turity. The people have grown wiser and better; civilization has made great progress; the age has become more enlightened, and the changes are seen of the criminal jurisprudence in every country that is civilized, the forfeiture of estate, manifestly wicked and unjust to those who are connected by blood after the offender has been done away with, the corruption of blood upon innocent children, has been abolished; taking away the dower of his innocent wife, unjust and wicked as that was, it has passed away in the light of the present day. The character of the offense remains the same; the man is just as criminal and wicked; the crime is just as subversive as it was at common law; in other words the offense

REMAINS THE SAME.

Murder is the same to-day as it was in the days of the common law, or as it was in the days of Abel. The offense is the same, the wickedness, turpitude just the same. The man who commits it is just as bad, and the effects upon society are just the same; but those particular consequences which classed it as a particular kind of offense have all passed away, leaving only the offense and its punishment, which is only in part what it was at common law. Polygamy, which is called a misdemeanor, in the federal statutes, was a capital felony in the reign of James the First; and prior to that time it was a capital crime in Sweden, but the punishment has been mitigated; its cruelty was too apparent, it could not stand in the present day, it could not be subjected to the criticism of the enlightened conscience of this nation; but the crime remains the same. It is the same offense. It is just as detrimental to the peace and good order to-day as it was in the year 1650; and the offender is just as criminal to-day as he was then, only the consequence is not the same, and the punishment is not the same. In that day a man charged with the crime of

POLYGAMY OR BIGAMY

might be shot to death by the officer holding the warrant for his arrest if he failed to surrender. Why? Because it was a high crime and a misdemeanor, and it was necessary for the State that its laws should be enforced, and it could only be enforced by trying and punishing the offender. So in this respect, if your honor please, we have grown out of the common law; and this question is not to be determined under the *United States* laws now as it was to be determined at common law. I conclude that if the offense is punishable under the Federal statutes by imprisonment in the penitentiary, with or without hard labor, or in the county jail or common jail, because there is no special statute requiring imprisonment in the penitentiary (the words used are "jail" and "penitentiary" all through the Federal legislation)—I conclude that such an one is within the rule laid down by Hawley and Blackstone, that is, if one charged with such an offense against the laws of the United States and knows it; resists the officer who has a warrant; or if he turn and flee with the intention of escaping, or if having been arrested or subjected to the physical control of the officer, he then escapes, he takes his life in his own hands, and if it be necessary the officer may shoot to take him; and it is time that it be said in this public way, and that this court should say in this public way to all those misguided people throughout this section of this country that their teachings are in error, that they have not the right to

FLEE FROM ARREST

of these offenses, it can only tend to bring them suffering and sorrow and shame. If I were to be called upon to send my voice through these settlements, and feeling that they would pay attention, I would say that it was the duty of every person within the jurisdiction of the United States, whether he be a citizen or an alien, when he knows of an offense charged against him by indictment of the grand jury and a warrant is out for his arrest, he should surrender. It is the duty of every man to surrender when he knows that there is a warrant out for his arrest, and it is as much the duty of every man to assist in the arrest, as much so as to leave his home and enter the armies of the United States to defend the nation upon call; and there is no justification to be found in a citizen fleeing from an officer who seeks to arrest him. I do not mean to say that there is not a question of fact in every case. There is in this case. I am only discussing now the question of law, whether or not there may be a case in which the officer may kill to take. Of course it must be necessary; and must not recklessly nor negligently nor wantonly abuse his power. Human life is too sacred to be trifled with in that way. But if it is absolutely necessary to shoot in order that the offender may be taken, and that question is to be determined by the jury in each case, I say that the law justifies it and authorizes it. He carries with him a warrant of the court. It commands him to arrest or bring the body of so-and-so. There is something more than the seal of the court attached to the warrant. It is the

MAJESTY OF THE LAW

represented by sixty millions of people, before which it is the duty of every man to bow. It is his duty to submit. It is the duty of the officer to take him. He is guilty of a crime if he does not take him if he possibly can.

