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TERRITORIAL SUPREME COURT DECISIONS.

OPINIONS IN THE CANNON AND MUSSER CASES.

JUDGES ZANE AND BOREMAN AFFIRM THE FORMER DECISIONS—JUDGE POWERS DISSENTS ENTIRELY IN THE MUSSER CASE AND OBJECTS TO SOME OF THE METHODS, BUT AGREES AS TO THE RESULT IN THE CANNON CASE.

As announced on Saturday, after a long delay which an expectant audience attributed to want of harmony between the Judges, at 4 p.m., Chief Justice Zane and Associate Justices Boreman and Powers entered the court room. Judge Boreman proceeded to read the following

OPINION:

In the Supreme Court of the Territory of Utah.

JUNE TERM, 1885.

THE UNITED STATES OF AMERICA, Respondent,
vs.
ANGUS M. CANNON, Appellant.

Boreman, Justice, delivered the opinion of the Court.

On the 7th day of February, 1885, the defendant, Angus M. Cannon, was indicted in the Third District Court for the crime of unlawful cohabitation. After trial and a verdict of guilty, he made his motion for a new trial, which was overruled, and thereupon, on the 7th day of May, 1885, he was sentenced to the penitentiary for six months and to pay a fine of $300. From the order overruling the motion for a new trial, and from the final judgment the defendant has appealed to this Court. The body of the indictment reads as follows:

"The grand jurors of the United States of America within and for the District aforesaid, in the Territory aforesaid, being duly empanelled and sworn, on their oaths do find and present that Angus M. Cannon, late of said District, in the Territory aforesaid, to-wit: on the first day of June, in the year of our Lord one thousand eight hundred and eighty-two, and on divers other days and continuously between the said first day of June, A. D., 1882, and the first day of February, A. D., 1885, at the County of Salt Lake and Territory of Utah, did unlawfully cohabit with more than one woman to wit; one Amanda Cannon, and one Clara C. Mason, sometimes known as Clara C. Cannon, against the form of the statute of the said United States in such case made and provided, and against the peace and dignity of the same."

"The appellant claims that the indictment is insufficient and that it was error to admit evidence under it. He relies upon two alleged defects in the indictment:

First—That it fails to allege or show that the defendant is a "*male person*."

The action is based upon the third section of "An Act to amend Section 5352 of the Revised Statutes in reference to bigamy, and for other purposes," approved March 22, 1882, and commonly known as the "Edmunds Act." The section referred to provides that "if any male person in a Territory * * * shall hereafter cohabit with more than one woman, he shall be deemed guilty of a misdemeanor," etc.

The name Angus, is in this community recognized as that of a "male person," the defendant himself, however, being the most public character bearing the name. Outside of this community it is well recognized as a male appellative.

The word *person* embraces all mankind, and mankind is divided into two classes, one male and the other female. The statute says that this crime can be committed only by the members of one class—the male—upon and with members of the other class, the female. When, therefore, as in the case under consideration, the specific crime is charged to have been committed by some person upon and with those of the female class, the natural and inevitable conclusion would seem to be that the same person committing the offense belonged to the other, the male, class. The law would presume this, and its statement in the indictment would be unnecessary. Crim. Prac. Act § 159. Laws of Utah, 1878, p. 94.

The grand jury could not have intended to indict a female under such a statute. To have done so would have been not only irregular, but in violation of their oath. The court cannot—in the absence of evidence—assume that the grand jury committed so great a folly and performed so vain a work. All presumptions are in favor of the regularity of the proceedings.—People vs. Sims, 17 Cal. 270; 1 Whart. Cr. Law § 713; 2 Russ. on crimes p. 732.

This is not the case of an indictment where there are different classes or kinds of persons who can commit the offense. That was the peculiar feature of the case of the People vs. Allen (5 Denio 76) cited by the defense. In such a case it would be clearly necessary to apprise the defendant by the indictment of the class he was charged of belonging to, for the reason that there were two classes. In the case before us, however, there could be no doubt, in his mind, as there is but one class. But in the case of the People vs. Allen the title, clerk, or servant, was not so much a description of the person as it was an element in the description of the offense itself. It was a case of embezzlement, where the money had to be received by him as the clerk or servant, and in the course of his employment as such. In the case at bar, however, the word "male" can hardly be said to be an element in the description of the offense, it is simply a designation of the class of the offender. This designation of the defendant could in no way aid in establishing his identity. That was fixed by the name, which upon arraignment he admitted to be correct.

In some of the States, such as New York, Massachusetts, Pennsylvania, etc., the statutes against rape say, that: "Whosoever ravishes and carnally knows a female," etc., (Mass. Stat., 1871, chap. 55;) or: "Every person who shall have carnal knowledge of any woman," etc.,) 2 N. Y. Rev. Stat. 663, sec. 23,) is guilty of rape." The words "male person" do not appear in the statute, yet it is a well-known fact that no one but a "male person" could be inflicted for such an offense. In a prosecution under such a statute, the Court is required to presume, from the very nature of the offense itself, not only that the defendant named therein was a "male person," but it would of necessity have to go one remove further, and presume the words to be in the statute, that is, that the statute, although it did not say so, meant to apply to "male persons" alone. How much stronger is the case before us where the statute is express and the Court has to presume only as to the indictment. We think it is a settled general doctrine that in rape cases, even under the strict rules of the common law, it is not necessary to aver, in the indictment, the sex of the defendant.

2 Whart. Cr. L., sec. 1154.
2 Bishop's Cr. Proc., sec. 901 (Ed. of 1846.)
People vs. Colton, 2 Utah. 457.

In the cases like the one under consideration, it is generally necessary to aver the sex in the indictment.

Bishop St. Crimes, secs. 700, 705-6-7.

A case there referred to was where the indictment charged "that Daniel McLeod and Delany Waters, *alias* Lany Waters, did live together in a state of adultery and fornication." The name Daniel is a well known male appellation, but "Delany" or "Lany" would seem to be as well suited to male as to female persons. Yet in that case, the Court held that it was not necessary in the indictment to state the sex. McLeod vs. the State, 35 Ala. 395.

The same rule that would apply to rape, adultery, and lascivious cohabitation cases, would apply to other classes of cases, in regard to other words. For example, the statutes against murder say that murder is the unlawful killing of a *human being* with malice aforethought. Yet in an indictment for murder it is not deemed necessary to allege that the victim was a *human being*. 27 Cal. 507. In every such case it is conclusively presumed that the deceased was a human being, so there is no such crime as the murder of an animal or of an inanimate thing. And further, the statute does not say in express words, that the unlawful killing must be the work of a human being in order to constitute a crime, yet the courts, from the very nature of the offense, do so hold. Not only so, but they go further and presume the defendant who is charged with the crime, to be a human being of a particular class, namely, one of responsible age and of sound mind.

