

Some utilitarian genius should set his wits to work and see what he can do in that line with substances that exist in great profusion around us; or how would it do for the municipal corporation to offer a premium for the cheapest and best combination of materials suitable for paving purposes? A monetary inducement would probably stimulate somebody's inventive genius in that direction.

THE GRAND ARMY AT ST. LOUIS.

The Encampment of the Grand Army of the Republic now going on at St. Louis is one of the largest and most enthusiastic ever held in the country, notwithstanding the fact that the list is not so long now as it was last year and is shorter by an amazing figure than a twelvemonth previous to that. Each succeeding year cuts into the ranks with greater destructiveness now than in the early days of the organization, for the reason that the members are all past the average allotment of years to man, and they no longer go by ones and twos, but by platoons and companies, as the seasons between the meetings come and go. It requires but a slight effort of the mind to determine a period within which there will be no one left to respond to the standing rule for a yearly meeting because all will have gathered elsewhere, and that period will not long outlast the century. Then all that the incoming generation will know of the Grand Army will not be the knowledge acquired by association, but what they hear from others and what they read in books.

A great and splendid volume is the history the veterans of the war have made, view it from whatever standpoint we may. There is a story of sacrifice untold and sorrow unspeakable, of suffering in the imminent deadly breach, of a

"War which for a space did fail, Then truly thundering swelled the gale"—till at last a victory was gained which erased sectional lines and blazed the path of empire with a new and glowing light. They performed the hard and cruel work well and faithfully, and a generous people will never forget them or their achievements.

The Grand Army, at the outset of its organization, disclaimed entertaining political views or favoring political parties as a body; and while this is an article of their creed, we have all seen how far it has been departed from on many occasions by those who wear its badge and speak in its name. As a body, it has been pressed into partisan service of the most unsavory character, and through its spokesmen and self-constituted directors has compromised the entire rank and file to the upholding and pushing forward of principles and practices against which many if not a majority must have revolted.

It is unnecessary in this connection to refer to any particular case or occasion. In fact, it is only with the hope that it may be noticed and corrected that it is mentioned at all. If the Grand Army of the Republic would continue to wear well the honors it has won, it should cease to be sectional and sectarian. Let it as a principle know only the Union, not certain parts of it, and above all keep out of discussions and wrangles in which politics and religion are the principal figures.

We trust that their sojourn at St. Louis may be a pleasant and profitable one, resulting in a better feeling than prevailed a short time ago, when two or three firebrands were ready and anxious for a renewal of the struggle long past. Better judgments have prevailed, and with the comingling should come a better understanding all around.

RESENTMENT TOWARDS THE UNION PACIFIC.

At the meeting of the Chamber of Commerce held last evening, indignation at the manner in which that body had been treated by the officials of the Union Pacific Railway was freely expressed. In fact, the meeting appeared to be considerably incensed. The immediate cause of the resentment was the failure of the officers of that road to make any communication whatever to the Chamber, through its committee on railways or otherwise, after having promised to inform that body of the action of the road regarding the concessions asked for, and a repeated granting of further time in which to prepare an answer. It was urged that had Mr. Potter or Mr. Munroe sent in a request for still further time, or had either of them signified, in any way, that the matter of making concessions to Salt Lake business men was being considered by the officers of the Union Pacific, the case would have worn a different aspect.

Probably the feeling of resentment which characterized the meeting, would have been less intense had there been read to it a properly worded refusal from the railroad to grant concessions to Salt Lake City. Mr. Needham, the local freight agent of the Union Pacific, was present at the meeting and endeavored to extenuate the course of his superiors; but his suggestion that perhaps the giving of

a little further time would result in the receipt of a satisfactory explanation and reply from Mr. Munroe, was not regarded as worthy of notice, in the light of what had taken place.

Undoubtedly Governor West voiced the sentiment of the Chamber when he urged that the patronage of this city be given to the road which was disposed to manifest a degree of fairness and courtesy, meaning, of course, the Denver & Rio Grande. The decisive action contemplated in the resolution introduced by the Governor will, in all probability, be taken on Wednesday night, unless in the meantime the Union Pacific shall send a satisfactory communication to the Chamber. This action will be a combined effort to withdraw patronage from the Union Pacific, and Ogden and Provo will be asked to join in it. Butte has signified her willingness to add to the effectiveness of such an attempt to bring that road to terms by ordering her freight shipped over the Northern Pacific.

The dilemma in which the management of the Union Pacific finds itself, grows more and more complicated. The fact that no explanation of its course regarding the concessions asked for by the Salt Lake Chamber of Commerce has been given here, makes it appear all the more inexplicable and unwise; and the indications are that, in addition to the difficulties with the government in which the officials of the road are involved, they will see the bulk of its Utah traffic diverted and given to rival lines.