This question may also be viewed from the standpoint of the Territorial compiled laws. In my own judgment, however, I do not concede that the Territory of Utah can, by its Legislature affect this question at all. It is true we have got a statute which authorizes an officer attempting to apprehend an offender against the Territorial laws, if he be a felon, to kill him, if it be necessary, to take him. There are over 40 cases in a list which my associate Mr. Zane has collated from the Territorial statutes, where an offender might be charged with a felony and yet the consequences if he were convicted be that he might be punished by imprisonment for only a day, and yet the officer would be authorized to kill him if necessary to accomplish his arrest. As I said before, it is the duty of every man to surrender or submit to the law; but I do not admit that this statute can control nor is there an application in the consideration of this question. The Territorial Legislature may do away with the statute, they may repeal it and they may enact that in no case shall a peace officer use force in the apprehension of a felon or persons charged with crime. If you admit that it has an application in one case, you admit the power.

I DENY THE POWER.

I say they cannot legislate away the right of this government to enforce its own laws in its own Territory. an analogous case was presented to the Supreme Court many years ago, the case of the United States vs Reid, 19 Howard, page 180. The question there is one of evidence: "But it could not be supposed without very plain words to show it, that Congress intended to give to the States the power of prescribing the rules of evidence in trials for offenses against the United States. For this construction in effect would place the criminal jurisprudence of one sovereignty under the control of another. It is evident that such could not be the design of this act of Congress and that the statute of Virginia was not the law by which the admissability of Clements as a witness ought to be decided." And so I say here, it cannot be supposed that the Territorial act in relation to the justification of an officer is to control and bind the court in a case where a United States officer is engaged in serving a process and in enforcing the United States law, where the court is sitting by express terms of an act of Congress with all the powers of a circuit and district court of the United States. But if it were, I may say that the understanding that we now have as to the class of crime that it is intended to cover, felony being simply a descriptive word, was to include all crimes which are followed by punishment in the penitentiary, it would

INCLUDE THIS CRIME,

because it is followed by that punishment which is *infamous* within the meaning of the act of Congress. So I say to the court that in my judgment—and it is my duty to say it—as the prosecuting officer of the court, that this jury ought to be instructed that the law is where an officer is armed with a warrant charging the offence of unlawful cohabitation under the laws of the United States against a man, that if the man flees and attempts to avoid arrest he may take him; and *if it be necessary*—there is the important qualification—to take him in order to prevent him from getting away, he *may*, not *must*, kill him; and he is justified. Accompanied with the instructions ought to be that the burden of proof is upon the officer to show the justification, unless the proof on the part of the prosecution tends to show it; that he should prove by preponderance of evidence and that the jury should be instructed that they must find it by a preponderance of evidence; which, if they do upon the law of the case, it would be justification.

I do not know whether my Brother Williams disagrees with my proposition or not; but this was the proposition that I submitted to the court as being what I deemed to be the law.

ADDRESS TO THE JURY.

Gentlemen of the Jury—It will be unnecessary for me to address you at any great length. You have listened and are, I think, able to determine this case. You understand what the prosecution consists of in this case, which is a matter of law. They cite that under certain circumstances the officer armed with a warrant may be justified in killing the person he seeks to arrest. This rule of justification, however, must not be applied recklessly, nor should the jury pass over it lightly. It is not our duty to pass over it lightly; human life is too sacred. The law entertains and treats it too dearly for anything like that. The question of necessity is a serious one. It is a matter to be determined as one of fact, which involves the consideration of many questions. It is not alone the word or the belief of the officer that is to guide the jury, as I understand the law. He must be guided by circumstances himself, it is true; but they must be such as would warrant an ordinarily prudent, careful, cautious man, without malice in his heart, actuated only by the desire to do his duty. And the jury is to so determine from all the evidence in the case where a justification of this kind is set up whether he did so act. Now the facts in this case are that on the 15th day of December, the defendant being a deputy United States marshal, was armed with a warrant from this court issued him to arrest Dalton, who was charged by an indictment of the grand jury of the crime of unlawful cohabitation, an offense against the laws of the United States. The defendant left Beaver and went over to Parowan for the purpose of taking him. It is also indicated in the testimony that upon the meeting of Dalton and Thompson,

DALTON WAS KILLED.

