

The San Bernardino Man With Two Lawful Wives.

We surrender a large portion of our columns to-day to the report of a case which has attracted and absorbed the attention of the whole community, and created a greater excitement than any which has heretofore occurred in this section of the State.

The indignation of the public generally at this disgraceful result of the careless manner in which the new codes have been gotten up is excessive; and as there is a painful suspicion that other defects as yet undeveloped may exist, the feeling is universal that the Civil Code should be at once repealed and the other codes referred to a competent Commission to revise them.

The case referred to is that of the People vs. Oades, just decided in the County Court of San Bernardino. Oades is an Englishman of good education, who came to that county about two years ago, and purchased and settled upon a farm in Temesdal Township. In January last he married Mrs. Nancy Foreland, a young widow lady of great beauty, residing in that neighborhood, by whom he has since had a child now about one month old.

Both parties have always been regarded in the neighborhood as eminently respectable.

About two months ago, a woman accompanied by three children—two boys and a girl—arrived at the city of San Bernardino, and after inquiring of Oades' whereabouts, proceeded to his residence, where she has since continued to reside.

A short time since, it transpired that this woman and Oades comported themselves toward each other as man and wife, and the neighbors, indignant at such open profligacy, laid a criminal complaint against them before Justice Billings, under the act of March 15th, 1872, for "open and notorious cohabitation and adultery." When the parties were brought up for trial, however, they produced a certificate of marriage, and proved by it and other authentic documents that the woman was Oades' wife—having been married to him in England about twenty years ago, and moved with him to New Zealand, where their children had been born. The accused was therefore acquitted and returned to their home, where Oades continued to live with the two women as before.

Thereupon another complaint was laid before the same justice against Oades and Mrs. Oades No. 2, charging them with the same offence. On this trial it was proven that about eight years ago Oades was living in Wellington county, New Zealand, on the frontiers, when, without warning, the Maoris—a tribe at peace with England—made an inroad into the settlements. Oades was at that time temporarily absent in Victoria, and returned only to find his homestead burned and his family disappeared. Some human remains were found in the ruins, and from this and from such information as he could gain during the ensuing two years, he was gradually forced to the conviction that his wife and children were dead, and being loth to remain amid the scenes of his distress, he left New Zealand and came to California. Upon this state of facts Oades claimed that his marriage with Mrs. Oades No. 2 was valid under the second subdivision of the sixty-first section of the Civil Code, which provides that the marriage of a person having a former husband or wife living is void, "unless such former husband or wife was absent and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, in which case the subsequent marriage is void only from the time its nullity is adjudged by a proper tribunal."

Upon an examination of the law, this proposition was found too clear to be disputed, as there was no doubt that when Oades married his second wife he had been ignorant of the existence of the first wife for more than five years. The complaint was therefore dismissed.

Oades still continuing in open cohabitation with the two women, a deputation was sent by the neighbors to lay the matter before Coke-man, the District Attorney, who, after examining the case, referred it to the grand jury, who found a true bill against Oades for bigamy.

The trial, which took place last Monday, attracted a large crowd of eager spectators, among whom, the

observed of all observers, appeared the two Mrs. Oades. The same state of facts was proven, and after the close of the evidence Coke-man, the District Attorney, opened the case for the prosecution in able and eloquent argument, of which we can only give a brief abstract: "The law," he urged, "was to be construed according to its spirit and intent, and the language where contrary thereto was to be disregarded. These time-honored principles have been expressly adopted in the new code: 'Where the reason of a rule ceases so should the rule itself.' (Civil Code, sec. 3,510.) *Cessante ratione legis cessat ipsa lex.*" And again, "Where the reason is the same the rule should be the same. (*Id.*, sec. 3,511.) *Obi eadem ratio ibi idem jus.*" And again, "He who considers merely the letter goes but skin deep into the meaning. *Qui haeret in littera haeret in cortice.*" (Co. Sit., 283 b.) Now in this case," he continued, "the evident intention of the law was simply to provide against the illegitimacy of the children of the second marriage, and it certainly never could have been intended to make bigamy lawful. It is true that at the date of the second marriage Oades was ignorant of the existence of his first wife, but his voluntary cohabitation with both women, after learning the facts, was to be taken as conclusive proof of a guilty intention, *ab initio*. And in support of this view the counsel cited 'The Six Carpenters' Case' (8 Cokes R., 146). That case was very similar in principle to this, and it was adjudged that 'the law judges by the subsequent act, the *quo animo*, or intent, for *acta exteriora indicant interiora secreta.*'"

