DESERET EVENING NEWS.

Tuesday, January 21, 1890.

# SECOND EDITION

## FRAGMENTS.

YESTERDAY afternoon Walter Dalton was sent to jail for 60 days, for vagrancy.

IN the Police Court today, John McKown was fined $5, and John Johnson $10, for being drunk.

THE current number of the Richard's Exponent is at hand with an excellent table of contents.

GOURE MORRIS was fined $20 in the Police Court today, for reckless driving. John F. Cracroft, for a similar offense, of a less aggravated nature, was assessed $10.

THE funeral of Miss Rosengreen, which was postponed on Thursday, took place from the family residence at Pleasant Grove, on Friday. A physician upon being called in pronounced life extinct.

TOMORROW afternoon, from 2 to 6 o'clock, a party will be given for the children of the Seventeenth Ward Sunday School. In the evening, commencing at 8 o'clock, another will be given for adults. The friends of the school are invited.

A SOCIAL gathering took place in the Sixteenth Ward schoolhouse last evening in celebration of Bishop P. Rentler's 77th birthday, on which occasion a handsome album was presented to him by the people of the ward. Appropriate speeches were made by the recipient and others.

THE University of Deseret will close a very successful term of school next Friday. On Monday, January 27th, the third term of the academic year will begin and classes in bookkeeping, botany, zoology, civilgovernment, English literature, historical reading, geometry, and physical geography will be organized.

THE Security Abstract Company is a corporation formed by gentlemen of first class standing in the community, and it owns complete abstract records showing the title to all lands in Salt Lake County. Accurate and reliable work, and reasonable charges, may be depended upon by the patrons of this company. Their office is in the basement of the Deseret National Bank building.

YESTERDAY afternoon Mrs. J. J. Daly was out sleigh-riding, when her horse became frightened and ran away. At the corner of East and North Temple streets the cutter turned over and the lady was thrown out. She was badly shaken up, but was not seriously injured. The sleigh was badly battered. Mrs. Daly had a narrow escape on the route of the runaway, and the finder will confer a favor by returning it.

### Death of a Veteran Lady.

OGDEN, Utah, Jan. 20, 1890. [Special to the DESERET NEWS.]—Mother Black died last night at 10:30

J. S. BLACK.

### "Cora the Creole."

This is the piece to be performed by Helen Blythe and her excellent company in the Grand Opera House this evening. It is described as a fine drama, and will doubtless draw a full house.

### The Gilmer-Davies Company.

Mr. Sam Thall, agent of the Gilmer-Davies Company, is in town making arrangements for the visit of the company, which will appear at the Salt Lake Theatre on Jan. 30th and 31st and Feb. 1st. The following pieces will be produced during the stay: "The Burglar," "The Tigress," and "The World Against Her." The first-named piece will be presented at Saturday's matinee.

### Political Notes.

There will be a political meeting in the Tenth Ward this evening. The Hons. H. J. Grant and C. W. Penrose will address the assembly.

All members of the Fourteenth Marching Club are requested to be at the school house this evening at seven o'clock, with torches and uniforms. By order of the Captain.

The Guitar and Mandolin Club will meet tonight at Calder's Music Palace, at 7 o'clock sharp. They have two engagements to fill—in the Tenth Ward and the Eighth Ward—and a full attendance is desired.

The Scandinavian Club of the People's Party will meet tomorrow night in the Thirteenth Ward meeting house. A good programme has been prepared, and a full attendance is desired. All the ward captains are requested to meet tonight in the Bledsoe office.

C. M. NIELSEN, Secretary.

The regular meeting of the Fourteenth Political Club will be held this evening at 7:30. It is expected that the Hons. S. A. Thurman and Wm. Crow will address the meeting. Prof. W. C. Clive will give a violin solo. A quartette will be given by Messrs. Thos. Rother, E. E. Wilson and others, and an interesting time is anticipated.

R. ALLEN, Secretary.

### Supreme Court.

Proceedings in the Territorial Supreme Court today:

A. H. Nelson, of Michigan, and Judge Maginnis, of Ohio, were admitted to the bar.

The accounts of Judge Sprague for $42.30 were allowed.

In the case of the People ex. rel. Edward M. Byron vs. Henry Page, the court ordered that peremptory writ issue as prayed for. The opinion of the court appears in another column.

In the case of the People vs. Judge Blackburn, the Carlton Dodds case, the writ of mandate was denied.

