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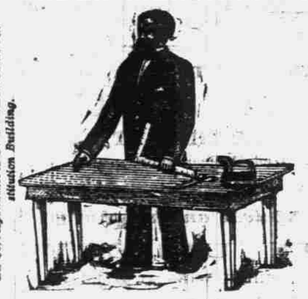

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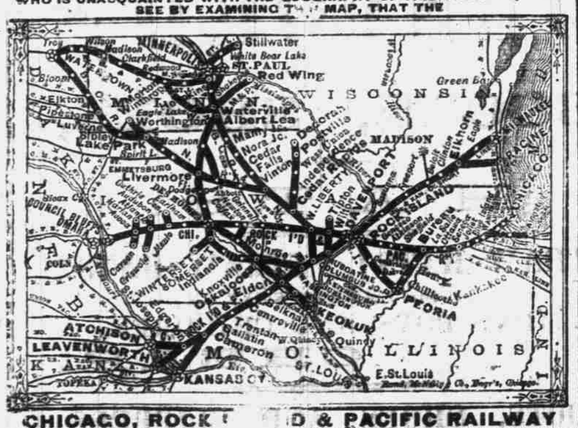
A MAN

WHO IS UNACQUAINTED WITH THE GEOGRAPHY OF THIS COUNTRY, WILL SEE BY EXAMINING THIS MAP, THAT THE



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EVENING NEWS.

Friday July 9, 1886

IMPRISONMENT FOR LIFE.

The Penalty for Unlawful Cohabitation Indefinite.

The Offense may be Segregated Ad Libitum.

Following is the full text of the decision of the Territorial Supreme Court in the case of the United States vs. N. H. Groesbeck, convicted in the First District Court at Provo for unlawful cohabitation, upon an indictment which segregated the offense into two counts. The attorneys for the defense raised a number of new and important points affording some ground for hope that the action of the lower court would not be sustained, but all such hopes proved futile:

SUPREME COURT, UTAH TERRITORY.

The United States, Respondent, vs. Nicholas H. Groesbeck, Appellant.

ZANE, C. J. — The defendant was tried in the First District Court on an indictment containing two counts, and convicted and sentenced to imprisonment and to pay a fine on each. From that judgment he has appealed to this court. The first count charges the defendant with unlawful cohabitation between the 1st day of January, 1884, and the 30th day of June of the same year, with the three women named. And the second is for unlawful cohabitation with the same women between the last date above named and the 31st day of the following December. To both of these counts the defendant pleaded not guilty, and before the jury was impaneled moved the Court to rule the Prosecuting Attorney to elect one count and to go to trial upon that. The Court overruled the motion; the defendant excepted and now assigns that ruling as error.

The appellant, by his counsel, insists that cohabitation for the entire time of both periods constituted but one offense, that the Grand Jury had no legal right to divide the time and charge two offenses. The crime of unlawful cohabitation consists in living or associating with more than one woman as their husband—apparently in the marriage relation—under the semblance thereof. The claim of the appellant's counsel rests upon the idea that the beginning and continuation of the association are essential to the offense—that the mere continuance of the show of marriage is not sufficient. If a man should live with more than one woman as their husband during three years it is claimed that in so doing he would commit but one offense. It is admitted, however, that if he were to cease to cohabit at the end of the first of the three years and again live with them as their husband during the last of the three, he would thereby commit two crimes. Assuming the law as claimed, the man who cohabits three years commits one crime and is subject to one punishment only, while he who cohabits two years commits two crimes and is subject to two punishments. According to this, the greater the cohabitation the less the punishment. The punishment is to the cohabitation in an inverse ratio.

Such a view furnishes no inducement to a man to polygamy or in the practice of unlawful cohabitation to reform. The language of the statute is: "If any male person . . . cohabits with more than one woman, he shall be deemed guilty," etc. The formation of polygamous relations, commencing to live with two or more women as wives, is not indispensable to the crime. Such relations may have been formed—the unlawful association may have commenced long before the laws defining the crime took effect—as in the case of the United States vs. Angus M. Cannon, affirmed by the Supreme Court of the United States. Cases may be cited holding that the same Grand Jury can indict but for one offense, where the crime may be a continuing one. In some of these, a portion of the time of each of two counts of the indictment was covered by both. In others it appeared that the prosecuting witness was attempting to use the court to gratify his malice, or for pecuniary gain, harrassing and oppressing the defendant with a multiplicity of prosecutions and accumulated costs and fines. In other cases the Legislature, in describing the crime, had indicated an intention to include the acts constituting the inception of the offense as an essential element to it. The point under discussion was decided adversely to the appellant's views in the case of the United States v. Snow, Pacific Reporter, vol. 9, No. 9, page 686. To the same effect are the cases Com. vs. Connors, 116 Mass., 35; Morey vs. Com. 108 Mass., 433.

