Published Daily, Sundays Eccepted, AT FOUR O'CLOCK. PRINTED AND PUBLISHED BY THE DESERET NEWS COMPANY CHARLES W. PENROSE, EDITOR. Jan. 17, 1887 Monday OFFICIAL JUSTIFICATION OF MURDER.

EVENING NEWS.

WE publish to-day in full the plea of We publish to-day in full the plea of Arizona is favored with a chief Assistant Prosecuting Attorney C. S. executive who is not a factionist. He varian in the so-called "trial" of evidently is what every man in William Thompson at Beaver for killing E. M. Dalton at Parowan. It has been stated that it was more in the nature of an appeal for the defense than an argument for the prosecution. The public can now judge fairly whether or not this was correct. In our opinion no other conclusion be honestly arrived at that the officer sworn than to prosecute undertook instead to defend the culprit. If ever there was a case of darkening counsel by words without knowledge, and of covering up the plain truth with heaps of worthless verblage it is this effort of C. S. Varian's. The defendant was charged with the

crime of manslaughter under the laws of the Territory of Utah. He was a deputy marshal, and was endeavoring to arrest a man charged with unlawful cohabitation. In doing so he deliberately borrowed a rifle, laid in wait for his man, lingering until the victim had passed the hiding place so that his back was toward the officer, then the latter called him to halt and

immediately shot and killed him. The territorial statute allows an officer to use force and justifies homicide when necessary, in case of resistance charged with felony. If he is not charged with felony the officer is not justified in using such force. In this case the offense charged against the murdered man was a felony under any law. That being the case the officer was not justified, and the evidence established deliberate killing, and did not show that now. the man killed made any resistance or

attempt to escape. Mr. Varian went a long distance out

of his way in order to confuse the terms felony and misdemeanor and try to make them identical. What for? to excuse the killing of a person charged with an offense not classed among high crimes, under the pretence that he was fleelng from arrest. But the law is too plain for him and shines through the clouds and dust of his sophistry and circumlocution. Here it is in a few words:

An officer may not use such force as his threat into execution? Suppose that exercised by Thompson except you do it, Dr. Taggart! when necessary to the arrest of a person accused of felouy. Dalton was accused of an offence which the law, that created it declares a misdemeanor. What can be clearer than that the officer was not authorized by law to shoot him in order to effect his arrest, even if he was trying to escape? There is no law of the United "States that authorizes such killing. The territorial statute under IN WHICH, AS A PROSECUTING which Thompson was prosecuted (in form) distinctly forbids killing under the circumstances disclosed at the trial. What followed? Why, the pubhic prosecutor, instead of presenting the plain and simple and incontrovertible side of the prosecution, made

mon" people are less than those of their co-religionists in mon" Arizona, but they are in the majori-J. A crowd of political backs and their followers clamor for the reversal of the rule in reference to the relative the felos, provided it was necessary to take his life, or to suffer him to escape. positions of majorities and minorities in all communities in the Republic. Hence the demand for special legisia-tion and pressure brought to bear tion and pressure brought to bear the alleged felon upon Congress by the foulest

misrepresentations.. Why should not the country and Congress This was not a rule, however, in cases

to make up and

CONSTITUTE & CRIME

take note from the action of the Aril take note from the schon of the Aria zons Legislature? The logical inference to be drawn from it is that oppressive and unconstitutional enactments—al-ways out of place—are especially un-necessary here. This fact has still more force when the honesty of "Mor-mon" local officials is considered. Arizona is favored with a chuef

ernment ought to exist somewhere. Without that it would become impos-sible to carry into effect the decrees executive who is not a factionist. He evidently is what every man in a similar responsible position beacht to be-the Governor of the whole people, seeking the welfare, happiness and prosperity of all who are under his executive supervision. Not only is he anxious that all should stand on an equality under the law, in keeping y with the Dielaration of Independence, the Constitution and his oath of office, but he rightly apprehends it to be his duty to use the influence and power to f his office against the etacting or maintenance of legal measures that are do fais office against the etacting or maintenance of legal measures that are sough by subteringe and political ingglery to induce Congress to it its post by subteringe and political jugglery to induce Congress to the the majority of the people of this Terri-tory hand and foot that they might, majority of the people of this Terri-tory hand and foot that they might, while politically prone, be a prey to un-scrupulous place and spoil hunters. may commit. In the legislation of Congress, contained as it is in a large volume—the penal code—a greater number, a larger majority of the of-fenses their defined are either desig-

A PHYSICIAN WITH STRONG SYMPTOMS. As relating an instance of superabun

dant assurance mingled with unmitigated presumption, welcommend to our are stated with accuracy and precireaders the account of an: incident sion. The act which was entered into to form the crime was likewise stated connected with the city quarantine.

connected with the city quarantine. There does not appear to be any spe-cial effort on the part of the spoliation party to disguise the fact that certain of its members expect to fill cer-tain specified offices in the event tain specified offices in the event and attempted escape of a person of the Edmunds - Tucker bill becoming a law. Doubtless numbers of these prospective appointments have been arranged for. Those who have offices in their mind's eye are in hot haste to seize them in fact. Some not a felony. It never was of them are not willing to merely let "Fond anticipation forward point the view."