F. S. Garner vs. A. Fisher; judgment of court below affirmed.

S. M. Preshaw vs. Thos. D. Dee et al.; from First District; argued, submitted and taken under advisement.

M. Teahen vs. A. H. Nelson; appealed from the First district; argued and submitted.

N. C. Flynn vs. Thos. Maloney; argued, submitted and taken under advisement.

### DAILY WEATHER REPORT

at Salt Lake City, U.T., for Jan. 21, 1890. Observations taken at 8 a.m., 7th Meridian time, at all stations.

| PLACE OF OBSERVATION. | THERMOMETER. Temp. of Air | Change in 24 Hrs. | Max. | Min. | Mean | WIND. Direction | Velocity in Miles | State of Weather. |
|---|---|---|---|---|---|---|---|---|
| S. L. City | 10 | 10 | 2 | 8 | | Calm | | Clear |
| Helena | 2 | | 4 | | | Light | | Clear |
| Ft. Custer | 10 | 15 | 24 | 8 | | Light | | Clear |
| Washakie | 17 | 6 | 22 | 8 | | Light | | Clear |
| Beulah N. | 8 | 12 | | | | | | Clear |

Reports by Mountain Telegraph Co. at 12 m. M.

| | | | | | | |
|---|---|---|---|---|---|---|
| S. L. City | 20 | 5 | | 2 | W | Cloudy |
| Ogden | 15 | 5 | | 4 | W | Calm Clear |
| Stockton | 15 | 3 | | | | Calm Clear |
| Bingham | 20 | 5 | | | | Calm Clear |
| Park City | 20 | 5 | | | | Calm Clear |
| Provo | 15 | 15 | | | | Calm Clear |
| Alta | | | | | | |

Reports received from the U.P. by 7:30 a.m.

| | | | |
|---|---|---|---|
| Glenwood | 15 | | Calm Clear |
| Huntington | 15 | | Calm Snow |
| Peoa | 15 | | Calm Clear |
| Silver Lake | 5 | | Calm Clear |

Salt Lake City, Barometer 26.23.

F. H. FITZGERALD, Sergt Signal Corps.

**Before Breakfast**

Always use Carter's Little Liver Pills for Dyspepsia and Biliousness. They give quick relief from sick headache, prevent the distressing effects of a hearty dinner, promote the healthful secretions of the mouth. It will cost more for medicine and sick doctor bills if you neglect to use them. Don't forget this when you need a pill. Only one pill a dose. They are small, easy to take, and are the cheapest pills in the market. Ask your druggist for them. Take no other.

## THE PEOPLE'S CONVENTION.

### Names of the Delegates Elected Last Evening.

### SPIRITED MEETINGS IN ALL THE DISTRICTS.

**Strong Interest and Enthusiasm of the Members of the Party.**

Last evening there were twenty-two People's party primaries in this city, held for the purpose of electing delegates to the People's municipal convention to be held on Monday next. All of these primaries were well attended and a lively interest manifested in the work in hand. Eloquent and vigorous speeches were made and were heartily applauded, and the enthusiasm exhibited indicated how thoroughly aroused are the whole people in their determination to secure a continuance of good government for Salt Lake City. In the

FIRST WARD,

John Siddoway called the meeting to order, and A. M. Musser was elected chairman. Frederick Pembridge was elected secretary, and Joseph Clay chaplain. The balloting was lively, and resulted in the election of John Siddoway, Wm. T. Jack and Frederick Pembridge as delegates to the convention, with Jasper Fletcher and Joshua H. Midgley as alternates.

SECOND WARD.

In this district Jacob Houtzer was elected chairman and Martin Simpson secretary. The balloting was proceeded with, and L. G. Hardy, Alfred H. Caine and John Gallacher were elected delegates, with W. Starmer as an alternate. The band discoursed excellent music.

THIRD WARD.

John Woodmansee called the meeting to order. The following officers were elected: Thomas J. Curtis, chairman; P. J. Hewlett, secretary; Samuel Moore, sergeant-at-arms, and Thomas Maycock, chaplain.

A dozen candidates were placed in nomination for delegates. During the balloting lively speeches were made. The result of the voting was that George Stringfellow, John Woodmansee and Thomas C. Curtis were the choice for delegates.

In considering the choice for candidates, the names of George M. Ottinger and Spencer Clawson, for mayor, and Thomas Dobson for marshal, were the preferences of the meeting.

FOURTH WARD.

At the People's Party primary of the Fourth School District last evening, J. C. Cutler was chosen chairman and R. G. Lambert secretary. Ten names were put in nomination for delegates to the convention. On the second ballot the following were chosen: Wilford F. Smith, J. T. Williams and J. C. Cutler. Thomas Lewis was named as alternate.

FIFTH WARD.

The meeting selected Sylvester Reeves for chairman, Henry Green secretary, Richard Brimley chaplain and W. Woolley sergeant-at-arms. The ballots for delegates resulted in the choice of P. J. Nuttall, Henry Harrow and C. A. Carlquist. The alternates were R. J. Turnbow and John Miller.

SIXTH WARD.

The meeting elected as its officers, S. W. Richards chairman, A. W. Brown secretary, E. J. Eardley chaplain and W. A. Wetzel sergeant-at-arms. During the balloting spirited speeches were made. The delegates selected were A. G. Glauque, Thomas W. Green, R. S. Kimball and J. H. Poulton; alternates, S. H. Love and R. F. Butterworth. A vote of the meeting indicated that it was the unanimous choice that Arnold G. Glauque be nominated on the People's ticket.

