

# THE DESERET NEWS.

TRUTH AND LIBERTY.

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FROM TUESDAY'S DAILY, AUG 28, 1888.

## Struck by a Train.

Two D. & R. G. W. employes had a close call from being sent into eternity this morning. Last evening they spent considerable time at Hezency's saloon. About 11 o'clock they left for their lodgings, on the work train, which was in the fields north of the city, near the chemical works. Instead of going to the work train and getting into bed, they sat on the side of the main track. Soon they fell asleep, and were not awakened until a freight train, No. 21, came thundering along and hurled them from their resting place. This was about 3 o'clock this morning, and the injured men were not discovered until the remaining hands on the work train came down to the track at 7 a. m. The men were then found to be considerably bruised and cut. The injuries of one were slight, however, and he was able to walk about. The other was more severely hurt, though he is not in a dangerous condition; he had to be taken away in a vehicle. It was fortunate for them that they had lain down outside of the rails. The principal injuries of both men are on the head. They were sent to the hospital.

## Fire at Pocatello.

At Pocatello, Idaho, at one o'clock yesterday morning, a fire broke out in the Union Pacific freight office. Within ten minutes the whole structure was ablaze. The flames spread to the sheds and also to a number of freight cars. The entire loss will not be less than \$25,000. The south-bound passenger train came in just as the fire started, but was unable to pass, and was delayed two hours. The railway men and others worked hard to save property. For a time there was imminent danger of an explosion. A car of powder was close to the fire, and almost in the center of a train of freight cars. The cars at each end were ablaze, but fortunately the powder car did not take fire. A locomotive was brought up, hauled the burning train out, and removed the powder to a place of safety. Had it not been for this successful move, the damage would have been terrible, as the passenger train was about 30 rods away, and there were many other people about, who, while they kept off quite a distance, still were not out of reach of the effects of an explosion such as must have occurred had the car taken fire.

## The Election Count.

Up to 2 p. m. today the board of canvassers had completed the following:

**SUMMIT COUNTY.**  
Commissioners to Locate University Lands:  
F. A. Mitchell.....431 I. M. Waddell.....433  
R. A. Ballantyne.....433  
Selectman:  
George M. Packer.....425 E. Sorenson.....780  
Scattering.....13  
Superintendent of District School's:  
Charles Short.....1203  
Clerk of County Court:  
Thomas Alston.....491 Wm. H. Smith.....712  
Scattering.....1  
Assessor and Collector:  
Geo. W. Young.....117 O. C. Lockhart.....798  
Scattering.....1  
Prosecuting Attorney:  
E. M. Allison, Jr.....340 W. I. Snyder.....651  
Coroner:  
Wm. Archibald.....441 Childs Manton.....764  
Recorder:  
John Boyden.....531 Jos. M. Cohen.....612

**Sheriff:**  
E. M. Allison.....331 John L. Weber.....680  
Scattering.....2  
**Surrey:**  
F. A. Mitchell.....429 Chas. P. Brooke.....760  
Scattering.....1  
**Treasurer:**  
Thomas Ball.....441 A. B. Richardson.....772  
Scattering.....3  
**SEVIER COUNTY.**  
Commissioners to Locate University Lands:  
F. A. Mitchell.....440 I. M. Waddell.....440  
R. A. Ballantyne.....440  
Selectman:  
B. H. Greenwood.....578 W. H. Schack.....63  
Scattering.....3  
Clerk of County Court:  
John A. Helstrom.....336 J. T. Leonard.....37  
Scattering.....3  
Assessor and Collector:  
F. A. Baker.....389 W. H. Rex.....69  
Scattering.....7  
Prosecuting Attorney:  
J. T. Bean.....364 W. N. McCarty.....67  
Scattering.....1  
Coroner:  
B. Carter.....382 A. Bertleson, Jr.....64  
Recorder:  
H. Hoppler.....381 Mads Christensen.....63  
Scattering.....3  
Sheriff:  
J. W. Coons.....389 Jappa Nielson.....63  
Scattering.....3  
Surrey:  
J. M. Petersen.....379 A. D. Ferron.....67  
Treasurer:  
J. M. Petersen.....383 August Nielsen.....62  
Scattering.....1  
Glenwood was the only precinct that voted for commissioners to locate university lands.

