THE SOCIAL WORLD.

Simpson Memorial M. E. Church Welcomes a New Pastor.

A Scotch Concert—Details of the Foute Silver Wedding—The "Smiling Group" Party. Family Fetes—Notes.

At the entertainment to be given this evening at Odd Fellows' Hall by the Western Addition Literary and Social Club, Mr. C. D. O'Sullivan will sing, Miss Judd will give one of her clear whistling solos and "Little Toddlekins," a comedietta, will conclude what promises to be an attractive programme.

The home of Mr. and Mrs. W. H. Crocker has been brightened by the advent of a daughter.

Cards have been received announcing the marriage of Mr. Charles F. Freund and Miss Lizzie Michel, which took place in this city last Sunday. They will be at home at 1026B Shotwell street.

The Peerless Club held its sixth party last evening at Odd Fellows' Hall. There was a smaller attendance than was anticipated. The following gentlemen officiated on the acting committees: Arrangement—I. F. Morris, S. Goldstein, H. Klaber; floor director, Alex Levison; assistant, J. Morris.

Golden Gate Circle, No. 23, C. O. F., will hold its fourth anniversary party at B'nai B'rith Hall.

Nearly $1000 has been added to the Church Building Fund of the Unitarian Society in Alameda through the efforts of the ladies of the Unity Circle, who so successfully presented the attractions of the open-air fete on Friday and Saturday last. The receipts are sufficient to pay off the mortgage on the church lot, which insures the immediate erection of a handsome church.

Welcoming a New Pastor.

The lecture-room attached to Simpson Memorial M. E. Church, corner of Hayes and Buchanan streets, was filled last night with members of Simpson and other church congregations, met to welcome Rev. Dr. A. C. Hirst, D.D., LL.D., the new pastor, late President of the University of the Pacific.

The pleasant affair was given under the auspices of the Ladies' Aid Society, and the rooms had been daintily decorated by Mrs. Charles H. Blinn, their President.

A programme had been prepared for the occasion, opening with an address of welcome, Captain Charles Goodall; anthem by choir; responsive address by Rev. Dr. A. C. Hirst, thanking those present for their welcome and indicating his intention of following up the established policy of the church, while admitting a certain aggressiveness and life into his methods. Dr. Hirst was to have been followed by Rev. T. C. Easton of Calvary Church, but he was unable to be present.

Mrs. Anderson, leader of the choir, rendered a soprano solo, "When the Heart Is Young," and during the evening Mr. Mahy sang "Didst Thou But Know" and Mrs. C. L. Parent rendered the soprano solo, "Sunrise." The accompaniments to these and their encores were ably rendered by Mr. F. Dellepiane. Refreshments were afterward served by the ladies, and the reception terminated pleasantly in the general interchange of small-talk.

The Foute Silver Wedding.

The silver wedding reception held on Monday evening by Rev. and Mrs. R. C. Foute was made the more delightful by the charming decorative effects at its scene, 2109 California street, and by numerous handsome gifts appropriate to the occasion.

Nearly 300 guests were received by Rev. Mr. and Mrs. Foute, assisted by Rev. Bishop and Mrs. Nichols, Rev. Mr. Mason, assistant rector of Grace Church, and his sister, Miss Mason. Music was enjoyed and a buffet supper was another pleasant feature. Several hours were passed in social converse, which naturally had for its chief starting and objective point the memorable occasion upon which Mr. and Mrs. Foute were so warmly congratulated.

Twenty-five years ago, at the residence of Mrs. Foute's aunt, Mrs. Kearney, wife of the well-known and celebrated General Phil Kearney, at Narragansett Pier, Dr. and Mrs. Foute were married. The gentleman, a native of Tennessee, was a Lieutenant in the United States Navy when the first guns were fired at Sumter. His sympathy being with the South, he served with the Confederates during the war. He was on the Merrimac during the now historical encounter of that ironclad with the intrepid little Monitor. At the time the Alabama was sunk by the Kearsarge he was in France waiting to take charge of the Alabama. While abroad at this time he met for the first time his wife, then Miss Mary de Kantzow, who was attending school in Europe. Mrs. Foute is a native of Stockholm, but her mother was a member of the Bullitt family of Kentucky and was in her maidenhood a belle in Washington society.

