EVENING NEWS.

PUBLISHED DAILY, SUNDAYS EXCEPTED, AT FOUR O'CLOCK.

DAVID O. CALDER, EDITOR AND PUBLISHER.

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NEWS OF THE DAY.

——The Philadelphia *Press* makes the statement that, owing to frosts and a late spring, half the wheat crop of the State has been destroyed.

——Immense whisky frauds have been discovered, and a large number of distilleries and rectifying establishments, at St. Louis, Chicago, and Milwaukee, have been seized by government officers, their owners being charged with complicity in the frauds. The swindle has been carried on by a ring, composed of distillers and revenue officials; and it is said that the government has lost one million two hundred thousand dollars a year by the operation, forty per cent. of which has gone into the pockets of its dishonest officers. Two of the editors of the St. Louis *Democrat* are credited with having discovered the organization and *modus operandi* of this ring of whisky thieves, who, before they get through with their nefarious business, will be very likely converted to the opinion that honesty is the best policy.

——The Czar arrived at Berlin yesterday.

——A verdict of "found drowned" was rendered in the case of the *Schiller* victims, thirty-seven of whom were buried yesterday.

——Fifty thousand dollars is the sum appropriated by the Massachusetts legislature to represent that State at the Centennial Exhibition.

——Three hundred of the Pennsylvania striking miners have threatened to kill the miners at the Hickory Ridge and Lancaster collieries unless they quit work.

——Yesterday, the centennial anniversary of the capture of Fort Ticonderoga, by Col. Ethan Allen, was observed in a manner worthy of the event and occasion.

——The treasury safe of Amador Co., Cal., has been robbed of $15,-000.

——Catholic priests must be a continual nightmare to Bismarck. Word comes to-day that Polish priests have hired three persons to assassinate the chancellor and the Prussian minister of ecclesiastical affairs.

——The report as to the condition of the winter wheat in several of the States indicates only five-eighths of a full crop.

——The Cartagena insurgents have been set free by the Spanish government.

——It is not yet decided whether Prussia will reply to Belgium's last note, or appeal to the guaranteeing powers.

——The London *Times*, speaking of the meeting of the Czar and the Emperor of Prussia, says that the former is strongly in favor of peace, but while immense armaments exist, even imperial peace-makers cannot allay anxiety. It is also said that the Czar will propose a general disarmament, and that in this he will be supported by the Emperor William.

——John Best, a citizen of standing and means, in the State of Mass., has been arrested for stealing $1,500.

——Over half a million dollars damage and four hundred men thrown out of work, by fire, in Brooklyn, last night.

——Between three and four hundred Indian warriors crossed the railroad track, a few miles from Bigbee Springs, Neb., yesterday.

——Captain Wakeman, formerly of the P. M. S. S. Co., died on Saturday night, at Oakland.

——The loss of the steamer *Glencora*, with a large freight and passenger list, is reported.

——A sporting parson named King, living in Lincolnshire, Eng., has just died; he was the owner of two or three famous racers.

——The bark *Cora Lynn*, with captain and crew, is reported lost at sea.

——A number of the leading British novelists have interviewed Disraeli on the subject of international copyright; the premier promised that the matter should receive the attention of the government.

——Religious orders are to be suppressed in Prussia; the bill providing therefor has passed its third reading in the Diet.

——On the trial of Father Gordeman, of Philadelphia, arrested some months ago, charged with having absconded with church funds, it was shown that the church was indebted to him.

——Dr. Winn, an innkeeper at Little Rock, Arkansas, has been shot and killed by Col. Gaines.

——Three thousand six hundred and forty-seven miners were in procession at Hazleton, Pa., yesterday.

——One of the victims of the *Schiller*, Miss Crane, of Washington, D.C., was the niece of the wife of Senator Edmunds, of Vt.; the young lady was on her way to Europe to study art in Italy.

——The Rev. Dr. Webber hanged himself, at Lewiston, Me., to-day.

——Col. Anthony, brother of Susan B., and editor of the Leavenworth, Ks., *Times*, was shot and mortally wounded, last night, by W. Embry, editor of the *Appeal*.

——There is said to be great excitement among the western whiskey thieves; a number of suits against them will be forthwith commenced by the government.

