

FROM TUESDAY'S DAILY SEPT. 29.

## TO-DAY'S PROSECUTIONS.

## Judge Zane's Definition of "Constructive Cohabitation."

After the close of the Williams case in the Third District Court yesterday afternoon, in which the defendant will ask for a new trial, the charge of unlawful cohabitation against

ANDREW HOMER,

of Mill Creek, Salt Lake County, was taken up and a jury impaneled.

Mrs. Petra Homer was the first witness, and being unable to speak English intelligibly, the services of Deputy Sprague were required as interpreter. She testified that she had been in this country for seven years, and had married the defendant a short time after her arrival; had one child, 22 months old; knew Ann Homer, who lived about half a mile from her, at Mill Creek. Annie had been in the habit of calling at her house once or twice a week, Mr. Homer sometimes being at the house when Annie called, but he never went out with her. Witness first met defendant in Norway, and he sent her the money to come to Utah with; she married him two weeks after her arrival; at that time a widow was keeping house for him; was not certain whether she had seen Annie before marrying defendant or not; Annie sometimes accompanied defendant and herself to meetings; Annie was sealed, but not married to the defendant.

Mrs. Annie Homer testified that she had been sealed to the defendant a long time ago, but had never lived with him as his wife. Jannina, another wife, had moved to Summit County, but she could not say just how long since. She had no children; supported herself; she was 63 years of age.

At this point the court adjourned to 10 a. m. to-day.

This morning the case was resumed by the calling of Deputy Marshal Franks, who testified—I arrested the defendant; found him at Cottonwood; he was in the enclosure where the house of Mrs. Ann Homer is; he was plowing in the field; both of his houses are within the same enclosure; I conversed with him, telling him we wanted to serve the witnesses; I told him he had better assist me in finding the witnesses; I made no promises or threats to him, and held out no inducements to him to make a confession; I told him Mr. Cannon probably had the third wife, and it was no use denying it; I then told him he had better assist us.

The defense objected to the conversation with the defendant, as it was under pressure from the officer. Objection sustained.

Witness (continuing)—I had no conversation relative to Annie Homer before I told him he had better assist me; we went down to Petra Homer's and he said that was his third wife.

Objected to by the defense as not being a voluntary statement. Objection overruled.

Witness (resuming)—I had no further conversation with him; we afterwards met Deputy Cannon and went to Ann Homer's house; Mr. Homer called her out and told her we had arrested him, and she would have to go to town. (Mr. Franks exhibited considerable anxiety to state that which the court had ruled as improper, notwithstanding the objections of defendant's counsel.) Mr. Cannon told him any statement he made would be used against him. After that I heard Mr. Homer and Mr. Cannon conversing; this was on the way to the city; the defendant, replying to questions, said he had separated from his first wife because they did not get along very well together; he alluded to the three ladies as his wives.

Deputy Cannon testified—I was in the vicinity when the defendant was arrested; I subpoenaed Petra Homer as a witness, and waited until Mr. Franks came five or ten minutes later; the defendant said no case could be made out against him, as he had lived exclusively with Petra for seven years; he said his first wife left him several years before; he said he had lived with Ann Homer, but for seven years had lived only with Petra.

This closed the testimony, and District Attorney Peters made the opening address to the jury. Mr. Moyle followed for the defense, and Mr. Peters concluded.

Judge Zane then charged the jury. In reference to "constructive cohabitation" with the legal wife, he said:

"If you believe from the evidence, gentleman 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."

The Court further stated that if the jury believed that the defendant had associated with his other two wives so as to lead the world to believe they were his wives, they should convict; a mere polygamous marriage was not sufficient, but actual association must be shown.

The jury retired in charge of Bailiff Dan Reckhart, and returned in ten minutes with a verdict of guilty.

Sentence was fixed for September 30, at 2 p. m.

The charge of unlawful cohabitation against

JAMES M. FISHER

was the next in order for trial, and a jury was impaneled in a few moments. Mrs. Edith Fisher was the first witness. She testified—I live at East Mill Creek, Salt Lake County; I was married to the defendant in 1857; he had no other wife when I was married to him.

