**EVENING NEWS** Published Daily, Sundays Bucepted AT FOUR O'GROCK.

PRINTED AND PUBLISHED BY THE DESERET NEWS COMPANY

CHARLES W. PENROSE, EDITOR.

PEOPLE'S TICKET FOR DELEGATE TO CONGRESS, JOHN T. CAINE.

THE GRAND JURY QUESTION AGAIN.

Many of our readers will doubtless Ogden, who was indicted five years ago by a grand jury which was generally conceded to have been illegally impaneled. Well, this case, which was allowed to remain out of sight so long, has now come up for trial, and on Thursday the defendant's attorneys, F. S. Richards, Esq., Judge R. K. Wil-F. S. Richards, Esq., Judge B. K. Williams and Judge Harkness, made an the ruling; it has taken a good deal elaborate and thorough argument in of judicial crook to accomplish November 13th of that year. The points were considered so well taken in law and a baby in jurisprudence. that District Attorney Van Zile allowed the case to remain in obscurity, fearing to bring it up because of the evident illegality of the grand jury which presented the indictment. The chief objections to the grand jury then set forth, and ably argued on Thursday, were these:

That the notice of the drawing of said grand jury was not given as provided by law. That nine of the grand jurors were drawn from the jury box without any notice whatever. That a number of the jurors drawn who possessed all the statutory qualifications were unlawfully excluded from service. That the name of one of the grand jurors who found the indictment was not on the jury list for the year. That two of said grand jurors had served within two years next preceding the impanneling of the grand jury. That one of these was

not a resident or tax-payer of the Territory. That five of said grand jurors had been drawn at the April term of 1879 and they were therefore ineligible to serve.

All these are fatal objections if the statutes of Utah in connection with the Poland law are of any force or effect. Some of them may require a little explanation. The jurors who were excluded from service were challenged by the Prosecuting Attorney as to their belief in the revelation on plural mar. belief in the revelation on plural marriage, and as to whether they considered a law of God higher than a law of Congress. On answering in the affirmative, although they declared their willingness to indict a person charged with polygamy if the evidence showed that he had violated the statute, they

was before the passage of the Edmunds law. There was not then even the presumption that the provisions of that law for challenging trial jarors could be construed to cover the case of grand jurors. There was not a line of law, local or congressional, to justify their exclusion. They possessed all the qualifications required by the The Edmunds law was enacted nearly three years after, with a provision to justify the challenging of authority on law or theology that will dispute the assertion that a law of God ing of that kind. The point to be reached is the willingness of a juror to indict or corvict, as the case may be,

governed by the evidence, It is unlawors who were qualified by law to serve, here were other fatal defects in the grand jury that indicted John Fowler, a man, by the bye, so nearly blind that one eye is entirely signtless and the other almost as bad. Thompson Ritter was one of the grand jurors who found the indictalent. No with suits suits
was on the jury list for the year; therefore he was more a lawful grand juror
within the meaning of the statuethorsphane meter was not attached. Thompshane
Ritter, any more than he was Theophilus, or Tom, or Titus, or Bimochy or
Telemachus Ritter. Then there was
Abzander, Majors, whose residence
was in Californis, and who acknowleedged that he was not a taxpayer in
this Territory. The law sensites a
juror to be a make distant of the United
States, over the second to United
States, over the second to United
States, over the second to the contribution would not enbely out of last, over the second to the contribution of persons mentioned in the
judicial district in which he
judicial district the was present to describe the propose the propose of the

when they placed the name upon the list was undoubtedly from the evidence. It is a undoubtedly from the evidence of the same case, and his name was illegally returned to the jury box, coatrary to the provision of the Poland law, and he was therefore by both the law of Congress and the law of this Territory disqualified to serve at the term when John Fowler; was indicted. Besides these jurors who had actually sat as jurors in a case tried in the District Court at the April term of that year, here were five of the grand jurors who had actually sat as jurors in a case tried in the District Court at the April term of that year, here were five of the grand jurors who had attended Court for jury service at the October term

