

BY TELEGRAPH

FEB. WESTERN UNION TELEGRAPH LINE.

AMERICAN.

WASHINGTON, 27. — Col. Isch, Chief of the Bureau of Engraving and Printing, died to day of paralysis of the heart.

The House elections committee to-day, by vote of 8 to 1, adopted a resolution providing for seating Sessions and unseating Frost, as Representative from the Third District of Missouri.

The Marquis of Lorne occupied a seat in the members' gallery of the House to-day, while McKinley, of Ohio, was speaking on the degradation of labor in England. Speaker Keifer sat by the Marquis, who left the gallery of the House upon the conclusion of McKinley's speech, and was conducted by the Speaker to a room in the rear of the hall of Representatives, where an informal reception was held. Members of the House committee on foreign relations were first presented; then members generally. The visitor complimented McKinley on his speech, and in a few minutes they stood talking, some allusion was made to the effect of the tariff system upon Canada. From the House he was conducted by the Sergeant-at-arms to the floor, where an informal presentation of senators took place.

Plumb was speaking on the tariff while the introductions were going on, and after half an hour's conversation, Lorne and party left the Capitol.

After leaving the capitol, the Marquis of Lorne, accompanied by his suite and the British minister, called upon the Secretary of State, who has been for some days past and still is confined to his house by a severe cold. The interview was quite extended, during which the Secretary presented the ladies of his family. The Marquis subsequently attended the reception of Mrs. McElroy, the President's sister, at the Executive Mansion. At 7.30 p.m. the Marquis left the Legation and was driven to the White House to meet the President at dinner. Elaborate preparations had been made. The parlors were tastefully decorated with flowers and tropical plants, while the state dining-room received more than usual care in its adornment. In the centre of the table was a large Indian canoe of purple and white carnations, resting on a large mirror rimmed with California lilies, roses and smilax. At either end of the canoe were miniature Canadian sleds formed of crimson flowers, while at the ends of the table were floral designs representing lacrosse clubs and snowshoes. The guests began to arrive at 7.40, and were received in the east room by the President and Mrs. McElroy. At 8 o'clock the marine band struck up "Hail to the Chief," and the President, with Mrs. Frelinghuysen, led the way to the dining room. The Marquis of Lorne, with Mrs. McElroy, followed, and were seated at the table vis-a-vis to the President and Mrs. Frelinghuysen.

The dinner was an elaborate one of 14 courses, and the guests sat late. To-morrow evening the Marquis will be entertained at dinner by Gen. Sherman.

The commissioner of the General Land Office has dismissed the protest of William McGarraban against the issue of a patent to the New Idri Company for the Rancho Panoche Grande of California, after hearing elaborate arguments in the case. The commissioner's decision holds invalid any claim to mines under the Panoche Grande private land claim.

Thu chances for the passage of the tariff bill are regarded greatly improved since the beginning of the week.

Commissioner McFarland has directed the issue of patents under the mineral laws for the Santa Rita mines in New Mexico. These mines were worked formerly under the mining laws of Spain and Mexico, but were subsequently abandoned and have since been relocated by citizens of the United States under the mining laws. The claim set up in opposition to the mineral claim was that mining privileges under the Mexican laws constitute property rights, that are protected by treaty stipulations. The Surveyor General of New Mexico declined to recognize the claim, and reported that no evidence of the grant or title from the former government had been presented to him on the part of the Mexican claimants.

The Chinese Minister gave a dinner party to-night to 290 guests. The decorations of the Mansion were strikingly elaborate and beautiful. The guests included both Senate and House committees on foreign affairs, members of the Cabinet, Diplomatic corps and other distinguished guests.

It is probable that when the question of the abrogation of the Hawaiian treaty comes before Congress, a proposition for the annexation of the islands will be made by some of the Southern Senators in favor of annexation. Senator George said he not only wanted the United States to acquire all the territory on the continent, but to reach out into both oceans, and take possession of the islands that naturally belong to us. Senator Maxey thought destiny pointed to the acquisition of every foot of territory from the North Pole to the Isthmus of Panama. Senators Jones and Kellogg would take all the land within reach of our very long fingers and grapple it to our hearts with hooks of steel.