On the other hand, the counsel for the accused relied upon the provisions of the Penal Code in relation to bigamy—which expressly provides that no person shall be held guilty of bigamy, "whose husband or wife had been absent for five consecutive years" (prior to the second marriage), "without being known to such person within that time to be living;" and in reply to the argument of the district attorney he urged upon the court that in criminal matters it would be a dangerous precedent to adopt so liberal a principle of construction as that contended for by Coke-man; and he cited in support of his position the following maxims: "*A verbis legis non est recedendum.*" "*Index animi sermo.*" and "*Maledicta exposito quae corrumpit textum*"—the meaning of which, as he explained for the benefit of the court, was that in the interpretation of statutes "we must stick to the letter." That it is true that the intention must govern, but "the language is the evidence of the intention," and that "it is wrongly called interpretation when we alter the text."

The learned Judge said that however desirable it might be to convict the prisoner, the position taken by his counsel was clearly the right one, and accordingly he instructed the jury to acquit, which was done, and Oades returned home triumphantly with his two wives.

Thereupon all the most eminent counsel of San Bernardino were retained by citizens interested in the virtue of the community, with a view of ascertaining some means of removing this terrible scandal of Oades and his two wives, and after an exhaustive examination of the case they came to the conclusion that the only method of annulling the marriage was to proceed under the 2nd subdivision of the 82d section of the Civil Code, which provides that a marriage may be annulled where "the former husband or wife is living at the time of the second marriage. But, as under the 2d subdivision of the 83d section of the Civil Code an action for the annulment of such a marriage can be brought only by one of the parties to the second marriage or by the husband's wife of the first marriage, it was evident that as neither Oades nor either of his wives are willing to bring the suit, the difficulty remained as great as ever.

What further steps will be taken is at present unsettled. But the people are very much excited and determined not to let the matter drop. Eminent counsel in San Francisco and Sacramento, including one of the Code Commissioners, have been written to, but as yet no answer has been received.

The latest information upon the subject is furnished by a special correspondent, dispatched by us several days since to San Bernardino.

Our correspondent interviewed Coke-man last night, from whom he learned some details not hitherto divulged. It seems that last Wednesday, John Howlett of San Bernardino, was by advice of counsel dispatched to seek an interview with Mrs. Oades No. 1, with a view of offering her inducements to bring a suit to annul the marriage of Oades with Mrs. Oades No. 2. It was thought that she, being the party principally injured by the second marriage, might easily be persuaded to do so. After considerable difficulty and some danger—having on one occasion been run off by Oades with a shotgun—Howlett on Thursday morning managed to secure a private interview with Mrs. Oades No. 1, while Oades was out riding with his second wife. She appeared to be a mild, timid woman, but it was impossible to induce her to move in the matter—although Howlett offered her \$5,000 to do so. Oades, she said, had sworn that if she attempted to annul his second marriage he would not only beat her half to death, but also would never live with her any more; that she knew Oades well enough to know he would keep his word; that she wouldn't mind the beating so much, but that she preferred to submit to the present state of circumstances rather than to lose Oades altogether, especially as being married to him she couldn't marry anyone else. Howlett therefore returned without effecting anything; and, after consultation of counsel, was again dispatched to make the same proposition to Mrs. Oades No. 2. But neither would she accept the offer. "If there was any way," she said, "of annulling Oades' first marriage she might be induced to move in the matter, although she really didn't mind Mrs. Oades No. 1 much; as she was getting too old to be a very formidable rival, and, besides, she found her a considerable help about the house; but as to her bringing suit to annul her own marriage, there was no use of talking about it, as she was perfectly well satisfied with Oades, even with the incumbrance of his first wife and children."

