share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section." Under this section counsel for proponents offered to introduce in evidence, by parole testimony, declarations made by the deceased in his lifetime to show that he did not intend to provide for the petitioner in his will. To this counsel for petitioner objected, but by agreement of counsel the evidence was taken subject to the objection, to be admitted or rejected by the court after final argument, and its admissibility must now be determined. The section of our statute above quoted is almost identical with section 691 C. L. of Utah, 1876. The two sections differ only in the form of the verbs "omit" and "appear." In the old section the said verbs are used in the future tense, in the new they are used in the present tense. The old section was construed by the Supreme court of this Territory in the case of Coulam vs. Doull, 9 Pacific Reporter, 568, and the court there held that extrinsic evidence was admissible to show the intention of the testator to omit to provide for his children, and this was affirmed by the Supreme court of the United States (133 U. S. 216), which court in affirming said decision of our Territorial Supreme court commented approvingly on the leading case in Massachusetts (Wilson vs. Fosket, 6 Met., 400), where it is held that evidence of this character is admissible to establish the fact that such omission of his child, by the testator, was caused by design and not by mistake or accident.

Counsel for petitioner maintains, however, that the change of tense above referred to is material as to the new law. An examination by comparison of the sections, in our present and former statutes, preceding and succeeding the section under consideration, reveals the same change in tense, and I am of the opinion that the legislature intended no change in the law in this particular, and that the same construction should follow as in Coulam vs. Doull, *supra*.

Counsel for petitioner further argues that section 2684, C. L. of Utah, 1888, has been enacted since the decision in Coulam vs. Doull, and applies to this case. The section referred to reads as follows: "In case of uncertainty arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking in view the circumstances under which it was made, exclusive of his oral declarations."

This section refers to a case where "upon the face of a will" an uncertainty arises "as to the application of any of its provisions," but reference to the will under consideration reveals no such uncertainty on its face; in fact just the opposite appears. Its provisions are plain and simple, and could be applied without difficulty were it not for the uncertainty which arose immediately upon the filing in this court of the petitioner's petition claiming to be a child of the testator, unprovided for in the will and therefore entitled to a distinctive share of his estate. Now this uncertainty did not arise upon the face of the will, but debars the will, and in such a case the intention of the testator cannot be ascertained merely from the language of the will, which is entirely silent as to the petitioner, and circumstances under which it was made, but from evidence *aliunde* as well. I do not think said section 2684 applies to the case at bar, nor do I think there is any material change in the law as laid down in Coulam vs. Doull, *supra*. The said section is simply declaratory of the familiar rule that evidence of oral declarations cannot be given to overthrow or control the words of a written instrument. Again, the party offering extrinsic evidence in a case like this does not offer it to change the language of the will nor to control a written instrument. The petitioner does not claim under the will but under our statutes. The will itself is used for no other purpose than to show it contains no provision for her, and the inquiry as to whether or not the testator omitted to provide for her by design is a distinct issue, the establishment of which does not necessarily affect the tenor of the instrument. When such testimony, as to the declarations of the testator, is offered, as in this case, to sustain the position that the petitioner was intentionally omitted by the testator, and for that reason cannot claim as heir-at-law, and thereby change the provisions of his will, the evidence confirms the will, and hence is not in violation of the general rule that the intent of the testator must be found on the face of the will. The said petition raised a latent ambiguity in the will, which is unambiguous on its face, and to remove this, parole evidence as to the facts and circumstances, including the declarations of the testator, leading up to and at and after the time of the making of the will is admissable.

Schouler on Wills, 580-581.
Coulam vs. Doull, 133 U. S. 216.
Wilson vs. Fosket, 6 Met. 400.
Havens vs. Van Den Burgh, 1 Denio 29.
Converse vs. Wales 4 Allen 512

I hold similar views in regard to section 2706 C. L. of Utah, 1888, to which counsel has called my attention. In determining the main question as to whether or not Florence A. Atwood is entitled to a distributive share of the testator's estate, I have steadily kept in view the circumstances with which he was surrounded from the time of that unfortunate marriage, as appears by the evidence, and have noticed how the defendants have shown the aversion the testator had for the petitioner, how he refused to provide for her and her mother, or to own her as his child in his lifetime, and have also noticed that in the presence of the witnesses for the petitioner he exhibited no such aversion, but exactly the opposite, at least for some time after the birth of the child. Why this change of disposition? Was it because of the unfriendly feeling between the families? I would be inclined to criticise severely some of the testimony of the proponents were it not for the fact that the evidence of the petitioner also points to the difficulties which existed between the mother and the testator from the time her child was eighteen months old, and after she refused to return to him unless he would give her a home that she might call her own. Thenceforward the breach seemed to widen, the mother forbade her child to speak to the father and the families failed to recognize each other. I am not convinced that the mother of the petitioner had no good reason for leaving the testator, especially after considering, in the light of the circumstances around her, the testimony in relation to proper conduct and anxiety for the welfare of her child, given by her old mother and Mrs. Louisa Madsen, who themselves are on the shady side of life—members of the same church as the testator, believing in the same faith which united in the bonds of matrimony an old man in his dotage with the blooming, innocent young Swede girl, the result of which union is the innocent child at the bar of this court, refusing to believe that her father intentionally withheld from her what justice would assign her, or that he closed his eyes in death intent on breaking the solemn promise made to her mother, that he would provide for his child. Always desirous to help the weak and innocent, I have endeavored to examine this case with great care, but the conclusion is irresistible that the testator intentionally omitted to provide for his child, and no matter how unjust this may be viewed from the side of the child, the Court is bound by the law.

