Mr. Rawlins made a brief argument in favor of the position the witness had taken, and further action in the matter was deferred until 10 a. m. to-morrow.

In reference to this question, the Territorial Supreme Court, in overruling the action of the First District Court in the Barnard White case, on July 1st, said:

"The court was clearly in error in ruling that the witness should testify. The witness not having been the lawful wife of the defendant at the time of the alleged offense of cohabitation, there was no crime committed against her which might possibly, although we do not determine the point, make her a competent witness under our statute. Besides, it makes no difference at what time the relationship of husband and wife commences, the principle of exclusion applies to its full extent whenever the interests of either are directly concerned."

THAT PRIZE FIGHT.

Judge Zane says it was a Violation of the Law, Notwithstanding It was a Fraud.

But Where are the Principals?

This morning the grand jury filed into the Third District Court to receive from Chief Justice Zane instructions relative to the recent prize fight between McDonald and Slade, in the Opera House.

The Judge in his remarks to the jury, said the paper presented by them to the Court was a statement of certain facts, and the question was asked whether these facts constituted a violation of section 2,061 of the Compiled Laws of Utah. The substance of the facts stated to the court by the jury is that persons advertised in the public press and by public posters, that at a public place two men would engage in a prize fight for money, with gloves, and would fight to a finish. In pursuance thereof the parties met at the place named, and a large number of people assembled to witness the contest. A ring was formed by drawing a rope; the parties were armed with gloves not thick enough to prevent injury to each other, and seconds and a time keeper were present, with all the necessary adjuncts to a prize fight. The parties exchanged blows, and finally one of them appeared to be knocked down. He also appeared to be unable to get away, and was carried off, and everything appeared to make it a real prize fight. But it turned out afterward that the contestants had agreed not to hurt each other. The question was asked by the grand jury whether these facts were a violation of the statute. The section reads:

"(2061.) Sec. 231. Every person who engages in, instigates, encourages or promotes any ring or prize fight, or any other premeditated fight or contention (without deadly weapons), either as principal, aid, second, umpire, surgeon, or otherwise, is punishable by imprisonment in the penitentiary not exceeding two years."

It would seem that every person who engaged in, instigated, encouraged or promoted any prize fight or contest, was liable to indictment and punishment. The question was, whether this was a prize fight or contention, as the facts were stated. The statute was not made to apply to street brawls, but to prevent the evils attending prize fights. One of these evils was the assembling of large crowds of disorderly persons. A turbulent crowd were usually present on such occasions. Sometimes quiet and peaceable people attended out of curiosity, but the assemblage was generally made up of the opposite class. One danger on such occasions is that parties are dissatisfied with what goes on, and as a result broils and fights will occur, and such conduct is injurious to the public welfare and the good order of society. Where a fight was advertised and a fraud practiced which deceived the audience, it was all the more liable to create a broil and bring about a general disturbance. It did not appear in this case that the parties expected that their fraud would be found out; but the deception only made it worse. Another injury of such proceedings was the effect of the bad example upon society, especially the younger class. Older ones might avoid it, but the younger ones might be encouraged in engaging in this class of contests, as tests of strength and personal courage. These trials of physical strength and courage lead to fighting, and encourage that spirit, and are prohibited by the law. The Court charged that the facts stated constituted a violation of that statute. The fact that the parties intended to deceive the public, instead of engaging in a fight, only tended further to create disorder, and under such circumstances parties might be seriously injured, as they often are when they do engage in prize fights.

At the conclusion of the Judge's instructions, the grand jurors filed out of the court room. Whether the parties engaged in the fight will be indicted or not, remains to be seen. The two principals were arrested and released on the small bond of $500 each, and it is generally understood they have left for other parts. In connection with this matter the following section, following the one quoted by the Judge from the Compiled Laws, may be of interest to those who witnessed the hippodrome:

(2062.) "Sec. 232. Every person willfully present as a spectator at any fight or contention mentioned in the preceding section, is guilty of a misdemeanor."

FROM SATURDAY'S DAILY OCT. 23,

The Office Cases.—A motion has been made before the United States Supreme Court to dismiss the appeal taken in the cases of the Territorial Auditor and Treasurer. It is made on the ground that the court has no jurisdiction, and is expected to be heard sometime next week.

Imprisoned.—Last evening Charles Hardy, of Provo, who was convicted of resisting Deputy Redfield, when the latter attempted to enter Hardy's house in a rather unceremonious manner, was brought up and placed in the penitentiary. He was sentenced to imprisonment for one day, and to pay a fine of $55—the costs of the prosecution.

Surprise Party.—On Wednesday evening, October 20th, a surprise was given to Sister Mary Whittle, president of the Relief Society of the Evanston Ward, it being her 58th birthday. About 40 of the brethren and sisters went to the house very quietly and surprised the inmates completely. The evening was spent in singing and dancing for a time; lunch was then served, after which all returned home. Sister Whittle was made the recipient of some very nice presents.