THE INDEPENDENT PRESS AND THE PRESIDENT.

The Boston Herald is conspicuous among the independent newspapers of the country, hence its references to the administration may be assumed to fairly coincide with the views of the independent voter. In a late issue that paper has the following editorial paragraph:

"President Cleveland is reported to have been in good health at Philadelphia, and his speeches, made on that occasion were sensible and appropriate. Aside from politics, he is of the right type of man for the Presidency—sensible, sagacious, with patriotic purposes, and as nearly independent of any party as any President that this generation, at least, has seen. In some other respects he may not be all that is desired, but we think he would be a better President in a second term of office, and so nearly absolutely a good one as to make it incumbent on the Republicans to bring out their best man if they expect the people to prefer him."

THE WAY IT STANDS.

The other day an unfriendly journal published in this city made the following statement:

"The News last evening charged, that Chief Justice Zane had, in his court, overruled a decision of the Supreme Court of the Territory. Of course the News did not realize how grave a charge it was making against the Chief Justice, or think that for a Judge to do an act like that would be a direct violation of his oath of office. A decision of the Supreme Court is the law until it shall be repealed by an equal or higher authority, and Judge Zane's oath binds him to execute all the laws of the United States and of this Territory."

The basis for the foregoing assertion was the following paragraph embodied in a News' editorial: "During this week Chief Justice Zane took occasion in the case of Andrew Homer, to reassert the position he took on the question of presumptive cohabitation, as decided in the Territorial Supreme Court in the Snow case. The decision was to the effect that cohabitation with a legal wife was presumed on the mere basis of relationship, evidence of association being unnecessary. Judge Zane dissented from this view and held that there must be some evidence of association. He has reasserted, in charging a jury, the position he then took, and its soundness is so clear as to be almost self-evident."

It will be difficult to understand by what process that could be construed into charging Judge Zane with having overruled a decision of the "Supreme Court of the Territory." That point needs no comment.

The statement of the News was called forth by the following remarks of Judge Zane (stenographically reported) in his charge to the jury which tried the case of Andrew Homer, indicted for unlawful cohabitation:

"If you believe from the evidence gentlemen of the jury, that Jannina Homer was the lawful wife of the defendant during the time mentioned in the indictment, and at the place mentioned in the indictment, that fact—that she was the lawful wife—raises a strong presumption that he cohabited with her; but it is not conclusive, unless you further believe from the evidence that he claimed her, during the time mentioned, as his wife, and by his language and conduct held her out to the world as such. Therefore if you believe that Jannina Homer was the lawful wife of the defendant, and that, at the place mentioned in the indictment, and at the time mentioned, he claimed her as

his wife, and held her out to the world by his language or his conduct as such; or if he visited her or associated with her, the law conclusively presumes that he cohabited with her. On the other hand, if she was his lawful wife, and he did not claim her as his wife, or hold her out to the world as such, by his language or conduct, and he did not visit nor associate with her at any time during the time mentioned in the indictment, you should not find cohabitation as to her."

Without referring directly to the books it does not appear difficult to express the common sense view of this subject. It is an accepted theory that the law is progressive. If lower courts were perpetually bound on legal points in cases outside of those in which superior courts have given decisions, progression would in one direction practically cease, as it would shut off a proper way in which errors of the higher tribunal could be corrected.

There appears to be two processes by which the corrective method can be reached. One is by a judge of a lower court crossing the record by instructing a jury counter to a superior court decision. In doing this he does not block the wheels of justice, the party aggrieved being enabled to make the matter a ground of exception, and thus have it carried up on appeal for review. In this way the higher court, if it finds it originally committed an error, can correct itself, and thus the ends of justice be progressively subserved.

Take the case in point. Judge Zane evidently considered the decision as to presumptive cohabitation bad law. He so expressed himself at the time it was rendered. The evidence favors the idea that his opinion is unchanged. This being the case it would seem to be more in keeping with his oath of office to legally proceed in a manner that would lead to a correction of what he believes to be an error than to let it rest and overrule, according to his view, in subversion of the ends of justice.

The other prominent method by which errors committed by higher courts can be corrected is for the party aggrieved when a lower court decides in accordance with a decision which emanated from a superior source, to appeal to the latter. A case in point occurred recently. The Territorial Supreme Court decided in the Yearian case, that the law which gave to Justices of the Peace jurisdiction in certain cases of misdemeanor in which the penalty did not exceed imprisonment for six months and a fine of \$300 was excessive; that the Legislature had no power to make it. In the case of the People vs. Wm. Douglass, of Ogden, charged with battery, the accused was taken before a Justice of the Peace and fined. A demurrer to the jurisdiction of the Justices was introduced, but overruled. The case was appealed to the First District Court, which, in accordance with the decision in the Yearian case, sustained the demurrer. An appeal was taken to the Supreme Court of the Territory, the case being very carefully operated by Mr. C. C. Richards, attorney for the People. The result was that the Court reversed its former decision and held the law to be valid.