A California statute says, that "any person of the age of fourteen years and upwards who shall have carnal knowledge of any female child under the age of ten years," etc., "shall be guilty of the crime of rape." The Supreme Court of that State holds that in an indictment under that provision, it is not necessary to aver that the defendant is over fourteen years of age: That the defendant's capacity to commit the crime is an element in the crime. People vs. Ah Yek 29 Cal. 575, citing Com. vs. Scannel 11 Cush. 548. So, if in the case before u, it should be conceded that the defendant's capacity to commit the crime be an element in it, yet it is not necessary to state, in the indictment, that he is a "male person." But as stated above, we do not consider the words "male person" any element in the description of the crime. It would show that he belonged to the class which alone was capable, but it would not show that he individually was capable, or that he was not of irresponsible age, or not of unsound mind.

The cases of *ex parte* Hedley (31 Cal. 108), and the Com. vs. Libbey (11 Met. 64), referred to by the defense on this point, do not seem applicable. They were both cases of embezzlement, and no question was raised as to the sufficiency of the indictment in either case.

We do not see wherein the insertion of the words "male person" would have aided the defendant in his defense. He could not then any have been enabled to make any other or different defense than he has made. It would not have enabled him to understand any better the nature of the crime charged. If he has not been prejudiced in respect to his substantial rights he cannot complain.

Crim. Proc. Act. § 479. Laws 1870, p. 165. Amended la s 1884, p. 120.

We conclude, therefore, that it was not necessary to designate the defendant, in the indictment, by the words, "male person." The fact, however, that he is a "male person" does appear from the indictment, taking it altogether, including the context, the nature of the offense and the recognized application of the name to male person.

Second—It is claimed that the indictment is defective in not alleging that the defendant put forth any pretense of marital relation to the woman mentioned. The appellant holds that the court has no right to interpolate words into the statute which the law-making power never intended to be there. That proposition as a general rule is undoubtedly true. But in the case in hand there is no interpolation. The question is on the indictment, and it shows no interpolation, but if it exists it is in the interpretation of the words used in the statute and in the indictment. It is insisted that if the court construes the third section as specified as being confined to matrimonial cohabitation it is wrong; but if it is right, then the indictment is defective in not alleging that defendant cohabited with these women as wives. So far as the objection to the indictment goes, it is not a question as to whether it is defective if some peculiar construction be adopted, but whether it is defective in law, without any such construction. If it be assumed, that the words, "as wives," according to the suggestion in one of the briefs of appellant, were added to the indictment, would the alleged defect be cured? Exactly the same objection would arise as now arises without the addition of these words. The question would still remain, what is the meaning of the words "to live or dwell together as husband and wife?" The trouble, therefore, would not be ended if the suggestion of appellant were complied with. The addition of such words to that already in the indictment, would be mere tautology, and would give the appellant no information as to the character of the crime against him that is not found in the indictment as it now stands. From the position taken afterwards in the briefs of the appellant, although the point is not made against the indictment, it is apparent that appellant might hold that still other additional should be made to the description of the offense, in the indictment. But as such particularity would not be required even in a murder case, we do not think it would be required in a case of misdemeanor. It is never necessary to detail in an indictment all the facts which the prosecution expect to prove, in order to make out a case, nor is the defendant ever entitled to them. He is entitled to a plain and concise statement or description of the offense charged against him, in order to enable him to make his proper defense and to enable him to plead a conviction thereunder in bar of another prosecution for the same offense.

In the construction of penal statutes care must be taken to put such a construction upon the language as would include the innocent as well as the guilty. The evil to be guarded against must be kept in view. Com. vs. Stout, 7 B. Mon. 249.

We will not likely go astray if, with this rule always before us, we keep in remembrance that other indispensable rule, namely, that the intention of the Legislature must be sought and followed, except that the construction must not be repugnant to the clear meaning of the words used.

With these rules to guide, the cases cited by appellant under this second heading are clearly not inconsistent with our views of the proper construction to be put upon the statute under consideration. The only object of those references is to show that the indictment should have added the words "as wives" to the word "cohabit," and this we have shown would have availed nothing.

The offense with which the defendant is charged is purely statutory, and it is a new offense in our statutes. It is a general rule, well settled, that in an indictment for an offense created by statute, it is sufficient to describe the offense in the language of the statute:

People vs. Colton 2 Utah.
People vs. Cronin 34 Cal. 191.
Lodano vs. State 25 Ala. 61.
People vs. Murray A. West—C. R. 513. [illegible]
People vs. Soto, 63 Cal. 165.

The Supreme Court of the United States says that where a person is indicted for a purely statutory offense, it is sufficient in the indictment to charge the defendant with acts coming within the statutory description in the substantial words of the statute without further expansion.

U. S. vs. Simmons 96 U. S. 360.

Where a new offense has been created by statute without reference to anything else it will be sufficient to describe the offense in the terms of the act.

People vs. Saviers 14 Cal. 29.
People vs. Shaber 32 Cal. 38.

To the general rule of describing statutory offenses in the language of the statute there are exceptions, the principal ones being (1) when the statute makes that an offense which was an offense at the common law, and (2) when the offense is described in the statute in terms too general. The cases cited by the appellant come within the one or the other of these exceptions. As we have shown above, the indictment in the present case would have been no more certain and plain than it is even if the definition of the word cohabit had been embraced therein. The word has an established meaning and the indictment gives such particulars of time, place and names of the women, as to inform defendant wherein he was charged with having violated the law. If the case falls within either of the exceptions to the general rule and would require more particularity, it has not been shown. It was the duty of the appellant to have done this

State vs. Abbot, 31 N. H., 434.
1 Whart. Crim. Law, Sec 334.

The alleged offense is not claimed to have been an offense at common law, therefore it does not fall within the first of these exceptions, and it does not fall within the second exception unless the description is language too general to give the defendant information to which he is entitled to enable him to prepare his defense or to plead the judgment hereafter in bar of another prosecution for the same offense, or too general to guide the Court in passing sentence. If the indictment had charged the defendant with "cohabiting with more than one woman," without giving the names of the women, without time and place, it would have been insufficient in not giving particulars so as to enable defendant to make proper defense or to plead the judgment hereafter.

In the exposition of a statute the intention of the legislature is to be sought and followed, unless by doing so the construction to be given is repugnant to the clear meaning of the words, and if the meaning of the words is plain and obvious the only safe course is to suppose the legislature intended those things which the words denote. Taylor vs Leoni, 20 Mich. 155. If the language is clear, it is conclusive and the words must not be narrowed down to the exclusion of what the legislature intended to embrace, but the intention must be gathered from the words. That sense of the words should be adopted which best harmonizes with the context and promotes in the fullest manner the policy and objects of the legislature. U. S. vs. Hartwell, 6. Wall, 385.