Information Wanted.—J. S. Harrison, whose address is Tennyson Post Office, Warwick County, Indiana, desires to hear from Alice Davis, her mother, or some of her brothers or sisters. She is supposed to be clerking in a store in this city. Her mother's maiden name was Emma Crompton, who married John Davis, who separated from her and went back to the States some 15 or 16 years ago. Mr. Harrison can give the family some valuable information.

Going to Provo.—The Provo Theatre, a fine place of entertainment, has not of late been used much by local talent, for the reason that traveling combinations have crowded it out. On Friday and Saturday evenings of next week, however, the home people will man the deck again. The old-time favorite comedian and character actor, Phil. Margetts, assisted by Miss Nellie Colebrook, J. C. Graham, W. C. A. Smoot, William Brown and the excellent home company of Provo, will present the "Lancashire Lass" in fine style. They can do it well.

Married.—In Logan, on Thursday, Oct. 21, Phineas Howell Young to Miss Margie Wayman, both of this city. The happy couple returned to this city by the noon train yesterday, where they will reside. The groom is a son of the late President Brigham Young and Harriet B. Young; he is a young man who enjoys a wide friendship wherever he is known, and possesses qualifications which can but make his future life a prosperous one, while the bride is as desirable a young lady as can be found "in a day's travel." We heartily wish the couple all the happiness which pertains to the human family in the best estate.

A Request.—For the benefit of the rising generation in particular, it has been suggested that the names of the missionaries, with the most interesting incidents that occurred, while crossing the plains from here to the Missouri River, 1,060 miles, on foot, hauling our provisions and bedding on hand carts, be published in the *Juvenile instructor*.

Any member who either, from memory or written memoranda, can furnish a few items that occurred under their own observation, will confer a favor by sending the same to

GEO. GODDARD,
251 E, Second South Street, Salt Lake City.

JUDGMENT RENDERED

IN THE CASE OF THE BEAR LAKE COUNTY COMMISSIONERS.

By telegram from Blackfoot we learn that judgment has been rendered in the case of the two Bear Lake, Idaho, Commissioners, whose case was recently decided by Judge Hays. The writ of ouster is granted and the plaintiffs, who were appointed by the notorious ex-Governor Bunn, are to assume the office at once. The defendants are to pay the costs of suit. We have not heard yet whether action has been taken for an appeal to the higher courts.

HANGED HIMSELF.

A POLICEMAN PREVENTS A SUICIDE.

This morning George Bailey, who has a long record in the police court, was arrested by Officer Smith for drunkenness and disturbing the peace by beating his family. About 9:30 a.m. he was placed in a cell, and at 10 o'clock, when Officer Sharp inquired of the Marshal if he should leave Bailey in until 2 o'clock p. m., the Marshal said he had better be brought out anyhow.

Mr. Sharp went to the jail and called the prisoners wanted for trial. Baily failed to respond, and one of the men was sent after him, returning with the tidings that he was hanging by the neck. Knowing that he had attempted suicide before in the jail, and had nearly succeeded, he thought the prisoner was joking, but investigation showed that the assertion was true. There, in the cell, his feet a few inches from the floor, hung Bailey, apparently lifeless, his face being turned black by the strangulation. He was suspended by a small rope, which he had secured and fastened to an upper bunk. Officer Sharp immediately cut him down and dragged him outside. When the rope was taken off he showed signs of life and gradually recovered.

He was put back in the cell, where about an hour after, he again attempted to hang himself by the short piece of rope left tied to the bunk, but was prevented by the prisoners.

This afternoon he was brought into court and pleaded guilty to the charges against him. He informed the Court that he wanted to get out of the country, and His Honor, taking him at his word, after giving him a good lecture, suspended sentence until Monday at 10 a.m. In the meantime Bailey was set at liberty, with the understanding that if he is found within the city limits again he will receive a severe penalty.

WRIT DENIED.

Judge Zane Refuses to Grant a Writ of Habeas Corpus in the Case of Apostle Lorenzo Snow.

The Case Will be Taken Before the United States Supreme Court.

The application of Apostle Lorenzo Snow for a writ of *habeas corpus*, as set forth in yesterday's EVENING NEWS, was called for hearing in the Third District Court to-day.

Mr. Sheeks stated that the court was not compelled by the statute to grant the writ, but as it was the desire of counsel for the petitioner to appeal to a higher court, they wanted no technicality to stand in the way of a review of the case, and asked that the court issue the writ, without passing on the question. They did not ask that the petitioner be released from imprisonment now, but that the question at issue—segregation—might go to the United States Supreme Court.

The Court said that with that understanding the writ would be issued.

