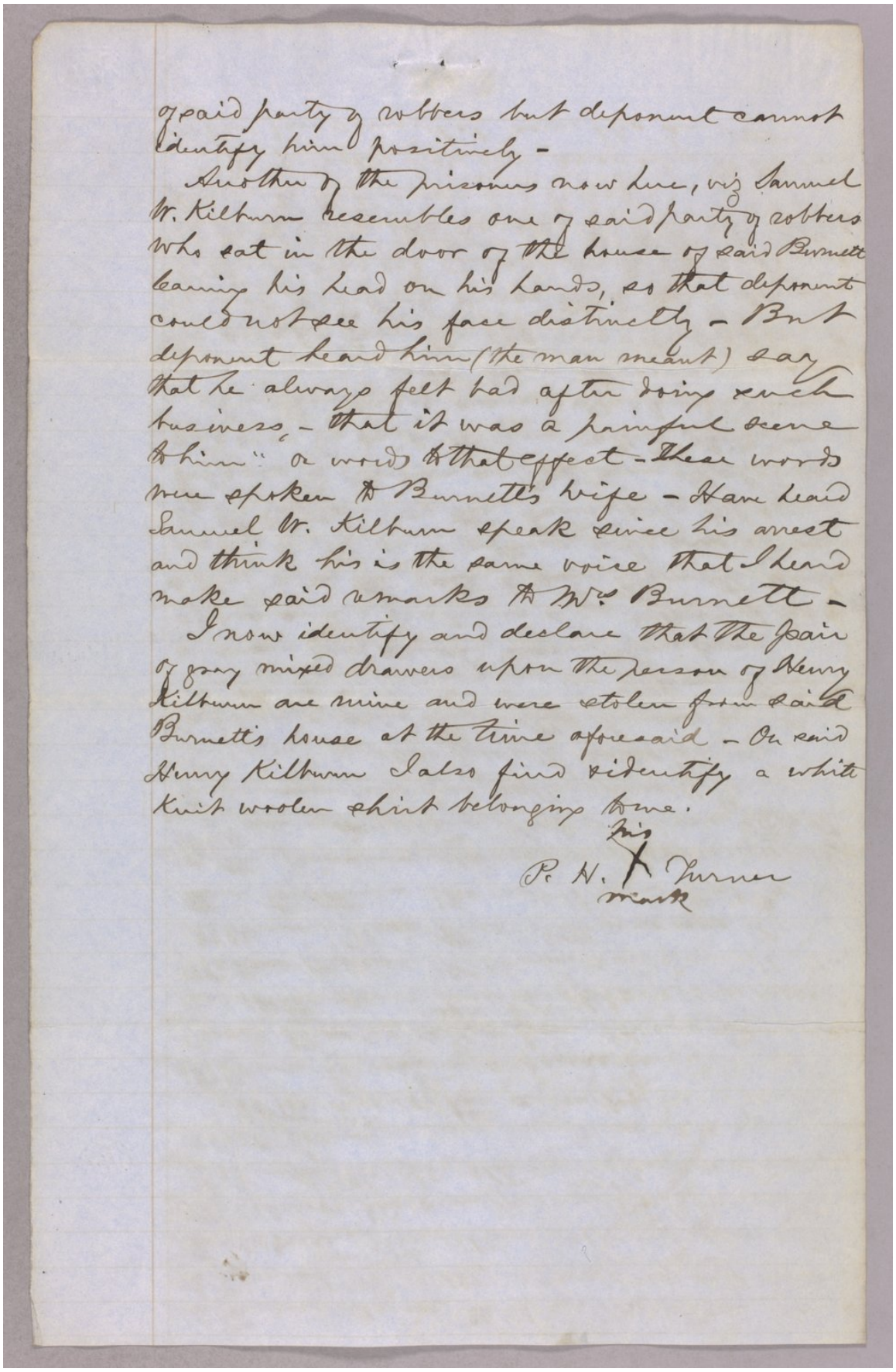
to Francis Marion Doley, One sack belonging to Jeremiah Burnett, - 2 shirts that deponent thinks were said Burnetts - Deponent estimates the value of his own property so found at $30. - Saddle $15. other articles mentioned about $10. -

At the time of the arrest by said Henry Kilburn he was in a house on Pottawatamie Creek 18 or 20 miles from Bisco Davis's - and at the same time and place were arrested & taken William Kilburn and Samuel W. Kilburn - These three Kilburns were living there together - Do not know that any of the prisoners claimed any of said property.