Upon the reception of this information the Rev. Mr. Kiggett, a minister of great and deserved influence in the community, was dispatched to expostulate with Oades himself. Oades received him courteously, and discussed the matter with great frankness. Theoretically, he said, he was a monogamist, and believed that the law should not allow a man to have more than one wife. He therefore joined with his reverend friend in saying that the action of the Code Commission in allowing bigamy could not be too severely condemned. "But such matters," he continued, "after all, are to be settled in each State as the legislators in their wisdom should deem best, it being now a settled principle in jurisprudence that all rights and obligations have their source solely in legislative enactment, that all the most eminent jurists, including the New York and California Code Commissioners, are agreed that right is what the legislature wills, this being the fundamental idea upon which the Civil Code is based. As to the old notion of natural right, that is entirely exploded. 'Nous avons change tout cela,' said Oades (who appears to be somewhat of a literary turn). "If there were such a thing," he continued, "the appointment of the Code Commission to reduce all law or right into a code would have been as absurd as to have appointed them to codify chemistry or mathematics—would, in short, have been to repeal principles established by the Almighty, and to substitute in their place the shallow notions of ignorant and fallible men. For his part, he didn't pretend to be wiser or more virtuous than the laws; and as the laws allowed him two wives, his conscience didn't disturb him for having them; neither of his wives were willing to give him up, and, to tell the truth, he could not get along very well without both of them. He loved them both so well (he added facetiously) that he was like the ass between two bundles of hay, and didn't know how to choose between them. Besides, if either marriage was annulled, it would have to be the last one; and while he might possibly stand the loss of the old woman (that is, his first wife), nothing on earth would induce him to part with the last.

The reverend gentleman thereupon left in great and just indignation, which was greatly increased on Sunday at seeing Oades—who

had always been regular in his attendance at church—seated in his pew with his two wives, listening complacently to the sermon.

As we stated yesterday, the San Bernardino lawyers had written to one of the Code Commissioners. Our correspondent was shown the answer, but did not have the opportunity of taking a copy. He was able, however, to send us a very full abstract of its contents.

The codifier, who appears from his letter to be a much more sensible man than one would think (judging only from the codes), wrote that it was a bad thing and he didn't see what was to be done about it, but that the commission was not responsible for it; that all they had done was to copy the code of that eminent codifier, David Dudley Field; that it was evidently the intention of the Legislature that the commission should pursue this course, for if they had wanted a new code made they certainly should have known better than to refer the matter to them; that it couldn't be expected that a commission of three men, without any special training or experience for the purpose, could complete in two years a work for which Justinian had found it necessary to employ the great Tibonian and seventeen other of the most eminent lawyers in the empire during many years; a work of such transcendent difficulty that the greatest of English jurists, Austin, had thought it necessary to recommend that a large number of the ablest men should be especially educated for it, and should devote their whole lives to it, a work, finally, so extensive that it had taken even David Dudley Field some time to accomplish it. As for himself he said he never had pretended to be much of a codifier, but the position was offered to him with a good salary, and he didn't feel called upon to decline it; that he made it a rule never to decline anything that was offered on account of his own incompetency—that being a matter that concerned only those who employed him; that if any one were to offer to employ him to make a piano or a steam engine—which was as much out of his line as codifying itself, he would accept the offer, provided always that it was on a salary, and that he was not to be paid by the job; that in his opinion the other Commissioners were no better than himself, and finally that the whole Commission reminded him very forcibly of Panagruel's opinion of the French lawyers, which he quoted as follows: "Seeing that the law is excerpted out of the very middle of moral and natural philosophy, how should these fools have understood it who have studied less in philosophy than my male."