Mr. Varian interposed an objection, however, claiming that the Third District Court had no jurisdiction to issue a writ of *habeas corpus* in this case. The defendant had been convicted in a co-ordinate court, the First District, and the Third District Court had no right to review the case, and no jurisdiction to render a judgment. For this reason he opposed the granting of the writ. He also argued that where the petition did not show sufficient cause for the discharge of the prisoner, the writ should be denied.

Mr. Richards said the position of Mr. Varian was not well taken. In reference to the alleged insufficiency of the facts shown in the petition, he cited authorities that Mr. Varian's claim had only reference to the court of last resort, and not to one from which an appeal could be taken. Counsel for petitioner had made this request that all possible doubt as to the right of appeal might be removed. It was very far from consistent for the representative of the government to object to having the highest court in the land pass on the construction of the law. This representative had claimed that he had the right to segregate the offense of unlawful cohabitation as often as he chose, and men were imprisoned in consequence. Now he came forward and objected to the Supreme Court passing on the question. If he was right, none should be more willing than government officers to have the question decided in his favor. If he was wrong, those prosecuted under that method were being illegally imprisoned, and it was only an act of justice to them to have the matter set right. For this purpose the writ should be granted. The Court should not try to oust the appellate jurisdiction of the United States Supreme Court by refusing the application of the petitioner.

Mr. Sheeks stated that the only object of the request was to get the question of segregation before the United States Supreme Court.

The Court said that the question was whether on the showing made, the petitioner could be discharged on the hearing. As this could not be done under the ruling of the Territorial Supreme Court, he would not issue the writ.

Mr. Richards said the reason the case had been brought before Judge Zane was that the statute required application to the most convenient court. The petitioner did not ask a review of the case, in this court, or the United States Supreme Court. The only question was whether the Court exceeded its jurisdiction in passing additional judgments after the petitioner had been sentenced once for the offense.

Judge Zane, however, refused to issue the writ, and an exception to the ruling was taken by counsel for the petitioner.

The case will be taken to the United States Supreme Court.

THE SCHOOL REPORTS.

P. L. Williams Wants the County Superintendents to Report to Him.

County Superintendent Stewart Moves to Dismiss the Writ of Mandamus.

In the Third District Court to-day, P. L. Williams said he wanted to know what the intention of County Superintendent Wm. M. Stewart was with reference to the writ of mandamus requiring him to report to Mr. Williams as Territorial Superintendent of District Schools.

Le Grande Young replied that he was ready on behalf of Mr. Stewart, to argue the latter's motion to dismiss the case, which was as follows:

In the District Court of the Third Judicial District of the Territory of Utah, County of Salt Lake.

P. L. Williams, Territorial Superintendent of District Schools for Utah Territory, Plaintiff,

vs.

William M. Stewart, Superintendent of District Schools for Salt Lake County, Utah Territory, Defendant.

Now comes the said defendant, William M. Stewart, superintendent as aforesaid, and appears in this case for the purpose of this motion, and none other, and moves this Hon. Court to dismiss the case, and to hold the pretended service made upon this defendant for naught, for this, that the said petitioner, as well as the United States Marshal, failed and neglected to serve upon this defendant a copy of the petition or affidavit of said plaintiff; and this defendant furtaer shows to this Hon. Court, that all the summons of service made upon him was a copy of its order, which said copy is hereto attached and made a part of this motion.

Petitioner further represents to this Hon. Court, that he in nowise wishes to disregard its orders herein or otherwise, and makes this appearance to respectfully test this question of this service, and asks that, in case such service be held valid and good, he be allowed to file a demurrer and answer to the order of this Hon. Court, and to the petition of the petitioner.

WM. M. STEWART.

We hereby certify that the said defendant's objection is well taken in our opinion.

F. S. RICHARDS,
LE GRAND YOUNG,
SHEEKS & RAWLINS,
Attorneys for defendant.

The arguments in the case were set for this afternoon, when Le Grand Young stated that the ground of the motion to dismiss the service on Mr. Stewart was that no copy of the complaint was served on him. The writ of mandate commanding him to report to Mr. Williams, alleged Territorial Superintendent, had been alone served. On this point the statute said that in papers of this character the writ should be served in the same manner as a summons in a civil case. In these cases it was provided that a certified copy of the complaint must be served with the summons. The defendant was not required to answer the order of the court, but the allegations in the petition for the writ, and unless served with a copy of the petition could not answer the allegations therein.

P. L. Williams argued that this was not a civil action, for the protection of private rights, or the redress of private wrongs. The action was to subserve a public want, and the writ was directed against a public officer. Under this view the writ of mandate stood in the place of the complaint. It stated generally the allegation against the party, and it was that the defendant should make answer to.