NEW YORK, 27.—Another explosion occurred to-day in the steam heating company's pipe, at the corner of Broadway and Maiden Lane, severely injuring two men and damaging property in the vicinity to a considerable extent. These explosions are causing much excitement, and citizens are talking earnestly about legal proceedings against the company.

Wabash, Ind., 27.—Last night the express train on the Wabash, St. Louis & Pacific line struck a broken rail, and the chair car and sleeper went down a 40 feet embankment. Eight persons were in the two cars; nonseriously injured except parties in the sleeping car. The wounded were brought here. Their names are M. Knight, general freight agent Wabash line, St. Louis; C. E. Whitman, St. Louis; A. W. Colton, Toledo; N. J. Gail, St. Louis; the porter's name not ascertained.

Raynham, Mass., 27.—The body of Aconiram Logard, workman, was found in the woods near here, frozen stiff, both feet tied to a sapling. Under the corpse was found a revolver. Fogard has been missing since the 1st of November.

Allentown, 28.—There was a cave in this forenoon at Jonas Metzger's ore mine, operated by the Hokenakus Iron Company, near here, killing Elias Hunsberger; William Metzger, caught in the debris, is still alive, though probably the rescuer's can't reach him to-night.

Shreveport, 27.—Last night the steamer *Silver City*, six miles below here, swamped a skiff in which was Alexander Morton, wife and son and Tom Edwards, all colored, all drowned, except Morton's son.

Atlanta, 27.—The building containing the Masonic Hall and stores of W. A. Pipe & Proctor, dry goods, burned, with stocks. The adjoining store of Roberts and Sanders was destroyed, with most of the stock, loss \$65,000; insured.

Winooski, Vt., 27.—Later. It is now said the loss by fire will reach \$200,000. The Central Vermont had ten loaded freight cars burned. Cause of fire, hot boxes on the wrecked kerosene oil car. The village water system proved utterly inadequate, only one steamer being available. The fire is still burning.

NASAVILLE, Tenn., 27.—The accountant finds the deficit of M. T. Polk, late State Treasurer, \$262,000.

Chicago, 27.—Matamoros, Mexico, special: A party of bandits led by Jesus Banacos were attacked near San Juan Jalisco yesterday by rural soldiers under Capt. T. Lemon. A desperate fight ensued; the bandits were defeated, having 11 killed; six soldiers were killed, including a brother of Capt. Lemon.

Cincinnati, 27.—Midnight—Four men, all Kentuckians, residents of Covington, had a shooting affray on the sidewalk corner of Race and Longworth streets. John Grumer, saloon keeper, was slightly wounded. A ball from his pistol took effect in the left breast of Bob Elliott, glass blower, inflicting a mortal wound. Billy McCarty, one of the combatants, was slightly wounded. Only four shots were fired. Arrests have been made.

NEW YORK, 29.—The *Journal* says a reporter visited Isaac P. Chambers, one of Vanderbilt's invited guests for the trans-continental trip, and was informed that Vanderbilt decided on Saturday morning to postpone his trip. He said Gov. Stanford had advised him to postpone the trip until the foliage appeared; that it was very disagreeable traveling now, and that the Governor did not think he would enjoy it very much, consequently the trip will not occur until spring and perhaps

not then, as Vanderbilt goes to Europe early in the spring, and if it should take until April 5th to complete it Vanderbilt would not be able to go to Europe at the usual time.

A Salem, Mass., special says: Chas. Derby, the alleged leper at the Alms House, is failing slowly but surely. He is kept isolated from all other inmates and has an attendant whose duty it is to wait on him alone. One of his eyes is completely sightless and the other is gradually becoming so, everything appearing hazy or smoky. He sleeps and eats well, but his voice is hoarse and husky. He declares his disease is not leprosy at all, but of another nature, contracted some six or seven years ago. He says that he is himself perfectly familiar with leprosy in all its stages, having been in a hospital in California and that in every instance it commences on the hands and on the little finger, that the finger loses its flexibility and becomes numb. Dr. Marchfield, a Frenchman from Worcester, has seen him and claims that the case is simply a skin humor peculiar to the South Sea Islands, and curable. He claims to be a relative of Ricord, of Paris, but brings no testimonials with him. He says he can cure Derby. The city physician, Goodall, has charge of the case at present.

