FROM WEDNESDAY'S DAILY, JAN. 18.

Body Found.

Yesterday the party searching for James Baxter, who was carried away by a snowslide near Park City on Jan. 1st, were successful in finding the body. From the condition in which it was, they concluded that he must have been killed almost instantly.

Charged With Incest.

Yesterday afternoon Peter Tong, a resident of Snyderville, near Park City, was arrested on a charge of having committed the horrible crime of incest. It is alleged that the victim is his 22 year-old doughter. He was taken to Park City, where he is to have a hearing before a United States Commissioner.

In Piute County.

A correspondent writing from Koosharem, Piute County, says that there the snow is so deep that the roads are impassable. The thermometer ranged for several days at from 30 to 40 below zero, and during the same period the price of hay advanced fr m $5 to $15 per ton, with little to be bought at that price. Some of the people were trying to get their stock over to the Henry Mountains in the hope of saving them, but it is feared that a great many cattle and horses will be lost.

THE LEGISLATURE.

COUNCIL.

January 18th.

The Council met promptly at 2 p. m After roll call, etc., several letters were read acknowledging courtesies of the Council.

H. F. No. 11, a bill for the compilation of the Laws of Utah, was read by its title.

Messrs. Tuttle and Carlisle were added to the committee on the part of the Council.

Marshall made remarks indicating that he doubted the practicability of accomplishing the work in the time specified, and suggested several difficulties in the way.

Woolley stated that as the work progressed more information could be obtained by the committee on this subject, and the council could act accordingly.

On motion of Woolley the rules were suspended and the bill read a second time by sections. After reading and further discussion Woolley again proposed the suspension of the rules and that the bill be read a third time.

Woolley moved that the bill pass. Carried, and the House notified.

The Council concurred in the House resolution providing for the printing of 150 copies of such bills as may be necessary.

The Council concurred in the House concurrent resolution No. 9, providing that the joint committee on memorial shall petition Congress for a fourth judge for the Territory and also for the defining of a fourth judicial district.

Woolley reported that the joint committee which had consideration of C. F No. 1, had virtually killed it by the substitution of H. F. No. 11.

Smoot offered a petition from the people of Spanish Fork City, to the Governor and Legislative Assembly, praying for a reduction of the limits of the township. Referred to the committee on municipal corporations and towns.

Young presented a memorial from S Hudson, which read as follows:

Memorial to the Honorable Council and House of Representatives of the Territory of Utah, Greeting:

Messrs.—Your petitioner respectfully solicits the return of the memorial for laws guarding the sanctity of the nominative franchise, for the purpose of eliminating therefrom the reference to Archangel Michael and our Lord Jesus Christ, being admonished that heavenly messengers have no legal status in public affairs, and as in duty bound, your petitioner will ever pray.

Respectfully,

S. HUDSON, Cauvasser.

The memorial was read and laid on the table.

C. F. No. 3, a bill providing for attachments, was then read the third time by sections. After reading the first section, Woolley moved that it be amended by prefixing an enacting clause. Carried.

Much of the time of the afternoon session of the Council was consumed in the third reading by sections of the rather lengthy bill entitled C. F. No. 3, providing for attachments.

C. F., No. 3, passed without a dissenting vote.

H. F. No 2, a bill for an act fixing the time when new laws shall go into effect, was read three times under suspension of the rules and passed. It provides that the new laws shall go into effect at 12 o'clock midnight on the 31st day of May next, unless some other time is therein specified.

On motion of Carlisle the Council adjourned.

HOUSE.

January 18, 1888.

Opening exercises. Some debate occurred as to whether or not the minutes should show what became of the conference committee on compilation. The matter was laid over for a day, that the House might conform to the Council's action in it.

A communication from the Auditor regarding county clerk's accounts was presented and referred to the claims and public accounts committee.

A memorial in relation to the nominating franchise, from Sidney Hudson, was ably, though McLaughlin first moved its reference to the committee on insane asylum.

