SEVEN BILLS WERE PASSED.

Senate's Night Session is a Very Busy One.

Bill Passes Senate Regarding Fire Insurance Companies to Do Business Through Local Agents.

At its last evening's session the Senate did considerable work, consisting of the passing of several bills. The measures passed were as follows:

Senate bill 42, relating to insurance other than life. The bill provides that fire insurance companies shall carry on their business through resident agents so that the State can collect a tax of 2½ per cent on the premiums. Failure to comply with the laws entails a fine of $500.

Senate bill 111, requiring the publication of estray notices and notice of sale of estrays in county papers wherever possible.

Senate bill 107, giving purchasers of State lands the right to assign such property in subdivisions of forty acres or more before completing the purchase.

Senate bill 84, requiring the State dairy and food commissioner to visit and inspect dairies and creameries and compel them to keep the premises in a sanitary condition.

Senate bill 85, relieving the State of the payment of one-half of the salaries of county attorneys.

Senate bill 56, requiring corporations re-suing or being sued to prove their corporate existence.

Senate bill 81, giving the heir, devisee or legatee the right to secure his share of an estate by filing a petition therefor three months after the will has been probated.

Senate bill 114, giving city councils the power to grant railroad franchises and union depot franchises for 100 years instead of 50 as at present. Senator Allison opposed the measure, urging that it would establish a dangerous precedent. On request of Senator Tanner the bill was made the special order for 3:30 this afternoon.

The following bills were reported on favorably:

House bill 108, providing for uniform examinations of applicants for positions as teachers in county schools.

House bill 105, giving the state board of education control over teachers' examinations.

House bill 147, giving city councils the power to grant land to railroad companies.

House bill 167, relating to taxes for schools in cities of the first class.

Senate bill 45, appropriating $4,000 for the establishment of a domestic science department at the University, was ordered referred to the committee on appropriations.

HOUSE RECORD BROKEN.

Twenty-five Bills Disposed of in a Single Day—What Was Done.

All records were broken in the House yesterday, when twenty-five bills were disposed of, twenty of which were passed. One of Glasmann's celebrated tax bills, which has been called the "banker's bill," went through, but it was hardly recognizable, for the same bill that the speaker had introduced some weeks before, being amended by the striking out of an entire page and the substitution of a whole page of typewritten amendment, besides some minor corrections. The bill, as passed by the House, imposes a tax of half of one per cent, to be paid each first of July, on all money loaned during the preceding twelve months. The clause in the bill allowing tax assessors to ascertain the amounts of individual bank accounts was eliminated, and the bill, in its present form, is said to be perfectly satisfactory to the bankers.

The House would have none of Glassmann's bill to assess property which had escaped taxation, and after the bill had brought about a war of words between the speaker and Messrs. Anderson and Smith, the committee's report that the bill be rejected was adopted. Mr. Glasmann started the trouble by accusing the committee of discourtesy in not asking him to be present when his bill was being considered. Messrs. Anderson and Simth both seemed much surprised at this and said that the speaker had been present when the bill was considered. Mr. Anderson said that he took a printed copy of the bill home with him to study it. The speaker denied that the bills had been printed at that time. Mr. Smith reminded him that he (Glasmann) himself had distributed the bills at the committee meeting, but the speaker still stuck to his point and said that the printer's record would show that the bills had not been printed at the time of the committee meeting.

During the afternoon the speaker announced that he had appointed Representatives Axton and McGregor as the committee to assist the chief clerk in correcting the journal, and a month's salary will be allowed them for the work. Mr. McMillan moved that Minute Clerk Clawson have a hand in the work, but the House was unwilling that any further expense should be incurred in connection with this matter.

