## HE EVENING NEWS June 7, 1869. LOCAL AND OTHER MATTERS.

THEATRE,-A large audience attended Theatre on Saturday evening. The mie Opera of Pierette was very amusing, as Clelia enacting the part of Plerette to satisfaction of all. Mr. Jerome as palou, and Mr. Frank Howson as rehou were also very good. he duct by the Howson sisters of "I

ald that my love" was sung with an as Clella and "Come into the garden aude" by Miss Emma impressed the dience very favorably. To-night the beautiful Irish drama

The Howsons will be supported by ossrs. Hardie, Margetts and Thorne, and as Annie Ward of the regular company. the performance will conclude (by special quest) with "The Eton Boy."

to morrow, Tuesday evening, by the ecial request of many patrons, the trande Duchesse" will be repeated. This is very popular burlesque, during the gagement of the Howson family, their pertoire being well stocked with other welties. This piece has already estabre, and possessing, as it does, many antiful musical gems, none who desire to tness it should fail to attend the Theatre morrow evening.

RRIVALS AND APPOINTMENT,-Elders orge Lake and Johan Carl Larsen arrived Liverpool, from Utah, per steamship y of Paris, on Thursday, the 13th ult. ey had a prosperous journey, and enjoy cellent health? Elder Larsen proceeds to penhagen to assist President Jesse N. mith; Elder Lake has been appointed a labor in the Nottingham Conference, inder the Presidency of Elder L. W. Shurt-In \_ Mill, Star,

NEW YORK .- We extract the following interesting items from a letter of Elder W. H. Miles, dated the 30th ult. "Yesterlay at 5,15 o'clock p.m., the following namIMPORTANT LEGAL BULING AND SENTENCE OF DEATH. In the case of the people vs. Thom

Brannigan, Jack Lavelle and Charles Howard, recently convicted of murder in the first degree, defendant's attorneys filed a motion in arrest of judgment, upon which His Honor Chief Justice Wilson delivered the following ruling on Saturday last:

The defendants in this case having been convicted of the crime of murder in the first degree, by verdict of the jury, by their attorneys filed a motion in arrest of judgment. The first point made in the motion the duct by the Howson sisters of a nid that my love" was sung with an nestness and vivacity quite captivating. ballads of "When Lubin Sings," by is Clella and "Come into the garden,

degree only." In order to determine this question, we are led to an examination of the statutes of The Howsons will be supported by defined to be "The killing of a human being with malice aforethought, either ex-pressed or implied," which is merely de-claratory of the common law; or, in other words, it is the common law definition of murder. This statute, in the opinion of the Court, does not alter the law of mur-der. What was murder before its passage, ill be, positively, the last presentation of his very popular burlesque, during the ngagement of the Howson family, their clares the penalty for murder in certain cases: Section five prescribing that when committed in certain specified modes or under certain circumstances therein mentioned, the punishment shall be death; while section six provides that, in all other kinds of murder the convict shall be pun-

ished by imprisonment for life, or a term of years. It is a well settled general rule, that in an indictment for an offence created by statutes, it is sufficient and usually necessary to describe the offence in the words of the statutes, or their equivalent. But when the statute is only declaratory of what was previously an offense at common law, it has been held in numerous cases by high authority, that, notwithstanding the statute, it is sufficient if the pleader define the offence by stating the common law ingredients necessary to its consummation. It necessarily follows, if these conclusions are correct that the averments necessary to make a good indictment at common law would be sufficient under the statute. This then, leads us to inquire what would be necessarily an indictment at com-mon law. All lawyers will at once admit that the material averment of an indictment for murder is that the de-fendants feloniously and of their malice

n to the juror relater es to

case advantage can be taken of it, on urrer, motion to quash or in arrest of

Judgement. . The array not having been challenged and the irregularities being simply in the empanneling of the jury it is too late, at this time, to take advantage of the irregu-larities complained of, if any exist. The second point is therefore overruled. The same answer will apply to the third point, which is also overruled. The fourth point contended for by the defendants is that the Court refused to allow them to file a plea in abatement, but commelled them to nlead to Court refused to allow them to file a plea in abatement but compelled them to plead to the merits. The record shows, that after the indictment was returned into court, the defendants filed a general demurrer to the same, which, after full argument, was overruled by the Court. It then appears that the defendants withdrew the demurrer and offered to plead in abatement, which offer was refused by the Court on the ground that by demurring generally to the ground that by demurring generally to the indictment, they thereby waived their right to afterwards plead a dilatory plea. By all rules of pleading dilatory pleas must be pleaded at the earliest opportunity, must be pleaded at the earliest opportunity, or they are waived. The Court sees noth-ing in this case to change the general rule, and upon full investigation, is satisfied that no error was committed in refusing to allow the said plea to be filed. The fourth point must therefore be overruled. The fifth point was not on the argument in arrest of judgment, very strenuously con-tended for, but the Court has noticed the same in its investigation and is fully satis-fied it is untenable. The reasoning on the first point is applicable to this also and fully settles the same.

settles the same.