All other means failing, yesterday a mass meeting was called to deliberate about the matter, which was largely attended by the citizens of San Bernardino, and also of Los Angeles and San Diego. After much discussion it was finally proposed, as the only remedy, to petition the Legislature to pass a special act dissolving Oades' last marriage. But Oades, who was present, immediately arose to address the meeting, and told them that that was no go; for by the twentieth section of the fourth article of the Constitution of California it is expressly provided, that "no divorce shall be granted by the Legislature." As Oades produced the book itself, this argument was unanswerable. It was then proposed that the Legislature should be petitioned to call a constitutional convention for the purpose of annulling one or the other of Oades' marriages; but Oades produced the Constitution of the United States, and read the tenth section of the first article, which expressly provides that "No State * * * shall pass any law * * * impairing the obligation of contracts," and marriage," he said, "was well settled to be a contract, and therefore no earthly power could deprive him of his vested right in his two wives." This brought the assembly to a standstill; for it was very evident that nothing short of an amendment of the Constitution of the United States could reach his case. At length, however, the silence was relieved by a prominent citizen of Los Angeles, who proposed—as a simple and effectual means of meeting the difficulty—to hang Oades. "This," he said, "was a very common way of arranging such affairs in Los Angeles, and it had always met the public approbation except on one occasion, when, indeed,

they had perhaps gone a little too far in hanging seventeen Chinamen." This suggestion took so well with the meeting that Oades took the hint and left while the Los Angeles man was explaining his views. The meeting at once broke up in dispute, but Oades, after a close race, reached his house, where he barricaded himself and drove off the crowd with a shotgun.

After the crowd had dispersed, our correspondent interviewed Oades at his house. He found him just sitting down to supper with his two wives, all in high spirits, and was cheerfully invited to join them. He had a long and interesting conversation with Oades, but this morning it had entirely escaped his memory, and our correspondent is too truthful to invent an account of what passed. He says, however, that he found Oades a very genial companion, and that they only separated at 3 o'clock in the morning, after the consumption of three bottles of whiskey between them. The latter part of his letter is indeed a little incoherent, and were it not for the well known steadiness of his character, might give rise to a suspicion that he has himself been converted by the sight of Oades' connubial felicity—for he says that Oades is a good fellow, and that in his opinion the whole affair has grown out of the jealousy of the people of San Bernardino, which is an old Mormon settlement; and that they are mad with envy at seeing Oades in the enjoyment of a privilege of which the laws have deprived them.—*Los Angeles Express*, Dec. 18.

JOCULARITIES.

It costs \$2,000 to bury a Congressman who dies in Washington.

"Bad temper bites at both ends," is a maxim to be remembered.

The Chicago *Times* with perturbation inquires, "Will Sickles lecture?"

"Transactions in Hair" is the heading of a Detroit editor to an account of a street fight.

A Boston court has decided that if a woman lends money to her husband she cannot get it back. That is making custom law.

No other living thing can go so slow as a boy on an errand—if you are in a hurry. Can't a girl?

The Dundee (New York) *Record* says that you can't fling a brick in that town without hitting a dashing young widow worth from \$5,000 to \$15,000.

That water will find its level was recently shown at Marion, O., where, on Christmas day, a Mr. John C. Water was married to a Miss Caroline Level.

"What is a more exhilarating sight," asks a Vermont paper, than to see eighteen handsome girls riding down hill on an ox sled?"

Some Vermont husbands are much attached to the Twilight Club. Their wives think they had better call it daybreak or else come home earlier.

The Springfield *Republican* says: "It may startle some people to learn that there is not a single man in Ohio who is legally married! We submit the matter to our new legislature." That is all true enough about the single men, but what does the *Republican* say about the married men?

A man sauntered into one of our apothecary shops the other morning, and after spending a few moments looking into the show cases, and turning a piece of tooth pick several times in his mouth, startled the clerk with the question, "What's good to cure poisoning?" "What kind of poisoning?" asked the clerk. "Well, laudanum poisoning," said the stranger. "You see, the old woman took a couple of teaspoonfuls of laudanum, and I kinder thought I'd better drop in to a pill shop, and see what's good for her," (all this in a drawing voice.) "Here, John," shouted the clerk, "put up a strong emetic as quick as you can, and you, sir, take it home, give it to your wife, follow it up with strong coffee, and call a doctor." "A doctor!" says the man, taking his medicine. "She don't waste no money on doctors, not if I know it."—*Portland, Me., Advertiser*.

—One of the first prayers that Mr. Beecher ever learned was this: "O Lord! keep us from despising our rulers, and keep them from acting so that we can't help it."