Published Daily, Sundails Excepted, AT FOUR O'CLOCK.

EVENING NEWS.

PRINTED AND PUBLISHED BY THE DESERET NEWS COMPANY CHARLES W. PENROSE, EDITOR. February 26, 1886 Friday POLYGAMY AND THE COMMON LAW.

IN passing sentence upon E. H. Tracy for unlawful cohabitation under the Edmunds Act, in the First District Court, on Thursday, Judge Powers delivered a long lecture which the delendant had to take as part of his punishment, although it is not included in the penalties prescribed by law. Fine and imprisonment are quite sufficient * - without the indiction of a string of fallactes, olten in the nature of a heavy " chastisement, which Utah Judges delight in inflicting upon helpless victims.

In the course of his discourse, Judge Powers | repeated a remark that has frequently been made of late . in Utah and in other places, which ex-. it. Judge Hays of Idaho hurled it at the gentlemen whom he sentenced to prison for living with their wives, We quote Judge Powers as reported in the Ogden Herald. Speaking of polygamy, and cohabitation which he defined as "the result of bigamy and polygamy," he said: 1.6

"The toffense was a crime at the common law, and consequently was always an offense in the United States. It has always been illegal."

This was advanced by way of reply to the remarks of Mr. C. O. Richards, Mr. Tracy's attorney, who showed, in a respectful and logical speech, that the offense was committed in 1883, at a time when there was no construc-tion of the Edmasds law, and no one here had any such conception of con-structions as have since been put upon the law by the courts. Judge, Power's remarks had no application to the argument of the attorney." But they do spoly to the claim that many persons the information of all offenders, what in Utah entered into the practice of they might expect if they had no prom-

plural marriage before there was any law in Utah against it. Let us see how far it meets this claim.

The law of 1863 was the first statute that made bigamy, as therein defined, an offense; against the United States. or consbitation. We take the Judge's And it| had no application outside of the Territories, and the District ald. Note how he grades the offenses. Columbia. In any State of the Union, bigamy and polygamy even in their worst, that is their really criminal form, can be practiced without violating any law of the United States. Each State makes its own laws on this matter. There is no generalj law of the land which makes something that no one seems to under-

exercise thereof." Those was entered into its practice before that time. then, violated no human law, but, as they claim and verily believe, obeyed a divine law. The endeavors of judges and others to make it appear

to the contrary, are only exhibitions of ignorance and an overweening desire to attack a people unassailable except by quibbles, misstatements and strained, partial and contradictory en the term of convicts for good con-duct, also H. F. No. 19, a bill to establish a Territorial reform school, each without amendments, and recomconstructions of laws purposely framed to ensnare them. A little common fairness would be a good thing to mix with the interpretation and admended that they be put upon their

and ministration of both statutory and common law.s
A PROMISE OR A PRISON.
Ix sentencing C. H. Greenwell on Thursday, Judge Powers was both angry and inconsistent. He had prophonomical judgment against Mr. Tracy, of six months in prisonment without fine, because he had given the officers to boundary lines between the counsilier. In Mr. Greenwell's case the defendant had given the officers to boundary lines between these two outles. The ducation had also been considered to the committee of this frequisitative Assemblies, and that the bill amending the act inscorporation of the provide the outles. The ducation had also been considered to the endowed to the committee of this frequisitative Assemblies, and that the bill amending the act inscorporation of the provide the boundary lines between these two outles. The ducation they wished, and had testified against himself at the triat? Yet he was fined \$300 as well as imprisoned for sure to the constitute for a had store the formation they wished, and had testified against himself at the triat? Yet he was fined \$300 as well as imprisoned for sure to the committee for the massare from the House was read. for six months. What for? Because he would not make any promises as to

the future. But neither would Mr. Tracy make any such promises. The only apparent reason for the difference made in the sentences, was.