These are facts that are not questioned. The question recurs now whether or not Thompson was justified in the sense that it was necessary—necessary to shoot at Dalton in order to take him; because, as I view it, it is immaterial whether he intended to shoot over him or not, if he did not have the right to shoot, it would be criminal for him to shoot over him, for he took the chances of hitting him. I take it that the law is that if he had not the right to shoot at the man, he had no right to shoot over him to scare him, because if he hit it would be criminal. He could not shield himself from the consequences of his mistake by saying, "I did not intend to hit him;" because the answer would be that he had no right to take the chances. If my view of the law is correct, it is immaterial in this case whether he meant to hit or not, if he had the right to shoot. He did hit him; and I discuss the case to you upon the assumption that he shot to hit him, because in either case to justify Thompson you must find that it was necessary to take him to shoot at him. Now, the evidence is conflicting in some degree as to how the horse was moving, and what Dalton was doing or endeavoring to do when the shot was fired. I think that all the witnesses agree that the officers called upon Dalton to halt. Some of them—those for the prosecution—say that the time given was very brief, almost inappreciable. Some say, I believe, that they only heard one call, others two, others three, however

THEY ALL AGREE

that some kind of an announcement was made by the officers, and a man ought to be advised if an officer wants him. Then some of the evidence on the part of the prosecution discloses the fact, if it is believed, that Dalton didn't whirl his horse at all, that he didn't turn and was moving on a walk. And then on the other hand the defendant and two of the witness for the prosecution state that the horse did whirl, and that the horse was on the lope. Then again the evidence varies as to where the wound was received and where it was located on the body, and where the bullet penetrated; as a matter of fact, that is material in determining this question. These are matters, gentlemen, for you to determine. You are the exclusive judges of the credibility of the witnesses and the weight of the testimony. It is your duty to weigh and sift it and decide in accordance as you consider the evidence justifies. The prosecution is bound to make a case to you as beyond a reasonable doubt. As the witnesses now stand for the prosecution and those for the defense, it would be idle for me to attempt to detail to you with any particularity the evidence. They all differ in some degree. There are differences that may be reconciled; there are differences that cannot be reconciled. Where you find differences that may be reconciled, it is your duty to reconcile them; where you find differences that you cannot reconcile, you may determine which of the witnesses to believe. But before

YOU CAN ACQUIT

this defendant, you must find by a preponderance of the testimony an actual and an apparent necessity at the time for Thompson to fire his gun at Dalton in order to execute his warrant. If you so find, I have no hesitation in saying to you that you ought to acquit him. The law ought to be vindicated and the officer of the law ought not to be punished for doing his duty if he was justified in it. On the other hand, if you should find, however painful it may be to you, gentlemen, as it would be to me (you have but your duty to perform), that Thompson is guilty of this crime, which is either voluntary or involuntary manslaughter, it will be your duty to say so.

PISGAH BURYING GROUND.

PRESERVATION OF A SACRED HISTORICAL SPOT.

Editor Deseret News:

Two years ago, President John Taylor received a letter from a gentleman owning the land at Pisgah, Iowa, where many of the Saints were buried in their exodus from Nauvoo to these mountains.

The gentleman, Mr. A. C. White, stated to Prest. Taylor that he had never suffered the land to be plowed or disturbed, known there as the "Old Mormon Burying Ground," and he wanted to know what the people here in Utah, who had friends buried there, wanted to do about the ground or the remains of their friends.

In his letter he made mention of the name of Wm. Huntington, my father, as having been buried there, who was a Bishop or presiding officer of the settlement.

President Taylor sent Mr. White's letter to me with instructions what to do in the matter.

I have followed his instructions; and to-day, through the blessings of God, the kindness and humanity of Mr. White, the "Old Mormon Burying Ground" at Pisgah belongs to the Church of Jesus Christ of Latter-day Saint and the deed thereof is in the hands of the Trustee-in-trust.

The lot, of one acre, is fenced with a good wire-netting fence, and next spring there will be a row of poplar trees set around the lot inside the fence.

It is now desired by some, in order to fully complete improvements upon the ground, that a monument of some kind or a stone, should be placed in the centre of the lot, whereon shall be engraved the names of all persons buried there, so far as they can be obtained.

This work will necessarily require money, which should be forwarded to me at Springville, Utah, and I will forward the same to Mr. White, who has very kindly and gratuitously attended to all business matters pertaining to the ground, which lies in the centre of his farm.

The liberality of those interested in this matter will decide the kind and respectability of the object that will indicate the last resting place of their loved ones.

If the money can not be sent now, from any persons wishing to donate for this purpose, they will please state how much and when it shall be sent.