District Autorney Dickson made an argument in answer to the reasoning of the defendant's attorneys, butas that has been adopted by Judge Zam and cape found in his Opimon, which was given this morning, and which we publish in full this evening, we need not allode to it further. Neither have we space found in his Opimon, which was given this morning, and which we publish in full this evening, we need not allode to it further. Neither have we space to the found in his Opimon, which was given this morning, and which we publish in full this evening, we need not allode to it further. Neither have we space to the found in his Opimon which was given this morning, and which we publish in full this evening we need not allode to it further. Neither have we space to the found in his Opimon which was given this morning, and which we publish in full this evening we need not allode to it further. Neither have we space to the found in his Opimon which was given to the found in his opimon which was given to the found in his opimon which wa

applies to trial jurors and not to grand jurors; that his opinion is in some instances placed above the plain language of the law in relation to jurors which needs no construing; that in the case of Alexander Majors, he acknowledges the juror's actual denicile was in California—which virtually settles the question of his ineligibility to serve in Utah but invents a pay kind of in Utah-but invents a new kind of residence, namely, a "residence for the

purpose of doing his duty as a juror." If Solomon were alive to-day he would

not declare "there is nothing new

under the sun:" Judge Zane's double residence is surely a new thing in law. His ruling in regard to service on juries is quite as peculiar. Because & juror sat but upon one case and has not actually served on juries during a whole term, he argues that he is cligible for service at the following term, while the law gives as one of the qualifications for a juror: "who has not served on grand or petit juries within the term of two years next preceding." The language cited by the judge, "for the term," is remember the case of John Fowler, of not in the law. If a juror has served within two years before the time he is again drawn he is ineligible and all

the Taird District Court, in support it, but it has been done. That of a motion to quash the indictment. a higher court will in turn set aside the This motion was originally made in ruling there can be little doubt. That November, 1879, and was published in Judge Zane's Opinion might be carefully full in the DESERET EVENING NEWS of perused, would be all we should ask if we desired him to appear as a weakling

## THE FOWLER CASE.

THE MOTION TO QUASH SET ASIDE.

FULL TEXT OF JUDGE ZANE'S OPINION The defendant in this case moves the Court to set aside the indictment for a number of reasons, that he should not be held to answer the indictment found by the grand jury in his case. And one objection is, "because the following named persons, namely—John Barton, O. D. Hendrickson and others were each and all illegally restricted tree said panels of said grand. jected from said panel of said grand jury, because they believed that polyg-amy was authorized by divine law; although they stated on their voir dire that they would, if on the grand jury, find indictments under the United States statute against polygamy or bigamy, if the evidence before them showed that any person had violated said statute and was liable to prose-cution under it."

sess that state of mind which would lead to a just inference that he would

tion asked the jurors mentioned was athough I have not examined into it. our honor) which considers the point have referred to, as decided in the Jah Reports. The Court says; "It is evident from the examination in a prosecution for polythe ground of their ibeliefthose grand jurors were so
it was without authority
law. Is it not therefore a

"the defendant also assigns as further a practical regions why said indictment should be set aside, that Thompson Ritter, a member of the grand jury that found said indictment, was not at the time said jury was empanelled, nor when said indictment was found, an eligible juror, as provided by law, because his same was not on the jury list prepared by the Probate Judge and the Clerk of this Court for the year 1879, nor on the jury list for any other year, and his same was not drawn from the Jury box of this Court."

It appears from the evidence in this case that the name of Thompkins Ritter was in the list prepared by the Probate Judge and the Clerk. In that list Tompkins Ritter's place of residence was given as Riverdale—a village, as I understand—and the name of Tompkins Ritter was drawn out.

gaged in business for a time, whether permanently or temporarily, was 'a re-siding out of the State, within the meaning of the Satute: that the actual term implies a more fixed and perma-nent abode than the former; and frequently imports many privileges and duties which a mere resident could not claim or be subject to. Approved lexi-cographers give a more fixed and defi-nite character to the place of abode of the one than the other. Be this, however, as it may, the cases cited above, establish that the transent visit of a person for a time at a piece, does not make him a resident while there; that something more is necessary to entitle him to that character. There must be a settled, fixed abode, an intention to remain permanently at least for a time, for business or other purposes, to constitute a residence within the legal constitute a residence within the legal meaning of that term."

Omitting a portion of this opinion the Court says further:

"One of these cases expressly, and all of them virtually, dec.de that actual residence, without regard to the domicil of the defendant, was within the contemplation of the statutes.

The domicil of a citizen may be in one State or Territory, and his actual residence in another."