More definite terms in describing the lines. A message from the House was read, announcing that they had agreed upon the report of the conference committee on C. F. No. 8, a bill pertaining to highways. Mr. Page also submitted the report of the conference committee with the amendments agreed upon, which, with the amendments, was adopted. The special order of the day, C. F. No. 35, a bill in relation to trusts, was taken up on its third reading, begin-ning at Sec. 15, and when Sec. 29 was reached the further, consideration of this bill was postponed till to-day-Friday. the irritation of the Judge at the answers of Mr. Greenwell to the questions he propounded to him, in regard to influences the Judge supposed to have been brought to, bear tourge him not to make any promises. The defendant declared, after saying he had no statement to make as to the future.

Friday. Substitute for H. F. No. 20, a bill to encourage the growth of timber, was read the third time. The first section-was amended to read "five hundred dollars," instead of "two hundred and fifty dollars" to any person who shall plant and suitably cultivate one, or more acres of forest timber; passed on the call of the roll, and the House notified. that he had not been requested or instructed to take that course, that he did it of his own free will and without fear of any consequences, or of the mauner in which he would be regarded by the community if he made such promises as the Court desired. H. F. No. 19, a bill to establish a

11. F. NO. 19, a bill to establish a Territorial reform school, was read the account time by its (tile and placed on file for third reading, II. F. No. 16, a bill too lesson the terms of imprisonment of convicts for good behavior was read the third time and passed, and the House ordered to be notified. The Judge seemed nettled by this, as if he expected to elicit from the defer-dant some admission reflecting upon the "Mormon" people. And steeling his heart against the defandant, he pronounced the full penalties of fine and Imprisonment, and announced for:

ises to make; also that the Court would be glad to extend mercy to those who would make promises for the future, whether they were charged with larceny, burglary, murder, polygamy

remarks as reported in the Ogden Har-

At 2 p.m. the House resumed the consideration of the House bill to pro-vide for a Territorial board of equal-ization of taxes. It was a special order of the day, and came up on its third reading. It was read, thoroughly de-bated and aumerous important amend-ments were mide to it. Commencing with largeny he goes up to murder, and rises to cohabitation as though in his eyes that offense stood at the head of the criminal catalogue. This punishment, which many of our brethren are undergoing simply because they will not promise to do

ing sections 578 and 579, session laws of 1384, with aminuments; recom-mended that they be printed and put on their passage; adopted. Also, from the same committee, 5.F. No. s8, a bill amending Sec. 4. Chap. 30, session laws of 1884, with amend-ments; report adopted and bill ordered printed. Also M. F. No. 11, a bill to amend Sec. 20, Chap. 19, session laws of 1880, report adopted. Mr. Sisch, from the committee on periltentiary And reform school, re-ported back H. F. No. 15, a bill to less-en the term of convicts for good conson persons are incompetent as a rule to try United States Cases, certainly they are and of right ought to be incompetent to iny Territory are closely allied to cases grow-ing out of offenses against the United States. This bill, if otherwise practical, would largely increalse the already great cost of expenses in per fdiem and mileage for per-sons who will not be employed. A reasonable economy would be fatal to this measure, as no corresponding good for the protection of acciety in any of its parts

has not the moral or legal right to join with the Legislature in any measure which fails to supplement and set in the execution of all inwa against all classes of offenders, the

BY TELEGRAPH PAR WESTERN UNION TELEOR... PH LINE.



A Big Bitesard in the Fast New York a Sen of Ice. NEW YORK, 25. The western bliz-

"New York, 26.—The western bliz-zard has reached New York. The mer-cury has fallen over 20 deg, in the pist few hours, and the streets that were deluged by rain yesterday are covered with lee to-day. The wind is blowing a gale, and it is with the greatest diffi-culty that telegraph connection can be maintaiged ather east or south. The sea in the bay is unusually high, and it is feared that the gale will prove al-most as disastrous to shipping as the great storm of Jan. 9th last. Blown From a Railway Train

H. F. No. 19, a bill to establish a Territorial reform school, was read the second time by its title and placed on II. F. No. 16, a bill too lesses the terms of imprisonment of convicts for good behavior was read the third time and passed, and the House ordered to be notified. H. F. No. 14, a bill amending saction 30, chap. 10, session laws of 1880, ap-propriating \$10,000 annually to the University of Deseret, providing fity normal pupils be admitted during fity normal pupils be admitted during two years, was read the third time and passed. Ayes 7, noes 2; absent 2; the president voting aye. Mr. Heyborae was excused on ac-connt of illness. The Council adjourned at 3:33 till 2 p.m. totoday.