I am not certain, but I believe that the prisoner now here, calling himself William Kilburn was also present & assisted in the robbery of said Burnetts house and stealing said property, as deponent saw a man very much resembling him in appearance, features, size & description sitting near the gate of said Burnett and acting with said robbers, who was addressed by the Captain of the band, (who deponent believes is known as Captain Holmes) and was by said Holmes called "Bill." -

Another man named Hugh Kilburn was arrested with these three and made his escape from the officers - but deponent cannot positively swear that said Hugh Kilburn was one of said party of robbers at said Burnetts house, but such is this deponents impression and belief -

The prisoner now here answering to the name of Vaughan somewhat resembles another



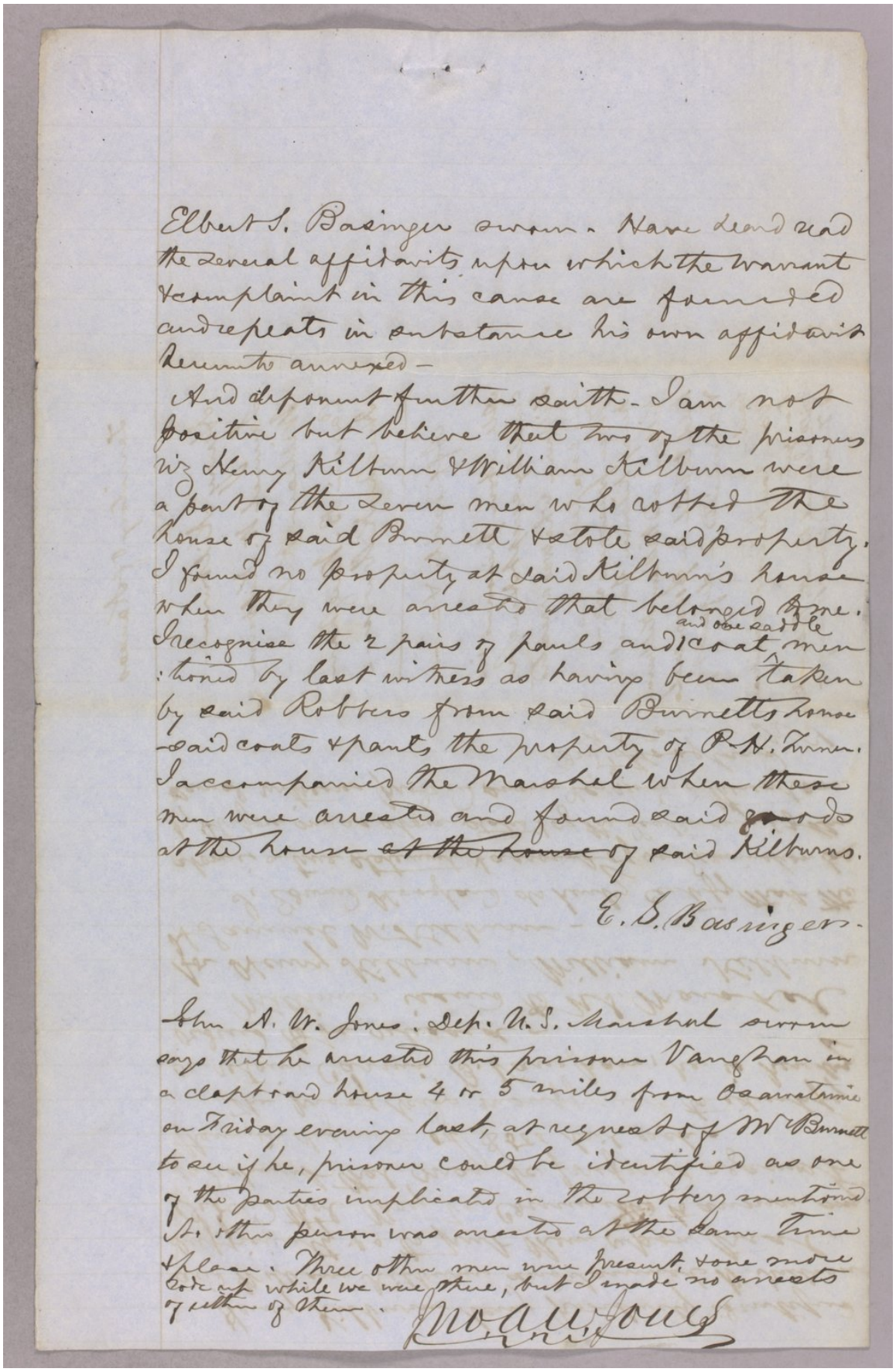
of said party of robbers but deponent cannot identify him positively -