Jesse Seligman, head of the Seligman House here, is reported in the morning papers as saying that American finances were never in a better condition. The country is full of money and its prosperity now is genuine, not fictitious. We are conducting our home improvements with home products, and American credit stands at the head of the list among foreign and home capitalists. I have always had great confidence in American investments. The investments are all up to expectations and have been very fortunate. I have not lost faith in the rapid extension of railroads. They have done more to build up the nation than you may suppose. The resources of the country have been brought into the market and have been opened up by those new roads. Immigration has followed every line as branches were extended west and south. Stock speculations are having less and less power over the actual monetary and commercial conditions. The finances of the country are in such a position that I do not think Wall Street can create such disturbances as it once did. The violent fluctuations in the value of stocks do not upset the real stability of our banks. We have profited by the experience of '73, and are now prepared for a rainy day.

James Seligman said: "I think with my brother that the general outlook of the country is very favorable to a large spring business among the banks, merchants, manufacturers, farmers and people generally. Our correspondence reports more favorably, and loans have been coming back to us that were sent out last fall. There is a large amount of home capital looking for investment."

NEW YORK, 29.—Behr Brothers piano factory damaged by fire; loss, \$75,000.

OKEMOS, Michigan, 29.—In Bath township, Clinton County on Friday night, Davis Clark, a farmer, was shot and instantly killed by his wife. The parties have lived unhappily for some years, often coming to blows. The murderess was arrested immediately afterwards.

BRIEF TELEGRAMS.

Lincoln, 27. — Vote for United States Senator—Bond 23, Saunders 16, Thayer 15, Millard, Cowen and Stickel 14, Manderson 8; balance scattering.

Omaha, Neb., 27.—The Senatorial ballot at Lincoln to-day resulted as usual; no change in the situation, nor will there be until next Tuesday. On Monday evening the republican caucus will meet again. Seventy-one republicans will participate. Secret balloting is to be allowed, and the candidate receiving forty-eight votes is to be the choice of the caucus. The secret ballot is a big point gained in favor of Millard.

Pittsburg, 27.—Herr Most delivered an incendiary address to a small, irresponsible audience.

Washington, 27.—Acklen has decided not to contest Kellogg's election to the next House.

Rochester, 27.—Lewis Seave, ex-Congressman, is dead.

MANDAMUS.

THE WEBER COUNTY PROBATE JUDGESHIP.

ARGUMENT OF COUNSEL FOR THE INCUMBENT.

The case of James N. Kimball vs. Franklin D. Richards decided by Judge Emerson in favor of the former, is now pending in the Supreme Court of the Territory. Mr. Kimball was the Governor's appointee, Judge Richards is the occupant of the office of Probate Judge for Weber County. Following is the brief of Richards & Williams, which we consider a conclusive argument and worthy of general perusal. We cannot publish it in full in one issue of the NEWS, but will issue it by instalments:

In the Supreme Court of Utah Territory.

James N. Kimball, Appellee, vs. Franklin D. Richards, Appellant.

I.

This case is disabed of any question as to polygamy or bigamy, because there is no charge of such made in the plaintiff's complaint; not a single fact is stated or charged from which the Court can determine that such offense was ever committed by the appellant.

The only allusion or charge is in the following language, and found on page 2, printed record—

"That on said first Monday in August, 1882, and at all times hereinafter stated, as plaintiff is informed and believes, and upon such information and belief so charges the fact to be, said defendant was a polygamist and not entitled to hold said office of Probate Judge."

But for the apparent overlooking, this important defect by the able Judge who tried the case below, no further remarks would be made on such a patent defect, but circumstances seem to demand more attention to it than counsel first thought necessary. To charge a man with being a polygamist is the statement of a conclusion of law, and not the charging of the facts essential to show the offense. If this had been an indictment instead of a complaint in mandamus, would any Court hesitate to say that no offense was charged, or that not a single fact from which the Court could determine that an offense had been committed, was stated?

Greenleaf, in Vol. 3, on Evidence, sec. 203, eighth edition, says: "This offense consists in having a plurality of wives at the same time," and in the next section he says: "The indictment states the first and second marriages, and alleges that at the time of the second marriage, the former husband or wife was alive."