What then was the object of the Congress in enacting this statute? It was, judging from the whole act, intended to be an aid in breaking up polygamy and the pretense thereof. The well recognized difficulty of reaching the polygamy cases by reason of having to prove marriage and by reason of the fact that the statute of limitations bars prosecutions after three years, no doubt led Congress to pass this act. It was sought to break up the polygamic relation. It was necessary in effect to make polygamy a continuous offense, without requiring proof of marriage. Whether marriage took place or not the pretense of marriage—the living, to all intents and purposes, so far as the public could see, as husband and wife—a holding out of that relationship to the world were the evils sought to be eradicated. Although aimed primarily at such a relationship, it reaches out and embraces all men living and dwelling with more than one woman as if they were married, whether any marriage had ever taken place or not. It was living and dwelling together under the appearance of being married. The appellant insists that cohabitation necessarily includes sexual intercourse, and that there can be no cohabitation without it. We find nothing whatever in the language or context to lead us to believe that Congress meant to apply the statute to lewd and lascivious cohabitation, which would be the case if the construction contended for by the appellant were correct.

The primary meaning of cohabit, is to dwell with (*con*, with, and *habere*, to dwell) and at the present day it is generally held to mean to dwell or live together as husband and wife, or to dwell or live together in the same company, place or country.

Calef vs. Calef, 54 Me., 365.
Com. vs. Calef, 10 Mass., 159.
Ohio vs. Connoway, Tappan (Ohio) p. 90.

This meaning is recognized in appellant's brief (p. 4) where it says that "in looking to the common signification of the word cohabit we find but two meanings, one broad and generic and including all residents of the same ward, town, city or even country, and the other the living together as husband and wife." The brief proceeds to place the construction upon the latter words, which we have here referred to and which we do not think are warranted.

That learned author, Mr. Bishop, says that he knows of no legal authority or usage that would embrace sexual intercourse in the word, except the casual misapprehension of Chancellor Walworth in Dunn vs. Dunn, 4 Paige 425, 428.

1 Bishop's M. & D. § 777, note (1), 4th Edition.

The authorities of the appellant on this point do not shake the position that cohabitation does not include sexual intercourse. The word does not even include necessarily the occupying the same bed.

2 Paige Ch. R. 425.

In Foster vs. Foster (1 Hag. 144.) where matrimonial intercourse was sought to be enforced between man and wife, the Court drew the distinction between "*matrimonial intercourse*" and "*matrimonial cohabitation*," holding that "the duty of matrimonial intercourse could not be compelled, but that "matrimonial cohabitation" could be.

The case of Orme vs. Orme (2 Eng. Ec. 354.) was brought by the wife against her husband for restitution of conjugal rights. The libel admitted that the complainant was "allowed by the said Robert Orme to reside in the same house with him," and the Court held that this admission of "cohabitation," admitted the complainant out of Court, and that she might have been restored to cohabitation, yet as that was admitted to exist, and the Court could go no farther, that the Court had no power to restore the complainant to matrimonial intercourse with her husband.

Had it been the intention of Congress to include the common sexual vices in this provision, it appears unreasonable that it should not have said so. It evidently did not intend to include lewd or lascivious cohabitation; for had it so intended it would have added those words. When the bill was under consideration in Congress, their attention was specially called to the matter, and it could not therefore have been an oversight. A member (Mr. Singleton) offered an amendment, whereby it was proposed to reach all of the sexual vices, and to punish adultery, fornication, open and notorious lewdness, etc.; but the amendment was voted down.

Congressional Record, March 15th, 1882.

Thus Congress clearly gave expression to their view, that no such offenses were to be embraced in the act. The crimes which Congress proposed to punish were such as a large part of the people, especially in this Territory, were upholding and practicing. The other vices were such as all people disapprove, and hence Congress left their suppression to the local authorities. The interpretation we have given to this provision—the 3rd section—is, as we think, the one best calculated to effect the object intended by Congress and to suppress the evil.

We now come to our criminal procedure act.

The criminal procedure act of this Territory is to the criminal practice what the civil procedure act is to the civil practice act.

27 Cal. 507.

As we are bound by the criminal procedure act, it is unnecessary to inquire what was the rule at common law, when the statute speaks.

People vs. West, 49 Cal. a. 10.
People vs. Murphy, 39 Cal., 52.
People vs. Cronin, 34 Cal. 191.

The criminal procedure act says:

"All forms of pleading in criminal actions and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this act."

Utah Laws, 1878, p. 91.

If the indictment will stand the test of these rules, it will be sufficient, no matter how much it might fall short of what would have been necessary at common law.

People vs. King, 27 Cal. 510.
People vs. Dick, 37 Cal. 277.
People vs. Cronin, 34 Cal. 191.
People vs. Murphy, 39 Cal. 52.

In section 150 of the criminal procedure act it is provided what the indictment must contain. After specifying that it must give the names of court and parties, it says the indictment must contain "a clear and concise statement of the acts or omissions constituting the offense, with such particularities of the time, place, person and property as will enable the defendant to understand distictly the character of the offense complained of and answer the indictment." A form of indictment is given, and section 151 provides that the indictment must be direct and certain as it regards, (1,) the party charged, (2,) the offense charged, and (3,) the particular circumstances of the offense.

Sec. 158 specifies that the indictment will be held good if it can be understood from it (amongst other things not here brought in question), so far as the description of the offense goes, "that the act or omission charged as the offense is clearly and distinctly set forth, without repetition, and in such manner as to enable the Court to understand what is intended, and to pronounce judgment upon a conviction, according to the right of the case."

To have enabled the defendant to answer the indictment it could not have been necessary that he should have been apprized of the act by express averment that he was a *male person*; nor could it have been necessary, as we have seen, to make him to understand the character of the offense charged and to answer it, that the offense should have been otherwise or more particularly described than has been done. The offense is clearly and distinctly set forth—there is no repetition—and it is set out in a manner sufficient to enable the defendant and the Court to understand it, and to guide the Court in pronouncing judgment.

If appellant thought the indictment defective in either respect, he should have demurred. Cr. Proc. Act Sec. 192, Laws of Utah, 1878, p. 101. The defects were such as could have been reached by demurrer. As appellant did not demur, he waived his objections. Sec. 200, of Cr. Pro. Act. People vs. Swensen, 49 Cal. 388. By said section 200 it is provided that all objections mentioned in section 192, authorizing demurrer, if they appear on the face of the indictment, can only be taken advantage of by demurrer, except that the objection to the jurisdiction of the Court over the subject matter of the indictment and the objection that the facts stated do not constitute a public offense, can be taken at the trial, under the plea of not guilty, or after trial in arrest of judgment. The objections urged are such as appear on the face of the indictment, and neither objection goes to the jurisdiction of the Court. If, then, the indictment alleges facts sufficient to constitute a public offense, it is sufficient, and there is no remaining objection to the indictment that the appellant can raise after having failed to demur. We have already seen that a public offense was clearly and concisely alleged.

