

according to the number of children reported between those ages. But when the trustees disburse the amount apportioned to them, they have to do so "in paying school teachers according to the average daily attendance of pupils."

It may be inferred that this refers to the daily attendance of pupils between the ages of six and sixteen. But it does not say so, and there is nothing in the law prohibiting the attendance of children of other ages. It is open therefore to two views; one, that the money must be used for the exclusive benefit of children of the ages denoted, the other that it may be used for the benefit of all the pupils who attend, no matter what their age. And we do not think any trustees would be liable to suit at law for using, in good faith, the money placed in their hands to aid in educating all the children that attend the district schools.

It may be asked, why were these ages designated in the law? Simply as a guide to the general distribution of the school moneys among the different counties and districts. It will be seen that this was arranged according to school population, not attendance. Some minimum and maximum of age therefore had to be fixed, in order to secure a fair and equitable division of the money. When once distributed to the trustees, as provided, then those officers have it in their power, under the law—and are so required—to pay it to the teachers according to the average attendance, and it appears to us that this is the only just method by which to disburse it.

We are aware that it is thought by many that the money can only be legally paid for pupils between the ages of six and sixteen, but, as we have shown, the law does not say so, and we think there is no danger to anyone in its disbursement according to the letter of the statute. But whatever view may be taken of this part of the subject, it cannot be claimed with any hope of demonstration, that the law excludes from the district schools any child who does not happen to be of an age between six and sixteen years. Wise trustees will be more careful to do what is just and consistent, than to be provoked by those over technical persons who, while clamoring about "strict opposition to education," try to place every stumbling block possible in the way of the cause they profess to favor.

THE REYNOLDS CASE.

PETITION FOR A REHEARING.

As this case is of more than common interest, affecting not only the plaintiff in error, but a great number of his co-religionists, and having attracted general attention throughout the country, we publish in full the application of his counsel for a re-argument on a portion of the case already heard, and on a very important point not touched upon before the court, that is, the addition of "hard labor" in the sentence pronounced against him by the Judge before whom the case was tried:

In the matter of the case of
GEORGE REYNOLDS,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.
Supreme Court of United States.
Error to Supreme Court of
Utah. October Term, 1878.
No. 153.

To the Honorable the Judges of the
Supreme Court of the United
States:

The petition of George Reynolds, the plaintiff in error in the above case, respectfully represents:

1. That he is the defendant in the suit originally prosecuted in the Territory of Utah, and was indicted in the District Court of said Territory for having married one Amelia Jane Schofield while he was then already married to one Mary Ann Tuddenham, the indictment being under Section 5352 of the Revised Statutes of the United States, p. 1044, viz:

"Section 5352. Every person having a husband or wife living who marries another, whether married or single, in a Territory or other place, over which the United

States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than five hundred dollars, and by an imprisonment for a term of not more than five years; but this section shall not extend to any person by reason of any former marriage, whose husband or wife, by such marriage, is absent for five successive years, and is not known to such person to be alive; nor to any person by reason of any former marriage which has been dissolved by the decree of a competent court; nor to any person by reason of any former marriage which has been pronounced void by the decree of a competent court on the ground of nullity of the marriage contract."

2. That on said trial the prosecution offered one A. S. Patterson as a witness to prove what one Amelia Jane Schofield had testified to in a former trial of another indictment by the United States against your petitioner under the same section of the Revised Statutes.

Whereupon your petitioner objected to the introduction of this testimony, because, First, it was not competent in any event. Second, it was not shown that the witness, Amelia Jane Schofield, was dead, or that she had been kept away from this trial by the defendant, and because in any event the testimony as read by the witness Patterson, was the best evidence; but these objections were overruled by the Court, to which ruling your petitioner excepted, and the witness was allowed to proceed and testify, as will appear by printed pages 14-17, of the Record, which has been heretofore exhibited to your Honors.

Your petitioner respectfully represents to your Honorable Court that he was injuriously affected by the introduction of this testimony, and believes his trial was greatly prejudiced thereby, he having had no opportunity of cross-examining the said witness, and deprived of the right secured to him under the sixth section of the amendment to the Constitution of the United States, to be confronted with the witnesses against him.

