EVENING NEWS. Published Daily, Sunday's Decepter AT FOUR O'CLOCK. PRINTED AND PUBLISHED BY THE DESERET NEWS COMPANY

CHARLES W. PENROSE, EDITOR February 23, 1886 Tuesday

AN OUTRAGE AGAINST LEGAL In the references to support this principle it is shown that the admissi-WIVES.

ONCE more a Federal Court in Utah has shown itself capable of so interpreting and applying the law as to give it the force and effect of new legislation. Practically it is the exercise of jegislative functions by the judicial power. Contrary to usage, the precedents of centuries and the general understanding of the spirit and meaning of both statutory and common law, in of both statutory and common law, in relation to the incompetency of husbands and 'wives to testi-fy against each other except by mutual consent, in a crim-inal action, Judge Zane on Satur-day permitted the legal outrage perpetrated by District Attorney Dickson in requiring a legal wife to give evidence for the prosecution in a case against her husband:

F Mrs. Langton was compelled to answer the questions of the public prosecutor intended to make her husband appear guilty of unlawful cohabitation. The replies were not such as were anticipated, and they falled to establish anything against the accused, who was acquitted because of the total lack of evidence against him. It was not proven that he had committed any un-

wife. The gossip of chattering and of Stein vs. Bowman in error to the unreliable persons who tried to make District Court of the United States for out a case to injure him was all that the prosecution could offer against Isaac Langton, who has been put to untold trouble and expense because the Prosecuting Attorney is so ready to the wife against the husband. The catch ap any silly story or piece of petty spite which a Gentile may have

against a "Mormon," whose guilt is assumed as soon as he is accused, and who receives the damage instead of the benefit of a doubt.

It seems that the delay in the passage of the Edmunds bill, making it lawful to compel the legal wife to itestify in certain cases against her husband, became so irritating to the prosecuting officers here that they could not wait any longer. So they concluded to make the local law answer their pur-pose. The ruling of Judge Zane on this point will be found in another column. It turns on that clause in the statute he quotes from which makes an except in cases of violence upon her person directly to criminate the hus-band; or to disclose that which she has learned from him in their condimake the local law answer their purexception to the rule excluding the testimony of husbands and wives

dential intercourse." "And it is conceived that th against each other in "a civil action or proceeding by one against the other or proceeding for a crime committed by one against the other. The object of this exception is clear. It is to make the wife a competent rule. witness when her person is assaulted or she receives bodily injury from her husband. It is not to place her, un- or by force be compelled to state facts willingly, in a position to criminate her husband, or to make her appear against him in a charge of crime against the public. The very object of policy and established principle for-

tills is admitted, and they are provide for in the Utah statutes. In relation to thein Greenleaf says fürther; page

"To this general rule excluding the usband and wife as witnesses, there nuscand and wife as witnesses, there are some exceptions; which are allowed from the necessity of the case, partly for the protection of the wife in her life and liberty, and partly for the sake of public justice. But the exception which calls for the wife's security is described to mean inclusion. described to mean, 'not a general necessity as where no other witness can be had, but a particular necessity, as where, for instance, the wife would otherwise be exposed without remedy to personal injury.'"

up to the officers.

bility of such evidence is only in"case If there was any shame in those who of personal injuries committed by the have worked up this simple assault husband or wife against each other," into a deadly "conspiracy," they would and it is said that Mr. Justice Hobroyd blush crimson over this new attempt held that even in such cases, "the wife to manufacture a big "Mormon" sencould only be admitted to prove facts. sation out of so insignificant an affair. which could not be proved by other We do not seek to palliate the offense witnesses." In the case of the State It was wrong and should mee vs. Welch, quoted by Greenleaf, it was with proper punishment. Bu this array of marshals

and attorneys, courts and bonds, double proceedings and blood-and-thunder outcries, because an attorney has had a spat in the face from a boy who considered the; lawyer; had insulted his mother, is too much lof a broad farce as well as a piece of sickly clap-trap

He refers to another case in point to be made out of nothing, by anyone which also shows clearly that the except rabid and frothing anti-"Morcrime or wrong committed by the husmons.

more of our brethren have been sen-

enced to the usual fine and imprison-

declining to make promises to obey a

band against the wife, to permit her testimony, must be one of injury to her person and not such an injury 'as that HONOR TO THE TRUE.