The report of the committee on University site and buildings was presented by N. L. Morris and referred to the committee on revenue and appropriations. It calls for a total amount of $173,363.40, distributed as follows: General maintenance, $70,000; apparatus, books and other supplies, including those for the school of mines, $6,800; supplies for normal training school, $1,-200; critic teacher and director for training school, $3,900; supplies, etc., school of mines or museum building, $8,073.40; machine shops and machinery, $10,675; kindergarten, $5,000; branch normal at Cedar City, $19,700. This is exclusive of interest on the land fund, which goes to the University.

The synopsis of the day's work is as follows:

BILLS PASSED.

Senate bill No. 87, by Allison—Relating to and broadening the field for the prosecution of damage suits for the death of children or wards killed by accident.

Senate bill No. 101, by Lawrence—Making it a felony to issue fraudulent or illegal stock in a corporation.

House bill No. 63—Fixing the mileage of judges and district attorneys at 8 cents per mile on railways and 15 cents per mile off railways.

Senate bill No. 38, by Howell—Providing that the State board of examiners shall approve the bonds of all State officials and other persons required to give bonds to the State or State institutions, where no other provision is made for the approval of the bonds.

House bill No. 233, by Lambert—Appropriating $5,000 with which to purchase poison for the destruction of ground squirrels, gophers and prairie dogs in the various counties of the state.

Senate bill No. 31, by Bennion—Providing for the acceptance of certain desert lands from the government by the State, and providing for the reclamation, occupancy and disposition of the same.

Senate bill No. 117—Prohibiting unauthorized persons from wearing the insignia of the Loyal Legion, button of the G. A. R. or medal of the Utah volunteers.

Senate bill No. 70, by Whitmore—Providing that State board of examiners may let contract to lowest and best bidder for publication of records of marks and brands, to be sold at $2.50 per copy or less.

Senate bill No. 69, by Whitmore—Providing for printing and distribution of copies of records of marks and brands to county clerks and constables.

Senate bill No. 6, by Barnes—Extending time of quarantine and including whooping cough.

Senate bill No. 75, by Love—Making sale of merchandise in bulk, illegal, without proper notice to creditors.

House bill No. 181, by Glasmann—Relating to statement and assessment of banking and other corporations.

House bill No. 228, by Axton—Making it a felony to construct or send infernal machines to any person.

House bill No. 227, by Axton—Requiring the labeling of explosives before being shipped or stored.

Senate bill No. 94, by Allison—Making illegal voting at a primary, or the filing of false returns a misdemeanor.

Senate bill No. 90.—Creating the office of stenographer of the Supreme court and fixing his salary at $900, instead of $1,200, as fixed by the Senate.

Senate bill No. 89—Prescribing the fees to be collected by the secretary of State.

House bill No. 213, by Smith—Relating to costs on appeal from justice courts.

House bill No. 191, by Hewlett—Authorizing counties to purchase voting machines.

House bill No. 202, by Evans—Defining kidnapping and abduction and providing penalties therefor.

BILLS KILLED.

Senate bill No. 77—Providing that in cities of the first and second class, no person or persons otherwise than the party or parties to an action can conduct a suit in a justice court, except an attorney at law.

House bill No. 193, by Glasmann—Relating to the collection of taxes on property that has escaped taxation.

House bill No. 66, by Phillips—Creating a reservoir fund.

House bill No. 170, by Axton—Providing for the printing of proceedings of Legislatures, county boards, city councils, etc., in newspapers.

House bill No. 162, by Van Wagenen—Compelling railroad companies to fence their right of way and construct cattle guards.

WITNESS MISSING.

Mr. W. G. Benham is wanted as a witness in the big Jordan water suit which has been on trial before Judge Morse for the past nine weeks, and Deputy Sheriff Cummock was given a subpoena on Monday last and started out to locate the witness and bring him in. For reasons best known to Benny, as he is popularly called, he does not want to be placed under the cross-fire of the examining attorneys in the above case, hence he has been dodging Mr. Cummock, who, up to date, has tried in vain to gather in the desired witness. The deputy sheriff, however, does not know his man even by sight, but the fugitive has the better of Mr. Cummock in this, as he knows the stalwart form of the latter. The other night Mr. Cummock was watching the place where Mr. Benham lodges, and seeing two men approach, one of whom he knew, asked him if he knew where the victim of his search was. Both assumed a look of innocence and averred they knew nothing of the much sought man, when all the time one of them was the party wanted. They entered the house and slept the sleep of peace during the night. Mr. Benham says he is going to run right up against the big burly deputy sheriff one of these times and see if he will be taken in tow. Meantime the chase goes merrily on.