Another of the prisoners now here, viz Samuel W. Kilburn resembles one of said party of robbers who sat in the door of the house of said Burnett leaning his head on his hands, so that deponent could not see his face distinctly - But deponent heard him (the man meant) say that he always felt bad after doing such business - that it was a painful scene to him" or words to that effect - these words were spoken to Burnetts wife - Have heard Samuel W. Kilburn speak since his arrest and think his is the same voice that I heard make said remarks to Mrs Burnett -

I now identify and declare that the pair of gray mixed drawers upon the person of Henry Kilburn are mine and were stolen from said Burnetts house at the time aforesaid - On said Henry Kilburn I also find identify a white knit woolen shirt belonging to me.

his
P. N. X Turner
mark

Kansas Territory versus Henry Kilbourn for theft



Elbert S. Basinger sworn. Have heard read the several affidavits upon which the warrant & complaint in this cause are founded and repeats in substance his own affidavit hereunto annexed –

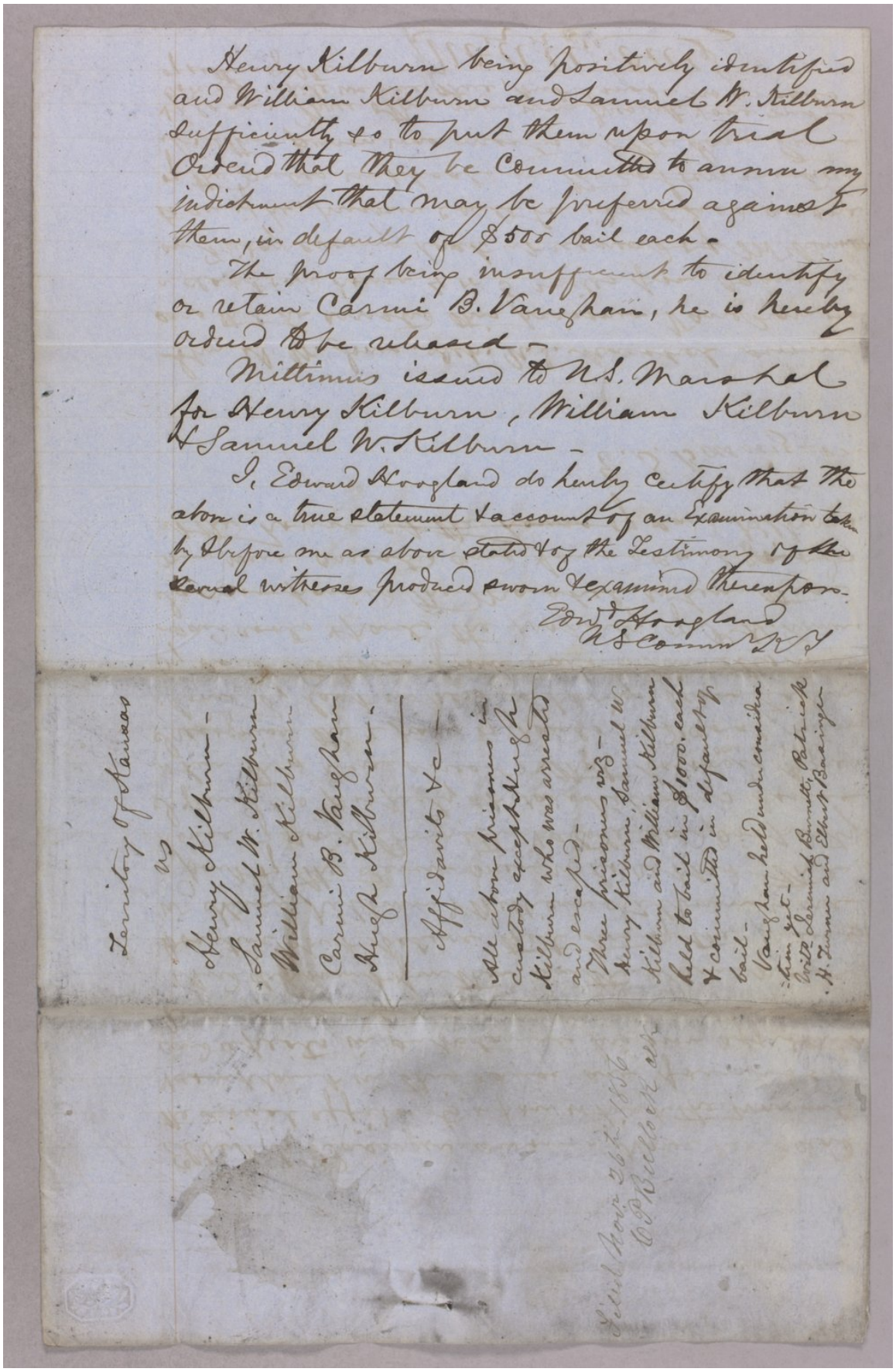
And deponent further saith. I am not positive but believe that two of the prisoners viz Henry Kilburn & William Kilburn were a part of the seven men who robbed the house of said Burnett & stole said property. I found no property at said Kilburn's house when they were arrested that belonged to me. I recognise the 2 pairs of pants and 1 coat and one saddle mentioned by last witness as having been taken by said Robbers from said Burnetts house said coats & pants the property of P. H. Turner. I accompanied the Marshal when these men were arrested and found said goods at the house ~~of the house~~ of said Kilburns.