Richards introduced a bill changing the first and second judicial districts. The preamble of the bill recites that 500 civil cases are pending in these courts, which number is being rapidly augmented, causing ruinous delay to litigants. Referred to judiciary committee.

Hoge, chairman of committee on penitentiary and reform school, moved that Mr. Lund be added to that committee, stating that such was the request of the committee. Mr. Lund was so appointed.

Thurman remarked that, under the compilation bill which would likely become law, the committee making the compilation would not be permitted to recommend amendments, notwithstanding there were numerous errors, incongruities and absurdities in the laws; and moved that a committee of three, consisting of Creer, Richards and King, be appointed to examine the laws and report all such defects in them, with a view to having the same corrected by action of the Legislature.

Before the motion was put it was withdrawn.

Richards' bill fixing the time at which new laws shall go into effect, was read the second time by sections The rules were suspended, and the bill was read the third time.

On motion of Hoge it was amended so as to include resolutions in the repealing clause.

At the request of Thurman the bill was read again, and he moved that it be amended so as to include joint resolutions as going into effect at the same time as the laws.

Richards thought the amendment was unnecessary, as resolutions would generally be desired to go into effect immediately.

Thurman stated that a joint resolution was a law, and that it was often desirable that notice of it should be given to citizens before its going into effect.

The question being put, the chair announced a tie. McLaughlin cited rule 6 as requiring the Speaker to vote on a tie. A debate ensued as to whether the speaker was required to vote, and he at length voted aye, causing Thurman's amendment to prevail.

The bill was put upon its passage; ayes 22; noes 1. The latter was Hatch.

The chair stated that on the 12th the Council appointed a joint standing committee on memorial.

On motion of Hoge the chair appointed the committee on the part of the House, Creer, King and Howell.

A message from the Council was read announcing the passage of the compilation bill with amendments, Tuttle and Carlisle being appointed on the compilation committee, and a clause inserted providing for the furnishing of the Utah Commission with copies of the compilation. Another amendment — made copies of the laws given to Territorial and county officers transmissible to their successors. The House concurred in all the amendments made by the Council.

Following are the more important amendments made by the Council to the compilation bill:

SEC. 7. The Auditor of Public Accounts shall, before distributing the books herein provided to be furnished to county and precinct officers, cause notice to be inserted in each book that it is the property of this Territory, and is furnished for the use of the office to which it is delivered and must be transmitted by the incumbent thereof, at the expiration of his term, to his successor in office.

SEC. 8. It shall be the duty of each county and precinct officer who receives any volume of the laws of this Territory, as hereinbefore provided, to carefully preserve the same, and at the expiration of his term of office to immediately deliver it to his successor in office; and any such county or precinct officer, who wilfully neglects or refuses to so deliver such book or books to his successor, upon demand being made therefor, shall be deemed guilty of a misdemeanor, and may be fined in any sum not exceeding fifty dollars, and the costs of prosecution.

Wood introduced the report of the directors of the insane asylum, which; on Thurman's motion, was referred to that committee, when the House adjourned.

AN APPEAL DENIED

From the Appointment of a Receiver in the Church Case.

Today the Territorial Supreme Court rendered a decision on the application for an appeal to be allowed to the United States Supreme Court from the action of the Territorial Court in appointing a receiver for the property of the Church of Jesus Christ of Latter-day Saints. The opinion, which was given by Judge Henderson, is as follows:

UTAH TERRITORY, SUPREME COURT

United States of America, Plaintiff,

vs.

The late corporation of the Church of Jesus Christ of Latter-day Saints, et al., Defendants.