The appellant, however, raised the objections at the trial, claiming that the indictment was too defective to allow of the admission of any testimony under it. Yet from what we have said, it plainly appears that there were no grounds for the objections, and that if there were they had been waived.

We are brought now to the consideration of the alleged errors in excluding testimony offered by the defense. Several questions were by the defense asked a witness for the prosecution, which were objected to by the prosecution as irrelevant, immaterial and incompetent. The avowed object of these questions as stated by the defense, was to show or tend to show non-access during the time charged, and as tending to disprove any presumption of sexual intercourse which might be raised by the testimony of the witness. The objections were sustained. The defense made an offer of proofs, the gist of which was to the same effect. Part of the offer was wholly hearsay—where he sought to show what was told the woman—a large part was wholly made up of admissions, and the residue bore upon the question of sexual intercourse and occupying the same bed. We have already seen in this opinion that sexual intercourse was not a necessary element in the crime. If it were an element—a necessary element—as the defense claim, then the prosecution might have shown that the defendant and these women lived together, in the same house and company—that they were continually walking, talking and eating as if husband and wife, treating each other so before their neighbors and the public generally,—calling each other husband and wife respectively, having all their dealings before the world as if husband and wife—he might be providing for all her wants of clothing, food, house and household affairs, and claim the women as his wives, doing many more like things, and yet if the prosecution did not prove that defendand had sexual intercourse with these women, the prosecution would have to fail. The prosecution would have to prove adultery when adultery was not charged, would have to prove fornication and lewd and lascivious cohabitation, when none of these charges had been raised, and all such offenses had been purposely left out of the act by the law-making power. It seems to us preposterous that Congress could ever have intended such a thing when the law was enacted. Congress never could have intended to include those things which it purposely excluded. If the sexual intercourse and bedding together were not parts of the offense necessarily, what advantage could it be to a defendant to disprove the existence of such things—especially when it would be the duty of the court—and it was done in this case—to instruct the jury that sexual intercourse and bedding together were not necessary parts of the offense. What is the advantage of introducing in evidence facts which immediately thereafter the court will have to rule out or declare of no importance. We do not think that the defendant could in any way be harmed by the rejection of such evidence. Its admission would not disprove nor tend to disprove any testimony by the prosecution. It would only tend to disprove that which the Court correctly instructed the jury was not important.

The appellant urges as error the refusal of the court to give instructions asked by him. There were twenty-four such instructions, between many of which there was but a shade of difference. The first and second of these instructions have approved the existence of the Edmunds act as to its applicability to this Territory. They were wholly immaterial and irrelevant.

The 3d instruction—having reference to the non-applicability of the act to persons cohabiting with lawful wives—has no application to evidence in the case.

The 4th, 5th, 6th, 7th, 8th, 9th, 11th, 18th and 21st have direct reference to sexual intercourse and are wholly outside of the case and not applicable.

The 13th is misleading—it has reference to fathers now being compelled to break off all communications with the mothers and the children. It would indirectly lead the jury to believe that the acts of the defendant in regard to the women were perfectly justifiable.

No. 14, 15, 16 and 17, have reference to the evidence of the relationship existing between the defendant and the women at and prior to the passage of the Edmunds Act, and indirectly raise the question as to the competency of such evidence.

In California a man was being tried for the alleged murder of his wife. A witness upon being questioned, said that about *a month before* the homicide the deceased wife came to her house greatly excited, and after she came, the defendant in the case had been heard swearing and breaking doors, windows and other things in his own house and that this was going on for sometime. The defense objected to the testimony but it was admitted, the court holding the admission proper, and that these circumstances occurring some time before the homicide, were proper for the consideration of the jury. That these facts tended to show the feeling of the defendant toward his wife and his treatment of her although this was before the homicide, and in some degree they tended to secure a motive for taking the life of the wife. People vs. Kern 61 Cal 244.

The case of Badger vs. Badger referred to by the defense upon another point, recognizes the doctrine that a meritorious intercourse in the beginning is presumed to continue unless there be evidence of a change. 88 N.Y. 546. Haga vs. Haga 101 Mass. 111. The principle of these cases applies to the case under consideration.

The evidence of what occurred prior to the date alleged in the indictment and prior to the passage of the law, was proper for the consideration of the jury, and the jury were, notwithstanding instructed that they must presume the defendant to be innocent until the contrary be shown. If it is not proper nor necessary (although it is sometimes done when no objection is offered), to tell the jury specially that they were at a particular time and before the time although in the indictment to presume him innocent—but the instruction covers all time down to the closing of the case by verdict. Such testimony could not have misled the jury—for they find the defendant guilty as charged, and he is charged with an offense between certain dates. The instructions could have done the defendant no good, they certainly did him no harm. It is no doubt error to refuse to give an instruction asked and which is material and has not been given in or covered by the charge; but it is not error to refuse immaterial requests.

People vs. King, 27 Cal. 507.
People vs. Kelly, 28 Cal. 423.
People vs. Story, 30 Cal. 151.
People vs. Lachanais, 32 Cal. 433.
People vs. Ah Kong, 49 Cal. 6.

The 10th instruction asked by defense and refused has reference to what rule the Court should adopt in the interpretation of the statute. It might properly be addressed to the Court, but it was a matter with which the jury had nothing to do.

The 12th instruction refused, had reference to the legitimatising of polygamous children. It was wholly irrelevant and immaterial.

The 22d, 23d and 24th instructions refused, have reference to the necessity of showing marriage or marriage ceremony. As we have already shown, no marriage is necessary to be shown in this class of cases. The instructions were therefore irrelevant and immaterial.

The 20th refused instruction—relating to the holding out of Clara C. Cannon as wife—is covered by the charge given. In some of the instructions refused there may have been isolated sentences that were proper, but we think that in every such instance, it is covered by the charge.

The next error assigned is the giving of the instructions by the court—untouched in the charge

The Court gave the time within which the offense was charged to have been committed, and stated what the offense was, and then detailed in general terms classes of circumstances which would, if proven, make out such a case as would authorize the jury to find defendant guilty. The court charged upon the question—the most vital in the whole—the question of sexual intercourse—and correctly so charged, and the Court reminded the jury of the presumed innocence of the defendant, and that they were the judges of the credibility of the witnesses, etc. We cannot see wherein the Court has failed to cover the whole case in the charge. If there be any errors at all, they are unimportant, and for such errors courts will not reverse.

Peope vs. Varman, 53 Cal. 630.