Afternoon, Feb. 35, 1888. At 3 p.m. the House resumed the consideration of the House bill to pro-vide for a Territorial board of equal-ization of taxes. It was a special order of the day, and came up on its third reading. It was read, thoroaghly de-bated and aumerous important amend-ments were made to it. It had monopolized one hour and a half whes Air. West, its is ponsor, made an cloquent speech in



Do You Want Good Digestion? I suffered intensals with Full Nummerk, Menner h. etc. A neighbor, who had tak a Simmons Liter Regulator, told me it was a sure cure for my trouble. The first dogs I look ra-liced me sign much, and in one week's time I was as strong and hearty as I ever was. It is the best modificing I ever touk for Dynpap-via.

RICHMOND, VI. H. G. CRENSHAW. Do You Suffer from Constipation? Testimony of HIRAM WANNER, Chief-Jus-tice of Gn. "I have used Simmons Liver Regulator for Constipation of my Bowels, caused by a temporary Derangement of the Liver, for the last, three of four years, and always with decided bracht."

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T have had experience with Simmons Liver Regulator since 1866, and regard if as the greatest modifience of the times for discusses peculiar to malarial regions. So good a medicine descross universal commendation. REV. M. B. WHARTOM, Cor. Sec. South'n Baptist Theological Seminary Safer and Better than Calomel! A QUANTITY OF CANADIAN POPLAR and Ash trees. Enquire at the Utah and Nevada Railway Office. Safer and Better than Catometi I have been subject to severe upells of Congestion of the Liver, and have been in the habit of taking from 15 to 20 grains of calomel, which generally laid me up for three or four days. Lately I have been taking Sim mons Liver Regulator, which gave me relief worthout any interruption to bestiness. MIDDLEPORT, Ohio. J. HUGG. J. H. ZEILIN & GD., PHILADELPHIA, PA PRICE, SI.00. AMUSEMENTS. LAKE THEATRE SALT Saturday Matinee, 2 p. m.



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either bigamy or polygamy a crime The law of 1862 and the Edmunds Act tice. Penalties are for past infractions of 1882 apply to the Territories and of law, not for failure to make promhave no force in the States.

Previous to the passage of the law of 1862, which was specially framed against a part of the religion of the Latter-day Saints, there was no statutory law against a man's marrying or living with more , wives than one Utah. The laws of the Territory contained nothing on this matter, and there was no other law in force in the Territory but those of

Congress, which, like the Utah laws, were silent on the subject. -But how about the common law? We answer there was no such thing as the crime of bigamy, as defined in English

and American statutes, known to or punished by the common law. If there was, let tucse who claim its existence tell us what was its penalty. Let a case be cited in which a man or woman was ever tried and punished under common law provisions for bigamy or polygamy. If Judge Powers or Judge Hays knows of such an instance, let ... it be referred to

some ffuture sermon from the bench. Bigamy was declared as of-fense in English criminal law by the every different case. The courts are statute of James I c 11, which made it not agreed among themselves as to any felony.

It was previously an offense against anon law, that is, ecclesiastical law. but that was not common law. If that is the law to which those lecturing judges refer, it will chip a good deal closer than they would like. Biramy, it in the past, and cannot tell the canon law, was committed when a man married a second wife after the first was dead. It meant marrying two wives under any circumstances whatever, and even marrying a | be willing to bind himself by it. Will Judges Powers or Judge Hays or any other pre-tender that old - English law prevails or has prevailed here, contend that the conon law is or ever was binding in the United States? If so what about men who marry widows, and widowers who marry after the first There are men at large who are living as the Court required some time wife's decease? Senator Edmunds, durlar the debate on his new anti-"Mormon" bill, had

to meet some arguments based on ignorance of the common law. And here is what the said, as reported in the Congrassional Record.