TEXT OF OPINION IN GRAHAM CASE

Following is the full text of the Supreme Court opinion in the case of John C. Graham convicted in the district court for unlawful cohabitation:

THE OPINION.

In the Supreme Court of the State of Utah; the State of Utah, respondent, vs John C. Graham, defendant and appellant; Rolapp, district judge.

The defendant in this action was tried in Salt Lake county for the offense of unlawful cohabitation, upon an information, the charging clause of which reads as follows:

"That the said John C. Graham on the 1st day of January, A. D. 1898, and on divers other days, and continually between said 1st day of January, A. D. 1898, and the 12th day of May, 1899, at the county of Salt Lake, State of Utah, did unlawfully cohabit with more than one woman, to-wit, one Mary A. Graham and one Sarah Potter, commonly known as Sarah Potter Graham."

The evidence adduced at the trial showed that the defendant cohabited with Sarah Potter Graham as his wife in Salt Lake county, without showing that the relation existing between this woman and defendant was illegal in any way; but on the other hand the evidence affirmatively shows that the defendant married Mary A. Graham (the other woman named in the indictment) thirty-two years ago, as a plural wife, he then having another wife living, and that for twenty years or more he has cohabited with her as such wife in the county of Utah, in this State. It was further affirmatively shown that this latter woman has never been in the county of Salt Lake within the period during which it is claimed in the information the defendant unlawfully cohabited with more than one woman; nor has the defendant at any time lived or cohabited with her in Salt Lake county.

The trial resulted in the conviction of the defendant, from which verdict and the subsequent judgment the defendant appeals to this court, assigning as principal errors certain of the instructions as given by the court, and the refusal of the court to give certain instructions as requested by the defendant.

Upon the trial the court below, among other things, charged the jury as follows:

"You are instructed that it is not necessary to find that the defendant cohabited with both of the women named in the information in Salt Lake county; but if you find that he cohabited with Sarah Potter Graham in this county, and with Mary Graham in Utah county, during the time charged in the information, he would be guilty."

And further, the court charged that: "If he has so conducted himself toward her that those living in the vicinity had reason to believe and did believe he was living with said Sarah Potter Graham as his wife, then you should find the defendant guilty, as charged, provided that you also find from the evidence beyond a reasonable doubt that during the same period as above mentioned he lived and maintained the same relations with Mary A Graham, although such relations with her were maintained in Utah county."

The defendant requested the court to charge the jury as follows:

REQUEST 1.

"If at the date of Statehood the defendant had two polygamous wives, one in Provo and one in Salt Lake, he had the right to marry either, and commit no offense in living with her. If defendant had as one polygamous wife Sarah Potter, and lived with her after Statehood in Salt Lake, the law will presume in behalf of innocence that he was married to her, and if married to her and lived with no other woman in Salt Lake county, then you should acquit."

REQUEST 2.

"It is necessary to allege the exact facts, and if it is sought to prove an offense committed partly in one county and partly in another, then it must be so stated in the information. This information states the offense as committed wholly in Salt Lake county, and cannot be sustained by proof that it was committed partly in one county and partly in another."

REQUEST 3.

"If the jury find that the defendant was living with one wife in Utah county and with another in Salt Lake county, and never living with but one in Salt Lake county, then he cannot be convicted under this information, which charges him with living with two wives in Salt Lake county."

REQUEST 7.