SEVENTH WARD.

David McKenzie was made chairman, and John E. Callister secretary. During the progress of balloting for delegates, speeches were made by Messrs. McKenzie, Dinwoodey, Van Dam, Moyle and others. The delegates chosen were David McKenzie, John E. Callister, Jas. H. Moyle and H. Van Dam; alternates, Wm. J. Woodbury and R. K. Thomas.

EIGHTH WARD.

In this district John G. Smith was elected chairman, and C. L. Berry secretary. The balloting showed the election of John D. H. McAllister, John G. Smith and C. L. Berry as delegates. The delegates were instructed to vote for Wm. Groesbeck for member of the City Council.

NINTH WARD.

The chairman was Thomas Gerrard, with J. E. Evans as secretary, J. M. Benedict, A. H. Woolley and D. D. Houtz were elected delegates, and A. M. Woolley alternate.

TENTH WARD.

Wm. Fuller was elected chairman and Jas. C. Woods, secretary. There were twenty-two nominations for delegates: J. C. Woods, J. H. Paul, S. G. Baxter, J. S. Darke, G. A. McLean, S. A. Kenner, Geo. Buckle, J. J. Walton, Wm. Fuller, Adam Speirs, Jas. T. Strong, John Walsh, W. A. Rossiter, Wm. Taylor, W. F. Winkworth, Edward Braley, John Kirkman, Jos. Keddington, J. R. Taylor, Rodney Hallam, J. H. Freeman, Robt. Miller, A. S. Thomson, W. A. Strong. There were 68 votes and the first ballot elected S. A. Kenner, J. H. Paul and Wm. Fuller. On the third ballot G. A. McLean and Jas. C. Woods were elected, making the number allotted to the district.

ELEVENTH WARD.

Francis Armstrong was elected chairman, J. G. Kelson secretary, J. H. Felt, chaplain, F. M. Atkins, sergeant-at-arms. Twenty-six nominations were made. On the first ballot Willard Done and O. A. Woolley were chosen delegates; on the second ballot, H. A. Tuckett, A. McMaster, and Francis Armstrong; on the fourth ballot F. M. Atkins was chosen. This completed the number of delegates. The following gentlemen were elected as alternates: F. A. Mitchell, J. R. Bean and John H. Kelson. During the evening addresses, songs, etc., were given. The Eleventh Ward Drum Corps furnished the music.

TWELFTH WARD.

T. A. Williams was made chairman, Wm. M. Stewart vice-chairman, and Horace G. Cummings secretary. When the result of the balloting was ascertained it showed the result to be the election of J. G. Midgley, N. W. Clayton, E. G. Woolley and H. W. Spencer as delegates. The alternates are C. M. Nelson and T. A. Clawson.

THIRTEENTH WARD.

The meeting elected D. J. Mackintosh chairman, and J. C. Jensen secretary. Two ballots decided who should be delegates—D. S. Spencer, Alonzo Young, A. R. Dunford and F. S. Armstrong. The alternates are D. J. Mackintosh and F. R. Platt.

FOURTEENTH WARD.

H. D. Folsom was made chairman and R. M. Wilkinson secretary. The election of delegates resulted in the election of Henry R. Richards, Frank Y. Taylor, Daniel Harrington and Andrew Bjorkman. The Alternates are George E. Bourne, P. W. Madsen, H. D. Folsom and H. S. Beatie.

FIFTEENTH WARD.

Wm. S. Burton was chairman of the Fifteenth district primary, and E. E. Sloan secretary. The counting of the votes for delegates showed the election of B. W. Ashton, J. G. Cutler, Thomas Hull, B. F. Cummings, Jr., T. F. Howells, J. E. Clark and J. E. Langford. Alternates: Barlow Ferguson, W. R. Jones, Jr., and W. C. Burton.

SIXTEENTH WARD.

The meeting selected Arthur Parsons chairman, Peter Gillespie vice-chairman, and Niels Thompson secretary. Voting for delegates was proceeded with, and the following were elected: E. A. Folland, J. W. Summerhays, Arthur Parsons, Wm. Hodges, R. P. Morris, Wm. Spry, A. S. Geddes and S. T. Tabs. The alternates are T. E. Jeremy, C. J. Oberg, J. W. Phippin and W. J. Newman.

SEVENTEENTH WARD.

In this district R. A. Smith was elected chairman of the primary, with C. B. Felt secretary. The meeting elected five delegates—W. J. Beatie, Joseph M. Watson, F. H. Hyde, D. F. Davis and E. A. Smith. Alternates, J. C. Sandberg and J. Z. Jacobs.

EIGHTEENTH WARD.