inferred by Judge Zane. DURING the past few days several "The wife is not a competent wit-ness against the husband in an indict-ment against him for subornation of perjury to wrong her in a judicial pro-ceeding." ment, for living with their wives and

held that:

But we will come now to the ruling law which has never been clearly deof the highest court in the land on this fined by the courts. John Bowen, of lawful act or even that he had a plural very important question. In the case Tcoele, Thomas Burningham, of Bountiful, Samuel H. B. Smith, Joseph Mc-Murrin and Henry Dinwoodey, of Salt the Eastern District of Louisiana, the Lake City, have gone to the peniten-Court reversed the decision of the tlary in token of their fidelity to their court below and one of the chief erfaith, and their willingness to suffer rors was the admission of evidence by for the sake of principle. They are

not criminals in the eyes of the people court ruled that nor in the intents of their honest hearts. They will have the best wishes "It is a general rule that neither a husband nor a wife can be a witness nor or against the other." and prayers of their co-religionists and be honored for their steadfastness and integrity. When they have served

"This rule is subject to some excep-tions; as where the husband commits an offense against the person of the their terms they will emerge from durance vile, brighter, better and more

"In the case of the King vs. Clinger (3d Term, 268) the Court held that a wife should not be called in any case valued for their trials, and will rejoice all their days that they were able to endure. God bless and comfort them to give evidence even tending to crim-inate her husband." "It is sound doctrine that trust and confidence between man and wife shall not be betrayed." and their families deprived of their presence for a season.

THE OUTRAGE UPON LEGAL WIVES.

> A LEGISLATIVE-JUDICIAL DECISION JUDGE ZANE'S OPINION IN THE LANGTON CASE.

Counsel for the prosecution in this case has called the lawful wife of the delendant for the purpose of questiontate against the parent governmentders them incompetent to disclose facts in evidence in violation of the lo were a tion with another woman, during the existence of the marriage relation with existence of the marriage relation with her, and the question is: Is she a com-petent witness without his consent? Reference has been made to the Utah statutes of 1876, 1878, 1882 and also to the statutes of 1884, which is the last statute upon the subject. On page 358 of the latter, being under chapter 2, title 10, sec. 1154 provides: "All persons, without exception, otherwise than as is specified in the next two sections, who, having organs of sense, can perceive, and perceiving cau make known their perceptions to Can the wife under such circum stance, either voluntarily be permitted in evidence which render infamous the character of her husband? We think most clearly that she cannot be. Public of sense, can perceive, and perceiving can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceed-ing are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although, in every case the credibility of the witness may be drawn in question by the character of his testimony, or by evidence affecting his character for truth, honesty or in-tegrity, or his motives, or by contra-dictory evidence; and the jury are the exclusive judges of his credibility." The section read is a general one and provides that "all persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and per-ceiving, can makeiknown their percep-tions to others, may be witnesses." Section 1155 relates to certain excep-tions, and section 1156, being one of The rule is founded upon the deepcan make known their perceptions to est and soundest principles of our nature. Principles which have grown out of those domestic relations that constitute the basis of civil society, joyment of that confidence which should subsist between those who are connected by the nearest and dearest relations of life. To break down or impair the great principles which protect the sanctities of husband and wife, would be to destroy the best solace of human existence. We think that the court erred in overruling the objections to this witness.55 (Peters vol. 18, p.p. 135, 136.) We have not quoted all that the Court said on this subject, nor the host of authorities referred to in the tions, and section 1156, being one of the sections referred to in the first decision, but have given copions quosection, provides: "There are particular relations in which it is the policy of the law to en-courage confidence and to preserve it inviolate, therefore a person cannot be examined as a witness in the following tations because they bear so squarely upon the question which this community has to meet. When the authorities go to show that a legal wife is not permitted except in a case of personal violence to testify against her husband. "A husband cannot be examined for what must be thought of proceedings or against his wife without her con-sent, nor a wife for or against her hus-band without his consent; nor can which compel her against her will as well as the protest of the defendant, to either, during the marriage or after-wards, be, without the consent of the other, examined as to any communigive evidence for the purpose of convicting her husband of crime 'particucation made by one to the other during the marriage; but this exception does not apply to a civil action or proceed-ing by one against the other, nor to a criminal action or proceeding for a crime committed by one against the larly when she has no personal griev-It will be seen from the citations we have made, that; the ruling of Judge Zane is not only at variance with the other." The provision, by its express terms, applies to both civil and criminal ac-tions, because it says this exception shall not "apply to a civil action or proceeding by one against the other, nor to a criminal action or proceed-ing." So that it covers both classes of cases. The question, therefore, is: is the crime of unlawful cohabitation by the husband a crime against his lawful wife? I see no escape from that con-clusion. If, therefore, unlawful co-habitation is a crime committed by the husband against his wife, under this section she would be a competent witlaws of the Territory on which he has professed to decide, but with the principles of law and public policy which have prevailed from time immemorial and with the decision of the Supreme which are in accord with each other and with that common sense which ction she would be a competent witness against him. At common law, according to the rules of evidence, if the husband as-saulted his wife or committed a bat-tery upon her, or committed any per-sonal injury to her, she was a compe-tent witness in a criminal prosecution in the name of the State or the people. This statute is broader; it does not use the term "personal injury," but it uses the term "crime committed by one against the other." less against him. the home, the family and the sacred against the other." It is true that all public offenses, in This true that all public offenses, in one sense, are crimes against the pub-lic; but when the injury is to some personal right of a party, it is regarded as a crime against that party. The re-lation of marriage, of course, gives to the wife certain rights; the right to the society of the husband; the right that he shall remain pure and commit no offense by adultery or by associa-THE ASSAULT ON THE ATTORNEY. THE assault against District Attorney Dickson is a most unfortunate affair. that he shall remain pure and commit no offense by adultery or by associa-tion with any other woman. If he does, it is a wrong or injury to the rights which she possesses by virtue of the marriage relation. Now, the question is, if a man takes another woman into his house or to his bed—to his society —and treats her as his wife, is that a violation of his wife's rights? It is such a violation, of course, as would entitle her to a divorce. If a man assaults his wife—if he dees not touch her, but makes an un-iswild attempt, coupled with a present ability, to commit a violent injury upon her—that is an assault, and that wrong geance is against the secular law, the The great principle upon which the doctrines of our Church and the re-