The defendant corporation makes application for an appeal to the Supreme Court of the United States under Sec. 692 of the Revised Statutes of the United States from the order heretofore made herein appointing a receiver. The complaint prayed that a receiver be appointed by the Court to take charge of the property during the pendency of the suit, and a motion was made for the appointment of a receiver "as prayed in the complaint." The motion was heard upon an agreed statement of facts, it being a part of the stipulation that the facts therein stipulated should be used upon the hearing of the motion and for no other purpose whatever. At the time the motion was heard the defendants had filed a general demurrer to the complaint for want of equity. The motion was heard and granted by this Court November 5th last, the opinion of the Court being read by the Chief Justice, and reported in 15th *Pacific Reporter*, 473 This opinion recites fully the complaint and the law under which it is filed. Pursuant to that opinion an order was entered appointing a receiver as prayed in the complaint. Since that time the demurrer has been submitted and an order entered over ruling it, and the defendants have answered, controverting the averments of the complaint and averring the unconstitutionality of the law under which it is brought. A commissioner has been appointed to take testimony. This is the situation of the case when this application is made.

The statute before referred to, under which this application is made, provides that "An appeal shall be allowed to the Supreme Court from all final decrees." It is contended by counsel for the defendant corporation that the order appointing a receiver is a final decree within the meaning of this statute, while counsel for the Government contend that the order is not final but is interlocutory, and therefore not appealable. And this is the only question before us.

The right to appeal is purely statutory, and therefore depends entirely upon the construction of the particular statute upon which an appeal is claimed.

We have been referred by counsel for defendant to a large number of cases from the various states construing various statutes thereof, from which the general rule may be deduced, that under statutes allowing an appeal from final orders and decrees, in determining whether an order or decree is final and appealable, the Court will look at the substance and effect rather than to the form or the time when it is made; and in applying this general rule to orders appointing receivers, if it is found that the order finally adjudicates and disposes of the subject matter of the litigation so far as it can be done in the action, or any part of it, then it is appealable; but if the complaint brings into court a subject matter auxiliary to which the court is or may be charged with the care, distribution, disposition or application of a fund or property, and the court makes a preliminary order appointing a receiver to hold the property for it, awaiting final determination o the principal question, it is not final. And the rule has been applied with varying results according to the facts under consideration; thus in Michigan, where the rule as above stated has been repeatedly declared.

Kingsbury vs. Kingsbury, 20 Mich. 212.

Duncan vs. Campau, 15 Mich. 415.

Wing vs. Warner, 2 Doug. Mich. 288.

In applying this rule in Lewis vs. Campau, 14 Mich. 458, it was held by a divided court that the order appointing a receiver was final and appealable under the peculiar facts of that case. It appeared that the complainant had made application to the probate court to have an administrator removed for misconduct in the management of his trust; that the administrator was delaying the hearing, and pending these proceedings the complainant filed his bill praying as principal relief that a receiver might be appointed to take charge of the trust estate during the pendency of the proceedings. Upon filing the bill the court appointed a receiver. The majority of the court held that it was final within the rule, because it granted all that the complainant asked as principal relief, and was a final disposition so far as the court could make it under the bill. And in Barry vs. Briggs, 22 Mich. 201, the court held the order appointing a receiver appealable because it took from a sole surviving partner the entire assets of the co-partnership and authorized the receiver to proceed to "sell all the property and convert it into cash, and directing and commanding the defendant to transfer the legal title to the receiver," thereby divesting the surviving partner of it forever. These cases were much relied upon by counsel for defendant upon this argument.

In the Supreme Court of the United States the statute under consideration has been repeatedly construed, and substantially the same general rule has been declared.

Mining & Railroad Co. vs. Express Co, 108 U. S. 24.

Forgay vs. Conrad, 6 Howard 204.

Trustees vs. Greenough, 105 U. S. 527.

Dainese vs. Kendall, 110 U. S. 53.