A Scotch Society Concert.

A musical and literary feast was extended to members and friends of the St. Andrew's Society at Scottish Hall, 111 Larkin street, last evening. The reputation of this society as a high class caterer to the musical taste of the general public is well known, and its socials in consequence are deservedly popular.

Mr. Robert Sutherland, the highly esteemed President of the society, presided over the meeting, being ably assisted by Vice-President A. L. Pringle and Mr. James Niven.

An attractive programme was rendered by the following: Mr. C. C. Whyte, Miss Mary Scott, Mr. W. Robb, Miss Mabel Gregg, Miss Mamie Perdie, Mr. George St. J. Brenner, Miss McFarlane, Mr. W. C. Cook, Mr. John Robinson, Messrs. Whyte and Ballingall, Mr. David Finnie.

"Auld Lang Syne," by the audience, brought the meeting to a close.

Surprised in the "Land of Nod."

A pleasant surprise party was tendered Mr. Henry C. Gregg, at his residence last Monday evening, the occasion being the twenty-third anniversary of his birth.

The surprise was undoubtedly genuine as the recipient was found in the "land of nod." The company passed the hours pleasantly until near midnight, when a delicious repast was served.

Among those present were: Mr. and Mrs. Nick Gregg, Miss Millie Storke, Miss Peare Thorne, Miss Edith Balmont, Miss George Hubbard, Miss Elsie Tyler, Miss Mamie Evans, Miss Lan Meade, Miss Viola Adams, Misses Olivette and Kate Townsend and Miss Susie Lyons of Virginia; Messrs. H. Andross, J. S. McGinn, T. A. Smith, R. L. Snedgrass, F. Shear, Henry Davis, Ralph Curtis, John Lorenz, J. McArty, C. Marple, H. Moore, C. B. Sloane, C. Durham, T. Dwyer, John F. Cooney, H. C. Green, H. Gregg, G. Lewis, John Humphreys, Henry Rodman and J. Cullen.

The Smiling Group Club Party.

The Smiling Group, a new social club, gave its first party last evening at Union-square Hall, and it proved a complete success. Over 100 couples participated in the grand march, which was led by Mr. Daniel E. Murdin (floor manager) and Miss McBain, followed by Mr. Walter S. Manon and Miss Farley. The club, which intends to give a series of parties during the coming season, is officered as follows: President, Daniel E. Murdin; Vice-President, L. J. Frichette; Treasurer, E. A. Pyle; Secretary, John W. Platt; Sergeant-at-Arms, Walter S. Manon.

Party on California Avenue.

A genuine surprise party was tendered to Mr. William McDermott on Saturday evening, a week ago, the occasion being an anniversary of his marriage.

The guests were pleasantly entertained with choice music, followed by dancing and the service of supper.

Among those present were: Mr. and Mrs. Eaton Faulkner, Mr. and Mrs. P. J. Gleeson, Mr. and Mrs. P. W. Commins, Mr. and Mrs. William McDermott, Mrs. A. Gillogley, Mrs. Igo, Miss Tillie Garrett, Miss Annie Wahl, Miss Nellie Hickey, Miss Mary Lafferty, Miss Emma Wahl, Miss Rosie Lafferty; Messrs. W. T. O'Brien, Henry Eaton, W. J. O'Brien, Louis Plato, Richard Stapleton, A. Bearwald, Eugene Hannon, J. Einfield, J. Strickland, S. Cohen, Leo Bearwald, Theodore Isaacs, George Plato, J. Farrell, J. Reagan.

The Veronas' Cruise.

Although the regular season of the Verona Outing Club ended with the yacht party of the 9th inst. the club, accompanied by a few friends, indulged in another sail last Sunday on the 25-foot sloop Pride.

During the day a sail of twenty-five miles on the ocean tested the seaworthiness of the party and all were found hardy salts. A hearty lunch was indulged in at Hunters Point, where several photographs were taken of the guests.

The Veronas are Messrs. Max L. Shirpser, Karl Eber, William P. Robinson and Maurice Rosenborn.