——It was said in the British House of Commons this afternoon, that the government had received satisfactory assurances from Berlin, in regard to the preservation of the peace of Europe.

——A memorial with a million signatures has been sent from Mayence, congratulating the Pope on reaching his 83d birthday.

REVIVALISM IN CALIFORNIA.—Mr. Hammond is making a success of his revivalism at San Francisco. The Oakland *Transcript* says—

"He has persuaded many hundreds of persons here to yield to the dictates of their consciences and publicly profess the religion they had believed to be true.

"Hardly any one could have conjectured that audiences ranging from two to three thousand people would assemble in this city nightly, for three weeks, to listen and participate in religious exercises. A person predicting it would have been laughed at. Good, nothing but good, can result from such an awakening. We cannot see any objections that can be urged by those who are indifferent about the matter, by an atheist or by anybody else. If, as claimed by many, those who profess to be converted become as sinful as ever in a few months, the months preceding their backsliding will be so much clear gain to society. If a tenth part of those who have signed the roll remain true to their obligations, society will be vastly benefited by the accession of so many who will govern their actions according to the highest standard of right. A movement that results in that, is a good one apart from any considerations of a religious nature. But we imagine that most people in this community will regard it as an awakening to the truth of the Christian religion and a determination on the part of hundreds to prepare themselves for the life that is to come."

YOUNG VS. YOUNG.

Decision of Chief Justice David P. Lowe, given in the Third District Court, Salt Lake City, May 10, 1875.

Ann Eliza Young,
by her Next Friend
George R. Maxwell, plaintiff,
vs.
Brigham Young, defendant.

On the 26th day of February last, an order was made in this cause directing the defendant to pay to the plaintiff as alimony *pendente lite*, the sum of $9,500, being at the rate of $500 per month from the commencement of the suit; also to pay her $500 per month subsequently during the pendency of the suit, and $3,000 as attorneys' fees to the attorneys of the plaintiff. It appears that under said order and subsequent proceedings, the attorneys' fees $3,000, and of alimony $500 have been paid. A rule upon the defendant to show cause why he should not be compelled by attachment to further comply with said order, has been granted, to which the defendant has answered, and the plaintiff now moves for an attachment, and the defendant moves to discharge the rule.

A discharge of the rule is asked upon three several grounds. The first that the court has not jurisdiction of the action. The decision of the Supreme Court of the Territory in the case of Cast *vs.* Cast, and the overruling of the demurrer to the complaint in this cause, seem to conclude that question in this court for this case. Any re-agitation of that question should be in the Supreme Court.

The second ground of defense is that an appeal from the order now sought to be enforced has been taken to the Supreme Court. If there were any reasonable ground for holding that under the practice act such an appeal was maintainable, I would most gladly act upon it, and thus hope to obtain the opinion of the Supreme Court upon the order in question; but it seems too plain for doubt that no appeal lies from such an interlocutory order, and that it cannot by any admissible construction be embraced in any one of the provisions of section 328 of the practice act which defines appealable cases. I think, therefore, that the attempted proceedings in appeal are inoperative and nugatory.

There remains for consideration the further ground urged in argument, that upon the pleadings and records, such a state of facts is disclosed as shows it to be inequitable to require the payment of *ad interim* alimony.

The plaintiff in her complaint alleges that she intermarried with the defendant on the 6th day of April, 1868, and sets up facts of negligence and desertion which constitute statutory grounds for divorce. The defendant in his answer makes a qualified denial of the marriage, and alleges by way of avoidance that at the time of such marriage the plaintiff was the lawful wife of James L. Dee, who is still living, and from whom she has never been divorced; that the defendant was lawfully married on the 10th day of January, 1834, to Mary Ann Angell, who then became and still is, his lawful wife. He further alleges in terms, that the marriage with the plaintiff was a plural marriage, entered into according to the doctrine and customs of the Church of Latter-day Saints. The complaint and answer is each upon oath, and it appears from the record as well as from the statement of counsel in argument, that the order for alimony and expenses was made upon the complaint and answer alone, without any other evidence or showing whatever.

It is the general doctrine of the courts in divorce, that before temporary alimony can properly be awarded, the marriage must be admitted by the parties, or established by proofs. 2d Bishop on Mar. & Div., 402-406.