Your petitioner begs leave further respectfully to state he is a citizen of Utah, a Territory in the United States, where a great number of people have been indicted lately for offenses under the same section of the revised statute, and that the trials of many of these cases are pending. Your petitioner therefore states on behalf of himself, and of others similarly placed, that it is of the utmost importance that they should have a fair and impartial trial, and that no prejudices which may exist against himself or other similarly situated individuals may be allowed to weigh against them in the minds of a jury, and that an opportunity to ascertain by cross-examination the real scope and effect of the testimony of the absent witness is taken away.

It further appears from the record, printed on page 10, that your petitioner was sentenced to "be imprisoned AT HARD LABOR for a term of two years."

This was a clear violation of the law. Sec. 5352 of the Revised Statutes, under which your petitioner was convicted, provided that whoever is found guilty of bigamy "shall be punished by a fine of not more than \$500, and by imprisonment for a term not more than five years."

That it was an error to add hard labor to the punishment here provided all the authorities agree.

Two or three of the more prominent ones are here referred to.

In *Daniels vs. The Commonwealth*, 7 Barr (7 Penna. St. 371), the plaintiff in error was convicted of obtaining goods under false pretences. The Act of Assembly imposed a punishment of imprisonment in the penitentiary or county jail, at the discretion of the Court. The Court below sentenced the prisoner to imprisonment in the county prison at hard labor. On appeal this sentence was held to be illegal, ROGERS, J., saying, "It is better to confine ourselves to the Act, which must be our guide in inflicting the punishment, which is fine and imprisonment without labor—the latter an addition not warranted by statute. The late venerated Chief Justice (TILGHMAN) never ventured to sentence a convict without having the Act inflicting the punishment before him; and his sentence was as near as could be in the words of the Act—an example worthy of imitation, and, if strictly observed, would save the Court some trouble, besides contributing to a more satisfactory administration of justice."

In the cases of *Commonwealth vs. Kraemer*, 3 Binn. 584, and *Bourne The King*, 7 Adolph. & Ellis 58, it was held that an erroneous sen-

tence must be reversed entirely by the Court of error.

Now it is true that this error was not specifically assigned or taken; but as it is apparent on the record, it is supposed your honorable Court will notice it in having its attention called to it; more especially is it to be considered in this application for a rehearing of the cause.

In view of the consequences, both criminal as well as social, which the decision of this and similar cases will bring, not only to the individuals accused, but also to their families and their children, your petitioner humbly asks of this Honorable Court for a re-argument of the above mentioned cause, or of such exceptions as relate to the admission of the testimony alleged to have been given by Amelia Jane Schofield on a former trial of a different indictment, to wit: the 11th, 12th, 13th, 14th, 15th, and 16th assignments of error; and on the question of the illegality of the sentence.

GEORGE REYNOLDS.

BEN SHEEKS,

G. W. BIDDLE.

Of Counsel with Petitioner.

Local and Other Matters.

FROM FRIDAY'S DAILY, JAN. 24.

Call for It.—There is a message in the Western Union Telegraph office for John M. Odenheimer.

Y. M. M. I. A.—Notice is given that the 11th Ward Association has changed its time of meeting from Tuesday to Monday evenings. Also the 4th Ward from Thursday to Wednesday of every week.

Any association changing their time of meeting will please notify Jos. H. Felt immediately.

Chicken Stealing.—Four persons were arrested yesterday for being concerned in a suspicious transaction with some chickens. At the examination in the afternoon one of these persons was discharged, the others being required to appear this morning, when, to the satisfaction of Justice Pyper it was proved that they were guilty as charged. One was discharged on account of an informality in the proceedings in his case, and the others were fined.

Mrs. Judge McKean Dead.—Mrs. Kate McKean, widow of the late ex-Chief Justice McKean, died of heart disease, at her residence, in the 7th Ward, about half-past one o'clock this afternoon.

She had been attending Mrs. Gilchrist, a sick lady living next door, during the night, and came home this morning feeling usually well. After eating dinner, she complained of a pain in the heart, and within two hours afterward succumbed to an attack of the disease stated.