Lower courts frequently decide contrary to decisions of superior tribunals without being chargeable with violation of official oath. An instance may be cited. The method adopted by the courts here of segregating a continuous offense into parts and finding a corresponding number of indictments or counts against the same individual, as was done in unlawful cohabitation cases, was contrary to all the decisions on that point ever given by the Supreme Court of the United States. The court itself, in ruling upon the point at issue, in the Snow case, so stated in substance.

Our object in referring to this subject is simply that we may be properly understood and the truth be clearly elucidated.

THE "VOLUNTEER" AND "THISTLE."

The great contest for supremacy between the American yacht Volunteer and the Scotch cutter Thistle has excited intense interest on both sides of the Atlantic, this being the third attempt on the part of our kinsmen beyond the sea to capture the much-coveted trophy, the America's cup. The first of the three races was sailed yesterday, and won by the former craft by nineteen minutes and a few seconds. This, in a course of fifty miles was as nearly an even contest as possible and one of them win; in fact, it is a result which indicates that good or bad judgment at some important time, and not superior qualities as a sailing vessel, may have given the honors of the occasion to the Volunteer.

It is a good thing and a wise one for nations to be properly and strongly represented on the great common highway. As on land, all the messengers and carriers should not be alike. Some should be for tonnage especially, others constructed with a view to speed more than anything else, and others again for offensive and defensive purposes. But in the midst of all these, which are mainly useful, we must have a sprinkling that are ornamental in construction and designed for pleasure merely, and such is the modern sailing yacht. It matters lit-

tle that steam has almost banished the breezes from the domain of propulsive power on the great craft of the mighty deep; there is no such genuine, easy pleasure connected with breasting the billows on a deck beneath which the monstrous throbs of a mighty engine's pulse and behind which the powerful gyrations of a propeller send quivering and continuous shocks throughout every joint and bolt of the superstructure. And it requires a skill which is not altogether a mechanical acquirement to so direct one of the elements as to be able to ride safely and serenely over another; there is something of inspiration in the mind which enables man to capture and control what he cannot grasp and wield with his human hands.

We will never, so long as such influences and attractions exist, dispense with canvas as a propelling power. In fact it never has, even on steamers, been entirely dispensed with. Our meaning is that there will always be craft that carry no other motor. The record made by such vessels is one too grand and consequential to permit them to be lost sight of or unused, even if there were no other considerations. It was by means of æolian navigation that all the known habitable lands of the globe were brought in communion, and if we now use it for no other purpose than sporting and speculation, it will still be a vigorous reminder of the time when it was our only dependence, and that without its benign aid the continents of the earth might still have been to each other more distant and unknown than are any of the planets in our solar system.

There will always be yachting, because there will always be some means of traversing the waters; and that particular method of sailing is as much a diversion from the prevailing methods of international communication as baseball and lawn tennis are from the daily routine of labor. It is no wonder, therefore, that so much money is spent on swift and elegant yachts, nor that our cousins abroad should have made so many ineffectual efforts to wrest from us the emblem of supremacy.

A DISSENTING OPINION.

A short time since the News contained a ruling of the Circuit Court of California on the application of the Pacific Railroad Investigating Commission for an order to compel Leland Stanford to answer certain questions. That ruling was handed down by Justice Field and concurred in by Judges Sabin and Sawyer, and took the broad ground that a man cannot be compelled to testify regarding his private and confidential business transactions; furthermore that the act of Congress creating the Commission was unconstitutional. These Judges, composing three-fourths of the Court in banc, made a conclusive settlement of the case, and the Commission had to depart without obtaining the information they sought.

It was intimated at that time by Chairman Pattison, of the investigators, that the opinion of Judge Hoffman, the fourth member of the Circuit Court, when forthcoming would be a dissenting one, and so it proves to be. It was filed yesterday, and an extensive synopsis of it will be found in our telegraphic columns to-day.

Judge Hoffman holds that the application for the order was made in precise conformity with the act referred to (held to be unconstitutional by the other judges). He depends largely upon this and quotes extensively from it, showing how by its terms the aid of the courts was to be invoked on just such occasions as that by which the Commission was confronted in the Stanford case. He points out that they were specifically empowered to deal with contumacy, which is precisely the ground on which his colleagues made up the unconstitutional part of their decision—that a merely inquisitorial body had been invested with judicial functions. Judge Hoffman claims that similar provisions are contained in the Inter-State Commerce law, and contends that if the desired aid should not be extended to the Pacific Investigating Commission, it should also be withheld from the former body and from all commissions created by the government to obtain information. He arrives at the conclusion that obtaining information by means of inquiry is an indispensable adjunct of legislation, and it is, therefore, a power impliedly and necessarily conferred upon Congress by the Constitution. Since it cannot be claimed that the Commission in and of itself can compel an unwilling witness to testify and the lack of such information would tend to render imbecile and of no effect the wholesome legislation of Congress, it follows as a matter of course that the aid of the courts must be called in, and courts possess inherent power in such cases whether the parties are before them or not.