The charge must be taken as a whole, and if it fairly and correctly presents the law bearing upon the issues, the appellate court will not disturb the judgment.

People vs. Hortade, 63 Cal. 288.
People vs. Welch, 49 Cal. 174.

It is on the defendant's motion for new trial urged, that the verdict should have been set aside because one Johnson, a juror, was a bigamist. The affidavits as to incompetency are not embraced in the bill of exceptions, and hence is not properly before us to consider.

People vs. Stonecifer, 6 Cal. 405.

But if it were, the verdict could not be set aside.

People vs. Lewis, 5 Pac. Coast R., No. 7, p. 543.
Sec. 188 Laws of Utah, 1878.

For the reasons stated throughout this opinion, it is apparent that the overruling of the motion for a new trial was proper, and the judgment was correct.

The order and judgment of the Court below are affirmed.

Zane, C. J., concurs.

Powers, J., concurs in the result, and files his opinion on the case.

At the conclusion of the foregoing, Judge Powers read an opinion on the same case, the full text of which we are unable to publish to-day, but will do so to-morrow, in which he personally took exceptions to the methods employed in the trial of Mr. Cannon, but agreed as to the result. He was followed by Judge Zane, who read the following

OPINION:

Supreme Court, Utah Territory.

THE UNITED STATES
vs.
A. MILTON MUSSER.

Zane, Chief Justice, delivered the opinion of the Court.

The defendant was indicted for unlawful cohabitation with Belinda Pratt Musser, Mary Musser and Annie Seegmiller McCullough Musser, to which indictment he pleaded not guilty. The issue was tried by a jury who found him guilty as charged; a motion for a new trial was overruled and he appealed to this Court. On the trial the defendant by his counsel alleged errors of law and of fact. The more important of the former was made by the Court, it is claimed, in defining the crime of which the defendant was convicted.

The offense is described in the third section of "An act to amend section fifty three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy and for other purposes," approved March 22d, 1882. It is as follows: "If any male person in a Territory or other place over which the United States has exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor." The Court below held that sexual intercourse was not essential to the crime. In that the defendant insists there was error, that it is a necessary element and must be proven.

The term cohabit as found in the criminal codes of many of the States is coupled with and qualified by the adverbs lewdly, lasciviously, adulterously or some other equivalent expression. No such word or expression is found in the section under consideration, or in the act of which it is a part. As defined by lexicographers, cohabit means to dwell with or reside together. It may mean residing in the same country, city or neighborhood, or in the same family, or the dwelling together in lawful wedlock—this would be lawful cohabitation. Or it may mean the dwelling of a man and woman together ostensibly and apparently in wedlock, when in fact or in law no marriage exists, and without proof of adultery or fornication this would be unlawful cohabitation; or it may mean the living together of a man and woman without lawful marriage, in the practice of fornication or adultery—this would be lascivious, lewd or adulterous cohabitation, another species of unlawful cohabitation; in this last case proof of adultery or fornication is necessary to make out the offense. The ideas which accompany the use of the word determine its import. The idea as of country, of family, of marriage, of the appearance of marriage (not without it), or of adultery, when associated with the term vary and determine its meaning in each case. The subject to which it is applied contracts or expands its meaning—it is a word of flexible signification.

Cohabitation, as used in a matrimonial sense, means to dwell together as husband and wife. Foster vs. Foster, 4 Eng. Ec. R. p. 359 was a case of divorce. In the opinion the Court used the following language: "Most certainly what Dr. Harris has said is true that the duty of matrimonial intercourse cannot be compelled by this court, though matrimonial cohabitation may." The Court made a very plain distinction between matrimonial cohabitation and matrimonial intercourse. The same distinction was made in the case of Nash vs. Nash, Ib. And in Orm vs. Orm, 2 Edg. Ec. R. 354. In a note to sec. 777, Bishop on Marriage and Divorce, the author says: "I am not aware that other judges (referring to a remark of Chancellor Walworth) have often employed this word to denote actual sexual intercourse further than may be presumed from the dwelling together in the same house of parties under the claim of being married, or as necessarily implying even an occupancy by the husband and wife of the same bed. The words matrimonial cohabitation have been used in distinction from matrimonial intercourse to signify a living together in the same house without copulation. To the same effect is the case of Calef vs. Calef 54 Maine 365, and Yardley's Estate 75 Pa. St. 207, Ohio vs. Connoway, Ohio R. Tappan 90, was a criminal prosecution. In charging the jury the Court read the statute defining the crime which was, "If any married man shall hereafter desert his wife, and live and cohabit with any other woman in a state of adultery, etc.," and remarked, "The defendant must not only have lived and cohabited with this female, but he must have lived and cohabited with her in a state of adultery, in this the Court indicated clearly that it did not understand the word cohabit to embrace sexual intercourse when not qualified by some expression showing such an intention. Counsel in their briefs and arguments made reference to numerous other cases, but it is found that the most of them interpreted or construed statutes containing qualifying terms.

We are of the opinion that the right of authority is to the effect that the crime of unlawful cohabitation as defined in the statute under consideration is made out without proof of sexual intercourse, and that such proof constitutes no defense. In the statute but two crimes are defined. The first section defines polygamy; the third unlawful cohabitation; the fourth provides that the offenses may be joined in the same indictment; the fifth makes the fact that a man summoned as a juror is or has been living in the practice of bigamy, polygamy or unlawful cohabitation with more than one woman, or the fact that he is or has been guilty of either offense, or the fact that he believes that either of such offenses is right, a ground of challenge. And the eighth section disqualifies those persons, who are living in the practice of polygamy or unlawful cohabitation, from voting or holding office. Cohabitation with more than one woman is essential to the crime. If the law was aimed at adultery, why require the cohabitation to be with more than one woman. If the national legislature had so intended, it would have given some intimation of that intent in the law. It appears plain that the intention was to protect the monogamous marriage by prohibiting all other marriage either in form or in appearance only, whether evidenced by a ceremony or by conduct and circumstances alone.

The Court should ascertain the intention of the legislature from the words used, when plainly expressed. But when the meaning of the words is obscure and doubtful and the intention of the lawmaker is uncertain, it becomes the duty of the Court to resort to rules of construction in order to discern the idea, which the language was intended to express. In the use of rules of construction we are not confined to the uncertain language of the law, but we may take into view the ideas which the legislator associated with the idea that is in dispute. For with them it existed in the legislator's mind, and in the light of those ideas we may grasp the meaning of the law, as the legislator endeavored to express it.