> But are seeking to appropriate them There's many a slip

"Twixt the cup and the lip,

And if Dr. Taggart has been assured States. There may be some other that he will have a claim to afflict the crimes which I, have overlooked to that he will have a claim to afflict the community of this city as quarantine physician, in case certain contingencies arise, he should not forget that the opportunity must exist before the anticipation can be realized. Still, we

law, the prisoner thereby

dwelling or mansion-house, shall suf-fer death." Now, if the legislature had simply said, after describing the places, that any person who shall com-mit arson within this Territorial juris-diction shall suffer death, that is the rule laid down; but in the case of fine the crime itself, and they say wit-fully and maliciously burning any dwelling, etc., the consequence is we have a capital arime there which is the dis-have a capital arime there which is the dis-the consequence is we

going to execution or during execu-tion, shall suffer death." That is not, defined

nated as misdemeanors or are not, or are not designated by name at all, as belonging to any particular class of crime. The elements which shall go AS A FELONY. Whether or not under the rule of Judge Hammond it would be deemed a felony, under the laws of the United States, whether it was a felony at common law, or whether the legislature had defined it in six language, it is not a felony at all events. "Any officer permitting an escape of a prisoner, shall be fined not more than two thousand dollars, or imprisoned for a term of not

more than two thousand dollars, or imprisoned for a term of not more than two years, or both." Now, as to forging and counterfeiting; "Every person who faisely forges or alters any obligation or security of the United Sates shall be punished by a fine of not more than five thousand dollars and by imprisonment at hard labor not more than fitteen years, "both of which are canital yet are punished federal government-is by fine and im-prisonment, of course with the death penalty in certain instances. In only two instances that I now recollect, do other consequences attend or follow the violation of the Féderal law. The man who attempts to bribe a Federal judge, if convicted, is to be punished by fine and imprisonment, and is dis-franchised; that is to say that be is prohibited from again ever holding office or position of honor or trust un-der the Federal law. The man who commits the crime of perjury in a court of justice is also punished by fine and imprisonment and he is for-ever disqualified from giving testimony penalty in certain instances. In only two ever disqualified from giving testimony onment for a term of fifteen years as a witness in a court of the United

UNDER OUR STATUTE.

Passing, selling, and concealing forged obligations has the same penalty at-tached. Bribing a judge may be im-prisoned at discretion for life, and for-ever disqualifing for holding office; yit the offender is not a felon under the United States laws. The offense is simply a unisdemeaner. Counterleit-ing is punishable by 10 years. Acces-sory before the fact in marder, pobbery or piracy, punishable by death, is not which similar consequences attach. These offences, however, are sufficient for illustration. They are both misdemeanors under the rules which I shall hereafter attempt to make clear. ticipation can be realized. Still, we share the stating to black often in the one of the stating that if Dr. Clinton, the under the classification of cases I have given, simply misdemeanors, offences ory before the fact in marder, roobery created by Congress. On the other hand there are offences designated by or piracy, punishable by death, is not stating the way of his putting. Offenses involving imprisonment for

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are decominated in limit, although there ware in the majori-political marks and lamor for the reversal learner to the relation of the second political marks and learner to the reversal learner to the relative and minorities and minorities.
It is mode death. It may be doubtful to be the reversal learner to the relative take hill fo, or to suborized to take the life or take hill fo, or to suborized to take the follow, provided it was necessary to take hill fo, or to suborized to kill him to more take the life, or to suborized to kill him the source take the life, or to suborized to kill him the source take the life, or to suborized to kill him the follow.
If the necessary to take him. There are the source the reversal to the follow.

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I DENY THE POWRE, I say they cannot legislate away the right of this government to enforce its own "laws in 'lis' own Territory. un analogous case was presented to the supreme Court many years ago, the case of the United States vs Reid, 19 Howard, page 180, 'The question there is one of evidence: "But it could not be supposed without very plain words to show it, that Congress in-tended to give to the States the power of prescribing the rules of evidence in trials for offenses against the United States, For this construction in effect bit is a description attaches to the market, page 184, 196 digesion more description attaches to the procession attaches the power distribution of procession attaches the power distribution attaches the procession attaches the power distribution attaches the power distribution attaches the procession attaches attaches the procession attaches attaches the procession attaches attaches attaches the procession attaches attache

intry ought to be instructed that the switchest is armed with a prosecution of criminal dases. If the power did not criminal dases. If the power did not criminal dases. If the power did not crime axiast the isw a man charged with a crime axiast the isw, it would be intraction—to take him in order to possible to enforte the hw. And so it was that at the common law, in by far the larger number of offenders all be-ng classed as felons, it is laid down, that the officer armed with a proper process axianst a man charged with and if it was necessary to kill him to take him, he was justified in doing so. Now the conditions have consiged since the common law reached its ma-turity. The people have grown wiser and better; civilization has made great progress; the are have consiged more to criminal jurisprudence in every country that is civilized, the forteiture of the estate, manifest, the forteiture of the estate, im every country that could be instructed to be the law. ADDRTAS TO THE JURY. the criminal jurisprudence in every country that of in estate, mailfestly wicked, and a unjust to those ADORTSS TO THE JURY.