In the very recent case of York *vs.* York, 34 Iowa, 530, it is said, "Alimony is a right that results from the *marital relation*, and the fact of marriage between the parties must be admitted or proved before there can be a decree for it even *pendente lite*." If some exceptional causes to this rule exist, they will be found to proceed upon facts and circumstances having no analogy to the present case. It is also an accepted doctrine that alimony *pendente lite* cannot be claimed as a matter of right, but that its allowance rests in the sound legal discretion of the courts. In Jones *vs.* Jones, Chancellor Walworth said, "It is not a matter of right under all circumstances, for the wife who has commenced a suit for a divorce or for a separation, to require the court to direct an allowance to be paid to her by the defendant for the purpose of defraying the expenses of the suit. Nor is it a matter of right that she should be allowed her *ad interim* alimony in all cases." And *ad interim* alimony was refused because there appeared no probability that the plaintiff ought to succeed in the case. 2 Barb. Ch. Rep. 146.

In Worden *vs.* Worden, the vice-chancellor said, "If the answer be true the complainant has no just cause of complaint * * * It is not a matter of course in every case, whatever may be the complexion of it, to make an order for temporary alimony;" and *ad interim alimony* was refused on the ground that it did not appear from all that was before the court that the complainant had a meritorious cause of action. 3 Edwds. Ch. Rep. 387. It is also conceded that the order for temporary alimony when made remains subject to the control of the court, during the pendency of the cause. The present case upon the record is in brief this: The plaintiff alleges a marriage and adequate statutory grounds for divorce. The defendant concedes a marriage, but alleges facts as new matter in avoidance and defence, which clearly show the marriage to be bigamous or polygamous. To these new facts alleged there is no denial. How then does the case stand upon such pleadings? It seems to be supposed that such new matter in the answer is to be deemed as controverted by force of the statute. But this is a mistake when applied to an interlocutory proceeding. The 65th section of the practice act declares, "that every material allegation of the complaint, when it is verified, not specifically controverted by the answer, shall, *for the purpose of the action*, be taken as true. The allegation of new matter in the answer shall, *on the trial*, be deemed controverted by the adverse party." Thus the new matter of the answer is to be deemed controverted only *on the trial*, the statute not prescribing the character in which the new matter is to be regarded for the other purposes of the action, as is done in the same section in reference to the allegations of the complaint. The allegations of new matter, therefore, in the answer, for purposes of the action, other than the trial, must have their ordinary legal effect, and that is to regard them as true, unless actually controverted. And such appears to be the character attributed to the answer in interlocutory proceedings by the supreme court of California under a statute which is identical with the 65th section of our practice act as quoted above. Burnett *vs.* Whitesides, 13 Cal. 156, was an appeal from an order dissolving an injunction, the case having been heard upon complaint and answer alone. The answer denied the equity of the complaint and set up affirmative matter in avoidance, and the court says: "The answer of the defendants is as much proof of the defendants' right, as the complaint of the plaintiff is evidence of his right"; and the order dissolving the injunction was affirmed. Delger *vs.* Johnson, 44 Cal., 182, a very late case, was also an appeal from an order dissolving an injunction which had been heard upon complaint and answer alone, the pleadings being verified. The answer set up new affirmative matter in defense, which the court says "if true would justify the court in dissolving the injunction." And in reference to the answer, the court says, "It was held, in Falkinburg *vs.* Lucy, 35 Cal., 52, and many other cases in this court, that when the defendant moves on the complaint and answer, to dissolve an injunction, *the answer will be treated for all the purposes of the motion as an affidavit*," and the injunction having been dissolved upon the uncontradicted new matter of the answer, the order was by the Supreme Court affirmed.