An enthusiastic primary was also held in the Eighteenth District, the independent schoolhouse being occupied. R. S. Wells was elected chairman, and H. G. Whitney secretary. There were twenty-five nominations, and the balloting resulted in the election of Richard W. Young, T. J. McIntosh, J. D. Spencer, Chas. S. Burton and George D. Pyper. Dr. H. J. Faust, Robert Patrick, Sear. and H. G. Whitney were elected alternates. Patriotic and eloquent speeches were made by Messrs. H. J. Faust, R. W. Young, J. Nicholson, O. F. Whitney, Robert S. Campbell, R. S. Young, F. W. Jennings, G. D. Pyper, T. J. McIntosh, J. D. Spencer, S. Clawson, S. Jacobs, W. B. Barton and C. S. Burton.

NINETEENTH WARD.

A. W. Carlson was made chairman and R. W. Briggs, Jr., secretary. The choice of the meeting for delegates to the convention fell on the following: John N. Pike, R. W. Briggs, Jr., A. W. Carlson, J. E. Talmage, John H. Back and Henry Arnold. Alternates, Isaac Barton, Alex. Carr and Wm. Finney.

TWENTIETH WARD.

In this district H. M. Wells was made chairman and C. J. Brain secretary. The balloting gave for delegates Heber M. Wells, Edgar Hows, D. Muntock, Oliver Hodgson, Henry Pusey and James Sharp. Alternates, G. M. Ottinger and S. P. Teasdel.

TWENTY-FIRST WARD.

M. S. Woolley was elected chairman, William G. Westwood secretary, W. L. N. Allen chaplain and James Maxwell sergeant-at-arms. In the balloting delegates were chosen as follows: William J. Tuddenham, M. S. Woolley, William Bywater, William Longmore, Thomas Goodman, J. Fewson Smith, Jr. and Wm. J. A. Timms. Alternates,—John Burt, J. Fewson Smith and Josiah Burrows. The delegates were instructed to use their influence to secure the renomination of J. Fewson Smith as a city councilor and the nomination of Wm. Calder for city marshal.

TWENTY-SECOND WARD.

This portion of the Nineteenth District held its primary meeting at the appointed hour, in the schoolhouse. John L. Nebeker was elected chairman, Arthur Winder secretary and John Lees chairman. The following named gentlemen were elected as delegates to the convention: Oscar H. Hardy, Andrew Kimball, Jos. R. Matthews, Matthew Noall, Wm. Spicer, Jas. S. Grow and John F. Peterson. The alternates elected are: F. K. Margetts, Samuel Holmes, Oliver R. Geller, Wm. Stoneman and H. P. Nielson.

## UNDER THE NEW LAW.

### That is How the Next City Election is to be Conducted.

THERE WILL BE NO ALDERMEN.

**But Three Councilmen and a Justice to Each Precinct.**

Following is the full text of the opinion of the Territorial Supreme Court, delivered today, and deciding that the coming city election is to be conducted under the new law:

*In the Supreme Court of Utah Territory.*

The People ex rel. Edward M. Byron vs. Henry Page, Registration Officer, Salt Lake City.

Petition for Writ of Mandate.—Original Application.

BLACKBURN, A.J.:

This is a petition by the plaintiff for a peremptory writ of mandate, to require the defendant, who is the proper officer to give election notices for the coming municipal election in Salt Lake City, to put notices of said election, stating among other things that there will be chosen by the qualified voters at said election fifteen councilmen, one mayor, one recorder, one treasurer, one marshal and one assessor and collector, and one justice of the peace for each of the five precincts of said city.

This involves a construction of a portion of the act of the last Territorial Legislature, entitled, "An Act for the Incorporation of Cities."

The purpose of that act seems threefold:

1st—To incorporate new cities.

2nd—To provide a mode by which cities already organized can re-incorporate under this act.

3rd—To apply to cities already incorporated certain portions of the act as amendments to their charters, without re-incorporation.

The question raised by this petition is: Does this act require that the officers provided for in it shall be elected at the coming municipal election in Salt Lake City? Or, shall the officers provided for in the charter of said city be chosen?

I think the officers provided for in this act are hereafter the proper ones to govern the city.

Section 14, Art. 1, by express words, applies to cities now organized, and provides that they shall be divided into three classes; all cities having a population of twenty thousand and over shall belong to the first class, etc.; other portions of the act point out the way any city may determine the class it belongs to; but the mode mentioned in the act is not exclusive.

If Salt Lake City has in fact a population of twenty thousand or over, and the court can judicially know that fact, it is a city of the first class, whether it takes any steps to ascertain that fact or not. Courts take judicial notice of all the political acts of the government. The census of 1880 shows this city to have a population of over twenty thousand; and that is a political act of which the courts take judicial notice.

Therefore, I think Salt Lake City, under this act, is a city of the first class, without anything done on its part.

Again: Section 5 of Article 20 expressly provides that section 1 of article 6, among other provisions of this act, shall apply to all cities already incorporated. Although there is no repealing clause in this act, yet section 5 of article 20 has the effect to make these several provisions amendments to the charters of all cities to which they are applicable.

Section 1 of Article 6 provides that the officers of cities of the first class to be elected by the people shall be three councilmen from each municipal ward, a mayor, a recorder, a treasurer, an assessor and collector and a marshal.