Mr. Young, for the defense, objected to the witness being compelled to testify.

Mr. Peters insisted that the defendant had no right to raise the objection, as it was with the witness alone to either consent or refuse to testify.

Mr. Young contended that such a construction of the law would make the action of the legislators absurd. Pending the discussion of the question, Mrs. Fisher declined to testify, and as both avenues were thus closed against the District Attorney, the question was left undecided by the Court, and the lady was excused. Recess was then taken till 2 p. m.

Mrs. Lydia A. R. Fisher was the first witness this afternoon. She testified—I live in East Mill Creek, Salt Lake County; I was married in 1869 to the defendant, James M. Fisher; I am still his wife; have five children, the youngest one year old; the defendant takes his meals with me at the present time; he rooms at his brother-in-law's; he lived with me from the time we were married until a little over a year ago; I regard myself as his wife; I know Edith Fisher; she is said to be defendant's first wife; she lives at Mill Creek, and has seven or eight children; I live on Mr. Fisher's farm; I do not remember that Mr. Fisher ever told me Edith was his wife, but I suppose she is, as they lived together when I was married to him 18 years ago; I lived in the same house with Edith two or three years; her youngest child is 15 years of age; Edith and Mr. Fisher separated seven or eight years ago; since then he has lived with me; Mrs. Fisher and I do not visit each other; we are on good terms.

EDWARD ELLIS

testified—I live in Salt Lake; have known the defendant two or three years; know where Edith Fisher lives; do not know her relationship to the defendant; was introduced to her as Mrs. Fisher; since January, 1885, I have been at her house about once a month; I never saw the defendant in her house during the time named in the indictment, but have seen him in the yard once or twice—not more than twice; never conversed with him about his first wife; have been at Lydia Fisher's house twice; saw Mr. Fisher there; never saw Mr. Fisher and Mrs. Edith Fisher talking together; they live on separate farms; never saw either of the wives at the other's house.

Deputy Franks testified—I was present when Mr. Fisher was arrested; subpoenaed his first wife; Mr. Fisher was near his second wife's house when arrested; when the defendant was in custody he talked with his first wife, asking her to aid in getting bondsmen so he would not have to remain all night in the penitentiary.

The prosecution rested its case with this witness, and the defense announced that it had no evidence to offer.

Mr. Young argued the case for the defense, and Mr. Peters for the prosecution.

The Court's charge was similar in substance to that given in the Homer case, this morning.

The jury returned a verdict of guilty, and he will receive the judgment of the Court on September 29.

The next case taken up was that against

WILLIAM BLOOD,

of Kaysville, who changed his plea to guilty on the charge of unlawful cohabitation. He stated that he would like till the 15th of October, but Mr. Peters objected, and sentence was fixed for September 30th.

JOHN A. MARCHANT,

of Peoa, Summit county, also changed his plea on the same charge to guilty, and will be sentenced on the 30th of September.

JOSEPH C. PERRY,

of Brighton, Salt Lake County, withdrew his plea of not guilty, and substituted one of guilty. Judgment will also be pronounced on September 30th.

ALEXANDER BILLS,

of South Jordan, was arraigned on the charge of unlawful cohabitation, and pleaded guilty to the indictment. In reply to the Court he stated that he was prepared for sentence.

The Court asked, "Is it your intention to obey the law in the future?" to which Mr. Bills replied, "No, sir; it is not."

He was sentenced to imprisonment for six months and to pay a fine of \$100 and costs.

JAMES WELCH

withdrew his plea of not guilty, and made one of guilty. He asked and was granted until October 15th, at 2 p. m. before sentence.

FROM WEDNESDAY'S DAILY, SEPT. 21.