The record of this case, therefore, in view of the provisions of the 65th section of the practice act, and the authorities just cited, does disclose for the purpose of the present inquiry, the uncontradicted fact that the alleged marriage was a bigamous or polygamous marriage. If such a marriage was entered into ignorantly by the complainant, and through the fraud of the defendant, equity will open its doors for her relief; but upon the case as it stands, it is not in the judgment of the court according to the principles of equity and good conscience to enforce the payment of *ad interim* alimony. It appears from the record that the alleged marriage was celebrated in this city, that the plaintiff and defendant both reside in this city. It cannot, therefore, be a difficult or expensive duty of the plaintiff to place upon the record a confutation or some explanation of the unexampled and most extraordinary allegations made if any just explanation exists, and the Court believes that such explanation is due to the common principles of equity and public justice before proceeding further in the direction sought. It would be strange, indeed, if upon such a state of facts uncontroverted by any rule of pleading or of law, and unextenuated by any evidence, it could be imposed as a duty upon a court of equity to direct or enforce the payment of alimony, and thus bestow the apparent, if not indeed the real, sanction of the law upon a practice which is hostile to the civilization of the age, and which the penal statutes of the land visit with condign punishment. The motion for an attachment is denied, and the rule discharged.

By Telegraph

FOR WESTERN UNION TELEGRAPH LINE.

TO-DAY'S DISPATCHES.

EASTERN.

Wheat Crop Injured.

PHILADELPHIA, 11.—The *Press*, this morning, says, in a review of reports from all parts of Pennsylvania, that owing to severe frost and a late spring, much of the existing wheat crop has been killed and the season delayed eight or ten weeks, and careful inquiry leads to the belief that not over half a crop will be gathered, and even this amount depends on the continuance of dry weather.

More Distilleries Seized.

CHICAGO, 11.—The revenue officers have taken possession of the distilleries and rectifying establishments of Goldsen & Eastmen, Roelle, Goimker & Co., G. G. Russell, P. R. Mason, Byron, Sawyer and the Lake Shore Co., of this city, on the charge of being engaged in the recently discovered frauds on the revenue; it is rumored that other seizures will be made. The establishments of R. Altrici, Bingham Bros., John Busby, Beves & Fraser, F. C. Fader, Quintin Bros., and J. L. Beneker in St. Louis are also seized.

A Washington special sends word that the unearthing of the gigantic frauds in the whisky trade, which resulted in the above seizures, began in St. Louis, under the direct supervision of Maj. G. W. Wishback, editor of the St. Louis *Democrat*, who, having satisfied himself of the existence of a formidable whisky ring, including St. Louis, Chicago, and Milwaukee, obtained authority to ferret them out and, with the aid of Martin Colony, the commercial editor of the *Democrat*, he succeeded fully in doing so. It is said that in St. Louis alone fifty thousand barrels of whisky have escaped the tax through the connivance of the revenue officials with the distillers and rectifiers, and the amount of which the government has been defrauded annually is placed at twelve hundred thousand dollars; of this amount the dishonest revenue officials have received about forty per cent. The mode of swindling comprised the duplicate use of stamps, the refilling of barrels regularly stamped, and various other devices, the successful issue of which depended entirely upon the connivance of revenue officials of various grades. A Washington special says the discovery of these frauds is the real reason for the displacement of Commissioner Douglas, although he was in no manner implicated in them, but his confidence in his system of supposed checks on frauds led him to unconsciously aid the schemes of the various rings. There is great excitement among the distillers and rectifiers in the west, and numerous prosecutions will be commenced at once.

One Editor Shoots Another.

At Leavenworth, Ks., last night, Wm. Embry, editor of the *Appeal* shot and fatally wounded Col. D. R. Anthony, editor of the *Times*. There was a newspaper quarrel between the two, over a matter connected with the Typographical Union. Last night they met in the entrance of the Opera House, and began to quarrel, which culminated in Anthony's striking Embry in the face, and the latter firing three shots from a revolver at Anthony, two of which took effect. The affair produced intense excitement, the Opera House being crowded with people witnessing Janauschek's rendition of Deborah. Embry was arrested and committed to jail. Col. Anthony was postmaster at Leavenworth, and is brother of Susan B. Anthony.

Hanged Himself.

LEWISTON, Me., 11.—Rev. Dr. Geo. Webber, of Kent Hill, suicided this a. m., at this place, by hanging.

Mobbed.