Another provision of the act provides that cities of the first class shall be divided into five wards, and that one justice of the peace shall be elected from each ward. Both parties having appeared and this application argued at the hearing, there is no need of an alternative writ. Therefore the peremptory writ will issue as prayed for.

We concur. ZANE, C. J., Anderson, A. J.

Judge Henderson was absent at the hearing of this case, and took no part in the decision.

## SUSPENDING SENTENCE.

### The Courts Have Power to do so in Certain Cases.

In the Territorial Supreme Court today, the following decision was rendered upon the power of the courts to suspend sentence, the question having been raised in the Pardon Dodds case:

*In the Supreme Court of the Territory of Utah.*

The People of the Territory of Utah, plaintiff, vs. John W. Blackburn, Judge of the First District Court, defendant.

HENDERSON, A. J.:

This is an application for a writ of mandate directing the defendant to proceed to sentence Pardon Dodds for the crime of voluntary manslaughter, of which he stands convicted in the First District Court. The case is brought to a hearing upon a return made by the defendant to an alternative writ heretofore issued, from which it appears that in February, 1888, the said Pardon Dodds was indicted for the crime of murder; that he was arraigned and pleaded not guilty; that in September following he was put upon trial in the First District court at Provo, before a jury and the Hon. John W. Judd, the then presiding judge. That on the 24th day of September the jury rendered a verdict of guilty of voluntary manslaughter, and thereupon the court, by an order duly entered, appointed October 19th, 1888, as the time for passing judgment upon such conviction.

On the 19th day of October, the prisoner being present and Judge Judd presiding, the district attorney moved for judgment and sentence, and the prisoner, by his counsel, moved the court that the sentence and judgment be indefinitely suspended during good behavior. And thereupon the court, by an order, entered in its minutes, reciting that good and sufficient reasons being made to appear therefor, granted the defendant's motion and suspended sentence during good behavior. On the 15th day of October, Judge Judd having resigned, he was succeeded by Judge Blackburn, the defendant. On the 21st day of October, at a session of the court then being held and Judge Blackburn presiding, the District Attorney moved the court for an order appointing a time for pronouncing judgment, which the court refused and still refuses to proceed to sentence.

Upon this record we are asked to issue a mandate to the defendant to proceed to judgment and sentence.

Ample authority is vested in the court by the statutes of the Territory and rules of practice to set aside verdicts for errors or want of proof to support them; but this power was not invoked in this case, and Dodds stood convicted before the court of the crime of voluntary manslaughter, by a verdict which was in full force and effect. After conviction the trial court may undoubtedly suspend judgment temporarily for limited periods from time to time. It may be proper to do so to allow the defendant time to move for a new trial, to perfect an appeal, to present a petition for pardon, and to allow the court time to consider and determine the sentence to be imposed. People vs. Reilly, 53 Mich., 203; Wharton's Cr. Pl. and Pr., sec. 3176; Com. vs. Demerritt, 115 Mass., 132; State vs. Addy, 48 N. J., L. 113.

But when a defendant stands convicted and all the remedies provided by law for testing the correctness of the conviction have been exhausted or waived, we have no doubt it is the duty of the court to keep control of the case and within a reasonable time proceed to give judgment, and in doing so to exercise such discretion as the statute governing the particular offense commits to the court. The authority to wholly relieve parties from a conviction for crime is not given to the courts, but belongs to the pardoning power. People vs. Morrissette, 20 How. Pr., 116; People vs. Reilly, 53 Mich., 203; People vs. Brown (Mich.), 5 Criminal Law, Mag. 808.

It is apparent from this record that it was not intended by the court to temporarily suspend judgment, but on the contrary, to entertain the prosecution no further and to discharge the defendant therefrom without sentence. The statute Com. Laws, 1888, section 4401, which prescribes the punishment for voluntary manslaughter, the crime for which Dodds stood convicted, is as follows:

"Voluntary manslaughter is punishable by imprisonment in the penitentiary not exceeding five years."

It will be seen that by this statute the largest discretion is vested in the court. It extends from a maximum imprisonment in the penitentiary down to the least appreciable space of time, to a minimum being designated. No doubt the legislature, in committing this discretion to the court, recognized the fact that there might be extreme cases where a party might legally be guilty of the crime, and yet the circumstances be such that the penalty should be purely nominal. Of course such a case would be an extreme one, but it can radically be imagined; on the other hand the case may be such as to require the extreme penalty provided for by the statute. Within these limits, then, the court in this case was authorized to exercise its discretion. It might have designated a term of imprisonment so brief that the prisoner could not have reached the penitentiary before it expired; or, if he did, that would have only required him to be received and discharged.