## Nine More.

Of the second open venire issued for petit jurors for the September term of the Third District Court, ten out of twelve answered to their names to-day. The first one called was L. B. Rogers. He had served on the grand jury for the April term, and was excused. The following passed the examination of District Attorney Peters, and took the oath:

John Dumphy, L. B. Best,  
Wm. A. Stanton, Thomas E. Harper,  
T. W. Collins, E. D. Egan,  
John W. Hinman, Sol. Crown,  
O. H. Parsons.

## Amputated.

Yesterday morning, Dr. Benedict came up from Salt Lake City to see Mr. Child. It was decided to take off the left hand, and the operation was performed successfully. The amputation was made at the wrist, and since the operation has been resting comfortably. The right hand was dressed again and there are hopes that it can be saved. When the reporter called at about midnight Mr. Child was sleeping.—*Ogden Herald, Sept. 21.*

## Bound Over.

At the conclusion of the preliminary hearing before Justice Pyper yesterday afternoon, of the charge of grand larceny against James Marshall, the court considered the evidence sufficient to warrant the holding of the defendant to await the grand jury's action, and bail was fixed at \$1,000. Secretary Hall, Marshall's counsel, asked for a reduction to \$500, but this was refused, and the defendant was committed to Sheriff Burt's custody in default of bonds.

## Under the Edmunds Law.

Yesterday the deputy marshals arrested Mr. Christlan Hansen, of Colliuston, on a charge of unlawful cohabitation. An indictment had been found against the gentleman and he was brought to Ogden and placed under bonds to appear in the First District Court when wanted.

The examination of Nicholas Somer on a charge of unlawful cohabitation was originally set to take place before Commissioner Rogers yesterday. The case, however, did not come off in Ogden. The examination was transferred to Logan.—*Ogden Herald, Sept. 21.*

## From the "Pen."

To-day John England, of Tooele County, was brought down from the penitentiary and taken before Commissioner Pierce on an application for discharge from custody, he having served a six months' term on sentence for unlawful cohabitation, and remained in durance vile for thirty days for the fine assessed. He passed a critical examination and was released.

James and William Dalley, brothers, who are upwards of three-score years of age, and are highly respected residents of Iron County, also completed their terms for a similar offense and under similar conditions regarding the fine. They were ordered brought down this afternoon for examination as to their property qualifications. Both of these brethren were discharged after the hearing.

William Unthank, also of Cedar City, Iron County, sent to prison under the same circumstances and at the same time as the Dalley brothers, was also brought down this afternoon, and on examination was released by Commissioner Pierce.

## PROSECUTING "MORMONS."

## Five Pleas of Guilty and One Sentence.

There was a list of six "Mormons" on the calendar of the Third District Court to-day, all of them being under indictment for violating the third section of the Edmunds law. The first name was that of a resident of Bountiful, Davis County,

WM. S. MUIR,

who was arraigned on the charge of unlawful cohabitation with Jane Muir, Lucy D. Muir, Elizabeth S. Muir and Sarah S. Muir as his wives. He will enter his plea on Saturday next, at 10 a. m. S. W. Darke is his attorney.

EBENEZER WOODFORD,

of Salt Lake City, changed his plea to guilty of unlawful cohabitation, and sentence was set for Wednesday, Sept. 23.

CHARLES BURGESS,

of the Fifteenth Ward, this city, also pleaded guilty to living with more than one wife, and will receive the judgment of the court at 2 p. m. on Oct. 11.

GEORGE WILDING,

also a resident of this city, likewise changed his plea to guilty, and sentence was set for 2 p. m. to-day.

This afternoon Mr. Wilding appeared and was asked the usual question as to his intention with reference to obedience to the Edmunds law in the future. He replied that he did not desire to bind his action by any promise. His punishment was fixed at six months' imprisonment and a fine of \$100 and costs.

EDWIN RUSHTON,

of the Fifth Ward, this city, next came forward, and changed his plea on the indictment for unlawful cohabitation to guilty. Sentence fixed for Monday, Oct. 3, at 2 p. m.

JOHN COTTAM,

whose home is in the Sixteenth Ward, this city, followed in the order, and also changed his plea to guilty to the accusation of living with more wives than one. Sept. 29 was fixed for sentence.