and he one flist we like liferd of fds: The young tien who have been ar-rested for domplicity in the assault, charged with "conspiracy" and other high-sounding trimes, it seems had nothing to do with the affair except being in the boy's company when the offense was [committed. No one else, breach of the law. Mr. Dickson seized one of them by the throat with great violence, but that seems to 'have been all the assault of jave been all the assault to 'have been all the assault odd boy, who afterwards gave himself' is on does not apply to act of the continue of the same time to the officers.

tion does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other," she is a competent witness in a case of polygamy, a case of bigamy, or in a case or unlawful cohabitation. In the Iowa case which was cited, (55 Iowa, 217, the State vs. Sloan), up-on a statute which seems to be sub-stantially the same as this statute un-der consideration the Constant of the State vs.

stantially the same as this statute un-der consideration, the Court says: "Mrs. Sloan, the first wife, was al-lowed to testify in behalt of the State, against the defendant's objection. Sec-tion 3641 of the code provides that neither the husband nor the wife shall be a witness against the other except in a criminal proceeding for a crime committed one against the other. In committed one against the other. In our oginion, if the defendant is guilty of bigamy, he committed a crime against his wife. We think she is a etent witness.

It will be seen that the language of the Iowa statute and ours is substan-tially the same. This decision in Iowa seems to have been the unanimous de cision of the court. I am of the opinion that when any man marries another woman while he has one wife living with him, and if he commits unlawful cohabitation with he forfeits that protection her, that which the law gives him; he has for-feited and destroyed that confidence by his own criminal act; and he has

no right when he is prosecuted for such an offense, to claim that the law shall preserve it sacred. I am of the opinion that the wife is a competent itness.

SUNDAY SERVICES.

The services in the Tabernacle Sunday afternoon were presided over by High Councilor Wm. Eddington.

The choir sang: Come ye that love the Lord, And let our joys be known.