**TOOELE COUNTY.**  
Commissioners to Locate University Lands:  
F. A. Mitchell.....350 I. M. Waddell.....350  
R. A. Ballantyne.....350  
Selectman:  
John D. McIntosh.....317 James Crouch.....132  
Scattering.....4  
Clerk of County Court:  
A. J. McCulston.....387 S. W. Bennett.....88  
Assessor and Collector:  
Joshua R. Clark.....324 D. B. Stover.....93  
John T. Rich.....51 Scattering.....7  
Prosecuting Attorney:  
D. D. Houtz.....375 J. H. Wolcott.....89  
Coroner:  
J. C. DeLaMer.....311 I. J. Elkington.....91  
Wm. Bracken.....65 Scattering.....12  
Recorder:  
A. J. McCulston.....385 T. J. Connor.....89  
Sheriff:  
J. C. DeLaMer.....325 John Franks.....89  
James Gowan.....97 Scattering.....1  
Surrey:  
F. M. Lyman, Jr.....323 Chas. Herman.....3  
Treasurer:  
John W. Tate.....318 Robert Scott.....91  
Scattering.....52  
There are still five counties in which a canvass is to be made.

**FROM TUESDAY'S DAILY AUG 28, 1888.**

## SUPREME COURT.

Business Done by the Three Judges Yesterday Afternoon.

At 3 o'clock yesterday afternoon a session of the Territorial Supreme Court was held, Chief Justice Zane and Associate Justices Boreman and Henderson being present. Before the session ended Judge Sanford and Judge Judd also made their appearance.

The first case taken up was that of the United States vs. A. J. Kershaw, prosecuted for adultery in living with his plural wife. Judge Boreman delivered the opinion of the Supreme Court, affirming the decision of the court below.

In the suit of the United States vs. the Utah & Northern Railway, the judgment of the lower court was affirmed.

In the case of the United States vs. Thomas R. Cutler, convicted of unlawful cohabitation, the majority of the court joined in a decision sustaining the action of the district court. Judge Zane dissented from this ruling. As the question at issue is one of importance, the opinions are given in full.

**THE COURT'S DECISION.**  
IN THE SUPREME COURT OF THE TERRITORY OF UTAH.  
June Term, 1888.

The United States of America,  
Respondent.

vs.  
Thomas R. Cutler,  
Appellant.

Boreman, Justice, delivered the opinion of the court.

The appellant was convicted of the crime of polygamy. Upon the calling of the case in the District Court the defendant moved the court to quash or set aside the indictment on the ground that the indictment was found on the evidence of an incompetent witness. That said alleged incompetent witness was the legal wife of the defendant and was compelled, against her own will and against the will of the defendant, to testify before the grand jury that found the indictment. The motion to quash was overruled in the District Court and the defendant has appealed the case to this court.

The statute upon which the defendant bases his objection to the indictment reads as follows: "A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or after ward, be, without

the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other." Laws of Utah, 1884, p. 359, sec. 1156.

This court has already held that a crime of this character is a crime committed by the husband against the wife, and that she is a competent witness against him. United States vs. Bassett, 13 Pac. rep. p. 237. After further consideration of the question in the case at bar, we have no disposition to depart from the views expressed by us in the Bassett case. The legal wife of the defendant was called as a witness before the grand jury, and as this was a crime committed against her, we see no reason whatever for holding that she was incompetent. Had it been any other kind of a case than a crime against her, she would under the statute just quoted, have been incompetent as a witness.

The respondent objects to the motion to quash as not being based upon any ground authorized by law. That the fact that an indictment was found solely upon the testimony of an incompetent witness is not under our statutes, ground for setting aside or quashing an indictment. The statute specifies four grounds for setting aside an indictment, and that set up in the motion is not embraced in any of them. The first ground set forth in the statute is the only one that could by any possibility be construed as embracing it, but we deem that it is settled by the practice in this Territory and by decisions under similar statutes, that the ground of the motion to quash is not within the statute.

People vs. Colby, 54 Cal. 37. State vs. Logan, 1 Nev. 509.

Indeed we do not understand the counsel for the defendant as contending that it comes within the statute, but they claim that outside of the statute, under the common law practice, the indictment should have been quashed. We do not however see any ground for such position.

With the statute before us, we find no authority to go outside of it.

The first section of the criminal procedure act says: "That the mode of procedure in criminal cases in the courts in this Territory shall be as prescribed in this act." Laws of 1878 p. 60. We deem this language exclusive, and we see no authority for allowing any other grounds for quashing an indictment than such as are specified in the statute. Why the legislature omitted from the statute, as a ground of a motion to quash, that set up in the motion of the defendant, is not a matter for our inquiry. It is not there, and it is not our province to place it there. The motion to quash was therefore properly overruled.

Upon the whole case therefore we see no reason for a reversal of the decision of the court below. The judgment and order of the district court are affirmed.

Henderson A. J. concurs.