That seems to me to be sound rea-

That seems to me to be sound rea-soning. The duty of a juror is a burthen imposed upon a citizen, and one which he owes to society, and of course if he is, for the purpose of business, out of the state where his domicil is, in another state doing busi-ness, and actually living there, he can-not discharge the duty which he owes to society at the place of his domicil, and if he is otherwise unobjectionable, I see no reason why he should not perform that duty at the place where he actually lives and resides, among the people with whom he is doing business and associating, and who know him; I and associating, and who know him; I see no good reasoa for it; and it would seem to me that this opinion is based upon sound reasoning, and that on the principle there laid down I am disposed to hold that Mr. Majors, while his domicil was in California, his residence for the purpose of his doing his duty as a juror was in the Territory of Utah. It appears that Mr. Majors had served on a jury before in this court within two years or within the time

Mr. Majors as a juror is, that he was not a taxpayer. It appears that he and among other things he answered that he was not; but was asked by the States Attorney if he did'nt own a watch—and I think the inference is that reference was made to the watch and chain that he had on; it is reasonable to assume at least that the watch and so far as the examination shows as to that particular point it ceased; the evidence did not show with any cer-

evidence did not show with any certainty or clearness that he may not have been a taxpayer in the Territory of Utah, according to his answer. I am inclined to think he was according to the, answers of other witnesses. The presumption is that those jurors were competent, and of course the burthen is upon the defendant to show clearly that they were not—to overcome the presumption by the clear weight of evidence. It is pretty clearly shown that this man Majors did'nt pay taxes here. It is shown that he was not assessed, and that he did not pay taxes; but the Supreme Court of this Territory—ist of Utah Reports, in the case of the United States v. Reynolds say upon this question.

"It is likewise asserted that one of the jurors did not pay taxes. He had taxable property, however, and was ready to pay taxes. If he was not assessed, and not thus allowed to pay taxes, it was not his fault, and he cannot be excluded from the jury box for failing to pay taxes."

This opinion, therefore, holds that it was unnecessary that a juror should actually pay taxes if he has property that is taxable. The point was made that his (Majors) domicil was in San Francisco, and that, therefore, his watch should be assessed there. I am inclined to hold under the laws of this Territory that the fact that he was here, as shown, and had his property with him, authorized the revenue officer to assess it; it was taxable here. It was true that under the general law of the land, where not otherwise provided by statute, that assessable property is at a man's domicil, the place of his abode. But the statutes of this

It appears from the evidence that the family of Majors—whatever family he had—resided in the State of California; that he was here on business for a near or about two years, going home—as I think the evidence warrants the inference—occasionally, and the quasition is, was he a resident within the meaning of the law?

I have been referred in Wendells Reports (Vol. 19, page 11), to the case of Frost & Dickinson vs. Brisbin. Chief Justice Nelson delivering the opinion—which appears to have been a unanimous opinion—of the Supreme Court of New York says:

"In the matter of Fitzgerald(2 Caines 317), it was decided that a person coming into this State and remaining for a special and temporary purpose, without any intent of settling here, was not a resident within the meaning of the act for relief against absconding debtors. In the matter of Thompson (1 Wandell, 43) the court held under the same act, but in respect to an absent debtor, that residing abroad, engaged in business for a time, whether regramently or temporarily, was 'a representation or a man or about the same act, but in respect to an absent debtor, that residing abroad, engaged in business for a time, whether regramently or temporarily, was 'a re-

to serve in one case, whether their names should be placed back into the box or not. It is true that if enough siding out of the State, within the meaning of the Satute: that the actual residence of the debtor was contemplated, which might be distinct from the place of his domicil. In the matter of Wrigley (4 Wendell, 602, 8 id 134), it was held that a person remaining temporarily for a mouth in the city of New York and Brooklin, intending to commence business in Canada, was not an inhabitant or resident, within the meaning of the insolvent act of 1812. In Roosvelt vs. Kellog (20 Johns. R. 210, 11) a resident of a place is said to be synonymous with an inhabitant, one that resides in a place. It may, I think, be doubted if this position is strictly accurate, as the latter vice in one case. If that is the proper construction of this law, then to con-structhis statute of the Territory of Utah as applying to a juror whose name is simply drawn out to serve in one case, to hold it to apply to that would be to hold that the Legislature intended, notwithstanding the intention of Congress that where a

juror's name was drawn out to serve in one case, and \_is name was put back into the box, that he was not a compe-tent luror. I am disposed to hold that the construction which has been given to this section 4 of the Poland law is a proper construction, that where they are drawn for special duty to serve simply in one case that their names may again be put back into the box and be drawn to serve as regular jurges, nothwithstanding they may have served in one case. That being so, I am disposed to construe this statute of the Territory with reference to the act of Congress and to hold that the intention of the