Mr. Young replied to Mr. Williams' argument, and the Court took the matter under advisement until 10 a. m. on Monday.

MRS. BASSETT AND THE GRAND JURY.

THE COURT DOES NOT RULE DIRECTLY ON THE ISSUE, BUT THE TENDENCY IS AGAINST THE WITNESS.

In the Third District Court to-day, relative to the refusal of Mrs. Kate Smith Bassett to testify before the grand jury against her husband, Bishop Wm. E. Bassett, for the reason that she was his lawful wife; and was protected by the law, Mr. Rawlins asked that the lady sworn on her *voir dire*, that the question as to her being the legal wife of the defendant might be settled. He thought this was the only way in which the question could be determined.

Mr. Varian opposed the request. He argued that the marriage of the defendant with a former wife was shown, and that she was still living. If the marriage of the witness was before the divorce of the first wife the grand jury wanted to know it, and the court could not go into an investigation of the issue. That remained with the grand jury, who could ask any question they pleased, and draw out all the facts connected with any case. The question of the competency of the witness could not be raised before the grand jury, but only when the cause came on for trial in the court.

Mr. Rawlins called the attention of the Court to the fact that the law said the grand jury could only receive legal testimony, and if this witness was not competent they had no right to compel her to testify. The question of her competency as a witness was before the Court, and should be determined, that the grand jury could not do what the statute said could not be done. It was proposed to show that the witness was the defendant's lawful wife, his former wife having been divorced prior to witness' marriage. This question had been settled by the Territorial Supreme Court, in the case of the United States vs. Bernard White, where it was said that a legal wife was an incompetent witness as against her husband, except where an offense had been committed against her. The question of competency could only be settled by the court, and the grand jury had nothing to do with its judicial determination.

Mr. Varian contended that if it was shown that witness was married to defendant Jan. 26, 1886, the grand jury had the right to ask whether there had been any prior marriage ceremony.

Mr. Rawlins replied that the law protected the legal wife in all cases and she was not compelled to be witness except where a crime ha been committed against her. The questions propounded by the grand jury implied an understanding on their part that the witness was the defendant's lawful wife, and they had no right to ask what they did. Whenever a witness was called before a court on this issue, the competency of the witness should be determined by the court.

Judge Zane, in ruling on the case, said that if the witness was the legal wife, and the offense complained of was not against her, she would not be a competent witness. If it was against her she would be. The counsel for witness proposed to show that she was the legal wife. It was alleged by the prosecution that the defendant had a wife, from whom he obtained a divorce, and afterwards married the witness. The defense claimed that cohabitation prior to the divorce was no crime against the witness, therefore she could not be compelled to testify. In reference to whether the witness occupied the position of lawful wife to the defendant, the grand jury should investigate that, before the questions submitted again propounded to her. The issue might then come up as to whether she could be compelled to answer.

Mr. Rawlins suggested to the court that the grand jury be instructed that if they found the witness was the lawful wife, she could not be compelled to testify.

This was refused, the court remarking that it was inclined to believe, however, that she was a competent witness.

The grand jury then retired, and Mrs. Bassett was excused from further attendance until Monday.

The small boy who plays circus with the "trick-goat" in his back yard should see that the St. Jacobs Oil bottle is not empty.

LEGAL NOTICE.

In the Probate Court of the County of Salt Lake, Territory of Utah.

In the matter of the Estate of Andrew Burt, deceased.

Order to show cause why Order of Sale of Real Estate should not be made.

JOSEPH W. BURT AND B. Y. HAMPTON, the Administrators of the Estate of Andrew Burt, deceased, having filed a petition herein, duly verified, praying for an order of sale of certain of the real estate of said decedent, for the purposes therein set forth, it is therefore ordered by the Judge of said Court, that all persons interested in the estate of said deceased, appear before the said Probate Court on Friday, the 26th day of November, 1886, at 11 o'clock in the forenoon of said day, at the Court Room of said Probate Court, at the County Court House, in the City and County of Salt Lake, Utah Territory, to show cause why an order should not be granted to the said administrators, to sell so much of the real estate of the said deceased at private sale as shall be necessary, and that a copy of this order be published at least four successive weeks in the DESERET WEEKLY NEWS, a newspaper printed and published in said City and County.

Dated October 23rd, 1886.

ELIAS A. SMITH,
Probate Judge.

Territory of Utah,
County of Salt Lake, } ss.

I, John C. Cutler, Clerk of the Probate Court in and for the County of Salt Lake, in the Territory of Utah, do hereby certify that the foregoing is a full, true and correct copy of an order to show cause why order of sale of real estate should not be made in the matter of the Estate of Andrew Burt, deceased, as appears of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this 23rd day of October, A. D. 1886.

[SEAL.]

JOHN C. CUTLER,
Probate Clerk.
By H. S. CUTLER, Deputy.