**JUDGE ZANE'S OPINION.**

Zane, C. J., (dissenting). While I am of the opinion that a man who has a lawful wife, commits a crime against her by entering into polygamy, I do not think that Section 1156 of the Laws of Utah, quoted in the opinion of the court, should be applied in the trial of a person charged with a crime against the laws of the United States. In the case of United States vs. Reid, 12 Howard 361, Chief Justice Taney, in delivering the opinion of the court, said: "But it could not be supposed without very plain words to show it, that Congress intended to give the states the power of prescribing the rules of evidence in trials of offenses against the United States; for this construction would in effect place the criminal jurisprudence of one sovereignty under the control of another. It is evident that such could not be the design of the Act of Congress and that the statute of Virginia was not the law by which the admissibility of Clements as a witness ought to have been decided." If the court could not presume "that Congress intended to give to the States the power of prescribing rules of evidence in trials of offenses against the United States" for the reason that "it would in effect place the criminal jurisprudence of one sovereignty under the control of another, ought the court to assume that Congress intended to give to the territories power to prescribe such rules of evidence in the trial of United States criminal cases? Such territories are not even sovereignities, but possess only such powers as Congress has conferred upon them. The objection to the exercise of such powers by a state legislature applies with greater force to their exercise by a territorial legislature. Congress may expressly provide that the United States and territorial courts shall observe in the trial of United States cases, the rules of pleading, practice and evidence prescribed by state or territorial legislatures for the trial of state or territorial cases. By such action, Congress gives to such state or territorial laws the force and effect of

laws of the United States. But the delegation by Congress to such legislatures of its authority to make such laws, will not be presumed to have been intended. Congress may authorize the people of a territory to make laws, and the state legislature may confer upon the people of a city that authority. But while Congress may authorize the people of a territory to make laws for themselves and to govern those coming within the territorial jurisdiction, it will not authorize them to make laws for the people of the United States; and so the legislature of a state may give to the people of a city power to pass ordinances for themselves, but not for all the people of the state. This point was not considered by the court in the case of the United States vs. Bassett, 13 Pacific Reporter, 237.

Nor do I think that the statute enacted by the Territorial Legislature specifying the grounds upon which indictments may be set aside, applies to this case. The authorities bearing on this question are cited in the dissenting opinion in United States vs. Jones, 18 Pacific Reporter, 235. I am of the opinion that the fact that the indictment was found solely upon the testimony of an incompetent witness constituted a sufficient ground to quash it. I dissent from the judgment of the court.

Ralph Pidcock vs. Union Pacific Railway Company; decision of the court below affirmed. Notice of appeal given by defendant corporation, and bonds fixed at \$10,000.

United States vs. Thomas F. Harris; convicted of polygamy, judgment of the lower court affirmed.

The Crescent Mining Company vs. the Wasatch Mining Company; judgment of the lower court affirmed. Ten days additional time granted in which to file a petition for a rehearing.

## A BOGUS CLAIM.

Attorney Winters then read the following petition which was ordered filed.

In the Supreme Court of the Territory of Utah in Chancery.

In the matter of the claim of Carl P. Carlson against the late corporation "The Church of Jesus Christ of Latter-day Saints."

To the Honorable Judges of the Supreme Court of Utah Territory.

The petition of Carl P. Carlson respectfully shows:

I. That the late corporation, "The Church of Jesus Christ of Latter-day Saints" was incorporated under the laws of the Territory of Utah and discontinued by act of Congress on the second day of March, A. D. 1887, and was in existence at the time herein after mentioned.

II. That it was the policy and practice of said corporation to encourage members of the Mormon Church to emigrate to Utah from foreign countries, and to facilitate such emigration sent out agents to assist and take charge of persons so emigrating, among whom was one Joseph W. Young, deceased, who acted as such agent for said corporation at the town of Wyoming, now Omaha, Nebraska, at the time hereinafter mentioned.

III. That said corporation instructed its said agent to demand the money carried or owned by said emigrants, for safe transportation across the plains, so as to avoid the danger incident to the voyage from the Missouri river to Utah.

IV. That in the month of July A. D. 1885, your petitioner was emigrating as a "Mormon" from Sweden to Salt Lake City, Utah, and had in his possession about thirteen thousand Swedish dollars, equal to about five thousand dollars in money of the United States of America, which constituted the whole of his earthly possession, and represented many years of hard labor.

V. That at said town of Wyoming, the said Joseph W. Young, in the name of said corporation, and as its representative and agent, demanded of the emigrants there present, among whom was your petitioner, all moneys in their possession, that he might safely convey it across the plains and through the dangers on the way, which he represented as very great indeed, and then and there represented said corporation as of Divine origin and himself as its special messenger; and that as such he would safely convey said money for us to our said destination.