Prayer by Elder Herbert J. Foulger. The choir sang:

Behold the great Redeemer die,

A broken law to satisfy. The Bishopric of the Eleventh Ward officiated in the administration of the acrament. Apostle John W. Taylor was called to address the congregation. He re-joiced in the privilege of meeting with the people, to speak of the things per-taining to the kingdom of God. The cir-circumstances surrounding the Latterday Saints were at present very peculiar, and strange to all of the younger portion. The most prominent feature at present was the oppo-sition to the system of marriage be-lieved in by the Saints, though other principles were also opposed. Here, in the tops of the Rocky Mountains, were

SURPLUS, .

reject its teaching of plural marriage. These Christians hoped to go to heaven, and sit down with Abraham, Jacob and others-polygamists, whon they scorned! The facts of history and the promises and covenants of th Lord, as taught in the unspired word

HN SHARP, 4. W. RITER, A. GROESBECK,

Lord, as taught in the inspired word of God, were conclusive evidence that if the strength and perpetuity of a na-tion depended on its mothers, these did come from polygamous families. Elder Herbert J. Foulger was the next speaker. He felt that the Latter-day Saints realized that to obtain the blessings of God, they must trust in Him and obey His isws, seeking first His kingdom. In this knowledge the Saints had great cause to retoloce. They Saints had great cause to rejoice. They were not here to defy the United States, but to do the will of the Most High. If the nation chose to enact laws con-trary to His will, the Saints could only obey the Lord, and leave the question of power to be settled between God and that nation which set up its laws

and that nation which set up its laws in defiance and opposition to His laws. Those who obeyed the laws of God were made better citizens of the ma-tion. The speaker expected, before the end of the present week, to be sent to prison for his obedience to the law of God; he had been asked by pretended friends to make the promise to obey the law, make the promise to obey the law, whether he kept the promise or not, and thus escape prison; but he could not thus violate his conscience. His esire was to do the will of God under all circumstances, and by being true to Him, be entitled to and receive His

> The choir sang an anthem, and bene-liction was pronounced by Bishop W. N. Allen.

BY TELEGRAPH PER WESTERN UNION TELEGRAPH LINE. AMERICAN.

LATEST BY LIGHTAING.

The Transcontinental Cut-Chicage to Frisco 827 ts 840.

CHICAGO, 23.—The railroads out of this city running to the Missouri River are openly seeling first class limited tickets to San Francisco in connection with the Burlington and Blo Grande and Union * Pacific roads for \$40, and second class limited for \$27. The same rates are quoted in connec-tion with the Atchison and Santa Fe road, though in the case of of the latter company the full rate is imposed and a rebate allowed the traveller on eaching San Francisco

Bill to Confirm Land Entrie

WASHINGTON, 23.-The bill to con-irm entries of the land laws of the United States, reported to-day by Senator Van Wyck, from the Senate committee on public lands, provides that any entry heretofore made in congathered 150,000 to 200,000 "Mormons," who were accused of seeking to millformity with the rules, regulations and



VVIINTILE ER

To such LOW FIGURES, as will insure

their Speedy Sale.

the statute making the husband and bid it. wife incompetent witnesses against each other, is "to encourage confidence and to preserve it inviolate." This is so stated in the law. The offense of unlawful cohabita-

tion is one that has been created and which are essential to the enfor a special purpose. According to the construction of the courts it relates to plural marriages. It-is the holding out and living with more than one woman as wives. It is said to be a crime against society. But that it is not a crime committed by the husband against the wife in the class of cases

for which the law was enacted, is evident, from the fact that the wife has entered into the relationship of marriage with her husband under institutions that provide for plural marriages. She is a consenting party to the arrangement. Her very marriage is contracted with the understanding that he may establish marital relations with others. When a man cohabits with another woman by consent of the wife, when she does not regard it as any crime against her, when she has no complaint to make, how can his alleged offense against society be construed into a crime committed against the wife?

The meaning of the statute quoted by Judge Zane is definitely determined in the laws of 1878: ance against him?

Sec. 421. Except with the consent of both or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other in a criminal action or proceeding to which one or both

The law of 1884, from which Judge Zane quotes, does not repeal this section. They both stand together. They Court of the United States, all of are to be construed together. They are to be viewed in paria materia. The crime committed by one against the should underlie all law and enter into other which allows the testimony of the administration of all measures for one against the other, is the crime of the public welfare. personal violence. It is so defined in In their eager anxiety to push exthe law. These statutes taken together | tremes the unprecedented proceedings

are in accordance with good common against the "Mormons," Attorney sense, with the principles of common Dickson and Justice Zane have made law, with the established doctrine in a serious blunder, as well as perperegard to the public policy of rendering | trated a flagrant legal outrage against incompetent the testimony of husband and wife for or against each other, and rights of wifehood which they have with rulings of the Supreme Court of hypocritically pretended to desire to the United States. While the persons protect.