It would take up too much space to do full justice by review to the learned Judge's opinion. It is not practically valuable, of course, for the case is settled the other way. It is only useful and of consequence as illustrative of the general fact that all matters becoming subjects of controversy have a stronger and a weaker side, and of the particular fact that there was much that was forcible and important brought to the surface of human affairs by means of the proceedings against Senator Stanford.

COURT AT BEAVER.

Proceedings Before Judge Boreman in the Second District.

BEAVER, Utah, Sept. 28. [Special to the DESERET EVENING NEWS.]—The case of Charles Wilkinson, of Leeds, charged with unlawful cohabitation, came up in its regular order this morning. The jury was finally obtained at 11 o'clock. One of the prominent features of the empaneling was the peremptory challenging by Mr. Denny, for defense; and the consequent exclusion from the jury box of certain prominent members of the Josephite church in this city, who had previously become familiar figures in almost every trial in this court under the Edmunds law.

Mary E. Anderson, the alleged second wife of Wilkinson, was sworn for the prosecution and testified that the defendant ceased living with or in any way maintaining witness some seven or eight years ago; that she did not now consider herself to be his wife. Mr. Zane tried in vain to shake the evidence of the witness.

Rebecca Angel testified that she was the daughter of defendant and substantially confirmed the evidence of the preceding witness.

Deputies McGarry and Armstrong testified to arresting the defendant at the residence of the alleged second wife, Wilkinson being there along with his first wife, engaged in assisting Mrs. Anderson in harvesting her crop of fruit.

The case was given to the jury at 12 o'clock and at 12:45 they returned into court with a verdict of acquittal.

The case of Thomas Taylor, charged with crime against nature, was called, but owing to the absence in Nevada of an important witness for the people, Mr. Zane asked for a continuance. Mr. Denny objected, urging the hardship upon the defendant of a further continuance.

The court adjourns to-morrow for the term, Judge Boreman being expected to assist in holding court in the First District at Provo on Monday next.

Calton gets sentence to-morrow.

IN SELF-DEFENSE.

Policeman Pugh Wounds a Lunatic at Morgan City.

This morning's Ogden Herald contains the following:

Morgan City has been indulging in a little shooting affair. On Tuesday, a man named Wm. H. France, who, it appears, is subject to attacks of insanity, went into the telegraph office and told the station agent that he wanted to send a message to Evanston. The agent was busy at the time and told the man to wait a minute or two. The agent turned his back to attend to his work, when the man France seized an iron inkstand and struck the operator a terrific blow on the back of the head rendering him senseless. France then rushed across the street to the butcher's shop and madly seized two large knives. One of these he threw down again and the other he took away. He hurried back to the telegraph office, evidently with the intention of finishing his terrible work. The operator, however, had regained consciousness and locked the door. A small crowd of citizens had assembled by this time and a policeman had arrived. France was still frantic, and when the officer attempted to arrest him he became still more infuriated. He threw a rock at the policeman, which struck the officer in the breast and knocked him down. Matters began to look serious, and it was clear that France would do still more mischief unless he was secured. He continued his attack on the policeman, and the latter pulled his pistol and fired. The ball struck France in the right breast, and passing through one of his lungs, lodged in his back. Dr. Powers, of this city, was sent for and the gentleman repaired to the scene of the affair. He succeeded in extracting the bullet, which was fired from a 38-calibre pistol, and yesterday the patient was taken to Salt Lake City to be placed in the hospital. France, it appears, is rational at times. At others he is quite crazy, his particular hallucination appearing to be that somebody has poisoned his coat and that such poisoning seriously affects his person.

The officer who did the shooting is Policeman H. T. Pugh, of Morgan. He made every effort to arrest France quietly and it was not until the madman rushed at him, brandishing the butcher knife, and attempted to stab him, that the officer drew his pistol and fired in self-defense. Had it not been for his prompt action he would doubtless have been carved to death. Fortunately the wounded man is not fatally injured.

Items From Draper.

From a gentleman just in from Draperville we learn that a large brick building in course of erection there will soon be completed. It is designed for the double purposes of a store and hall of entertainment. The large hall in the upper story of the building will be devoted to theatrical and social gatherings hitherto held in the Ward house.

There are two schools now in session with a daily average attendance of about 90 pupils.

Fevers have been quite prevalent in that place recently, but none of the cases have resulted fatally, so far.