## PRESIDENT TAYLOR'S WILL.

## Full Text of the Document as Admitted to Probate.

The following is a copy of the will of the late President John Taylor, which was admitted to probate on Monday last:

In the name of my Creator, Amen.

I, John Taylor, of Salt Lake City, in the County of Salt Lake and Territory of Utah, being of the age of 78, and being of sound mind and memory, do make and declare this to be my last will and testament.

2d—I appoint to be the executors and trustees under this will, without bonds, George John Taylor, John W. Taylor and L. John Nuttall.

3d—The names of my wives are: 4th—Leonora Cannon Taylor (deceased), daughter of Captain George and Leonora Callister Cannon (deceased).

5th—Elizabeth Kaighan Taylor, daughter of Elizabeth Garratt Kaighan (deceased).

6th—Jane Ballantyne Taylor, daughter of David and Annie Bannerman Ballantyne (deceased).

7th—Mary Ann Oakley Taylor, daughter of Ezra and Elizabeth De-groot Oakley (deceased).

8th—Sophia Whittaker Taylor (deceased), daughter of Thomas and Sophia Turner Whittaker (deceased).

9th—Harriet Whittaker Taylor (deceased), daughter of Thomas and Sophia Turner Whittaker (deceased).

10th—Maggie Young Taylor, daughter of Ebenezer Russell Young and his wife, Margaret Holden Young (deceased).

11th—Caroline Gillam (deceased), daughter of — and —.

12th—The children of my wife, Leonora Cannon Taylor (deceased), are my heirs, namely:

George John Taylor, aged 53 years. Mary Ann Taylor Redfield, aged 51 years.

Joseph James Taylor, aged 49 years. 13th—The children of my wife, Elizabeth Kaighan Taylor, are my heirs, namely:

Josephine Taylor, aged 41 years. Thomas Edward Taylor, aged 38 years.

Arthur Bruce Taylor, aged 31 years. 14th—The children of my wife, Jane Ballantyne Taylor, are my heirs, namely:

Richard J. Taylor, aged 39 years. Annie Taylor Hyde, aged 35 years.

David John Taylor (deceased.) 15th—The children of my wife, Mary Ann Oakley Taylor, are my heirs, namely:

Henry Ezra Taylor, aged 38 years. Brigham Oakley Taylor, aged 29 years.

Ezra Oakley Taylor, aged 24 years. 16th—The children of my wife Sophia Whittaker Taylor (deceased), are my heirs, namely:

Harriet Anne Taylor Badger, aged 46 years. John W. Taylor, aged 30 years.

Hyrum W. Taylor, aged 26 years. Moses W. Taylor, aged 25 years.

Fred W. Taylor, aged 21 years. 17th—The children of my wife Harriet Whittaker Taylor (deceased), are my heirs, namely:

Sophia Elizabeth Taylor Nuttall, aged 38 years. William W. Taylor (deceased.)

18th—The children of my wife Maggie Young Taylor, are my heirs, namely:

Ebenezer Y. Taylor, aged 27 years. Frank Y. Taylor, aged 26 years.

Leonora Taylor Harrington, aged 23 years. Maggie Taylor, aged 17 years.

Nephel Y. Taylor, aged 15 years. Mary Taylor, aged 13 years.

Abraham Taylor, aged 9 years. Samuel Taylor, aged 6 years.

19th—I authorize my executors to settle all trusts wherein I am trustee, and to pay any debts I may owe, in respect to the same, and to receive whatever claims may be due my estate therefrom, and to make conveyance and assignment to the proper party or parties of the trust estate, and to take proper indemnity or security as to all outstanding liabilities I may be under for such trust estate, so that my private estate shall suffer no loss by reason of my liabilities for such acts; and power is hereby conferred upon the executors named in the will to designate and determine the trust property held by me for any use or purpose, and any such determination by such executors shall be final and conclusive.

20th—In testimony whereof, I have hereunto set my hand and seal, this 30th day of June, 1887.