WILKESBARRE, Pa., 11.—About thirty men went to work in Hutchinson's mine this a. m.; they marched from their houses in a body and were armed with rifles and revolvers. A crowd of men, women and boys followed them with threats and imprecations, and were only deterred from violence by the weapons of the workmen. The women were particularly bitter with invectives, and at one point in the march nearly precipitated a conflict. Threats were made to have a crowd, this evening, when the men came out of the mine, large enough to mob them. Through fear, the authorities were called upon this a. m. by Hutchinson for protection, and a posse is now being raised to go to Kingston this afternoon.

Going to Work.

HUNTINGDON, Pa., 11.—H. G. Fisher, of Fisher Bros., and Miller and John Whitehead, of Whitehead and Co., the respective owners of the Excelsior and Ocean collieries, in the Clearfield coal region, left here this morning with a large force of workmen, thoroughly equipped and provisioned, and they will, on reaching the collieries, at once resume shipping. A large force was taken up by other parties yesterday, but many were intimidated and returned.

WESTERN.

Dead.

SAN FRANCISCO, 11.—C. J. Brenham died to-day, at his residence in this city.

FOREIGN.

GREAT BRITAIN.

Bismarck and Gortschakoff will Decide.

LONDON, 11, 5 a. m.—A special to the *Standard* from Berlin says that Bismarck and Gortschakoff will decide, during the Czar's visit, whether Germany should answer the last Belgian note directly, or appeal to the guaranteeing powers. The recent warlike rumors are declared to be the work of stock jobbers.

The Czar for Peace.

The *Times* says—"We believe that the Czar is resolved to hold the most decided language in favor of the maintenance of peace and to use every effort to stop the present alarm, and a few days will probably bring forth official disclaimers of the recent reports. It is possible that it will be said there is nothing to justify French apprehensions, but there should be no mistake on this point, for as long as the present conditions remain there must be uneasiness and even danger, and an unforeseen incident or an outburst of jealousy may precipitate a rupture. The Czar is unable to guarantee that France will not attack Germany within a few years. Gigantic armaments are a mutual menace, and while they exist it is beyond the power even of imperial peacemakers to allay apprehensions."

Congratulating the Pope—Peace of Europe Assured.

The *Pall Mall Gazette's* Berlin dispatches says that the Catholic Assien has left Mayence for Rome, to present the Pope with an address congratulating him on the 83rd birthday, which occurs on the 13th inst. The address, which is said to have a million signatures attached to it, is couched in terms of the deepest devotion and allegiance.

In the House of Commons, this afternoon, Bourke, the under foreign secretary, in response to an inquiry by Sir Charles Dilke, as to the continental situation, said the government had received, to-day, the most satisfactory assurances from Berlin of the maintenance of the peace of Europe.

MINING STOCKS.

MORNING BOARD.

San Francisco, May 11.

940 Ophir, 78; 78¼; 78½; 77½; 77½; 78, b 5
680 Mex, 25½; 25⅝
170 G & C, 19½; 19⅝; 19¾; 20; 19¾
395 B & B, 52½; 52½; 52
185 Savage, 102; 101½; 101; 104, b 30; 103; 102
870 Chollar, 73; 75; 74; 74½; 74
35 H & N, 39; 39, b 10
740 Point, 33; 32½; 33, b 10; 33¼
45 Jacket, 80; 81
225 Impl, 8½; 8¾
250 Kentuck, 14½; 14
150 Alpha, 22; 21½; 21¾
420 Belcher, 32; 31¾
20 Confidence, 20
260 S Nev, 12
690 Cal, 60¾; 61; 60¾
525 Bullion, 56; 57; 56½; 55½; 56
10 Exchequer, 295
365 Overman, 64; 65; 65½; 66, b 5; 66
20 Justice, 122; 120
180 Succor, 1; 1¼
455 Union Con, 7⅝; 7½; 7⅝
300 Buckeye, ¾
120 Caledonia, 18; 18½; 18
195 L Bryan, 5½; 5
250 Julia, 8½; 8¾
110 Knicker, 3½; 3
600 Globe, 1⅝
110 Balto, 6½; 6½; 6¾
170 Bacon, 5
125 Utah, 6¾; 6
120 S Hill, 11½; 11
250 R I, 6
230 Dayton, 3
185 N Y, 1¾
30 Occidental, 3¾
380 Am Flat, 9½; 10; 9¾
35 Senator, 1
1140 Woodville, 3; 2½; 3
200 Alta, 4; 3½