"The act of living and cohabiting with Sarah Potter Graham in Salt Lake county was an innocent act, as far as this information is concerned, and not punishable unless accompanied by proof that somewhere defendant had a lawful wife. No such evidence has been offered in this case, and the jury should acquit."

All of these requests were by the court refused.

Of course, inasmuch as the instructions given by the court were wholly antagonistic in theory to the instructions requested by the defendant, the sole question before this court is, which of the two theories is correct.

Our statute provides (Revised Statutes, section 4730): "The information or indictment must contain:

"Second—A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended."

Section 4584 of the Revised Statutes provides as follows: "When a public offense shall have been committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense shall have occurred in two or more counties, the jurisdiction shall be in any of such counties. When a public offense shall have been committed near the boundaries of two or more counties, the jurisdiction shall be in any of such counties."

This latter section of our statutes was copied from the California statute, after having received repeated judicial construction from the highest tribunal of that State; and under such circumstances we have repeatedly held that this court will as a rule accept the interpretation thus placed upon such borrowed statute by the highest court of the State from whence it came. As early as 1857, in the case of People vs Dougherty (7 Cal. 396), the supreme court of California had occasion to interpret the statute similar in principle to the one under consideration here. In that case the defendant was indicted and convicted for an assault with a deadly weapon, alleged to have been committed in the county of San Francisco, while the evidence showed the crime to have been committed on board a vessel, either while lying at her berth in Sacramento or on her passage to San Francisco. The statute under which the prosecution was commenced provided that "when an offense is committed within this State on board of a vessel navigated on river, bay or slough, or lying therein, in the prosecution of her voyage, the jurisdiction shall be in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage was terminated."

And the court, in reversing the judgment, said: "The extra territorial jurisdiction thus conferred upon the courts of the various counties situated upon the navigable waters of the State is special in its character, and in derogation of the common law rule upon this subject; and whenever it is invoked, the facts and circumstances should be set out in full in the indictment. In this respect the court may be considered as exercising a special and limited jurisdiction, and the facts which give jurisdiction must be clearly alleged and satisfactorily proved."

Again, in the case of People vs Ah Own (39 Cal. 604), the supreme court of California had before it on indictment for the forcible taking and stealing of a man in one county and carrying him into another. The information alleged the offense to have been committed in both counties, and being assailed upon that ground the court says: "The offense was commenced in one county, and consummated in another; but it was only one transaction, occurring partly in each county, and it was not only proper but necessary that the indictment should state the facts, so as to bring the case within the statute."

Again, in the case of People vs Scott (15 Pac. 384), which was a case upon an indictment for burglary committed in San Diego county, the property obtained by the burglary was taken to San Bernardino county. The statute providing that when property taken by any one, by burglary, larceny, or embezzlement, has been brought into another county, the jurisdiction of the offense is in either county. The indictment alleged the burglary to have been committed in the county where the information was filed (San Bernardino county). The court held that although that county had jurisdiction, the facts showing where the burglary was committed, and that the property was brought into San Bernardino county, must be alleged in the indictment.

This principle has been universally applied, with two exceptions, one of which is a seeming exception only. The first exception is applicable where the offense was committed within a short distance from the boundary line between two counties, in which event it has been held sufficient to allege and prove the offense to have been actually committed in either. The other class of cases in which there is an apparent diversion from this well-established rule is where the stolen goods are carried by the thief through various counties, in which case the law adjudges that the offense was in truth committed in each of such counties, and hence there is no occasion for a statement in the pleading of what occurred in any other except where the trial is had.

All of the cases cited by counsel for the State either come within one of these two exceptions to the general rule, or they are cases where a dangerous agent has been unlawfully set in motion in one county and the necessary result of such act effected in another, in which event, of course, the jurisdiction of the offense may be laid in either county.