It is also insisted that it was unjust and oppressive and greatly to the disadvantage of the defendant to put him upon trial on both counts before the same jury—that in considering the question of his guilt upon one they would be influenced by the evidence under the other. But the courts have held that in a trial on a single charge evidence tending to prove the defendant's relations to the women before and after the time mentioned in the indictment should go to the jury to be considered with the evidence for and against him between the dates named, for the purpose of aiding them in determining the character of his association between the dates—that it is proper for the jury to know his feelings, dispositions and habits towards them before and after the time of the offense as much as during the time; that such facts shed light upon the conduct complained of; so that defendant was placed at no disadvantage by being tried on both charges before the same jury.

The Court sentenced the defendant to distinct punishments on each count. To this the appellant objected and excepted and now assigns the same as error. The respondent relies on section 1024, R. S. U. S. "When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such case, the court may order them to be consolidated." This section provides that when two or more crimes are charged of the same class which can be properly joined they may be included in the same indictment in separate counts; and in such case if two or more indictments are found the court may order them consolidated. While this section may authorize different descriptions of the same offense in separate counts of the same indictment, in order to prevent a fatal variance, the intent to authorize the joinder of separate crimes in different counts of the same indictment is apparent. Such joinder prevents the trouble, delay and cost of more than one trial. The delay, cost and harrassment of several prosecutions on a number of indictments are often almost as oppressive as the punisment imposed.

The object of uniting offenses of the same class, or of ordering the consolidation of different indictments, is not to prevent the punishment of the offender for more than one offense. But such would be the effect if punishment could not be inflicted on the separate counts.

The same class of conduct constitutes the two misdemeanors charged in this indictment, and they could be properly united. The provisions of the section quoted are not new so far as it relates to misdemeanors. Two or more misdemeanors growing out of separate and distinct transactions may, according to the doctrine which appears to prevail everywhere, be joined in the same indictment when embraced in different counts. It is not easy to say precisely what is the limit of this doctrine, except that the Judge will exercise at least his supervision to the extent of protecting the prisoner from being prejudiced in his rights of defense.

Where a statute makes it a misdemeanor to sell intoxicating liquor without license and imposes a fine for each sale, several counts for distinct sales may be joined in one indictment, and the accumulated penalty imposed. Bishop on Criminal Procedure, 2 ed., sec. 402. Lewis Martin vs. The People, 1 Ill., 167. The law as stated by Bishop is the prevailing doctrine in England and of those states in the country where a different rule is not provided by statute. The ancient common law was otherwise, and a few recent cases in this country may be found to the contrary. The leading case so holding is that of the People ex rel. Tweed vs. Liscomb, N. Y., 62. In that case the relation was tried upon an indictment containing 220 distinct counts and convicted on 204. He was sentenced to twelve successive full terms of imprisonment of one year each, and the fines of $250 each; upon other counts to additional fines amounting in all to $12,500. The appellate court held that he could not be sentenced to but one count. This was a hard case and furnishes a precedent contrary to the weight of authority. Where there are several charges in different counts of an indictment against the same person for the same act or transaction, but one punishment could be imposed; but where the actions or transactions are different, and constitute different offenses, and belong to the same class, and may be properly joined, separate punishments may be imposed on each count. The case of *ex-parte* Hibbs, 9 Federal Reporter of the date of March 16, which is a carefully considered decision by Judge Deady, expressly rules this point.

It was also argued that the trial of the defendant for two offenses before the same jury deprived him of the benefit of three peremptory challenges. It is conceded that the defendant was not deprived of any challenge for implied or actual bias, or for any sufficient cause. He had three peremptory challenges in selecting a jury of 12 men. If a separate trial on each count had been given him he would have had no more. It is true he would have had the right to challenge six men in selecting two juries; but then there would have been but three challenges for each fifteen jurors and the defendant was as likely to secure twelve good jurors with three peremptory challenges in one trial as twenty-four with six challenges in two trials. The end sought by peremptory challenges, as well as for cause, is intelligent, fair and impartial jurors.

The appellant also objects to Phillip Grill as a juror because it was alleged that the evidence did not show that he was a citizen of the United States. It does not appear from the record that the defendant exhausted his peremptory challenges, nor does it appear that the record contains all the evidence touching the citizenship of the juror. The evidence heard by the Court satisfied it that the juror was a citizen. We must, therefore presume that the evidence heard was sufficient to justify the finding of the Court.

We find no error in this record and, therefore, affirm the judgment of the Court below.

Boreman, A. J., concurs.
Powers, A. J., concurs.