E. S. Basinger.

John A. W. Jones. Dep. U. S. Marshal sworn says that he arrested this prisoner Vaughan in a clapboard house 4 or 5 miles from Osawatomie on Friday evening last, at request of Mr Burnett to see if he, prisoner could be identified as one of the parties implicated in the robbery mentioned & this person was arrested at the same time & place. Three other men were present, some more rode up while we were there, but I made no arrests of either of them.

John A. W. Jones

Kansas Territory versus Henry Kilbourn for theft



Henry Kilbourn being positively identified and William Kilbourn and Samuel W. Kilbourn sufficiently so to put them upon trial Ordered that they be committed to answer any indictment that may be preferred against them, in default of $500 bail each.

The proof being insufficient to identify or retain Carmi B. Vaughan, he is hereby ordered to be released.

Mittimus issued to U.S. Marshal for Henry Kilbourn, William Kilbourn & Samuel W. Kilbourn.

I, Edward Hoagland do hereby certify that the above is a true statement & account of an examination taken by & before me as above stated & of the testimony of the several witnesses produced sworn & examined thereupon.

Edwd Hoagland
U.S. Commr K.T.

Territory of Kansas
vs
Henry Kilbourn -
Samuel W. Kilbourn
William Kilbourn -
Carmi B. Vaughan
Assgt Kilbourn -

Affidavits &c -

All above prisoners in custody except Assgt Kilbourn who was arrested and escaped -