VI. That, there, your petitioner, believing his said statements, and relying on his honor, integrity and his said promise, and believing said corporation to be a Divine institution, paid and delivered in trust to said corporation through its said agent, all of his said money, to-wit: Five thousand dollars, to be held in trust and returned to him as aforesaid.

VII. That no portion of said money or interest thereon has been returned or paid to your petitioner, and that he is entitled to the same.

Wherefore, your petitioner asks that an order be made allowing him to make proof of his claim, and that said claim, with interest, be ordered paid out of any assets of said corporation in the hands of the Receiver thereof

not otherwise appropriated. And your petitioner will ever pray, etc., etc.

R. D. WINTERS,  
Counsel for Petitioner.

P. L. Williams, in behalf of Receiver Dyer, suggested that such a claim was barred by the statute of limitation.

Mr. Winters said he wanted permission to prove the allegations made.

Judge Henderson wanted to know why the matter had not been brought up before, and Attorney Winters said that would be shown at the hearing of the case.

The petitioner was permitted to enter suit against the Receiver for his alleged claim.

On motion of Judge Powers, Michael E. McEnany, of Michigan, was admitted to the bar.

D. C. Eichnor made application for admission to the bar. Messrs. W. H. Dickson, J. L. Rawlins and P. J. Barrett were appointed an examining committee, and after being closely interrogated for some time, Mr. Eichnor was recommended for admission. The recommendation was accepted.

Hon. Elliot Sanford, the newly appointed Chief Justice of Utah, and Hon. John W. Judd, the new Associate Justice, took the oath of office, and are now duly installed.

The Territorial Supreme Court adjourned to Sept 10th.

## DISTRESSING ACCIDENT.

A Little Girl Accidentally Cut by Her Grandfather.

WALLSBURG, Wasatch County, Utah, Aug. 18, 1888.

Editor Deseret News:

A severe accident occurred here today, to the daughter of Lewis Parcel, a little girl between three and four years of age. The father was binding grain in the field when the child went to where he was. She went into the standing grain, I. C. Parcel, the grandfather of the little one, was cutting the grain with a reaper. It is supposed she was sitting down and the grandfather did not see her until he had run the knife into the child, cutting her right arm from the elbow to the wrist, the cuts being about half an inch apart. He also cut a severe gash in the right leg. The body was likewise bruised.

Brother W. E. Nuttall dressed the wounds and the child is doing well.

GEO. A. DABLING.

## "Orders from His Superiors."

On Wednesday, Phineas W. Cook, of Logan, was examined on the charge of unlawful cohabitation, before the commissioner. He pleaded not guilty. Johanna C. Poulsen, the alleged plural wife, was placed upon the stand; she said she was married to Mr. Cook ten years ago in Salt Lake City. She is acquainted with defendant's first wife; she obtained her consent to their marriage; she had five children with defendant, the youngest being nearly three years old; he has another wife besides the first; her name is Polly A. Savage; she is the second wife; she saw her about six weeks ago, at Garden City, when in company with her husband; they took dinner at her house; she also went to see the first wife who also lives at Garden City; they had a mutual agreement to divide property, the first and second wife each getting one-third, he to support her with his share. Mr. A. B. Taylor appeared for the defendant. The order of the Commissioner was that the defendant be held for adultery, and Johanna C. Poulsen for fornication. Mr. Cook was bound over in the sum of \$1000 and the lady in \$200. Mr. Taylor held that the commissioner had no right to elicit evidence from a person, and then convict or bind that person over on said evidence without previously instructing said person, so that she would not knowingly criminate herself. The commissioner, however, held it was common practice, especially in cohabitation cases, and that he was instructed from his superiors to question witnesses with a view of eliciting evidence that a graver offense had been committed than that which they were charged with.—Ogden Standard.

## To the Primary Associations.

The Primary Fair will open about the 12th inst., in the building adjoining Elias Morris' place on South Temple Street. All who have articles for exhibition will please deliver them not later than Monday, Sept. 10th, at the building where the fair will be held.

On Friday, Sept. 7, the officers of the Primary Associations in the Salt Lake Stake will meet at Mrs. E. C. Clawson's residence, No. 23 First East Street, at 2 p. m. A full attendance is requested.

On Saturday, Sept. 15, the conference of the Primary Associations will convene in the Assembly Hall. Meeting will be held at 10 a. m. and 2 p. m.

Please note the dates—Officers' meeting, Friday, Sept. 7; delivery of articles for the fair, Monday, Sept. 10; conference, Saturday, Sept. 15.

ELLEN C. CLAWSON,  
President.