The "Donkeys'" Party.

Miss Fannie Burns was tendered a very pleasant party by the "Donkey" Social Club at her residence, 38 Eleventh street, last Sunday evening. Great credit is due the following gentlemen, who composed the Committee of Arrangements: Messrs. Joseph M. Kerr, George P. Hall, P. Henry McKenna, Thomas Hallinan and Will T. Dorrance.

At 10 o'clock the guests repaired to the drawing-room where the following programme was excellently rendered: Song, "Playmates Are We," Miss Fannie Burns; recitation, "On the Stump," P. Henry McKenna; comic song, "Comrades We Be," J. Michael Kerr; recitation, "Take a Chance?" Miss Kitty Burns. Miss Sarah Boyle and Miss Emma Burns sang a duet and an act from the comedy, "The Love-maker," was produced by Miss Theresa Burns and Will F. Dorrance.

At the conclusion of the programme supper was served. The affair was heartily enjoyed by the following guests: Miss Sarah Boyle, Miss Emma Burns, Miss Sarah Kane, Miss Kitty Burns, Miss Kitty McKenna, Miss Annie Hayes, Miss Theresa Burns, Miss Emily Fox, Miss Lulu Featherstone and Miss Fannie Burns; Messrs. P. Henry McKenna, Thomas Hallinan, George P. Hall, Thomas Burns, G. Q. Atwood, Joseph Whitford, Chauncy Lewison, Will A. Green, Joseph M. Kerr and Will T. Dorrance.

Society Personals.

Mrs. James Carolan and her daughter, Miss Emily Carolan, left for the East yesterday. Miss Carolan will remain East to attend school at Miss Porter's, Farmington, Conn.

Miss Eva McAllister and Mrs. C. E. Wise, the daughters of Mrs. Hall McAllister, have for the present given up their intended trip to Europe, owing to the indisposition of their mother.

Mr. E. G. Schmiedell and Mr. Charles J. Fay have gone down on a visit to Santa Barbara.

Mrs. W. C. Ralston and Miss Ralston have returned from a visit to Auburn.

Miss Lucy Upson has returned to Sacramento from Pacific Grove.

Mr. Michael Davitt, the Irish patriot, his wife and children, left on the overland train last Monday evening on their return to Ireland. While in Oakland they were the guests of the Cannings, whose niece he married.

Mr. and Mrs. W. D. Grady of Fresno are stopping at the Baldwin Hotel for a brief vacation visit.

Mr. Timothy J. Sutherland, the young Fresno rancher, is visiting his mother and sisters at the Marechal Nell on Ellis street.

Mr. C. W. Shaw, the mining expert, has gone to Mexico on a business trip.

Mr. and Mrs. T. T. Dargie have returned from a pleasant trip to Lake Tahoe.

Mrs. J. J. O'B. Gunn and party, who have been staying at Santa Barbara for several weeks, returned yesterday.

Mr. H. C. Ahlers has returned from a business trip to Seattle and the Northwest.

Mrs. C. P. Bagg of Fresno is expected to return by Thursday's steamer from Humboldt, where she has been visiting friends.

Miss Kittie Corbett is the guest of Miss Nettie Royal of Santa Rosa.

Mrs. M. A. Wilcox, Miss F. A. Wilcox and Mr. W. H. Wilcox are visiting Los Angeles.

Mr. Henry T. Oxnard has left Cuino for Nebraska on business.

Mrs. James Flood and Miss Flood have gone on a short visit to the Hotel del Monte.

Mr. and Mrs. James Jerome Smith of Stockton have finished a sixty days' trip to Alaska and the cities of Puget Sound, and will remain at the California prior to leaving for San Diego and City of Mexico, to be gone the balance of the year.

Miss Clara Barton, the well-known philanthropist and President of the American Red Cross, and Dr. J. B. Hubbell, its general field agent, arrived at the Occidental Hotel Sunday morning. They are here to arrange a camping excursion into the mountains with her friends, the botanists, Mr. and Mrs. A. G. Lemmon of Oakland, with whom they spent several weeks of camping life in the Sierras on a former visit to the Pacific Coast in 1886.