In Boynier Law Dictionary it is defined thus: "Polygamy—The act or state of a person who, knowing that he has two or more wives, or that she has two or more husbands, marries another."

And he defines: "Bigamy.—The wilfully contracting a second marriage when the contracting party knows that the first is still subsisting."

But, as said by writess and Courts, these terms have now, by common usage, become convertible.

In law, therefore, no man is a bigamist or polygamist unless he contracts a second marriage whilst a former one is subsisting, and the fact of this former marriage, and that it still subsists, must be shown in the pleadings.

Philologically, a man need have no wife to be a polygamist, for if he believes in, and justifies it, he comes within the definition.

Webster, in his Academic Dictionary, defines: Polygamist.—One who practices or justifies polygamy."

Can any Court determine whether the pleader, in this instance, used the term in its legal or philological sense and, if the latter, whether he meant that defendant practiced rather than justified it?

II.

But under the several acts of Congress, known as the act of 1862, and the Edmunds statute, approved March 22d, 1882, other essential facts must appear.

Previous to the enactment of July 1st, 1862, the United States

had no law against bigamy in any Territory or place over which it has exclusive jurisdiction and, as a matter of course, under the United States Constitution forbidding the enactment of any *ex post facto* law, this statute of 1862 was made prospective and not retrospective in its operation; its language applies it to only future marriages; it could not constitutionally, have retroacted upon past marriages. Its language is: "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."

Under this statute there are three essential facts, all of which must have occurred to make the offense.

1st—The accused must have a previous legal wife.

2nd—The marriage complained of must have occurred since July 1st, 1862.

3d—It must have occurred in a Territory or place over which the United States have exclusive jurisdiction.

Neither of these facts, much less all of them, are set out in the plaintiff's pleading.

The Edmunds statute, which is an amendment to the act of July, 1862, is still more specific; its language is: "Every person who has a husband or wife living, who, in a Territory or other place over which the United States have exclusive jurisdiction, hereafter, marries another, etc., is guilty of polygamy." Thus explicitly making it prospective as to this crime.

And with this express prospective operation provided in the first section, the eighth section says: "That no polygamist, bigamist, or any person cohabiting with more than one woman; * * * in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any Territory or other place, or be eligible for election or appointment to or be entitled to hold any office or place of public trust, etc."

This section applies to all the Territories, etc., and in harmony with the first section uses terms denoting a prospective operation and not a retrospective one, for as it added new penalties, disabilities, etc., it could only escape the constitutional denunciation against *ex post facto* laws by a prospective operation. The disabilities attach to persons "cohabiting" with more than one woman, not that has cohabited; therefore, before any disabilities could attach under this amendment to the statute of 1862, it is essential that either a forbidden marriage, or the forbidden cohabitation should have occurred since its approval, March 22d, 1882.

Even had this clear indication of the intention of the enacting power been wanting or not found in the statute, still courts always give a statute only a prospective operation unless a retroactive operation clearly appears, even when there is no constitutional barrier, as there is here.

Wade, on Retroactive Laws, sec. 34, says: "One of the cardinal rules by which Courts are governed in interpreting statutes, is that they must be construed as prospective in every instance, except where the legislative intent that they shall act retroactively is expressed in clear and unambiguous terms, or such intent is necessarily implied from the language of the statute, which would be inoperative otherwise than retroactively."

And a very long list of concurring authorities are referred to. This Edmunds statute manifest, by its language, a clear legislative intent that it should have a prospective operation but were it otherwise, were those prospective words eliminated. Still, neither expressly, nor necessarily impliedly, would it appear that a retroactive operation was intended, and if it did it would clearly render the statute unconstitutional as *ex post facto*. See Wade on Retroactive Laws, sec. 273.

This direct point as to office, came up in the Appellate Court of New York, 58 N. Y., 303, People, *ex rel.*, vs. Green, the relator being a deputy clerk of the Court of Special Sessions, and who was subsequently elected to the General Assembly, after which the city charter was amended, making the offices incompatible, and the question being whether said amendment vacated his office of deputy clerk, Chief Justice Folger, for the Court, says: "The point made by the appellant, that section 114 of the last charter of the City of New York, operates