"At the common law there was not any punishment for polygamy or biga-my at all, and therefore the common law never had any such cases to deal Amos Maycock, who has gone to the

Pen, because he would not, make Although Senator Edmands knows very little about Utah and its laws, as promises," When privately approached with propositions in regard to the fuevidenced by his provisions, to repeap Utah statutes that have no existence, It will not be contended that he does not know more about constitutional and general and common law than a \$3,000 Territorial Associate Justice. But if he is right, then the hec-toring judicial lecturers of Utah and Idaho are certainly wrong. Another point in Judge Powers' dis-

course to Mr. Tracy was this:

"The Mormon people removed from the United States into this Territory while it was a part of Mexico, but they came into this Territory subject to the laws of our sister republic, and polyg-smy was an offense spainst the laws of Mexico, then, as it is to-dag."

and Stripes on Ensign Peak, had five

stand, is unjustifiable by law or jusmade favor the bill, tice. Fenancies for the future. No court ises for the future. No court has the right to punish any d one because he will not make agree-he ments to suit the pleasure of the Court. There is not such thing in justice. There is not such thing in justice. good provisions, and he would vote for it rather than see it killed. Mr. Hatch moved to strike out, the enacting clause, but siterwards withdrew the motion, and moved to strike out the second section, which provides that the probate judges of Sait Lake, Utah, Sampete, Beaver, Weber and Cache Counties shall be the board of equalization; he would in-sert an amendment providing for the appointment of seven persons who of those gentlemen who have gone to prison because they would not give their word to do a thing which no one has a right to demand of them. They might make a promise, pass their word, even if they had no board of equalization; he would in-sert an amendment providing for the appointment of seven persons who shall be named, by the Legislative as-sembiles, for said board. The motion was carried by a vote of 18 to 9, not-withstanding Mr. West strongly pro-tested saninst it, believing is would kill the bill. Mr. King said section 2 as it now intention to keep it or consider it binding, and thus escape punishment. Some of them have been approached with inducements to "just give their word," no matter what they should do afterwards. But they preferred to make no promise in word which they might afterwards break in practice.

tested administ it, beneving it would kill the bill. . Mr. King said section 2 as it now stood made no provision for a chair-man, and he moved that at the first meeting of the board it elect a chaireven though they may have determined. in themselves to avoid any intraction man and secretary. His motion was

in themselves to avoid any infraction of the law in future. And who can tell what is the mean-ing of "obesting the law as construed by the courts?" The law has been differently construed according to every different case. The courts are not agreed among themselves as to any settled meaning of its terms. It has been rendered to mean one thing yes-terday, another thing to-day, and a different thing to-morrow. A promise to obey it in the future, when a man imagines he has been keeping it in the past, and cannot tell how many new and contradictory con-structions may yet be put upon it, would be such an uncertain thing that no one who cares for his word would be willing to bind himself by it. Whe way the law is handled, it is a puzzle and a snare, There are men condemned to-day who have nonestly puzzle and a snare, There are men condemned to-day who have nonestly. decide the bill now before them was kept the law as it was construed at

of great importance and ought to pass. He therefore voted for it, and the bill was sent to the Council for its action first by the courts. Others have kept it as they understood "its meaning themselves. But this does not count A notice of the Council's non-con-A notice of the Council's hon-con-currence in some amendments to the fish and game bill was received, and a c. nierence was asked for. Mesors. Thurber, Honston and McLadghin be-ing appointed a committee on the part

ago, but who are liable to ndictment to-day because the Court has turned a flipflap and double summersault and given a totally different construction to the law.