Apart from the consideration of the effect of these adjudicated cases upon the question before us, we do not think that the provision of section 4584 of the Revised Statutes, outside of those relating to offenses committed near the boundary line of two counties, are at all applicable to this class of cases. Before that section can become operative in any criminal case one of two things must appear. Either, first, the offense must be divisible, and each part be unlawful in and of itself and committed at a different time and place; or, second, the offense must consist of more than one act, each of which acts or effect of such acts must constitute an unlawful element of the offense, without the presence of which the offense could not be consummated.

The mere existence in some other county than the place of trial of acts or conditions of the defendant, lawful in and of themselves, but necessary to be alleged or proven, in order to establish the crime as charged, do not invoke the powers of this statute so as to permit the trial of the defendant in such other county.

Applying this reasoning to the case at bar, and viewing the evidence in the light of the presumption of innocence accorded to every accused person, we must inevitably come to the conclusion that the jury were bound under the evidence in this case to regard as wholly innocent any relation, whether actual or apparent, existing between the defendant and the woman named in the information who resided in Salt Lake county, and who claimed to be his wife. If in any case the proof shows the presence of a relation founded either on actual marriage or on the holding out of its existence, between a man and a woman living within the jurisdiction of the court, and no evidence of an illegal inception or character of the relation is produced, the conclusive presumption arises that such relation is that of lawful marriage.

U. S. vs Snow, 9 Pac. 686.

U. S. vs Smith, 14 Pac. 291.

This is so upon the well established rule that the law presumes a usual and ordinary state of things, rather than a peculiar and exceptional condition; it supposes legality rather than crime; and virtue and morality rather than the opposite qualities.

Caujolle vs Ferrie, 23 N. Y., 168.

While residing with his lawful wife in Salt Lake county the defendant did not "flaunt in the face of the world the ostentation and opportunities of a bigamous household." Consequently, while the defendant's association and relations with the lawful wife in Salt Lake county was a necessary matter to be pleaded and proven by the State, yet such association, act or condition was not a public offense, nor part of any offense; and not being or constituting an unlawful element of any offense it could not be an act or the effects of an act necessary to the consummation of a crime, because no crime is composed in whole or in part of lawful acts.

We think, therefore, that the theory upon which the main instructions of the lower court were given were erroneous.

The appellant also assigns as error the refusal of the court to give the following requested instruction:

"The prosecution in their information have fixed the time of this offense from the 1st day of January, 1899, and have given evidence of other acts introduced for the purpose of showing cohabitation of the defendant with the two women named prior to the 1st day of January, 1898. When the prosecution have given evidence for the purpose of showing an offense, they are bound by the time and occasion selected, and having introduced evidence of the acts first prior to that of 1898, that was an election to select the prior date within which to prosecute, and the prosecution is now limited to a time prior to the first named date, January 1, 1898."

We see no error in such refusal. This court has repeatedly held that evidence of the illegal marriage between the defendant and one or all of the women named in the indictment, together with evidence showing that he cohabited with such women as his wives prior to the time named in the information, is admissible for the purpose of aiding the jury in determining the character of the relation claimed to exist between the parties during the time covered by the information.

U. S. vs Cannon, 7 Pac. 369.

U. S. vs Musser, 7 Pac. 389.

The appellant further assigns as error the fact that a witness was permitted to answer the following question with reference to the defendant and his illegal wife at Provo: "I will ask you whether it is the general reputation in Provo among their acquaintances, neighbors and friends that they are husband and wife?"

We think this question should have been excluded. While it is not necessary to show actual sexual relations between such parties, and while it is true that a conviction could have been supported by showing other marital associations between the defendant and such wife, such as the holding out to the world a semblance of marriage; yet the defendant could only be convicted upon proof of affirmative acts upon his part from which the jury might infer guilt. But it would be setting a dangerous precedent to permit the mere belief or thought of acquaintances and neighbors and friends to become an element in any crime.

U. S. vs Langford, 21 Pac. 409.

For the foregoing reasons the judgment of the court below is reversed, the verdict set aside, and information quashed.

We concur, Baskin, J., Bartch, J., in the result.