of the husband and wife are protected from violence by these laws taken together, the essential unity of the marital status is not broken nor the sanctity of matrimonial confidence invaded. But in the rendering of the later law te the exclusion and ignoring of the It is deprecated as much by the "Morother equally valid law, the general mons" as by any one who is opposed principles which forbid the arraying of to them in principle or practice. In the wife against the husband are vio-lated, cast down to the ground and place it is wrong. In the next stamped upon.

exemption of husband and wife peated special exhortations and counas witnesses against each other is sels of its leaders. It is also injurious

as witnesses against each other is founded is the legal theory that they are ONE. And as no defendant can be compelled to be a witness against him-self, the wife whose legal identity is

who were a blot on the national civi-lization. These accusations were ialse. The speaker believed that truth should be accepted wherever found, whether among Christians or heathen. The Saints believed the Constitution of the United States was inspired of God, and as such revered it. They, it was true, maintained ideas antacon-istic to the majority of the civilized world. The speaker was himself a son of a polygamous family relation, and when the principle of plural marriage was attacked, it caused him to con-sider his position before the world. The question arose under the ipopular outcry, as to the the time shall be adjudged in the same manner as if said rules, regulations and decisions had not been reversed or modified, provided that such entry must have been made in good faith and rainst the same.

world. The question arose under the popular outcry, as to the legitimacy of the children born in polygamy. This subject he had care-fully considered, and with it the legal-ity of a system of plurality of wives. About two-thirds of the world to-day, among the unchristianized nations, practiced plural marriage, and another question arose as to whether this ma-jority of the world's inhabitants were justified. The principle could not be accepted as correct, simply because be-lieved in by the majority; for this ma-jority, owing to man's proneness to do

jority, owing to man's proneness to do evil, were often wrong. The speaker wished it to be understood in this con-nection that the "Mormon" system of

nection that the "Mormon" system of a plurality of wives was entirely dif-ferent from that in general practice. To satisfy himself of the divinity and purity of the principle of plural mar-riage, and of the legitimacy of the children of that unlon, he had been constrained to apply to the God of heaven for instruction. The President tof the United States, in his mes-sage to Congress, had said that from polygamous marriages came not

from polygamous marriages came not those who were the strength and pepetuity of a nation. This idea ex-cluded all those born outside of the areful comparison showed that the

careful comparison showed that the President's assertion could not stand the test of the Bible as the word of God. The Lord had promised to make of Abraham, a polygamist, a great na-tion. It would be strange if the Lord would make, a faw centuries ago, a powerful nation of that material which contained no strength in its nature, in the present age. He had kept if is promise to Abraham, and being un-changeable, it was probable that that which gave strength to Abraham would also be a source of strength in this

changeable, it was probable that that which gave strength to Abraham would also be a source of strength in this generation. The Lord had also prom-ised that in Abraham should all the na-tions of the earth be blessed; this in-cluded the United States as well as all other nations. A consideration of these things gave us the choice only be-tween the words of man and the word of God. The great Jehovah had pronounced a curse on those who trusted in the arm of flesh, and the speaker felt it his duty to rely on God's word and law, rather than repose con-fidence in the ever changing ideas of men. If the Lord acknowledged Abra-ham and blessed him, a polygamist, and was unchangeable, how could He fail to bless those who similarly obeyed his law? It had been argued that this was a civilized age. But did it have less need of the blessings of God? That could not be; so obedience to His laws were just as necessary as ever. Many of the Saints, among whom was the speaker's father, were compelled to hide themseives from the world, while others were sent to prison for obedience to this principle of olural

to hide themselves from the world, i while others were sent to prison for obedience to this principle of plural marriage. The Lord had said "By their fruits shall ye know them: ye cannot gather grapes from thorns, or figs from thistles." If this was true the rule could be applied, and if the children of the polygamist Abraham were entitled to God's blessings, it must be evidence that they were regarded as legitimate.

to God's blessings, it must be evidence that they were regarded as legitimate, and the source of their parentage ap-proved of. An examination of the Scriptures showed the children of polygamy were blessed above all others, thereby expressing Jehovah's sanction of that relationship, which









25 YEARS IN USE. The Greatest Medical Triumph of the Age! the city one month more.



Dr. Sain has acquired GREAT SKILL AS AN EYE SURGEON; he performs all ope-



GOODE



vis and John Tingey.

TORPID LIVER.

the back, with a dull constitue, Pain in the back, with a dull constitue in the work part, Pain nucler the shoulder-bindo, Fullness after enting, with a di-

th a dis-