"CASTE."

What the Amateurs Did With the Comedy Last Evening.

There was a large assemblage of the English colony at the Bijou Theater to enjoy and criticize the amateur performance of Tom Robertson's comedy. It was given for the benefit of the British Benevolent Charity Fund, and we are pleased to learn that several hundred dollars will be turned over to the society as the result of the enterprise. Considering the nicety of the play and the peculiar talent necessary for its proper presentation, it was a bold undertaking for the young gentlemen and ladies who ventured on it. Nevertheless it must be confessed that, generally speaking, they acquitted themselves very well. As George D'Alroy, who set caste at defiance in following the dictates of his love for Esther Eccles, Mr. W. J. Lonergan made a most effective rendering of his part, and as Esther, Miss Ida Krueger, the girl who earned her living as a ballet dancer, showed a nice easy lady-like manner in private life that warranted George D'Alroy's taste and judgment. Polly Eccles, her sister (Miss Ashton), Sam Gerridge (Mr. Cyril Young), her affianced, and old Eccles (Mr. H. G. Hockey), the father of these girls, are the antitheses of the swell element in the cast. D'Alroy, Captain Hautree (Mr. Brooks of Sheffield), and the Marquise de St. Maur (Miss Louise Cosgro), and so balanced the business that the comedy went through without a hitch from beginning to end. Of Mr. Hockey's Eccles, the drunken father, who, advocating the necessity of labor, is always in liquor and never at work, has not "struck a lick for twenty years," as Sam Gerridge satirically remarks, there can only be words of commendation. The part—a most arduous one for an amateur—was played with all the skill and finish of an old professional, and would justify this young gentleman seeking a wider recognition for his mimic talent on the regular stage. The only defect to be found was in his make-up, but this is one that can be easily cured. He affected the peculiar shabbiness of Daniel Quilp as we find him portrayed in illustrations of the "Old Curiosity Shop," rather than the typical threadbare worth-o'-mouth English workman; but, generally speaking, the character was well conceived and well executed. Cyril Young's Sam Gerridge, the jolly young plumber and gas-fitter, was cleverly played, and he dropped his "aitches" like a true son of Cockaigne. The orchestra, under the direction of Mr. H. J. Stewart, was quite a feature of the evening, only the masterly overture to Vincent Wallace's "Maritana" was measurably marred by the chatter of the ladies in the audience. Commend us to Englishwomen for gossip when they get a chance. Again, when the orchestra played "God Save the Queen," only a moiety of the audience rose out of respect to the music, showing how few had the courage of their convictions.

CONSUL CONEY.

The Representative of Mexico Takes Issue With Mr. J. R. Rohone.

A. K. Coney, Consul General of Mexico, being interviewed as to the statements of J. R. Rohone, as published yesterday, said that for an exhibition of ignorance of Mexican history, political and otherwise, Mr. Rohone's statements stand unrivaled, as none of them are founded on fact. Mr. Coney rejected indignantly the libelous aspersion cast by Mr. Rohone upon the Mexican army and its officers, and preferred to have them judged, as they have been, by such men as Generals Grant, Sherman, Sheridan, Miles and other famous American military men, who have been unanimous in praising the officers and soldiers of Mexico.

Furthermore, Mr. Coney stamps as incorrect the statement that General Diaz made up his army of bandits, or made any such propositions as Mr. Rohone says he did make. Neither is General Diaz an Indian as stated; nor is there any unrest throughout Mexico. On the contrary the telegrams show that the few bandits that are under the leadership of the notorious Garza and Ruiz Sandoval are fleeing toward the American border, which does not show that there is any evidence that they are being sustained by any party in Mexico. In point of fact a revolution, even to be started in Mexico or elsewhere, must have some reason or principle to be founded upon, and the offer of mere pillage, as in this case of Garza, can never be dignified by the name of revolution.

Mr. Rohone is also mistaken in his description of the movement of troops which yearly takes place upon the celebration of the national holiday on the 16th of September in all the large towns. Mr. Coney claimed that Mexico was never more prosperous nor more peacefully inclined than now, and that General Diaz is universally respected and liked by every class of society, both on account of his able and wise administration of public affairs and of the purity of his private life.