We may assume that the authors of this law had in mind the institution of marriage because they expressly declared that any man who having a wife marries another, is guilty of a crime, and that any male person who cohabits with more than one woman is guilty of unlawful cohabitation. They had in view the evil effects of such practices. The end of the law was the protection of the monogamous marriage; and the suppression of polygamy, and unlawful cohabitation were but means to that end. It is proper also to take into consideration the conditions as the National Legislature anticipated and understood them in which the law was to be applied and enforced. They knew the time had elapsed within which a very large portion of those living in polygamy could be punished for that offense, and that many of these were among the most influential men in society, being the heads of the Church, and that the example of their continuing to live with their plural wives under a claim of divine right would be a scandal to society and a menace to the lawful marriage; that such examples would be a continuing invitation and apparent justification for their followers to either secretly or openly violate the law. Congress therefore forbad plural marriage in appearance only, as well as in form, and by the example of punishment it doubtless intended to eradicate the example of apparent plural marriages as well as the plural marriage in form.

According to the maxims of sound interpretation for use in searching for the intention of the legislature, it is proper to ask, what was the defect and mischief against which the law did not provide, and the true reason of the remedy? And it is the duty of the Court at all times, to make such construction as shall suppress the mischief and advance the remedy. Potters Dwarris, on Statutes and Constructions, 184. Whether we interpret the terms used according to their legal sense or resort to the rules of construction and construe them in the light of the reason and the purpose of the law and of the conditions in which its authors understood it was to be applied to human conduct, we reach the same conclusion.

The defendant also insists that the evidence before the jury did not prove him guilty. This raises a question of fact; to determine which it is necessary to examine the evidence. Annie M. Sheets, a daughter of defendant by a deceased wife, married and not living at home testified that she had known the women named in the indictment, Mary Musser, Annie Seegmiller McCullough Musser and Belinda Pratt Musser, several years: that Belinda and Mary lived in defendant's house; that the former lived there about one year and a half and moved to the house she now lives in about four months ago; that Annie Seegmiller Musser lived in a house on an adjoining lot; that they all there have children who bear the name of Musser living with them; that Belinda has three; two of them bear the name of Musser; that she never heard the younger called any name but Arthur; that there were eight children in the house, one of them Blanche Musser is between two and three; that Annie Seegmiller McCullough Musser has three children from five to eight who go by the name of Musser; that defendant called them by their given names and they addressed him as father; that the defendant her father lived in the same house with Belinda and Mary—witness did not live there herself but visited—had seen him at the table with Mary in the house in which Belinda and Mary lived; that the house had eight rooms on the ground floor and four on second—the rooms down stairs connected by doors—Belinda's bed-room was on the west side—Mary's on the east, defendant's between, from his a door opened into Belinda's, between Mary's and his was another room having doors which opened into theirs; that the older children slept up stairs and the younger ones down—had heard defendant refer to Mary as witnesse's step-mother and heard Mary's children address him as father; that she did not know where Arthur is—last saw him four or five months ago at his mother's house—nor does she know where Mary is—the women named in the indictment have been for several years past recognized and known in the Musser family as defendants wives. Lizzie Lee testified that she was a married daughter of Annie Seegmiller now known as Annie Seegmiller Musser;; that Belinda Pratt Musser and Mary Musser lived in a house on a lot adjoining her mother's; that she knew defendant—that her mother has five children—did not know how old Ross, the younger is, last saw him between four and five weeks ago, when attention was called to her statement before the grand jury she said between two and three years old, that he was not an infant in arms when she last saw him; that she saw defendant at her mother's house about a week ago—her mother was not there—has not seen her for four or five weeks; last saw the child in her arms; that she had seen defendant at her mother's four or five weeks ago; that her mother is recognized by her and her mother's families as defendant's wife; had heard them speak of the children in presence of each other, though not as his; that her mother's children were named Musser. Witness has one full brother and one sister; their name is McCullough; had heard her mother's other children speak to defendant and of him as father; that her mother's maiden name was Seegmiller; she married McCullough and she now goes by the name of Musser; had seen defendant at her mother's a number of times, in the evening and morning; witness lived beside her mother, and, since last August, at her house. Mary Rideout testified that she had seen Mary Musser's children; that the youngest she saw was two or three years old; had not visited her for three years; that she had seen Belinda Musser's child — when she saw it, it appeared to be something over a year old; was an infant nursing; it was a nursing infant in arms last winter—three or four months ago; that witness had seen defendant quite lately about the house; that she traveled with Annie Musser, and defendant met her at the carriage—she had her baby with her; this was last summer. Joseph Warburton testified. Knew Belinda and Mary Musser and the house in which they lived; was at the house; saw defendant there and going to and coming from the house, driving into the barn; that children bought articles at store and defendant paid for them; that most of the children were Mary Musser's; saw defendant walking and choring around his premises. M. F. Ekels testified that prior to the 16th of last October, lived at Mary Musser's about a year and four months, boarding there; that defendant was there at meals, he sat at one end of the table there nearly all the time; that he ate at Belinda's table once, the occasion was a birthday party—defendant was there; that Mary Musser had six children, the youngest is an infant running around, whether it was a year ago do not remember, its name is Blanche; that he knows Annie Seegmiller McCullough Musser; witness is a school teacher; went to see her about children she was sending to school; one of Belinda's also went, and some of Annie's, all went on the role by the name of Musser; that Mary Musser paid tuition for all the children who came under the name of Musser. Defendant offered in evidence three deeds which had been recorded in which he was grantor bearing date July 21st, 1883, Mary Musser was grantee in the first, Belindo Pratt Musser in the second, and Annie Seegmiller Musser in the third—that Belinda Musser moved to the house she now lives in last December.

From the foregoing evidence it appears that the women named in the indictment have for years borne his name and before that they had borne other names; that for more than one year next preceding December last, defendant had lived in the house with Mary Musser and Belinda Musser, that these two women and defendant occupied bed-rooms on the same floor; that a door opened out of defendant's room on the east, directly into Belinda's room and on the west into a room which opened into Mary's; that he ate a large portion of the time at her table, that the third woman lived in a house on an adjoining lot; that defendant was frequently there; that Mary has six children—the youngest two or three years old, and Belinda three—the youngest two or three years old; that Annie has three children—ages between five and eight years; that these children all bear the name of Musser and have addressed him as father, and that all three of the women are known and reputed in the family to be defendant's wives. It is undeniable in review of the evidence that defendant lived a large portion of the time charged in the indictment in the same house with two of the women and all the time in a house adjoining the other woman at whose house he was frequently. What relationship did he bear to these women with whom he was living. Was it the relationship of father and daughter, brother and sister, employer and employee, master and servant. Neither of these questions can be answered in the affirmative in the light of the evidence. The evidence points to but one relationship and that is matrimonial—husband and wife; the evidence can be reconciled on no other hypothesis. To consider a portion of the evidence apart from the rest is not the right way to determine its sufficiency—a portion may not establish the disputed fact but all together may prove it beyond a reasonable doubt. A portion of a physical structure does not prove its existence but when all the parts are taken together there can be no room to doubt its existence. When all the evidence in this case is so considered we are of the opinion that it sufficiently appears that defendant during the time mentioned in the indictment was living with at least two of the women named, in the apparent relation of marriage; that by his language and conduct and appearances and expressions for which he was responsible he held out to the world that relationship—that he was living with them in the habit and repute of marriage. We are of the opinion that the evidence was sufficient to authorize the verdict formed.