Ing sppointed a commune of the House. A solemn slience reigned in the House after the announcement of the receipt by the Speaker of the follow-ing gubernstorial message vetoing the There is a feature in this promise-demanding that is worthy of consideration by all who have anything to do - TEBRIFORY OF UTAH, with it. It is illustrated in the case of

EXECUTIVE OFFICE, BALT LAKE CITY, February 28, 1886. Hon. W. W. Riter, -Speaker of the Ho

promises. When privately approached with propositions in regard to the fu-ture, he remarked: "There are three others who have something to say about this. It does not rest alone with me. There are three of us interested. What will my wives say, if I am willing to break the covenants with them?" Yes; indeed. When good aud pure women, who have lived with a man for many years under covenants of marriage considered sacred by all the parties, are in danger of being thrust away as though they were pol-luted, have they no voice in what their husband shall do? They are pledged together before heaven for time and eternity, and it will be found that there are very few, men in this community

arguin ----THREE SENTENCES.

> The Fuil Penalty in Each Instance -No Promises Made.

The Chief Justice finds no "Con

quered Mormons." ...

In the Third District Court this morning,

PREST. HUGH S. GOWANS. Topele, was the first called to re-

ceive sentence from Judge Zaue, for having lived with and schoowledged his wives."

The Court asked the usual question in regard to the future conduct of the defendant, and Brother Gowans re-

ied, "I have nothing to say as to the The stull penalty of the law, six months' imprisonment in the peniten-tiary and a fine of \$900 and costs, was imposed. The next to receive judicial "clemency" was

WM.-H.-LRE uso of Tooele. His reply to the Judge's aquiry was the same as that made by Brother Gowans, sid he received the same penalty for spurning to be a cow-ard and traitor. After him came

HERBERT J. FOULGER,

ARREART J. FOULGER, of the Twenty-first Ward, and first counselor to the Bishop of that Ward. To the Court's question he replied similarly to the other brethren. Court-You do not konw what you will do in the future? Brother Foulger said he had no statement to make of his intention in that regard. In the past he had striven to do right, and to main-tain a conscience void of offense toward God'and toward all men. He had light as a good citizen, but as to the future, he did not know what he would.do. olitical satire (W. Henry Ruce Version

Court-Is it your intention to steal in

the future?. Mr. Foulger-I am not here on trial-for stealing. Court-You do not know what you FOUND,

will do? Mr. Foulger-I do not. When the

Mr. Foulger-I do not. When the witnesses in my case went before the grand jury, I told them to tell the truth, and they did so. At the triai I was sworn and told the truth. The Court then repeated its well-worn remarks about a man setting up his judgment as to what laws he would obey, cia., and closed with Sentencing Brother Foulger to the full penalty of the law. Brother Foulger to the full penalty of the law. The three brethren thus sentenced to suffer for conscience' sake were taken out to the penitentiary to-day.

lars apply to den in sti W., Fourth South St.

FOUND

COW FOR SALE.

STOLEN. BATHING TRAIN. STOLEN FROM A HITCHING POST. Tuesday Morning, one Chesnut Sorrel Horse, Saidle and Bridle, 5 years old, branded THE combined. Any one that will find it will be rewarded. W. E. GALLACHEE, Cook at Valley House. The bathing train will have the ah Central Depot for the Hot rings to-morrow afternoon, at 2:15.

Syrup of Frum

RENSEELAER, Ind., 26. - Weibern Wartens was hanged here'to-day for the murder of John Dregher, Novem-ber 4th, 1884. The murdered man lived with Wartens and the crime was per-petrated to obtain his money. The body of the murdered man was after-wards thrown into the Mississippi River.

ESTRAY NOTICE. HAVE IN. MY POSSESSION.

al MARE, 3 years This wonderful remedy will allay a fever in a single hour; a small dose taken daily will wooh cleanse the blood This wonderful remedy will allay a fever in a single hour; a simal dose taken dally will wooh Cleanse the blood of all impurities, and it is the only safe and certain cure for that common and often chronic complaint—billousness. It is rapidly making its way on its merits; and is destined to have an im-mense sale:

Ser Call and Set.

as the second of the second of

DE. SAIN'S eclaity is Diseases of the EYE and EAH Ringing in the Ears, CATARESE of His Ears, Eyes, Nose, Ehroat, and Musous Passages.