Will every person having relatives buried there, forward the names of the dead without delay, whether they can donate anything or not?

Every one should send as much as will engrave the name of their dead if possible, and they that are well-to-do, more; that the good work may be completed in a creditable manner.

When fully completed, a photograph of the ground will be sent to those most liberal in donating.

OLIVER B. HUNTINGTON,
Springville, Utah County, Utah.

OGDEN OCCURRENCES.

Ogden's History—Her Light Goes Out—Religious Revival—A Cohabitation Case—A Bad Battery—A Warlike Business Anticipation.

JANUARY 18.

SINCE the Court has overruled the demurrer to the injunction forbidding the City Council from appropriating one thousand dollars to Mr. E. W. Tullidge, to aid in writing the History of Ogden City, that gentleman has received encouragement from other sources and aid will be forthcoming in due season. So, notwithstanding the petty spite of the "dogs in the manger," the history will be written and the junction city will be seen and read of by thousands of people who now know little or nothing of her and her hidden wealth, which will in the not distant future be developed.

LAST NIGHT the electric light suddenly disappeared and left the people in darkness, and of course there was considerable complaint about the matter, and by a few some tall deprecating. But on enquiry it was ascertained that no one of the company was to blame. The cause was that a large quantity of "mush ice" came down the Ogden river, filled the flume, clogged the turbine wheel and prevented them from getting the speed necessary to generate the light. It is expected that in a short time hence the residences of numbers of our citizens will be illuminated with the incandescent light.

TO VARY the monotony of the times now we have gospel meetings held by one of the Christian clergymen of the city. They are held in the large new building recently erected by M. Buchmiller, on Main Street. The assemblies gather every afternoon and night—they are largely attended by all classes of people, who listen to the fine singing, and exhortations of the preacher, who tell them "their sins will be sure to find them out." There is quite a revival.

TO-NIGHT Jens P. Jensen, of Logan, appeared in the office of the United States Marshal and gave bonds in the sum of $1,500 to appear when he is called for to answer to the charge of acknowledging and providing for his whole family. It was late but the sureties were soon found. George W. Driver and John Scowcroft were accepted.

THE EXCHANGE saloon, last night, was the scene of a terrible battering, much worse than that which occurred a short time since in the Beer Hall. This time it was a person named John Smith. He had been partaking of the cup that inebriates. After a while he retired to the rear of the house and was followed by two other men. After an absence of a few minutes Smith returned with his head and face in a fearful condition. He was covered with blood, his cheek was literally cut open and his jaw bone almost visible. His assailants decamped, but one of them was overtaken and arrested. No further developments yet.

THE ASSESSOR and Collector is after delinquent tax payers, and it is expected that ere long if the revenue is not paid, the officer will have to levy on some property to meet these demands. It is a hard business, but the collector is under bonds and of course must do his duty or be sued on his bonds for his delinquency.

J. F. THOMAS, who was arrested yesterday, at the instance of George B. Douglas, was this morning arraigned before Justice Dee, charged with obtaining money under false pretenses. The investigation resulted in the honorable discharge of the defendant, there being no cause of action against him.

THIS AFTERNOON I was called into the establishment of Browning Brothers and shown a singular document which they received this morning from a large firm in the East who deal in firearms, ammunition, etc., and who appear to be anxious to make an "honest penny" out of the new "Mormon" troubles. It reads as follows:

NEW YORK, Jan. 13, 1887.

Browning Bros., Ogden, Utah:

Gentlemen:—We see by the morning papers that the gentlemen in Washington have taken up the anti-Mormon bill and think as this may be a demand for arms, we write to ask you to bear us in mind. You have some samples of the goods we have on hand, and if anything else is needed will gladly furnish you what information may be desired."

They evidently think or hope that the "Mormons" will take the field and fight it out on the line that will make profitable to that business firm.

THE TRAIN from the north which was due at Ogden at four o'clock last evening was seven and a half hours late. It is reported that the train was ditched and wrecked near Pocatello, Idaho, but the particulars at present it seems impossible to learn. No one can or will give any correct information of the affair at present.

ON WEDNESDAY night the Second Ward dramatic association will appear in North Ogden, in Rex's Hall, where they will present "Condemned to Death" to the citizens of that place who are anxious to see it performed.