Assignee Tubbs' Report.

A. L. Tubbs has filed his report as assignee of the Meriden Borax Company, the Harmony Borax Mining Company and the California Chemical Company. The receipts of the three concerns amounted to $511,476 55 and the disbursements $461,602 39.

To-Night's Exhibition.

To-day is ladies' day at the Piedmont Baths, Oakland. In the evening an exhibition will be given, consisting of high diving by Messrs. Clark and Harmon, fancy and trick swimming by Captain Jack Williams; also chariot races, horse water races, and the climbing of the greased pole. Ritzau's Orchestra will be on hand to furnish the music.

IS THE LOTTERY LAW VALID?

A Cogent Argument Against Its Constitutionality.

THE POWERS OF CONGRESS.

An Exhaustive, Learned and Logical Presentation of the Case Against the Law by Judge J. C. Carter.

Honorable James C. Carter, the eminent jurist of New York City, has filed a very able, learned and interesting brief in the Supreme Court of the United States on the question of the constitutionality of the lottery law. Mr. Carter's client, George W. Dupre, was indicted February 19, 1891, in the Circuit Court of the United States for the eastern district of Louisiana, for mailing a newspaper containing an advertisement of a lottery contrary to the provisions of Section 3894 of the Revised Statutes of the United States. He demurred to the indictment and his demurrer was, upon argument, overruled, and he was ordered to plead thereto, and was thereupon surrendered by his bail and committed to the custody of the United States Marshal, to be held until discharged in due course of law.

He thereupon filed his petition in the Supreme Court praying for a habeas corpus and certiorari to the end that he might be discharged from his imprisonment. The ground of his petition is that the statute under which he was indicted is unconstitutional and void.

The provisions of the lottery law are so well known to the public that they do not need to be repeated here.

In his first point in presenting the case to the court, Mr. Carter defines the power of Congress as limited in two ways. First, it can exercise no power which has not been conferred upon it by the Constitution. Second, it cannot exercise the powers which have been thus bestowed in ways or for purposes which the Constitution forbids.

His first proposition is that the statute in question (R. S., Sec. 3894) is invalid, as being an attempt to exercise power not conferred upon Congress.

In support of this proposition Mr. Carter says:

"It is not denied that Congress, in the exercise of the power conferred upon it by the Constitution to establish postoffices and post roads, is clothed with the full incidental power of regulating such offices and roads; in other words, mail service. Nor is it denied that this incidental power of regulation embraces the power of so limiting the carriage of matter by mail as to render that service practicable; and consequently embraces a power of excluding matter from the mails for that purpose and to that extent. What we do assert is that any incidental powers which Congress may thus exercise must be such only as, in the

LANGUAGE OF THE CONSTITUTION,

'Are necessary and proper' for carrying into execution a general power expressly conferred; and that whether any such incidental power is 'necessary and proper' must be, as this court has always held, a judicial question."

The last above-stated proposition was early settled by one of the most celebrated judgments of Marshall.

The first form which the judicial inquiry assumes is whether the means employed by Congress in executing its admitted powers are appropriate and apparently conducive to the legitimate end. If they are so, it matters not whether or not they are the best and most effective means. Congress may fail in the effort to select those. But they must be means; in other words, they must have some relation to the end—some tendency to accomplish it. Applying this test, the statute in question is plainly invalid. This seems scarcely to admit of debate.

The legitimate end is to furnish mail facilities to the people of the United States; and this means facilities to all the people of the United States. No argument will be expected from us to show that the power thus bestowed upon Congress was not one to furnish mail facilities to such persons as Congress might, from caprice or favor or any arbitrary motive, choose to grant them.

The attempt in 1835 to procure the enactment of a law to prevent the delivery from the postoffices of alleged incendiary publications on the subject of slavery called forth an earnest debate in the United States Senate. Webster at once seized upon the essential vice of such legislation. He declared "that Congress had not the power, drawn from the character of the paper, to decide whether it should be carried in the mail or not."