We think it is to be presumed from this record that the learned judge who presided at the trial, and heard all the testimony, in his discretion, determined that this was a case in which the highest penalty which by law he was authorized to inflict should be imposed; and that being purely nominal and requiring of the officers to execute it, a merely perfunctory duty, and useless expense, he refused to pass sentence at all. This, we think, is the reasonable presumption. From this record we are to presume official integrity and propriety, rather than the contrary. No case is presented in this record for reviewing the discretion of the court below. If that could be done, the facts upon which the discretion was exercised are not before us. The question presented to us is whether we shall issue a peremptory mandate requiring the court to proceed to inflict this penalty. We think not, especially in view of the fact that the writ would require another judge than the one that heard the evidence and presided at the trial to pass the sentence. While we have no doubt, as before stated, that it is the duty of the court in which a conviction is had to proceed to judgment within the limits prescribed by law for the exercise of its discretion, and that it cannot rightfully exercise the pardoning power by refusing judgment, but that where the statute prescribing the punishment for a crime only fixes a maximum punishment, thereby expressly authorizing the court in its discretion to fix any degree of punishment from such maximum down to a purely nominal punishment, and it is apparent from the record that the court, in the exercise of such discretion, has determined that the lowest possible punishment should be inflicted, the failure of the Court to pass judgment is more a matter of form than of substance. The mandate of this court would only require the performance of a technical duty, for this reason. We do not think we are called upon to interfere by issuing the writ asked for.

The writ should be denied.

ZANE, C. J., concurs.

Anderson, A. J., concurs.

**WE ADVISE OUR FRIENDS**

WHO NEED ANYTHING IN THE Clothing line to call upon Carlton & Co., 44 Main St., where they will find a well selected stock of men's and boys' suits, overcoats, hats, caps, shirts, etc., at very low prices. This firm is reliable and will treat you right. eor

## AN HEIRSHIP DECISION

### Made by the Territorial Supreme Court.

At 5 o'clock yesterday afternoon Judge Anderson filed the following opinion in the Territorial Supreme Court:

In the matter of the estate of Thomas Cope, deceased:

George H. Cope, a son of the above named decedent, applied to the Probate Court of Salt Lake County for a distributive share of the estate of said decedent. His right to share in such distribution was objected to by Janet Cope and Thomas H. Cope, lawful wife and son respectively, of said decedent. A trial was had and the Probate Court adjudged that the said George H. Cope was not an heir of said decedent, and not entitled to share in the distribution of his estate, and decreed the distribution of the whole estate remaining in the hands of the administrator to the said Janet Cope and Thomas H. Cope. From this decree the said George H. Cope has appealed to this court. O. O. Whitemore said Wm. Armstrong, attorneys for George H. Cope, and Le Grand Young and John M. Zane, attorneys for Janet Cope and Thos. Cope, counsel for the respective parties, have stipulated in writing thus: "The facts as stated and found in the decree of distribution made and delivered by said Probate court on the 1st day of March, 1889, are and shall be taken to be facts in the case and that the sole question to be determined in this case is whether the said George H. Cope, mentioned in the decree as the polygamous child of Thomas Cope, deceased, is an heir of said deceased."

The facts found and stated in said decree, so far as they are material to the determination of this case are as follows:

DECREE OF DISTRIBUTION.

"George H. Cope, son of Thomas Cope, deceased, having heretofore, to wit, on the 4th day of February, 1888, filed in the court his petition stating there, among other things, that the final account of Thomas Cope, deceased had been stated and that said estate was in condition to be closed; that a portion of said estate remained to be distributed among those entitled thereto and he was a son of said Thomas Cope, deceased, and an heir to said estate, and praying that a distribution of said estate be made, and Janet Cope, widow, and Thomas H. Cope, the son of said Thomas Cope, deceased, having filed in this court their written objection to any of the said estate being distributed to said Geo. H. Cope, because the said George H. Cope was not an heir to the estate of Thomas Cope, deceased, and praying that distribution of said estate be made to them. Said matters coming on regularly to be heard on this first day of March, 1889, at 10 o'clock a. m. the said George H. Cope appearing by his counsel, C. O. Whitemore, and the said James Cope and said Thomas H. Cope appearing by their counsel, J. M. Waldell. This Court proceeded to the hearing of this matter, and proof having been made to the satisfaction of the Court that due notice had been given of the hearing of said petition as required by law and the order of the Court, and it appearing to the Court from the proof made in open Court that the said Janet Cope was the legal widow and the said Thomas H. Cope was the legitimate son of said Thomas Cope, deceased, and one Margaret Cope the plaintiff polygamous wife of said deceased; that the marriage of said Thomas Cope with said Margaret Cope was contracted when the said Janet Cope was the living and undivorced wife of the said Thomas Cope, deceased; that the said Thomas Cope, deceased, died in Salt Lake City on or about the — day of August, 1884, leaving an estate consisting of the real and personal property hereinbefore described, the title to which is held by Thomas Jack, administrator of the estate of Thomas Cope, deceased, in trust for the heirs of said estate; that the same is now in a condition to be closed; that the whole of said estate was the separate property of said deceased. The court finds that said George H. Cope is a son of the issue of said polygamous marriage of Thomas Cope; that he is not an heir of said deceased, Thomas Cope, and is not entitled to any share in the distribution of the estate. The court further finds that the said Janet Cope is the lawful widow and the said Thomas H. Cope is the legitimate son of the said deceased, and are the sole heirs of said deceased, and were entitled to have said estate distributed to them. It is hereby ordered, adjudged and decreed that all and singular the real estate hereinbefore described be and the same is hereby distributed in fee to Janet Cope and Thomas Cope in equal and undivided shares."