The learned counsel for petitioner has suggested the theory that the testator who, having been shown by the evidence of the proponents to have been an honorable and upright man, having been aware of the unfriendly feeling that existed in his family toward the petitioner and her mother, in the interests of peace and harmony, or, possibly, under a mistake of fact as to the paternity of the child, concluded to omit the petitioner from his will, thinking that in the event of its transpiring that she was his child she would take a distributive share of his estate under the statute hereinbefore considered. I must admit that most of the witnesses in the trial of this cause gave some color to this theory. It is certainly a charitable view and one which will not do violence to his fair name as an honorable man; but does it help the case of the petitioner? Can a court inquire into the motives which impel a testator to omit to provide for his child in the disposition of his property by will? I think not. Under our laws every person over the age of 18, of sound mind, may by last will dispose of all his estate, real and personal (C. L. of Utah, 1888, section 2617). There is no limitation here. Nowhere do I find authority for a court to inquire into the motives of a testator in omiting to provide for his child when it is clear that he intended to do so. No matter how unjust or unreasonable the disposition, if the statute has been complied with all the world is bound by his will. The lips of the testator are sealed in death, the court is asked to solve the mystery, and under the weight of authority and the evidence I feel bound to decide this case in favor of the proponents. Should justice thereby be dethroned, I can but express the hope that the devisees under the will may take such a course, now that the paternity of the child is established, as will cast no cloud upon the fair name of the dead.

The petition of plaintiff for intervention is dismissed. G. W. BARTCH, Judge.

Mrs. J. Persdotter, of Skummeloff, Sweden, committed suicide at the age of 76 years.

A biological station connected with an aquarium is being built at Bergen. The cost has been estimated at 80,000 crowns, of which more than 20,000 crowns have been subscribed.

MILLARD STAKE ACADEMY.

The closing exercises of the Millard Stake Academy were held May 20, in the State house, which for the past academical year has been utilized for academy classes. Brother J. E. Hickman has been principal for the last four years, and his labors have been crowned with marked success. This was exemplified by the exhibit of work accomplished by the students during the year.

It would be invidious to mention any one study in particular, for all showed the mark of a master's painstaking supervision. Professor Hickman was assisted in the Normal and primary departments by Brother E. S. Hinkley, to whom he gives an honorable meed of praise. The ladies' work department was under the supervision of the Misses Robison and Cooper, and the beautiful specimens arranged for inspection clearly proved that the principal made a wise selection when he placed that department in these young ladies' hands. One hundred and twenty-eight students availed themselves of the educational advantages of this institution during the academical year just closed, and doubtless many more would have done so but that some of our district schools had very able teachers. The Polysophical Society has been a notable feature of the institution; many valuable papers have been read, and interesting lectures delivered, at their weekly meetings. Professors Hickman and Hinkley will leave almost immediately for Ann Arbor, there to pursue a higher course of studies, and fit themselves for still more useful positions.

The number of young women attending our seats of learning and teaching in the district schools, together with the proficiency they attain in that to which they devote themselves, goes to prove beyond a doubt that their capacity for learning is fully equal to that of men when the same facilities are placed within their reach.

The fine weather of the past week has brought out dainty spring in all her vernal beauty; and although the "flowers of May," are not at present as plentiful as in some years, still, there is every prospect that we shall have a bountiful supply by the time June comes in.

The crops are looking well and we have every prospect of a plentiful harvest, if we except the barley, which the late frosts have injured somewhat. Politicians of both parties are airing their different views; but the time is drawing near, when lucerne will demand all the farmers' time and care. Protection and free trade will be laid on the shelf for a time, and the mower, and hay fork occupy the mind and hands of men instead.

M. A. Y. G.

Meadow, May 20. 1892.

L. O. Smith, the whisky king of Sweden, is said to have made lately a clear profit of 4,000,000 kronor by speculations on foreign boards of trade.

Several newspapers in Finland have related cases where the Russian postal authorities have opened letters addressed to people living in foreign countries