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confusing, sophistical and disingenuous plea for the defense. And he announced a doctrine that is contrary to law and to public policy; that is, that a deputy Marshal may shoot down a citizen charged with a simple misdemeanor, if he thinks it necessary to effect his arrest.

We have no hesitation in pronquacing this a monstrous and diabolical proposition, unsupported by law, murderous in its nature, and calculated in its tendency to disturb the public peace and provoke bloodshed and anarchy. Let any candid person read Assistant District Attorney Varian's so-called argument, and compare it with the third section of the Edmunds Act and sections 88 to 97 of the Penal Code, and we will risk the conclusion. Mr. Varian did not go so far as to tell the jury in so many words that they should acquit the manslayer, but the tendency of his argument was to that end, and the charge of Judge Boreman was in the same direction.

It now remains to be seen whether the Government of the United States will sustain the bloodthirsty, unprecedent-ed and lawless doctrine enunciated by one of its representatives in this Ter-ritory. And if deputy Marsbals are to be turned loose with loaded rifles to be turned loose with loaded rines to shoot down unaimed and perceable citizens in the streets, in the manner in which E. M. Dalton was as-sasinated by Wm. Thompson, then it will be time for every man to take what measures will be deemed best and safest, to preserve himself from murder at the instigation of those whose duty it is to preserve peace and protect jife and property. This question must be determined definitely and at once.

DEATH OF AN UNJUST LAW.

A SPECIAL dispatch, which will be found in another part of the paper, informs us that the Governor of Arizons has signed the bill which repeals the anti-"Mormon" test oath law of Arizona.: In our sister Territory in the south the unconstitutional abortion in the form of a law has been tried, convicted, sentenced to death and executed. This is the fate to which all such measures destructive of freedom and the fundamental principles upon which the government of our common country twas built should be consigned They bear the same relationship to the commonwealth as individuals who revel in lawlessness and trench upon the rights of the people, and are much more dangerous. The latter are within reach of suppression by laws of a sounder and more preservative char-acter. When a law of itself is destructive

of right and intrinsically non-protec-

AS FELONIES

VARIAN'S VAGARIES Full Text of His Beaver Argument, OFFICER, HE DEFENDS

THE PRISONER. Says Thompson was Justified in What He Did,

AND THAT IT IS THE DUTY OF EVERY ACCUSED MAN TO GIVE HIMSELF UP. [Reported Stenographically for the NEWS.

ABGUMENT TO THE COURT.

May it please the court, there is a question of law which arrests our at-tention upon the very threshold of this inquiry, directed to the prosecuting officers as well as the court, which must be considered and determined.

must be considered and determined. So far as I am advised, this is the first time in the history of the Territory, when the question involved here has been presented for determination by the court. That question is briefly stated whether or not, under any cir-cumstances, a marshal of the United States, armed with a process of the Federal court, goes out to arrest an alleged offender against the laws of the United States, is an horized to use force to apprehend the offender; if so, to what extent, and whether he may

abets, causes, procures, commands or counsels another to commit any murthat are followed by short terms of der, robbery or act of piracy apon the seas, is an access by before the fact to imprisonment and lighter penalties. Therefore it is apparent in reviewing such piracles, and every such person being thereof convicted shall suffer the legislation upon this subject that the distinctive features known to common law as felonies, characterize them as such the distinction from misdemeanors no longer existing in this country, in every State of this Union, in every Territory of this Union, there the distinction no longer exists. In every Territory and in every State, so

far as I am advised, the designation of the class of crimes known as felonies is an arbitrary one, made by the legisis an arotrary one, made by the legis-lature, and depends upon the pun-ishment that follows, and not upon the character of the offence. Every of-fence that is followed by impris-onment in the State prison. The punishment in every State or la every Territory, is classified as a fel-ony; every other offence is classified as a misdemeanor. Misdemeanors are punished in the Territory and through punished in this Territory and through the States and Territories, by impris-onment in the county jails. Neither is the duration of the punishment, the period of thme for which an offender may be committed to prison, to deter-mine the question. I find upon exam-ination of the statutes in this Territory, that there are some forty offences, statutory offences, punishable by limprisonment in the penitentiary, where in the maximum terms of imprison-ment have been fixed by the Legisla-ture; so that each of them may be followed by imprisonment for only one day; still they are offenses under the

TERRITORIAL LAWS.

who are connected by blood after the onentier has been done away with, the corruption of blood upon innocent children, has been abolished; taking away the dower of his innocent wife, infust and wicked as that was, it has passed away in the light of the present day. The character of the offense re-

g ess, is an access if before the fact to such piracles, and very acth period. being thereof ceavities and if a unter-being the benefits of the ceavities and the benefits of the ceavi

unnecessary for me to address you at any great length. You have listened and are, I think, able to determine this case. You understand what the prose-cution consists of in this case, which is a matteriof law. They cite that un-GREAT In all OUR DEPARTMENTS during the For

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