As these questions seemed to involve the life of three persons, the Court has devoted an unusual amount of time and labor to their examination, and after a full and careful consideration of the whole subject is convinced that no error has been committed which has done injustice to the defendants or for which the judgment should be ar-

The motion in arrest of judgment is there fore overruled.

The three prisoners were then ordered to stand up, whereupon Judge Wilson pro-nounced the following

## SENTENCE.

Having disposed of the legal questions involved in your case it now becomes the painful duty of the Court to pronounce

ed missionaries sailed from this port, on the City of Anixerp, for Liverpool, Elders John Toone, John Tuddenham, William Taylor, Geo. Romney, Geo. H. Dunford, A. P. Shumway, Chas. Shumway, Hamil-ton G. Park, Jenkin Jones, George Noble, S. M. Price. They left Echo City, Friday the 21st, at 40°clock a.m., arriving at New York, Thursday 27th at 70°clock a.m., and took rooms at the Stevens House, Broad-way, until arrangements could be made for their voying. By the way, I wish or their voying. By the way, I wish say one word, in behalf of the gentlemanly proprietors of that establishment, their say one word, in behalf of the gentlemanly proprietors of that establishment, their say one word, in behalf of the gentlemanly proprietors of that establishment, their say one word, in behalf of the gentlemanly proprietors of that establishment, their say one word, in behalf of the gentlemanly proprietors of that establishment, their say one word, in behalf of the gentlemanly proprietors of that establishment is the noticed by your paper, and a recom-mandation given, in order that our brotheren who are traveling, to and from proprietors of that establishment is the noticed by your paper, and a recom-mandation given, in order that our brotheren who are traveling, to and from proprietors of that establishment is the noticed by your paper, and a recom-mandation given, in order that our brotheren who are traveling, to and from mandation given, in order that our brotheren who are traveling, to and from mandation given, in order that our brotheren who are traveling, to and from mandation given, in order that our brotheren who are traveling, to and from mandation given, haven the present for murder, if must neces; table and indiction the highest to the lowest; also and that the present and premeditated without one mitigating circumstance in your favor, and, in the opinion of the Court, fully warranted the verdict of the jury. The Court feels that you have had an im-The Court feels that you have had an im-partial trial. You were defended by the ablest and most diligent attorneys at the bar, by whom your rights were well guard-ed, and every point and question that could possibly avail you, preserved. The Court and jury gave you the benefit of every pos-sible doubt and after a fair and careful hearing before a patient, honest and hu-mane jury you have been pronounced guilty of murder in the first degree, the punishment for which the law declares to be death by hanging, shooting, or behead-ing; either of which modes the Court will now give you an opportunity to choose as now give you an opportunity to choose as provided in the statutes. (The prisoners here each chose to be shot.) The Court is fully impressed with the fact that the words it is about to utter will limit your earthly career, but sad and solemn as that duty is it must be perform-ed. Whatever may be my convictions as a private individual, or whatever may be it had the disposition, to make, change, modify it. It is an old and true maxim "That he who presumes to be wiser than the law is a dangerous citizen." How much more true when applied to a Judge sitting as a Court, sworn to administer the law as it is prescribed by those whose sole pro-vince it is to enact it! It therefore has no alternative and can adopt but one course and it is that which the law prescribed. The Court feels it to be its duty to state that it has examined with great care the evidence as well as the law in your case, and with that candor and fairness with which it would speak to dying men it says to you there can be no escape from the awful doom about to be pronounced. In the spirit with which the Court would ad-dress a dear friend under the most solemn of all circumstances it entreats you all not to waste the little precious time still left you, indulging in vain hopes that can never be realized, but studiously devote it to pre-paration for the last great trial in that High Court above from which there is no appeal and where mistakes are never made. There you will meet your murdered victim sent into the presence of his Maker by your hands without one moment's warning or paration, and to whom you refu preparation, and to whom you fell mercy, although with his dying breath appealed to you in behalf of his wife i children, hoping thereby to awake if po ble one spark of humanity in your so Yon heeded not his dying voice, but one more fatal shot ushered his upp one more latal shot ushered his uppre-pared soul into eternity. But, notwith-standing you hearkened not to the cries for pity uttered by your poor bleeding victim, still you may yet hope that the Great Ruler of the Universe will have mercy on your dying souls, if with prayer and true repent-once you aver now approach the Throne of b guard this patch during the season, so hat we may raise some wheat, at least. We ire busy putting in potatoes and corn. All is peace with us at present, but we con-tantly keep up a guard against Indians, of from four to eight men, night and day." CACHE VALLEY.—Bishop Budge,of Prov-CACHE VALLEY.—Bishop Budge,of Prov-



Europe, may know where they can be sure of good treatment, and reasonable charges. All of the above named brethren wish to

their feelings of pleasure, at the nd treatment and warm reception, acorded to them by Professor O. Pratt, who occupying a room in the same hotel. hey met together in his room, and received with joy, his friendly counsel with a God speed them on their voyage to the field of their labors. One of the number, Hamilton G. Parks having a brother living in Philadelphia whom he had not seen in 20 years, availed himself of the opportunity of a visit by a four hours' trip on the Railroad, the meeting, interview and departure was related to the writer after his return, and was intensely interesting; best given by himself, and in his own words, which I resume you may have from his pen hereifter.