The Supreme Court.—Proceedings of the Supreme Court of the Territory, on Thursday, Chief Justice Schaeffer and Associate Justices Emerson and Boreman on the bench.

Thomas McLellan, administrator of the estate of Charles Roper, deceased, respondent vs. Jas. L. Dickinson, et al., impleaded with others, etc., appellants. This cause was further argued, submitted and taken under advisement.

Erwin Davis, respondent, vs. Flagstaff Silver Mining Company of Utah (limited) et al., impleaded with others, respondents. Arguments in the case were in progress.

Court adjourned till this morning at 10 o'clock.

FROM SATURDAY'S DAILY, JAN. 25.

In Great Britain.—The following dispatch from New York, concerning the arrival of the missionaries, of whom Brother Geo. H. Taylor was one, was received yesterday:

"The Wyoming, with ten missionaries, arrived at Queenstown at 10 o'clock this morning."

Lost.—Some people who were traveling in a wagon down the State Road, lost, by some means, a square, a kettle and a number of other things. The owners are aged and poor, so that the loss to them is considerable. Will the finder please return the articles to this office?

Land Survey.—Salt Lake City, January 24, 1879.—Filed to-day in the local land office, in this city, one plat with descriptive list of an additional subdivision survey in township No. 1 north, range No. 1

east; by Adolphe Jessen, United States deputy surveyor.

FRED. SALOMON.

United States Surveyor General.

Museum.—Several numbers of the Salt Lake Mining Gazette, published in 1873, and of the Real Estate and Mining Gazette of 1875 have been received from H. L. A. Culmer, Esq. Also a very curious Indian implement made of variegated sandstone presented by Hon. C. C. Rich. A red sandstone Indian tool has been sent up from Parowan, by Mr. Henderson of Parowan, but no history of the same has been sent with it. The curator of the Museum will feel obliged by a statement of such facts as are known respecting curiosities and Indian relics contributed, so that they may be properly recorded, and credited to those who have assisted in adding to the interest of the Museum.

Copies of the Paleontologist have been also received from A. P. James, Esq., Cincinnati; the fossils of Logan Cañon would be examined and reported on by Professor James, as he appears to make a specialty of the silurian rocks.

County Educational Meeting.—The third meeting of the Salt Lake County Educational Association convened in the University building, at 11 a. m., to-day, President T. B. Lewis presiding. After the usual opening exercises, Bishop E. D. Wooley, Trustee of the 13th District, addressed the meeting on the subject of school houses, and offered other interesting remarks on education, duties of trustees and their supporters; he animadverted on the undervaluation of home educated teachers, and deprecated the use of school house for any other purposes than those for which they were erected.

Miss Rebecca Mantle, from the 38th District (Taylorsville), then gave some excellent ideas on the teaching of reading.

Mr. Alma Kendall, of the 11th District, illustrated to some length, in a clear and detailed manner, his method of teaching grammar.

The meeting was well attended, and with the exception of being a little too long, proved very enjoyable to all present.

The next is set for Saturday

February 1, at 11 a. m., in the 12th Ward Assembly Rooms.

Brigham Young Academy.—We are enabled, through the courtesy of a Provo friend to report some items in connection with the last examination held in the Brigham Young Academy, on Friday the 24th inst. These examinations are held at the end of each term, without any particular preparation, the proceedings being merely the regular exercises of the day, so arranged, of course, as to show the progress and proficiency of the pupils. The result of Friday's examination was in every way satisfactory to the visitors, the teachers and the students themselves. The exercises began at 8.30 a. m., and lasted, with an hour's intermission, until 3.30 p. m., the latter part of the time being occupied in short speeches from President Smoot and Judge Dusenberry. The academy has now a total membership roll of two hundred and fifty students.

The new term, which begins on Monday next, will open with fairer prospects than has any previous one. With it will commence, in connection with the academy, a musical department, under the supervision of Miss Susie Young. A room will be fitted up with various musical instruments where the students can have every facility for acquiring a thorough knowledge of vocal and instrumental music, and other improvements are continually being made. The success of the academy, our informant states, is assured, and the foundation for usefulness already laid cannot be shaken.