Territorial Legislature was to conform Territorial Legislature was to conform to the act of Congress. And in speaking of grand and petit jurors, they intended jurors for the term, grand jurors certainly, but coupled with petit jurors. The grand jurors must be for the term; they could not serve on one special case; and the petit juror is coupled with it and that without qualification, and that must mean to be jurors for the term.

This view that I have taken on this motion disposes of all the questions that I deem it necessary now to direct attention to particularly. The direct attention to particularly. The motion is therefore set aside. An exception was taken to the ruling by counsel for the defendant.

BY TELEGRAPH. PER WESTERN UNION TELEGRAPH LINE.

> AMERICAN. LATEST BY LIGHTNING.

Church Fire. CRICAGO, 10.—The Third Presbyteri-an Church on Ashland Avenue, one of the finest church edifices in the city was burned this forenoon. The struc-

ture's value was \$100,000. The loss is \$79,000: fully insured. Nearly 7 1-2 Per Cent New York, 10.—The annual report of the Oregon Railway and Navigation Company, for the year ending June, 1884, will be issued in a few days, and will show that the company has earned within seventy thousand dollars of 7% per cent. net.

A Nest of Unclean Birds.

NEW HAVEN, Conn., 10.—In demolishing an old building on the top of East Rock the workmen discovered several undergound passages 30 or 40 feet long, 15 feet high and 3 feet wide, which led to a subteranean vault. Several counterfeit silver pieces and broken dies were found. Milton J. Stewart was the less occurrent. He disclaims art was the last occupant. He disclaims any knowledge of the matter. The place has had an unsavory reputation, Murders and various other crimes have been committed there.

FOREIGN. LATEST TRANSATLANTIC DIS

Carro, 10.—Col. Kitchener telegraphs that a rumor is current at Ambukel that the rebels have captured three Europeans with their dragomen. If the report is true, the prisoners are presumably Col. Stewart; Power, correspondent of the London Times, and M. Herbin, French consul at Khartoum. Thus there is some hope that the lives of these three have been spared. One hundred row boats forming a part of the Nile expedition have arrived at Assouan. The Canadian contingent has passed Assiout in a steamer.

The Franchise Bill,

London, 10.—The prospect of a compromise franchise bill being reached botween the conservatives and liberals is improving. It is alleged, that the government's scheme for the redistribution of parliamentary seats to correct the disparity which now exists between the representation of the poplation in counties and boroughs had smoothed the way for a settlement. The Marquis of Salisbury and his conservative colleagues the Duke of Richmond and Earl Cairns are holding a conference at Garlin Castle, Residence of the Duke of Richmond, looking to a settlement of the difficulty with the liberals.

TOOK OUT FOR HIM.

HIGHEST CASH PRICE. Paid for Butter, Eggs, Poultry, etc. DURST & VAN HORNE'S. One and one-half bat less of Ely's Cream Balm entirely cared me of Hay-Fever of ten years' standing. Have had no trace of it for two years. Al-bert A. Perry, Smithboro, N. Y.

PILES! PILES!! PILES!!! Sure cure for Blind, Bleeding and Itching Piles. One box has cured the worst 'ases of 20 years' standing No case Leed suffer five minutes after using William's Indian Pile Olument Its absorbs tuncors, allays itching, acts as positice, gives instant relief. private parts, nothing else Soid by druggists and maded on receipt of price 50c and \$100 For sale by Z. C. M. I. Drug Dept FRAZIER MEDICINE Co. Prop's, Cleveland, Ohio.

WANTED. WO GOOD AGENTS WANTED AT No. 63 w. First South Street. Call at once. BUELL & BOBERTS.

WANTED. FIRST - CLASS HORSE SHOFR. NAYLOR & PIKE'S.

FOR SALE. E NOUIRE AT THE CLIFT HOUSE FOR Empty Whisky Barrels, \$1.25 each.