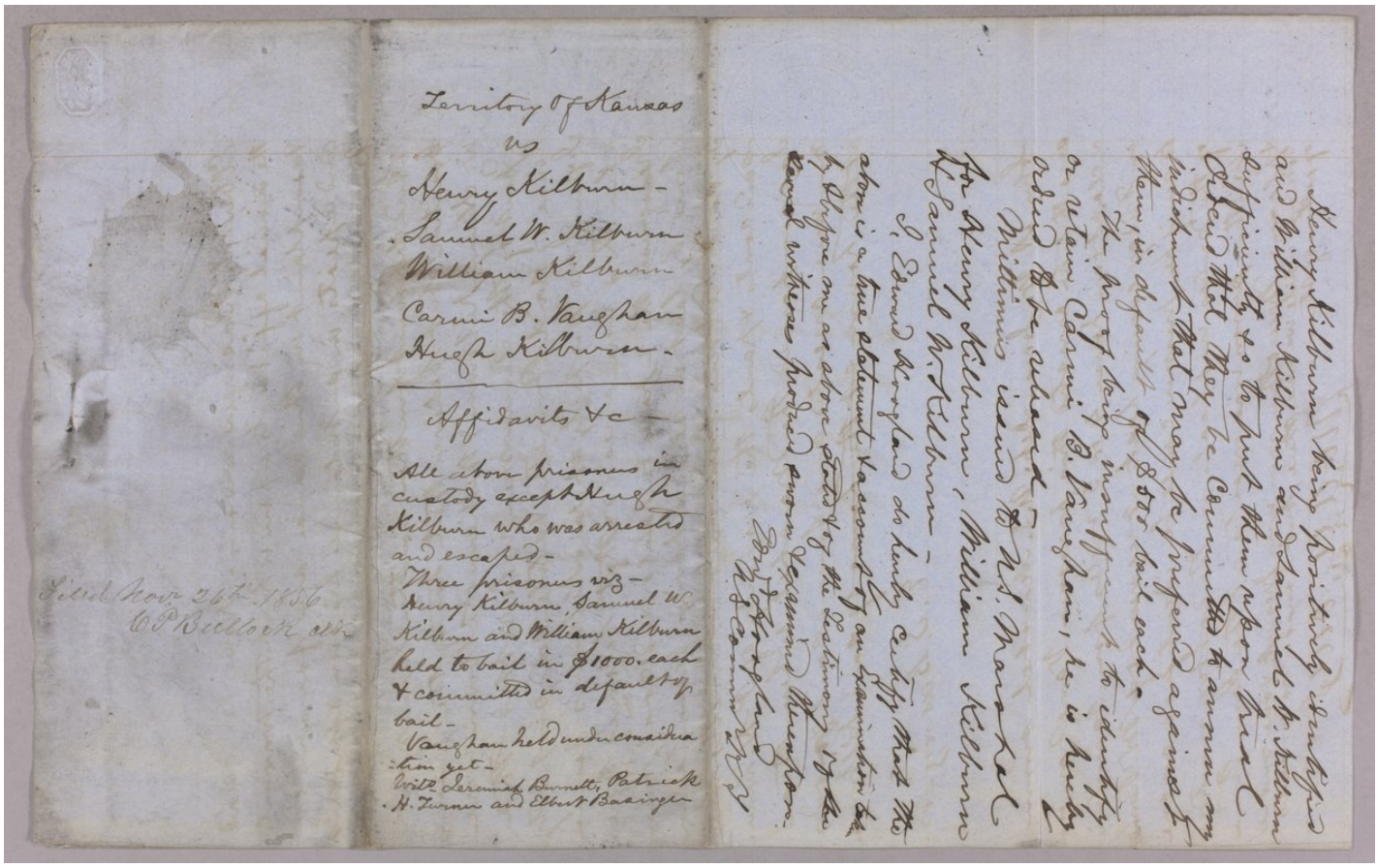
Three prisoners viz - Henry Kilbourn, Samuel W. Kilbourn and William Kilbourn held to bail in $1000. each & committed in default of bail -

Vaughan held Dundas amicus &c -

Wit for Comm. Burnett, Patrick & H. Timmons and Edwd Boatwright -

Recd Aug. 26th 1856
U.S. Records K.T.

Kansas Territory versus Henry Kilbourn for theft



Territory of Kansas
vs
Henry Kilburn -
Samuel W. Kilburn
William Kilburn
Carmi B. Vaughan
Hugh Kilburn -

Affidavits &c -

All above prisoners in custody except Hugh Kilburn who was arrested and escaped -
Three prisoners viz - Henry Kilburn, Samuel W. Kilburn and William Kilburn held to bail in $1000. each & committed in default of bail -
Vaughan held under examination yet -
Wits Jeremiah Burnett, Patrick H. Turner and Elbert Baringer

Filed Nov 26th 1856
C P Bullock Clk

Henry Kilburn being duly sworn deposeth and saith that Samuel W. Kilburn and William Kilburn and Samuel B. Kilburn defendants to the suit above named are justly indebted to this deponent in the sum of Eight Hundred Dollars for which sum deponent prays judgment against the said defendants and that writs of attachment may be issued against the property of said defendants to the amount of said debt and damages.
The affiant further states that he verily believes that the said Samuel W. Kilburn, William Kilburn and Samuel B. Kilburn have property in their possession or under their control consisting of Horses, Mules, Cattle, Waggons, Harness, Saddles, Bridles, Household and Kitchen furniture, Provisions, Farming utensils and other personal property sufficient to satisfy said debt and damages.
Deponent further states that he has a just and true account against the said defendants for the amount above stated which is due and unpaid and that the same is just and true to the best of his knowledge and belief.
Henry Kilburn
Sworn and subscribed before me this 26th day of November A.D. 1856
B. F. Stringfellow
A Justice of the Peace