Blitkins bought a stop watch of a friend and the next day carried it back, complaining that it did not go. "Does not go?" exclaimed his friend, "Of cours not. It's only a stop watch."

Constitution should be the test word in selecting fowls for breeding, says *Poultry Monitor*. There is nothing more vexatious to the breeder than to see chickens drop away with no apparent disease after all the trouble bestowed on them.

Secretary Beadle, of the Ontario Fruit Growers' Association, says the Kiefler pear is like a turnip, we never want to eat it raw. It is good to cook and can. The tree is tender and the fruit cracks, he says.

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14th DISTRICT SCHOOL NOTICE.

THE REGISTERED VOTERS OF School District No. 14, Salt Lake County, Utah Territory, are hereby notified that a School Meeting will be held at the School House of said district, beginning at 7.30 o'clock p. m. on Monday, July 12th, A. D. 1886, for the purpose of electing one Trustee for the ensuing three years, and the transaction of such other business as may be brought before the meeting.

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Salt Lake City, Salt Lake Co., July 1, 1886. d 10d

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dlm DR. GODFREY HESSEL.

NOTICE TO CREDITORS.

Estate of Mary James, deceased.

NOTICE IS HEREBY GIVEN BY THE undersigned, Administrator of the Estate of Mary James, deceased, to the creditors of, and all persons having claims against the said deceased, to exhibit them with the necessary vouchers, within ten months after the first publication of this notice, to the said administrator, H. F. Evans, 111 South Fifth West Street, Salt Lake City, in the County of Salt Lake.

Dated at Salt Lake City, June 19, 1886.

H. F. EVANS, Administrator of the Estate of Mary James, deceased. doaw 4w

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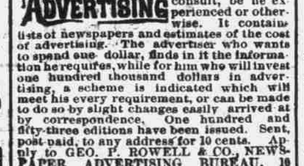

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Business men having their families at the Lake Point Hotel, may go to Lake Point on the evening (5.10 p. m.) train, remaining over night and returning the following morning, arriving at Salt Lake at 8.50 a. m., in time for business.

More liberal terms than ever given to Sunday Schools, Societies, etc., getting up excursions.

Special Trains may be chartered at a nominal sum and made ready at short notice.

S. F. FENTON, G. P. and P. A. W. W. RITER, Supt.

J. W. WEST,

GEM MEAT MARKET.

55 EAST, SECOND SOUTH STREET

Meats of All Kinds In Season.

JABEZ W. WEST, Proprietor. Telephone No. 212. d111 1m

NOTICE TO CREDITORS.

Estate of Edward E. Brain, deceased.

NOTICE IS HEREBY GIVEN BY THE undersigned, Administrator with the Will annexed, of the Estate of Edward E. Brain, deceased, to the creditors of, and all persons having claims against the said deceased, to exhibit them with the necessary vouchers, within ten months after the first publication of this notice, to the said Administrator, at No. 174 "A" Street, Salt Lake City, in the County of Salt Lake.

Dated at Salt Lake City, June 10th, 1886.

C. J. BRADY, Administrator with the Will annexed, of the Estate of Edward E. Brain, deceased. d 1m

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NOTICE TO CREDITORS.

Estate of Elizabeth Kingdon, Deceased.

NOTICE IS HEREBY GIVEN BY THE undersigned, Administrator of the Estate of Elizabeth Kingdon, deceased, to the creditors of, and all persons having claims against the said deceased, to exhibit them with the necessary vouchers, within four months after the first publication of this notice, to the said administrator, at his residence, 15th Ward, Salt Lake City, in the County of Salt Lake.

Dated at Salt Lake City, June 15, 1886.

JOHN KINGDON, Administrator of the Estate of Elizabeth Kingdon, deceased.

SNOW & WOODALL, Attorneys. d5w

WOOD! WOOD!!

Cash paid for good, sound Quakingasp Wood, at the Paper Mill. Must not be less than Five inches in diameter.

THE DESERET NEWS CO

DICK & NAM CO.,

Successors to Quong Wong Sing, dealers in

JAPAN AND CHINA

GROCERIES and PROVISIONS,

50 E. First South Street.

The best quality of

FIREWORKS,

Silk Handkerchiefs, Baskets, Boxes, Fans, Stuffed Birds, etc., and all kinds of JAPANESE and CHINESE ORNAMENTS, at Low Prices!

☞ P. O. Box 637, Salt Lake City. d

A CARD

THE DESERET HOSPITAL, UNDER the most favorable auspices, is now open for the reception of patients, having removed to that large and commodious building lately occupied by the Deseret University. The appointments are new and of the first order. The halls and rooms are thoroughly ventilated, and warmed by a furnace and steam heating apparatus extending through the whole building. Good and capable nurses are supplied, and every attention paid to the comfort and welfare of its inmates. The medical department comprises a fine stock of drugs, and a line of some of the most valuable and elegant surgical instruments and appliances ever imported into the Territory. Arrangements have been made to secure the first medical talent the city affords for the benefit of patients. A specialty is made of the diseases of women, and correspondence is solicited from the afflicted.