At the time of the death of said decedent the statute of the Territory of Utah in relation to the estate of decedents provided as follows, to wit:

"Section 24. The homestead occupied by the wife or any portion of the family of the deceased at the time of his death shall in all cases be held free to the use of the wife and family of the deceased, and shall not be liable to any claim or claims against the said estate, and if there be any property remaining after the liabilities of the estate are liquidated, then it shall, in the absence of other arrangements by will, descend to equal shares to his children or their heirs; one share to such heirs through the mother of such children, if she shall survive him, during her natural life or during her widowhood; and if he has had more than one wife, who either died or survived in lawful wedlock, it shall be equally divided between the living and the heirs of those who are dead, such heirs taken by right of representation."

"Illegitimate children and their mothers inherit in like manner from the father, whether acknowledged by him or not, provided it shall be made to appear to the satisfaction of the court that he was the father of such illegitimate child or children."

This statute was enacted March 29, 1852, and it is by virtue of the provisions of the last of the above sections that counsel for claimant contend that he is entitled to no distribution or share of said decedent's estate. It will be observed that this statute makes no distinction as to their right to inherit from the father between the legitimate children and illegitimate children who are the offspring of a polygamous wife and the children of a prostitute; although such illegitimate children may never have been recognized by the father during his lifetime, yet after his death, if it shall be made to appear to the satisfaction of the court that he was their father, "they and their mothers were placed on substantial equality with the lawful widow and legitimate children, and inherit in the manner from the father." Whether the statute was void as into because contrary to good morals and against public policy, it is not necessary to determine in this case, in view of the act of Congress of July 1st, 1862 (in compiled laws of Utah, 1888, Vol. 1, p. 107-9). The first section of this act prescribes the punishment for the crime of bigamy in any Territory or other place over which the United States has exclusive jurisdiction. The second section is as follows, to wit:

Section 2.—That the following ordinance of the provisional government of the State of Deseret, so called, namely, "An ordinance incorporating the Church of Jesus Christ of Latter-day Saints, passed February 8th, in the year 1851, and adopted, re-enacted and made valid by the Governor and Legislative Assembly of the Territory of Utah, by an act passed January 19th, in the year 1855, entitled 'An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication and distribution,' and another act, and parts of acts, heretofore passed by the said Legislative Assembly of the Territory of Utah, which establish, support, maintain, shield or countenance polygamy, be and the same are hereby disapproved and annulled; provided that this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired, under the ordinance hereinbefore mentioned, nor the right "to worship God according to the dictates of conscience," but only to annul all such laws which establish, maintain, protect or countenance the practice of polygamy; inasmuch as the celestial spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecration or other contrivances."

Counsel for the widow and legitimate son insists that this act of Congress disapproved and annulled the Territorial statute giving to illegitimate children and their mothers the right to inherit from the father, upon the ground that the Territorial statute maintained, protected and countenanced the practice of polygamy. At the time of the passage of this act the inhabitants of the Territory were almost all members of the Church of Jesus Christ of Latter-day Saints, commonly called Mormons. They professed a belief in polygamy, and their so-called prophets and revelators claimed to have received revelations from God commanding its practice. It was the most distinguishing feature of the Mormon Church, and its members had settled here that they might practice it undisturbed. It was publicly taught in their churches and openly practiced in all parts of the Territory by the people. The Governor and members of the Legislative Assembly belonged to the Church, and polygamy was established and the approved condition of the people. In order, however, to induce women to willingly enter into such a life, it was necessary to provide, so far as possible for the support of such women and their children, and I think it cannot be disputed that this statute was passed for this purpose, although it does not, in express terms, mention plural or polygamous wives or their children. At common law illegitimate children were incapable of being heirs, nor could they have any heirs but those of their own body. (Blackstone's Commentaries, Vol. 1, p. 249.) While the rigid rule of the common law has been more or less modified in most of the States of the Union, so that an illegitimate child may inherit from its mother and a mother from the child, and in some of the States an illegitimate child may inherit from its father, if recognized by him during his lifetime, yet in no State or Territory, except in the Territory of Utah, nor in any civilized nation of the world, so far as I am aware, is there a statute giving to illegitimate children, when not recognized by the father during his lifetime, the right to prove after his death that they are his children and to inherit from him the same as if they were legitimate.

I think it is plain that the Territorial statute countenanced and protected the practice of polygamy and was therefore annulled by the act of Congress referred to. It follows that George H. Cope is not an heir of the decedent, Thomas H. Cope, and is not entitled to share in the distribution of the estate.