NOTICE

OTWITHSTANDING GEORGE THUR-GOOD'S breach of promise to us and the invitation he extends to his old customers, we having bought out his good will in the Globe Market desire to return our thanks to them for their liberal patronage in the past, and hope that in the disposal of none but CHOICEST MEATS to retain their SHERWOOD BROS., Opposite Z. C. M. I.

LOST.

ON WEDNESDAY LAST, OCT. 8th, ahout noon, (it is thought between East and West Temple Streets, on First South Street,) a square charm the shape of a small window with shutters on the one side, and part of a chain. The finder will greatly oblige by leaving it at the News office right away for the loser of the same.

ESTRAY NOTICE. T HAVE IN MY POSSESSION.

One dark, yellow two year old Stallion, short piece of lariat twice around his neck, brand resembling an ox yoke staple on right One black MARE, 3 years old, no brands visible.
One bay HORSE, 10 or more years old, three white feet, tail docked, branded on left jaw, G P on right shoulder, resembling I C on right thigh.
One black MARE, 4 years old, three white feet, white spee on tip of nose, right shoulder blade injured, branded R G on left shoulder and T on left thigh.

Which if not claimed and taken away by the 21st of October, 1831, will be sold at 9 a. m., at the Nephi Estray Pound, Juab County PETER SUTTON, District Poundkeeper. Nephi, October 9th, 1884.

SHEEP FOR SALE!

250 THOROUGHBRED RAMS CONSISTING OF

Cotswold's, Lincoln's and Shropshtre's.

> Will arrive from Canada to-morrow EIGHTH WARD SQUARE.

DR. FOOT, Jr., be Consulted Free at the Metropolitan Hotel;

ner of Third South & West Temple St. Until March 1st, 1886, N ALL NERVOUS, BLOOD, PRIVATE. CHRONIC AND FEMALE DISEASES AND DEFORMITIES, ETC.

Visits made. Phrenological Charts Given. The Doctor has settled here this winter for a change of climate.

\*\*AP Methods of Treatment—Homopathy, Eclectic, Electricity and Magnetism. Cures guaranteed by mail.

Located permanently in the Union Block, Main St., between 2d and 3d South Streets. Consultation free.

exhaustion without effort, which rankes life burden to so many people, is due to the fact that the blood is poor, and the vitality consequently feeble. If you are suffering

Ayer's Sarsaparilla s just what you need, and will do you incal-

ombines blood-purifying, vitalizing, enrichng, and invigorating qualities as AYER's SARSAPARILLA.

Dr. J. C. Ayer & Co., Lowell, Mass. Sold by all Druggists; \$1, six bettles for \$5.

884 FRUIT CROP 188 TEASDEL'S!

Highest Market Price paid for all kinds of DRIED FRUIT. CITY PATRONS

SHIPMENTS FROM THE COUNTR By Rail received at the depot Our own wagons visit daily for the benefit of shippers.

S. P. TEASBEL. NO POISON



Vestile, Lesson, Grange, one, Service Colors, Crange, Fundament and Service Street Allone.

Price Baking Powder Co.
Chicago, Ill.

Br. Prices Green Baking Beauty painters through to destroy and Treat.

WALKER OPERA HOUSE. SEVEN PERFORMANCES. Saturday, October 4th, 1884.

THE SUPERB NELLIE BOYD COMBINATION, Supporting the best of all Versatil NELLIE BOYD In the following repertoire: SATURDAY, Matinee and Evening, OCT, 4

BOLOMON ISAACS. MONDAY EVE, OCT. 6th, The great New York, London and San Francisco Success, PORGET-ME-NOT. TUESDAY EVE, OCT. 7th, The Ticket - of - Leave Man. WEDNESDAY EVE, OCT. 8th, The great Historical Tragedy LUCRETIA BORGIX. THURSDAY EVE, OCT. 9th, CELEBRATED CASE.

LORLE. With Entire Change of Programme each evening. Her own Elegant Band and Superb Orchestra. New and Appropriate Scenery and usual matiness.

Popular Prices \$1, 75c., 50c. No extra charge for reserved seats. Box office open on Friday at 10 o'clock.