H. B. CLAWSON, President.
W. F. ANDERSON, Medical Supt.
M. P. HUGHES, House Surgeon.

E. B. WELLS, Secretary.

A limited number of students will be taken, who will board in the institution, receive instruction preparatory for future studies, and will be expected in return to devote a certain portion of their time and labor to attendance on the sick and other requirements connected with the Hospital. Correspondence on this subject is solicited from Bishops and other authorities in the settlements. d&w

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MARSHAL'S SALE.

PURSUANT TO AN ORDER OF SALE to me directed by the Third Judicial District Court of the Territory of Utah, I shall expose at Public Sale, at the front door of the County Court House, in the City of Salt Lake, County of Salt Lake and Territory of Utah, on the Fifteenth day of July, 1886, at 12 o'clock M., the following described property, situate in Salt Lake County Utah Territory, to wit:

"Beginning at the Southwest corner of Lot One (1), in Block One Hundred and Thirty-two (132), as platted in Plat "A" Salt Lake City Survey, and running thence North Eleven (11) rods and Twelve and one half (12½) feet; thence East Four (4) rods and Four feet; thence South Eleven (11) rods, and Twelve and one half (12½) feet; thence West Four (4) rods and Four (4) feet to the place of beginning, containing Forty nine and ¾ square rods of land (more or less)."

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining. To be sold as the property of Lewis Oviatt at the suit of Henry Cumberland and Sarah Cumberland.

Terms of Sale, CASH.

Dated June 22nd, 1886.

FRANK H. DYER, U. S. Marshal. d td

LEGAL NOTICE.

In the Probate Court, in and for Salt Lake County, Territory of Utah.

In the matter of the Estate of Elizabeth Oakley, deceased.

Order appointing time and place to hear petition for distribution.

ON READING AND FILING THE PETition of James Oakley, administrator of the estate of Elizabeth Oakley, deceased, setting forth that he has filed his final account of his administration upon said estate in this Court, that all the debts have been fully paid, and that a portion of said estate remains to be divided among the heirs of said deceased, and praying among other things for an order allowing said final account and of distribution of the residue of said estate among the persons entitled.

It is ordered that all persons interested in the estate of the said Elizabeth Oakley, deceased, be and appear before the Probate Court of the County of Salt Lake, at the Court Room of said Court, in the County Court House on the 15th day of July, 1886, at 11 o'clock a. m., then and there to show cause why an order allowing said final account and of distribution should not be made of the residue of said estate among the heirs and devisees of the said Elizabeth Oakley, deceased, according to law.

It is further ordered that the Clerk cause copies of this order to be posted in three public places in Salt Lake City, and published in the DESERET EVENING NEWS, a newspaper printed and circulated in Salt Lake County, three weeks successively prior to said 15th day of July, 1886.

ELIAS A. SMITH, Probate Judge.

Dated June 15th, 1886.

TERRITORY OF UTAH, County of Salt Lake. } ss.

I, John C. Cutler, Clerk of the Probate Court in and for the County of Salt Lake, in the Territory of Utah, do hereby certify that the foregoing is a full, true and correct copy of order appointing time and place for settlement of final account, and for distribution, in the matter of the Estate of Elizabeth Oakley, deceased, as appears of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this 15th day of June, A. D. 1886.

[SEAL.] JOHN C. CUTLER, Probate Clerk. d&w

DESERET NEWS' AGENTS.

The following are the Authorized Agents for the DESERET NEWS in their respective towns:—

A. Allen,	Rock Creek, American Falls, Idaho
S. H. Higginbottom,	Neeleyville, American Falls
American Fork Co-op	American Fork
William Grant	American Fork
H. S. Lewis	Albion, Cassia Co., Idaho
John Devey	Alpine
J. F. Hunter	Alma, Weber Co., Utah
James Bowns	Alma
W. G. Black	Alpine, Apache Co., Arizona
C. C. Bartlett	Ashley, Utah Co
N. Vanleuven	Aora
Brigham City Co-op	Brigham City
W. Hulme	Bloomington, Idaho
J. Hansen	Bear River City
S. O. Crosby	Bunkerville, Nevada
D. B. Brinton	Brinton
T. Rogers	Benson
Beaver Co-op	Beaver
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T. Bell	Elsinore
R. P. Allen	Escalante
Ephraim Co-op	Ephraim
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