The same view was supported by Senators Davis of Massachusetts, Calhoun of South Carolina, Clay of Kentucky and others. There was no pretense made by any one participating in the debate that the measure was in any way conducive to the end of establishing a mail service.

Mr. Carter cites innumerable decisions of the court in support of his propositions, and then goes on to say that no one will assert that Congress has power to suppress lotteries any more than it has to suppress any other employment or pursuit. If Congress had enacted a law directly forbidding under penalties the carrying on of the lottery business in any State there would be no hesitation in any court in declaring it to be unconstitutional.

Inasmuch as the denial of mail facilities to persons wishing to carry on any particular pursuit must, of necessity, so far impede it as to greatly abridge the extent to which it may be carried on, and in many instances render it impossible, and inasmuch as argument under notice asserts the absolute right of Congress, in its uncontrollable discretion, to refuse the facilities in any case (and such was Mr. Buchanan's view), it involves the assertion that Congress has the right, by such action, to break up, or impede, any business or employment.

What power did the framers intend to exercise when exacting this exclusion? Not certainly a power of regulating the mail service in order to make that service practicable, convenient and efficient.

The real power which Congress attempted to exercise was to hamper and impede, and, if possible, to destroy the lottery business, in order to protect the people of the United States from the assumed demoralizing and dangerous tendency of lotteries. Inasmuch as no one pretends that Congress may pass a law directly suppressing lotteries on the ground that they have an immoral tendency, or, indeed, on any ground whatever, the question is whether it can pass a law, not directly suppressing them, by declaring them to be crimes, but harassing and obstructing them by withdrawing from them facilities which are under its control, for no other reason than that it deems them crimes which it would suppress if it had the power.

This question must be promptly answered in the negative, for the power thus attempted to be exercised is a power to suppress lotteries and that alone. No such power can be derived from any express language in the Constitution, nor by any just implication from any language in it. More than this, the possession of any such power by Congress is utterly inconsistent with the whole theory of the

CONSTITUTIONAL RELATIONS

Between the General Government and the States.

Nothing is clearer than that the carrying on of a lottery, or the dealing in the lottery business, or with a lottery, is, in every instance, an act done within a State, and the power to declare such acts crimes, or to punish them as such, or to obstruct or impede them because they are crimes, is lodged exclusively with the State governments. They possessed this power before the adoption of the Constitution. They did not part with it by that adoption. Indeed, nothing was more sedulously guarded against by that instrument than the notion that the States had parted with any of their governmental rights over the conduct of their own citizens upon their own soil, except in respect to such concerns as were expressly intrusted to the Federal Government.

In respect to all rights other than those thus excepted, that Government was to be as absolutely powerless as if it were a foreign State. To borrow the language of Mr. Chief Justice Waite, in the United States vs. Cruikshank (92 U. S. 542, 550): "Within the scope of its powers, as enumerated and defined, it is supreme above the States; but beyond, it has no existence."

Whether a citizen of Louisiana, or of Maine, may carry on the lottery business, or do any act in the transaction of any business with a lottery, must therefore depend on the laws of those States respectively.

DIRECT LEGISLATION OF A STATE.

If Congress may disfavor one occupation or business by withdrawing from it the benefit of the mails, it may another. Should those who favor the prohibition of the sale of intoxicating drinks obtain a majority in the national councils—and, perhaps, that is now within their power—they may forbid the carriage of mail matter relating to that business. And what limit could be set by this court to such an assumption of authority?

But the statute in question is invalid, not only for the reason that none of the powers conferred upon Congress were sufficient to authorize it, but also because Congress was, by an express restriction upon the exercise of those powers, prohibited from making such a law. It is a law "abridging the freedom of the press" within the meaning of the first amendment.

At this point Mr. Carter reviewed at length the history of English jurisprudence on the liberty of the press, explaining its evolution from the period when it was in utter subjection to the state through its various trials and vicissitudes until it reached a condition of unquestioned freedom. He then took up the inquiry as to whether the statute under consideration is a law abridging that freedom. That such is its character is very clear, he said.