JOHN TAYLOR. [SEAL.]

Signed, sealed, published and declared by John Taylor to be his last will and testament in our presence, and we have, at his request, in his presence and in the presence of each other, subscribed our names as witnesses thereto.

SAMUEL BATEMAN,  
JAMES E. MALLIN.

## Probate Court.

Proceedings in the Salt Lake County Probate Court yesterday:

The marriage certificate of Louis Berren Leverich and Nina Clayton Winter was filed.

In the matter of the estate of John H. Burton, deceased; order made of publication notice to creditors.

The cases of E. Dubois, deceased; H. S. Mortensen, a minor, were postponed.

Estate of John McGuire, deceased; report of sale of real estate and petition for confirmation came on for hearing; order made for administrator to give notice and have a new sale.

Estate of Isaac Hunt, deceased; order appointing time and place for settlement of account and distribution.

Estate of Abraham W. Taylor, deceased; final account of administrator filed and order made appointing time and place for settlement of said account.

Estate of Joseph M. Allen, deceased; petition for admission to probate of a document bearing date of February 27th, 1880, as the last will and testament of said deceased; and for the denial of probate of a document bearing date November 5th, 1880, purporting to be the last will and testament of said deceased, came on for hearing; order made admitting to probate the document bearing date February 27th, 1880, and appointing John S. Barnes administrator, with the will annexed, upon filing a bond in the sum of \$7,500, and refusing probate to that bearing date November 5th, 1880.

Estate of George Nebeker, deceased; petition for confirmation of sale of real estate allowed and order made selling property to Theodore McKean, Jr., or \$1,175.

FROM THURSDAY'S DAILY SEPT. 21.

## A False Verdict.

It is frequently asserted by those opposed to the jury system that jurors in criminal cases are generally induced with the idea that they are "chosen to convict." This claim received an exemplification in the trial of the Chinaman Ah Toi Ong, in the Third District Court yesterday afternoon. The defendant was accused of the crime of burglary. The statute defines the offense as one that must be committed in the night, and while the evidence was sufficient to show that the Mongolian had been guilty of petty larceny, it did not develop that he had gone into Pearson's shop in the night time, and therefore a necessary element in the crime of burglary was not proven. Notwithstanding this fact, and the explicit instructions of the judge, the jury continued in bloc and returned a verdict of guilty. Judge Zane, however, would not allow the heathen to be thus foully dealt with, and ordered that the verdict be set aside and the prisoner released, which was done. Ah Toi Ong has probably been punished severely enough for his theft of a razor, as he was kept in the penitentiary seven months awaiting trial.

## New Factory Building.

Z. C. M. I. has begun on the east portion of the D. H. Wells lot, the erection of a mammoth building, to be composed of brick, with rock foundation. Its ground measurement is 120 by 60 feet, and it will be four stories high with a basement besides. It will be the largest structure of its class in this city, second only in proportions to the main building of the institution, to which it is contiguous. In it will be conducted the home manufacture department, including boots and shoes, overalls, etc. The contract has been awarded to Watson Brothers, and the construction will be pushed rapidly to completion. It will be a great advantage to the institution to own its factory building and to have the several branches of its business operated in compact shape instead of in different localities.

## The hoir Excursion.

The Tabernacle Choir, with invited friends, numbering some 200, left Salt Lake City at 7:20 a. m. Tuesday, on the Utah Central for Provo, and were soon borne swiftly away from the smoke and turmoil of the busy marts of trade out into the green fields and orchards and the exhilarating breezes of the beautiful September day, bent on three whole days of solid rest and recreation. They soon after arrived at Sandy, where it was noticed that the great struggle for total abstinence is in full blast. Although there are still several struggling sailors, yet the enterprising advocates of temperance have erected a large sign in the middle of the town inscribed in black letters.

## "DRINK WATER."

As this is in the imperative mode, present tense, it shows that the prohibitionists of Sandy mean business. The next place that the train pulled up at was a flourishing town in Utah County. The people there seem to be ardent advocates of home manufacture.