In the case last cited, Chief Justice Waite in deciding the case gives a general definition of a final decree, as follows: "A decree to be final for the purposes of an appeal must leave the case in such a condition that if there be an affirmance in this court, the court below will have nothing to do but to execute the decree it has already made." In Forgay vs. Conrad, supra, the court says: "And when a decree decides the rights to the property in contest and directs it to be delivered by the defendant to the complainant * * * * and complainant is entitled to have such decree carried immediately into execution. The decree must be regarded as a final one to that extent, and authorizes an appeal to this court, although so much of the bill is retained in the Circuit Court as is necessary for the purpose of adjusting by further decree the accounts between the parties pursuant to the decree passed. This rule, of course, does not apply to cases where money is directed to be paid into court, or property to be delivered to a receiver, or property held in trust to be delivered to a new trustee appointed by the court, or to cases of the like description. Orders of that kind are frequently and necessarily made in the progress of a case, but they are interlocutory only, intended to preserve the subject matter in dispute from waste and dilapidation and to keep it within the control of the court until the rights of the parties are adjudicated by final decree." While in Trustees vs. Greenough, supra, the court held that an order directing certain amounts to be paid out to the trust fund is appealable, because to the extent of such payments the property was finally disposed of.

In the case at bar, the statute under which the complaint is brought declares the dissolution of the defendant corporation and authorizes proceedings in equity in this court to wind up its affairs and distribute its property and make assignments thereof. The complaint avers this dissolution, and the right of the Government to intervene and wind up its affairs and distribute its property. This dissolution and right to administer the defendant denies and did deny by its demurrer pending at the time this order was made, and still denies by its answer. This, then, is the principal contention and subject matter in controversy. Taking charge of the property by the court pending the settlement of this controversy is merely auxiliary to the principal question, and that it may be held by the court and delivered to whoever shall be entitled to it when the controversy is determined. The order does not pretend or purport to dispose of any part of the property or interfere with the title to it, or put it beyond the control or reach of the court or parties, but simply to hold it for them.

3rd Pom. Eq. Jur., Sec. 1236.

It is insisted that the act under which the complaint is brought declares the dissolution of the corporation, and that the distribution of the property follows as a necessary consequence, so that the validity of the act is the only real question involved, and that in passing upon the motion the court decided this question, and that it is therefore final; the counsel refer to the opinion of the court in support of this view. One ground, and indeed the principal one, urged against the appointment of a receiver, was the unconstitutionality of the law, and in passing upon the motion this court necessarily considered it and gave expression to its opinion as a reason for making the order; but it was only passed upon for the purposes of the motion. Neither the opinion nor the order made upon it constitutes the decree or final order. When the cause is brought to hearing, upon being perfected for that purpose, if the aspect of the cause has not changed, the opinion before expressed, if not changed on future deliberation, would pass into a decree and be the subject of appeal; but the court would not be concluded by the opinion before expressed. If, for example, the Supreme Court of the United States should, before this case is finally heard, make a decision in some other case pending before it which in our minds was conclusive in favor of defendant, then the decree would be entered herein accordingly. It frequently happens that on some preliminary motion the court is called upon to express an opinion more or less strong in relation to the merits of the controversy, but the order made thereon is not for that reason a final order.

Wing vs. Warner, 2nd Doug. Mich., 288.

On the hearing of the motion for a receiver, it was argued on both sides by eminent and able counsel, and the arguments proceeded upon the theory that the order asked for was interlocutory. Indeed, it was one of the grounds strongly urged by counsel for defendant against the granting of the order. Col. Broadhead, in his argument as published, in stating the question presented, said: "Whether a court of equity or a court of law, under the provisions of a statute authorizing it to take possession of the property of a defendant, to take it out of his custody before there is any determination of the rights involved in the litigation between the parties is, in the language of the books, an extraordinary remedy. * * * That the defendants have been guilty of some fraudulent acts which justify the interference of a court of chancery in reaching out the strong arm of the law and taking possession of the property before there is any determination of the rights in controversy between the parties." And the Chief Justice, in deciding the motion, said: "In deciding this motion we are not called upon to finally determine the rights of the parties with respect to the property involved in the case. Such rights will be decided as they ultimately appear." We cite these opinions as showing that it was the judgment of counsel and court at that time that the order asked for was interlocutory and not final.