FRIDAY EVE, OCT. 10th,

WALKER OPERA

JOHN MAGUIRE,.....MANAGER. Engagement of the Great Artiste

IX NIGHTS COMMUNICING ON Monday, October 13th, n an extensive Repertoire, amongst which

FELICEA; Or, Woman's Love!

THE FORSAKEN! Etc., Etc., Etc.

Popular Prices—\$1, 75c. and 50c, Box Office open Friday, October 10th. 83 No extra charge for Reserved Sents.

REMOVAL!

WILL REMOVE OVERCOATINGS

72 Main Street.

October

Fixtures at 48 Main Street. FOR SALE.

BANKS. U. S. DEPOSITOR Y.

DESERET NATIONAL ITANK. SALT LAKE CITY. PAID UP CAPITAL

H. S. ELDREDGE, President.
WM. JENNINGS, Vice-Presi.
FERANCHE LITTLE,
JOHN SHARP,
WM. W. RITER,
L. S. HILLS, Cashier,
JAS. T. LITTLE, Asst Cashier, DIRECT ORS

RECEIVES DEPOSITS PAYABLE BA DEMAND. Roys and Sells Exchange on New York, San Francisco, Chicago, St. Louis, Omaha, London, and princi-pal Continental Cities.

STRAYED OR STOLEN. ont foot a suitable reward will be given for any formation sent to EALPH SNOWBALL, flat Ward.



FINE YOUNG PERCHERONS

ALMA PRATT, West Trimpte Street, Two miles South of Trimpte Block

BRED IN ILLINOIS FROM THE BEST IMPORTED SIRES.

TWENTY-THIRD BEMI-ANNUAL odonent leit SALT LAKE CITY, Oct. 6th, 1884. E BATURDAY, THE 4th CURRENT,

CLOSING OUT.

A Full Line of Misses', Children's and Infants' SHOES

Of Williams & Hoyt's make, in Goat, American and French Rid. Sandals, Ties, etc., also an endless variety of

Ladies' Grain, Goat, American and French Kid, High and Low Cut Shoes, Kid and Satia Slippers, at Sacrificing Prices, as I am Closing out this entire line of Ladies', Misses' and Children's Shoes.

NEW STOCK OF

CLOTHING AT LESS PRICES THAN EVER.

WHICH WILL ASTONISH THE NATIVES.

LATEST STYLES IN HATS **NEW STOCK OF FURNISHING GOODS.** 

MEN'S AND BOYS' BOOTS AND SHOES OF ALL GRADES AT

THOS. W. JENNINGS' FALL MILLINERY

No. 56 Main Street.

MRS. J. E. GREGORY Has RE OPENED at the aid establishment of Miss Neille Colebrook, with

COMPLETE STOCK OF MILLINERY Just received from New York. Also, SOMETHING NEW IN HAIR GOODS And respectfully invites her friends and the public generally to call.

> :01----MRS. J. E. GREGORY, No. 56 MAIN ST.

ESTABLISHED 1876

LARGEST

COMPLETE FOR FALL AND WINTER IN THE CITY FINEST MPORTED STYLE, FIT

AND DOMESTIC

WORKMANSHI GUARANTEED.

PRICES

PANTINGS BUCKLE & SON. DEFY COMPETITION

BUCKLE & TAILORS AND WOOLEN DRAPERS,

F.AUERBACH&BRO

LAKE CITY.

FALL AND WINTER 1884!

WE ARE NOW DAILY RECEIVING

Novelties in Silks, Velvets and Plushes. Novelties in French and English Dress Fabrics.

Novelties in Pall and Winter Wraps. Novelties in Jerseys.

Novelties in Knit Woolens.

Novelties in Laces and Handkerchiefs. Novelties in Primmings and Dress

Novelties in Ladies', Children's Shoes and Slippers. INENER CE

Novelties in Gents' and Boys' Wear. Blankets, Quilts, Rubber Goods, Etc., Etc.

Stallions for Sale! The Pew SUMMER GOODS left we offer AT HALF PRICE! BERRE Belanding

> WHOLESALE BUYERS will find our Fall and Winter Stock filling up fast with NEW GOODS

> AT ATTRACTIVE PRICES

WE ARE MEVER UNDERSOLD. MAIL ORDERS PHOMPTLY FILLED

F. AUERBACH BRO

JITS CORT REPORTS, APPEND, CARLY SEE CHEE