The judgment of the Probate Court is affirmed.

## SPECIAL NOTICES.

**Notice to the Public.**

We, the undersigned, will not be responsible for any debts incurred, except by our written or verbal order. GEO. & ELIZA S. DUNDONS.

**Notice to Mountain Ice Co's Employes.**

All the Old Employes of the Mountain Ice Company are requested to be at the Company's Ice Grounds tomorrow (Tuesday) morning at 7:30, in order to commence work. d14

**Notice!**

My wife Kittie, having left my bed and board without cause, I will not be responsible for any debts contracted by her. A. WADDELL.

Full Cream Cheese at 12½c lb. Best Butter at 15c lb.

People's Equitable Co-op.

Go to SPENCER, BYWATER & Co., opposite City Hall, for Tin Roofing, Guttering, Spouting, Stoves and Tinware, etc.

SLEEPLESS NIGHTS, made miserable by that terrible cough. Shiloh's Cure is the remedy for it. 1

CATARRH CURED. Health and sweet breath secured, by Shiloh's Catarrh Remedy. Price 50 cents. Nasal Injector free. 1

WILL YOU SUFFER with Dyspepsia and Liver complaint? Shiloh's Vitalizer is guaranteed to cure you. 1

THAT HACKING COUGH can be so quickly cured by Shiloh's Cure. We guarantee it. 1

WOOL BATTS

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JOHN C. CUTLER & BRO.,

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Men's Suits from $3.75, Boys' Suits from $1.00. People's Equitable Co-op.

The Best Quality of Rock Springs Coal delivered promptly, in any quantity. Order now from Rock Springs Coal Co. Office in Gable Pitts Drug Store. A. J. HILLS, Agt.

To tone up the system and stimulate the appetite, take Augustus Bitters. Dr. J. G. B. Siegert & Sons sole manufacturers. At all druggists.

**Coughs and Hoarseness.**—The irritation which induces coughing immediately relieved by the use of "Brown's *Bronchial Troches*." Sold only in boxes.

**Home Made Wool Hose.**

Children's, 12c. pair, worth 50c.
Misses', 20c. " " 40c.
Ladies', 25c. " " 50c.

People's Equitable Co-op.

**$2,000**

Worth of Elegant Holiday Goods now on exhibition and sale at the Drug Store of "The Boys," Jennings, Bear & Co., 48 Main Street. Call and see them. d11

**Champagne Cider, Belfast Ginger Ale** Seltz Water, Iron Wine, Root Beer and all kinds of mild, refreshing beverages. We have removed into our new, large and commodious building, and are now prepared to supply the public with any amount from a dozen to a car load of the finest class of goods at reasonable prices. HEWLETT BROS., 744 and 746, State Road, Salt Lake City.

We have just received a large supply of Pure Orange Juice Cider, in five gallon kegs. Free delivery to any part of the city.

Telephone 806. d1m

7 Large Bars Soap for 25 cents. Saponifier Lye, 11 cans for $1.00. Splendid Teas, 12½c. Packings. 2 lb. Cans Marmalade Peas and Corn, 10c. People's Equitable Co-op.

**The Worthington Clothing Store.**

Having established a reputation for honesty, reliability and fair dealing, we are now prepared to offer of the public great bargains in Men's Boys' and Children's Clothing, Furnishing Goods, Overcoats, etc. Call and examine our new and complete stock and be convinced that our prices are 10 per cent. lower than any other house in town.

WM. LOSCHORE,

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**Like Hot Cakes.**

Mr. T. A. Denovet, merchant, Denoven, Louisiana, says: "The St. Patrick's Pills sweat like hot cakes." Their gentle action and reliability as a cathartic is what makes them popular. For sale by Z. C. M. I. drug dept.

Pears' soap secures a beautiful complexion. 1

**Better Than A Hot Lemonade.**

In a recent article in the Youth's Companion, on "How to cure a cold," the writer advises a hot lemonade to be taken at bed time. It is a dangerous treatment, especially during the severe cold weather of the winter months, as it opens the pores of the skin and leaves the system in such condition that another and much more severe cold is almost certain to be contracted. Many years constant use and the experience of thousands of persons of all ages, has fully demonstrated that there is nothing better for a severe cold than Chamberlain's Cough Remedy. It acts in perfect harmony with nature, relieves the lungs, liquifies the tough tenacious mucus, making it easier to expectorate, and restores the system to a vigorous and healthy condition. Fifty cent bottles for sale by Z. C. M. I. drug dept.

**Ogden Department.**

The NEWS can now be had every evening, at 5:15 p.m., at the news stands of the Union Depot, or at the Ogden News depot, 331 Twenty-fourth Street, a few doors east of the Post Office; also from Dalton, Nye & Cannon, Main Street, or it will be delivered at your residence the same evening by applying to Mr. Scott Anderson, News agent in Ogden City.

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