"Bro. G. H. Snell remains in this city, un til the next company arrives, having been indisposed nearly ever since his arrival; he is, however, improving at present. "Bro, Naisbitt, preached yesterday after-

"Bro. Naisbitt, preached yesterday alter-noon, in our Hall to a good congregation of Saints and strangers, taking for his text an editorial from the *Herald*, of Sunday 30th on the religious tendancies of the age. "A perusal of the article, would give some idea, through the inspiration of the same spirit possessed by, the speaker, of the interesting nature of the discourse. In the

vening also, we listened to an able, and soul-inspiring sermon, on the restoration of the Jews, and the second coming of Christ, by our beloved brother Elder Orson Pratt. I see it announced by your paper just received that Elder Staines is on his way to attend to the emigration, a cordial welcome awaits him, all are anxious to fearn of the time of their deliverance."

PAROWAN. - Elder W. C. McGregor. writing from Parowan on the 28th ult. says: "the prospects for raising a crop here this season, are very gloomy, at present the grasshoppers cat our grain as fast as it comes out of the ground, so that at present our fields are as bare as the first day after plowing. Many have dug deep trenches around their land, and have driven the lo-custs into them and burned them with straw, etc., but still they have conquered thus far. We had a heavy snow storm on the 24th and 25th insts., but as soon as the went off and the sun came out, the locusts seemed reinforced and happier than over. It is snowing again to-day, and no doubt these storms will do good to the grass on the range, and perhaps will bring up some of the wheat again, though some think the young wheat is entirely killed, others think some of it will come up yet, and make a crop, if the locusts can be kept off. Quite a number of the brethren comoff. Quite a number of the brethren com-menced yesterday, putting in from one to two acres apiece of wheat, all in one patch, and they intend to surround the patch with a stream of water, which will prevent the grasshoppers, while they are young, from getting on to it, and they intend, unitedly, to guard this patch during the season, so that we may raise some wheat, at least. We are busy putting in potatoes and corn. All is peace with us at present, but we con-stantly keep up a guard against Indians, of from four to eight men, night and day."

satisfied that the pleader when drawing an indictment under the statute need not designate the degrees of murder, or use the words "Wilful, deliberate and premedi-tated," or either of them. But on hearing the evidence the jury have the right, and by the 7th section of the statute, it is made by the 7th section of the statute, it is made their duty, to enquire and determine wheth-it is murder in the first or second degree or manslaughter, and return their verdict ac-cordingly. The indictment in this case being good the jury was authorized to find as it did. The Court entertaining these views must therefore hold that the first views must therefore hold that the first point is not well taken and it is accordingly overruled.

The second point contended for by defen ants' counsel is"That the indictment again said defendants was found by a Grand Jury composed of only seventeen (17) persons, of whom six were talesmen summoned from the bystanders." Owing to the many imperfections of our statute, the Court has had no little trouble in arriving at a satisfactory

to a full examination of the statute as well as numerous other authorities. The fifth as numerous other authorities. The fifth section of the thirty-fifth chapter of the statutes of Utah, page sixty-nine, provides "That when a District Court is to be held, a Grand Jury of twenty-four persons shall be summoned at least thirty days before the commencement of the term." The eleventh section of the same statute provides that after the Grand Jury have been empanneled, sworn, etc., they, of Jews, and the second coming of by our beloved brother Elder Orson I see it announced by your paper an indictment. This statute, while it provides for the summoning of twenty-four persons, does not require that number to be sworn, but does provide that twelve may find an indictment. In the examination of this question the Court has had occasion to examine the statutes of many different States, in which similar provisions are found. In some of the States the law requires that not less than sixteen jurors shall be sworn; but there is no such require-ment in our statute. We have, therefore, ment in our statute. We have, therefore, to seek some rule, outside of the statute, established by acknowledged authority, by which to be governed in the empanneling of a grand jury. It is contended by counsel for defendants, that twenty-four grand ju-rors must be empanneled and sworn, and that a less number is not a legal jury. If such be the literal reading or true construc-tion of this statute, it is manifest that it would defeat the object of the statute itself, no provision having been made for itself, no provision having been made for drawing talesmen from the bystanders. I

case of the absence of any one of the twenty-four summoned we would be compelled to dismiss those who did appear and thus dedismiss those who did appear and thus de-prive the Court of a grand jury and in effect do away with all criminal procedure in the courts. The Court is not prepared to establish so dangerous a rule, but prefers to adopt one more in consecution. adopt one more in consonance with reason and thus uphold, rather than nullify, the clear intention of the legislature, viz: that, notwithstanding the statute requires twen-ty-four persons to be summoned, no more than twenty-three should be sworn and