Success to the Brigham Young Academy and all other rightly managed educational institutions!

FROM MONDAY'S DAILY, JAN. 27.

PRIESTHOOD MEETING.

A meeting of the Priesthood of the Salt Lake Stake of Zion will be held in the Fourteenth Ward Assembly Rooms, at 11 a. m. on Saturday, February 1st, 1879.

A general attendance of the Priesthood of the Stake is requested.

ANGUS M. CANNON,

DAVID O. CALDER,

JOSEPH E. TAYLOR,

Presidency of the Stake.

Postmasters Appointed.—H. Dewsnip has been appointed postmaster at Deseret, Millard County, Utah, and W. H. Reynolds has received the appointment for the office at Hayden's Ferry, Arizona.

Burglary.—The two men, Charles Smith and Albert Caine, who were arrested for robbing the till of Hill & Trewela, proprietors of the Wasatch saloon, on Friday night, had on examination before Justice Pyper to-day. The evidence was all given and the arguments were being offered when we went to press.

Died from Injuries.—Our Brigham City correspondent A. C. sends us the particulars of the death of Brother Wilford Campkins, of Three Mile Creek, Box Elder County. While at Corinne with a load of hay, Brother Campkins stepped into a store, leaving his horses and wagon in the street close by. While in the store he was informed that the horses were starting to run, and stepping up to their heads quickly, trying to hold the animals, he was knocked down and run over by them, and the two wheels of the wagon passed over his body, causing serious injury, from which he died on the 24th inst at 9 o'clock, in Corinne. Deceased was about thirty years old, and leaves a wife and three children to mourn his untimely death.

Quarterly Jubilee.—Yesterday afternoon, the 17th Ward Sabbath School held its regular quarterly review or jubilee.

Among the visitors present were Superintendent Geo. Goddard, with his assistants Wm. Willes and Samuel Evans, Bishops Robert T. Burton and John Henry Smith, Dr. John R. Park, Professors T. B. Lewis, O. H. Riggs and J. B. Toronto. The exercises were conducted by Superintendent James Dwyer, and consisted of class recitations, declamations, readings, songs and choruses, all of which were of a very meritorious character. During the meeting, appropriate addresses were made by Elders Goddard, Evans and Willes, and by Bishop Smith. The jubilee lasted a little over two hours, and was very enjoyable and interesting throughout.

Owing to the lateness of the hour, the programme was not completed, and the exercises will be given next Sunday at two p. m.

'Enquirer' Items.—An attempt was made last Tuesday evening to burn certain buildings in Payson occupied by the co-operative store, and by Pomeroy & Greer, druggists. A gentleman who was passing at the time succeeded in tearing off a blazing shutter, and soon extinguished the flames. An examination of the premises revealed the fact that kerosene oil had been freely distributed over the woodwork, and only the fortunate appearance of the gentleman prevented a disastrous conflagration, as the theatre, titling office, lumber yard, besides dwelling-houses and barns are in close proximity to the scene of the flames. It is undoubtedly the work of an incendiary, who is still at large.

A warning is given to the good people of Utah County to beware of certain swindlers, who it seems are quite common in that part of the country. The Enquirer exposes them with the severity they deserve.

Ogden Items.—Professor L. F. Monch has returned from a trip through Morgan and Summit Counties, where he visited some 18 different schools, and held the same number of public meetings. His object was to see the condition of the schools, and to consider, with the trustees and leading men, the best means of increasing and improving the present facilities for education. Owing to the extensive loss of the crops in these counties, from grasshoppers and frosts, such improvements as were intended have not been made, though with their unfortunate circumstances the people have done very well.

On Saturday a man who has been in the police court for attempting to burn his house, was again arrested for breaking a bottle of oil of vitriol over the head of a boy, the latter being badly burned, and the man himself being almost blinded. He was intoxicated at the time, and the Junction, from which we learn the foregoing items, wisely suggests that when under the influence of liquor he be cared for, as he at such times seems to be almost crazy.