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

heir lives and affections of their souls ing against Mexico in aid of this Gov-ernment, and organized at once a pro-visional local government as part and to the men who are asked to dishonor them and cast them off. Until the courts can settle the mean parcel of the American Union. From ing of the law which they wish men to 1848 to 1862 they were not amenable to agree to keep, and can entertain some respect for the feelings of humanity, any law against bigamy, for there was none in existence that applied to them.' When the treaty of Guadalupe Hidalgo and show some sense of justice to a geople who have broken no law with criminal intent, it will be in vain that was signed, they wars not on Mexican but United States territory, and the United States had no law on this subthey will lecture and scold and berate men for their firmness, and puulsh ject until 1863. And, farther, there them with all the penalties the law was no law against polygamy that ap-plied to Utab, until March 22, 1882. permits because they, will not bind themselves by uncertain promises. Will the Judge please make a note of that?

Judge Powers, it is evident, has not studied Mexican laws in relation to parriage, or he would not perhaps be

"Mormon" people, that there was no hew against the practice of their re-ligious system of marriage until the aw against the grastice of their re-ligious system of "marriage until the Act of 1802 was passed, with a special view to operate against "an establish-ment of religion and prohibit the free ments; also C. F. No. 20, a bill amend-

THE LEGISLATURE.

COUNCIL-FEB. 25TH. so reckless in stating their application to "Mormon" plurality of wives. But we do not caro to discuss that matter now, for, as we have proven, it cuts no Agure in the question. The fact remains, as claimed by the "Mormon" people, that there was no law against the grastice of their re-induced and approved. Mr. Sharp, from the committee on Sah and game, reported that they had considered the House amendments to C. F. No. 10, recommended that they conneil should not concur, and asked for a committee on conference; report

Trow 1874 to 1884 the courts were ham-pered and prosecutions defeated by the Good juries are allow obtained under the old common law practice, which generally prevails throughout the United States, where the method presective for any rea-tion that, and which it is application in prevails throughout the United States, and the United States, and the base of a determined opposition. This bill, if it be a rightful subject of tion. This bill, if it be-a rightfal subject legislation, would inangerate a system legerdemain not easy to be understood its application. Citizens would be an moned who are compotent to serve in Unit states curses and Territorial curses, a others who would not be competent to serve in curses arising under laws of the Unit states, and who under this law might competent to serve in Territorial cases. In practical operation it would at time news the court with one set of Juryma your the "enginal box" under the faw ongress, another set moder the faw ongress, another set under the law

Serious and expensive sickness often prevented by keeping on hand bottle of Dr. Henley's Celery, B and Iron. Sold by all druggists a country dealers. DEATHS. STOUT.-February 5th, 1886, of "diplitheria. It Phonix, Arizona, Robert Ell, son of Hoses at Phe Jr., and Elizabeth Stout, aged 2 years.

Jr., and Emstern stour, ages a pro-Nice Sison - At the residence of his son, (John Nicholson) in the 18th Ward of this city, Feb, 26, 1896, of old age and generar debility, John Nicholson, Sen. Deceased wis born on the Iale of Skys, Scotland,

wishorn on the lale of Skys, Scotland, July 17, 1812. He came to Utah, Troin the city of Edinburgh, accompanied by his aged wife, in 1875, they having best seri for by their son, with whom they had resided over since. A few weeks after their arrival they were by him baptized, and con-frued members of the Church of Jasus curies of Latter day Saints. Bendes his veilerable wife-how St years old and his son John, the deceased leaves three daughters, in Scotland, and a large number of grandchildren.

From the "supplemental bor." Confusion from the "supplemental bor." Confusion crease the sost of the courts. I fail to comprehend any reason why Friends of the family are invited to attend.



alx months tree. I then went to Du abd after being under his treatmen lays my sym were comparatively well look natural again, and the inflam on is all gone. I know they are estired E. A. HUGHLERT. BER Market St., Philadelphia, Pa. Examination for Spec

connection with his practice, Dr. Sa as a specialty of examining for, and if were with specialize in a is Practical Optician, Special attention given to the fitting of digionit and children's speciacies.

Office hours 10 s. m. wr1.p. m., and 5 p. m.