Witness Lizzie Lee, who lived at the house of one of the reputed wives and her daughter, stated that she did not know where her mother was—that she last saw her four or five weeks ago. And witness Annie M. Sheets a daughter of the defendant who visited the house of Mary Musser and defendant frequently testified that she did not know where Mary was. And the evidence tended to show that two or three of the youngest children had not been seen for some time. And the Assistant District Attorney in his closing argument to the jury said that it was in the power of defendant to show all the facts in defense by his wives and children, but that it was not in the power of the prosecution to do so by them because they had been put out of the way by the procurement of the defendant. The defendant's counsel objected to this language, and the Court said there was no evidence that defendant had put them out of the way, and the Assistant District Attorney made no further remarks on the point. The bill of exceptions also shows that the same attorney in his argument stated than an outsider had made signals to the jury during the trial, and the Court checked him, and he said nothing further with respect to it. The remarks were made in the heat of argument, and the Attorney did not persist, but ceased as soon as his attention was called to the impropriety. The Court charged the jury that in considering the verdict they should not go outside of the evidence and take into consideration facts not in evidence, that they should consider only evidence, and consider it fairly. In support of this assignment of error counsel for defendant cite a number of authorities. In some of them the trial Court had permitted the prosecuting attorney to continue over the objection of defendant. In other cases the remarks of the States attorney was in violation of a statute forbidding comment on the fact that defendant had not testified when the law permitted him to do so. In each of the cases cited there had been an aggravated breach of professional duty and obligation to the injury of the defendant. In view of the circumstances attending the statements of the Assistant District Attorney, and of the fact that he ceased further remarks as soon as his attention was called to the impropriety, and of the charge of the Court, and of the authorities; we are of the opinion that this exception is not well taken.

The indictment charges that the defendant unlawfully cohabited with the women therein named, between the 1st day of May, 1882, and the 1st day of April, 1885. And the defendant insists that it was error to admit evidence of defendant's conduct and of his relationship to them before the day first mentioned. The offense of the defendant consisted in dwelling with the women in the habit and repute of marriage, holding that relationship out to the world by his language and conduct or by expressions and conduct for which he was responsible; that he lived in the house with two of them during the time mentioned, there is no room for controversy. And the question is, what relationship existed between the defendant and these women? Was defendant there as a guest? As a boarder? Was he the proprietor of the house and the women in his employ as servants,—chambermaids or cooks? Were they his sisters? Was any one of them his mother? Or were they there as his wives? Does not his conduct before the offense charged throw light upon the inquiry? Evidence of the feelings and intent of the defendant with respect to the crime and towards the injured party is competent in cases of murder and other crimes which may be committed by a single act. It would appear to be more pertinent when the offense consists of a succession of acts and expressions extending through a considerable period and indicating the relation of marriage. That relation is usually preceded and attended by affections and feelings peculiar to it, and more permanent in their character, and they give rise to conduct indicating their existence, and thereby indicating marriage. Evidence that defendant had married the women—had been living with them as his wives before the offense, adds weight to the circumstances pointing to unlawful cohabitation during the time the offense is charged.

It is further insisted that the Court erred in admitting evidence tending to show marriage to the women named before the law which the defendant is charged with violating took effect, and that the Court erred in refusing to charge the jury that the law presumed the defendant ceased to cohabit with his wives when the law took effect. The Court did charge that the law presumed the defendant innocent till proved guilty beyond reasonable doubt—innocent both before and after the law was in force—before and at the time af the offense charged.

It a lawful relationship is formed, and its continuance is made unlawful, the law presumes the parties thereto intend to obey the law and that they terminate or change the relationship so as to make it conform to an innocent intent. In such a case it is necessary that the lawful intent should be changed to an unlawful one, or that the relation should be changed to a lawful one—that is to say made to conform to the law—the law presumes change of conduct rather than change of a lawful intent to an unlawful one. But if the relationship was unlawful in its inception and the intention was unlawful then it would be necessary to presume a change of both intention and relationship. If the relationship was unlawful in the beginning, and the intent was also, and the name of the offense is simply changed or punishment is simply imposed on that which was unlawful before, the presumption remains the same as though no change had been made in the law. In either case the law presumes innocence till guilt is proven. A disposition and intention to violate the law in entering into the relationship with these women being shown, it affords an inference of some effect upon the man when considered with the other evidence at the time of the offense charged. The inference against the defendant from his marriage to these women before the law went into force with the inferences from his own conduct towards them and the circumstances within the time limited in the indictment strengthens the latter. In determining how this man lived between the dates named the public would take into view his inclination and disposition to cohabit with the women as shown by his conduct and example before the law took effect, and in that way contributes to the example which injures society. The common law has been in force in this Territory more than a generation. And an Act of Congress against bigamy more than twenty-two years. None of the conduct or circumstances in evidence extend back so far. They tended to prove a relationship unlawful in its inception. We are of the opinion that there was no error in admitting evidence for the purpose of showing marriage between the defendant and the women named, before the law took effect—or showing that he cohabited with them as his wives before that time.

Thayer vs. Thayer, 101 Mass. 111.

Exceptions were also taken to the charge of the Court to the jury and to the refusal of requests to charge by the defendant. The entire charge of the Court, as given to the jury is set out in the bill of exceptions. It contains a description of the offense and the plea of the defendant, and charges them that the law presumes the defendant innocent till proven guilty beyond a reasonable doubt; that if the jury believe beyond a reasonable doubt that at the county and between the dates mentioned in the indictment, the defendant lived with the women therein named, or with any two of them as his wives in the habit and repute of marriage, they should find him guilty; that it was not essential that sexual intercourse should be shown or a marriage celebrated; that the jury were the sole judges of the credibility of the witnesses, of the weight of the evidence of the fact; that in judging of their credibility the jury might take into consideration the deportment of the witnesses on the stand, their apparent frankness and candor, or the want thereof, appearing from the evidence—the reasonableness of their statements and any fact appearing in evidence affecting their credibility; that in weighing the evidence the jury should consider it altogether and should consider only evidence, that they should not go outside of it; that they should consider it fairly and candidly and reach such reasonable conclusions as they might be able. The jury found the defendant guilty as charged.

The prosecution asked no instructions and the defendant asked twenty-five—all of which were refused except so far as their principles were contained in the charge given.