We should be glad if the case was in condition to give it to the Supreme Court to determine the important questions involved, but we feel constrained to hold that the order is not appealable. The motion is denied.

Zane, C. J., concurs,

Boreman, Justice, concurs.

Upon the rendering by the Court of his decision, Mr. Rawlins asked that a date be set for the trial of the suit of the United States against the Church corporation, and also the suit against the P. E. Fund Company, as only questions of law were involved, the testimony being necessary only where other defendants were interested.

Mr. Peters opposed the request, and wanted the hearing of the case postponed indefinitely.

The matter was further argued by the attorneys, and the court set Tuesday next, at 10 a.m. for still further argument.

The Coast Scourge.

We are informed by a gentleman who has received private advices from California, that smallpox is rapidly spreading. There are one hundred and fifty cases now in the San Francisco pesthouse, and Chinatown contains a great many patients of that disease. The authorities there are keeping the matter quiet so the public will not learn the true state of affairs. The disease is gaining a foothold in Sacramento, and will doubtless scatter to the four winds. It would be well if the Ogden municipal authorities would take some action to prevent the dread scourge being imported to this city. It would spread like wildfire during the present state of the weather, and should certainly not be allowed in our midst.—*Ogden Standard.*

Probate Court.

Business transacted in the Salt Lake County Court yesterday:

In the matter of the estate of Mary A. Murphy, et al, minors; order made appointing Rhoda Murphy guardian of J. P. Murphy, minor, upon filing a bond in the sum of $1,000.

Estate of Sidney K. Hooper and Alice Hooper, minors; order made appointing time and place for settlement of guardian's accounts.

In the matter of the estate of Joseph Weller, deceased; order made appointing time and place for settlement of executor's account.

In the matter of the estate of Isaac M. Fink, deceased; claims of Mary Judels, Allen Fowler, A. E. Greenwald and Bennett Kirkpatrick, allowed and approved.

FROM THURSDAY'S DAILY, JAN. 19.

EXCOMMUNICATED.

At a session of the High Council of the Salt Lake Stake of Zion held on Wednesday, January 18th, 1888, Henry I. Doremus was cut off from the Church of Jesus Christ of Latter day Saints for contempt of said Council and apostasy.

In witness whereof I have hereunto set my hand and the seal of the High Council, this 19th day of January, A. D. 1888.

JAMES D. STIRLING,
Clerk of the High Council.

Arrests at Brigham City.

Yesterday Samuel Smith, formerly a counselor in the Box Elder Stake presidency, and Bishop Henry Tingey were arrested at Brigham City on the charge of unlawful cohabitation. They were to have an examination before the United States Commissioner there.

Arrest at Springville.

On Saturday afternoon last, January 14th, deputy marshals visited Springville and arrested W. Gallup, on a charge of unlawful cohabitation. They also subpœnaed some of Edward Whiting's family. On Tuesday evening last they made a call at G. Condie's place, but did not find that gentleman at home.

Burglary Last Night.

Last night, between 7 and 9 o'clock, Durgin's auction and commission house on Second South Street was burglarized, and a lot of jewelry stolen. The thieves helped themselves liberally to silverplated spoons, collar and cuff buttons, rings, scarf pins, watch chains, bracelets, lockets, etc., getting away with about $300 worth of goods.

Casualties.

A boy named Petersen, of the Fourth Ward, Logan, returned from the cañon a few days ago with his feet badly frozen. The right foot was the worst, it being so severely bitten that it is probable one half of it will have to be amputated. Two toes on the left foot were badly frozen.

On Saturday last, Heber Kent, of Logan, a boy about six years of age, was accidentally shot by a brother several years his senior. Heber was standing near his brother and watching him unload a 38 caliber revolver. By some unaccountable means the weapon was discharged, the bullet striking the little fellow between two of his fingers, and passing down entered the thigh at the groin, barely missing the femoral artery; it passed through the thigh and came out four inches below on the opposite side. The boy is under Dr. Ormsby's care and is doing as well as could be expected.