In the case of the Indianapolis, etc., R. R. Co., vs. Horst 93, U. S. 291, the Court said: "It is the settled law in this court that if the charge given by the Court below covers the entire case and submits it properly to the jury, such Court may refuse to instruct further. It may use its own language, and present the case in its own way." The charge of the trial court in this case covers the entire case and is plain. In the case last cited the Court also said: "When instructions are asked in [illegible] the aggregate as were those of the defendant and there is anything exceptionable in either of them the whole may be properly registered by the court, that there were many things exceptionable in the twenty-five asked in the case under consideration is certain. The instructions asked and refused so far as we deem it necessary to refer to them may be classified as follows: First—Those stating abstract principles of law. In the refusal of these there can be no error. Second—Such as attempted to define the degree of intimacy necessary to be shown between defendant and the women named. In its charge to the jury the Court gave a definition of unlawful cohabitation, and in doing so defined the necessary intimacy. Third—Those relating to the presumption of innocence arising when the law under which defendant was prosecuted took effect. The question raised by the exception was discussed above, and we are of the opinion that the exception is not well taken. Fourth—Those declaring principles of law included in the charge. The Court stated such principles in its own language in the charge and that was sufficient.

The precise questions raised by the exceptions to the ruling of the Court below in this case in refusing to sustain objections to the indictment were considered in the case of the United States vs. Cannon, and decided at the present term. We are satisfied with the conclusions reached in that case. And hold that the trial Court committed no error in overruling such objections. Without directing attention further to the exceptions taken by defendant, and after a careful consideration of the whole case we are of the opinion they are not well taken, and that the judgment of the Court below should be affirmed. It is so ordered.

Boreman, J., concurs.

Powers, J., concurs in that portion of the opinion construing the Edmunds Act, but dissents from the conclusion of the Court affirming the judgment of the Court below, and files his reasons therefor.

Associate Justice Powers then proceeded to read the dissenting opinion, which will be found on the fourth page of this issue.

BY TELEGRAPH.

PER WESTERN UNION TELEGRAPH LINE.

AMERICAN.

LATEST BY LIGHTNING.

More Lynching.

GAINESVILLE, Texas, 29.—Yesterday the lynchings of five horse thieves was reported in addition to the recent report that fifteen men had been hanged in two weeks. Efforts to substantiate the last mentioned report resulted in positive proof of the hanging a week ago near Yatestown, of Frank Morgan, Bill Williams and a boy name Moore. Bill Williams was a farmer living near Mud Creek. He was suspected and persons detailed to watch him, when it was learned that Williams had unlawfully taken possession of another man's house. Thirty-two determined men visited his house and arrested him. Williams bade his family an affectionate farewell and told them that if he did not return in two days they might know he was dead. Williams was then led several miles away into some woods where they were met by another party having in charge Frank Morgan and the boy Moore. By unanimous vote the men decided to hang Williams and Morgan. Some contended that by reason of the boy's youth it was best to turn him loose with moderate punishment, but it was finally decided as there were great probabilities of his becoming a troublesome criminal, it was better that he should die. Accordingly all three were strung up on one limb. After the men were dead they were all cut down and buried together. The posse then started on a man hunt up the Wachita river and reports come back that they had captured and lynched nine more thus making a total of 12. The latter reports however lack confirmation.

Bound Round the World.

NEWTON, Conn., 29.—The new schooner-yacht *Brunhilde*, 119 tons owned by John J. Phelps, of Englewood, N. J., son of Wm. Walter Phelps, will sail from New London to-day for a trip around the world. Besides the owner, five other gentlemen of the class of 1883, Yale College, will make the trip.

FOREIGN.

LATEST TRANS-ATLANTIC DISPATCHES.

One Million Pounds Seized by Russia.

BOMBAY, 29.—It is reported from Cabul that Isa Khan supported by Russian allies has risen against Abdullah Khan. Isa Khan marched upon Khanalbad and seized treasure there valued at a million pounds sterling, belonging to the Ameer of Afghanistan. Political difficulties in Kashgaria are becoming serious and a reinforcement of troops is going northward.

Anglo-German Alliance.

LONDON, 29.—The Berlin *Post* in an article supposed to have been inspired by Bismarck, hints at a desire on the part of Germany for an alliance with England. The *Novoe Vremya* of St. Petersburg says: Russia ought not to forget that Salisbury and Randolph Churchill have always been anxious to form an Anglo-German alliance against Russia.

PARIS, 29.—The *Memorial Diplomatique* reports that Salisbury will have an interview with Bismarck in August.

Progress of the Plague.

MADRID, 29.—The official cholera reports for Sunday are as follows: Castellon De La Plana (city), new cases 6, deaths none; Province, new cases 143, deaths 74; Valencia City, new cases 83, deaths 35; Province, 556 new cases, 293 deaths; Alicante City, 10 new cases, 2 deaths; Province, 158 new cases, 61 deaths; Saragossa, new cases 29, deaths 9; Toledo City, new cases 1, deaths 2; Province, new cases 9, deaths 18; Aranje, new cases 40, deaths 15; Olen Pazalos, new cases 12, deaths 5; Madrid, new cases 3, deaths 1.

Genoa Galviz, director of Toledo military academy, has died of cholera.

Orders Countermanded.

CAIRO, 29.—Orders to the camel corps to embark have been rescinded. It is reported that the government meditates reoccupying Dongola.

HOME MADE GOODS.
Men's Summer Suitings, Boy's Tweeds, Jeans, Flannels, Socks, Stockings, etc., wholesale and retail.
JOHN C. CUTLER & BRO.,
Agents Provo Woolen Mills,
No. 55 East Temple St., South Store, Hooper & Eldredge Block.

AMUSEMENTS.

WALKER OPERA HOUSE.
FOUR NIGHTS
— AND —
SATURDAY MATINEE.
— COMMENCING —
Wednesday, July 1st, '85,
Upon which occasion, the Eminent Tragedian,
Frederick Warde!
Supported by an especially selected company of Metropolitan Artists, will appear in the following repertoire:
WEDNESDAY, JULY 1,
VIRGINIUS;
Or, the Roman Father.
THURSDAY, JULY 2,
Grand Shakesperean Double Bill,
THE MERCHANT OF VENICE
— AND —
KATHERINE AND PETRUCHIO.
FRIDAY, JULY 3,
DAMON AND PYTHIAS.
SATURDAY, JULY 4—MATINEE,
INGOMAR, THE BARBARIAN.
SATURDAY NIGHT, JULY 4,
RICHARD III.
The sale of Reserved Seats will commence at Box Office, on Monday, June 29th. No extra charge.

LOST.
NEAR SPRINGVILLE, UTAH CO., TWO LADIES' JERSEY JACKETS in a box. The finder will please leave them at either the Co-op Store in Springville, Salt Lake City, or at [illegible] be rewarded.