That freedom, he continued, includes not only the liberty of printing, but the liberty of publishing. The former would be empty, indeed, without the latter. And the liberty of publishing must be coextensive with the liberty of printing. And what is publishing? It is the communication to others of what is printed; in other words, it is circulating. Publishing and circulating are admitted to be synonymous. And what was the liberty of publishing which existed at the time of the adoption of the Constitution? It was the liberty of circulating printed matter in all practicable and permissible forms, of which that by mail was by far the principal mode. It included letters, newspapers and packets.

The statute forbids the carriage by mail of any newspaper, circular, pamphlet or publication of any kind containing matter concerning it may be a thousand subjects, if it also contains "any advertisement of any lottery or gift enterprise of any kind offering prizes dependent upon any lot or chance, or containing any list of the prizes awarded at the drawings of any such lottery or gift enterprise." Thus, no man can circulate a newspaper in any State except upon condition that he consents to forego the benefit to be derived from any such advertisement, although

IT MAY BE ENTIRELY LEGAL

In such State. Of course the conditions may, if this may be allowed, be extended to any other advertisement relating to any business or subject, and thus the power is directly asserted by this legislation of Congress to control the character of the whole newspaper press; for no one will pretend that the publication of newspapers is possible, on any large scale, if the benefit of the mail service is denied to them. If this power exists what stands in the way of excluding newspapers which contain matters advocating the tariff or free trade, or the doctrines or the candidates of any particular party?

And still further: The statute creates a censorship. Had it forbidden only the depositing in the mail of the matter described, it might be urged that every one was at liberty to make such deposit, subject to the hazard of being indicted and punished, and, therefore, that there was no previous restrain. But the prohibition forbids the Postmaster from delivering any such newspaper, circular, pamphlet or publication. It arrests publication, for it arrests the communication of the matter to the public, or to those for whom it is intended. And whether publication should be thus arrested is submitted to the judgment of a Postmaster! This is a perfect restoration of the censorship. That, indeed, as formerly existing, was imposed a stage earlier. It forbade the printing until the imprimatur was given. But this is interposed before publication, which is the essence of the censorship. It is previous restraint. The withholding of the tradatur of the Postmaster is as effective as the withholding of the imprimatur of the censor.

One learned Judge, startled by the sweeping scope of the language, which as clearly embraces the mailing of the prohibited matter to lottery-dealers as by lottery-dealers, has declared it incredible that Congress could have intended to punish a man for a criminal offense who had simply written a letter to a lottery-dealer, even if it were to order a ticket, and has cut down the statute so as to limit its prohibitions to lottery-dealers. (United States vs. Clark, 22 Federal Reports, 708.) If a statute embraces provisions, some of which are within and some beyond the legislative power, the former may be saved if they can be read separately from the latter; but the separation cannot be effected by an heroic construction. Courts must untie knots, not cut them. "It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could rightfully be detained and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the Government." (United States vs. Reese, 92 U. S., 214, 221.)

CONGRESS HAD NO DIRECT POWER WHATEVER.

That Congress has power to exclude from the mail any publication or letter tending to promote murder, arson, burglary, larceny—anything which is malum in se—or anything which tends to facilitate the commission of acts which it has power under the Constitution to declare to be crimes, and punish as such—piracy, and counterfeiting the coin, for instance, is not questioned.

Hence it has the power to forbid the mailing or delivery of obscene books or pictures. The publication or circulation of these was a perfectly well-known offense at common law.

There are, as there were at the time of the adoption of the Constitution, two methods by which printed matter might be circulated; one public and the other private.

The former was the principal one upon which the whole public mainly relied. It was constant, regular, abundant and sure; and, moreover, it had the capacity by law of excluding the other from the field, if not absolutely at least for the most part, and of thus increasing its own efficiency. There was, and is, a similar, if not as great, difference between the methods as between the sending of merchandise by railroad and by private conveyance. This principal method of circulation is denied to certain printed matter, and yet it is declared that the freedom of circulation is not abridged!

It is quite evident that this conclusion proceeds upon the view—it can stand upon no other—that the freedom of circulating, admitted to be tantamount to freedom of publishing, is not abridged so long as the citizen has the right to circulate printed matter in any private manner which he alone, or with the assistance of others, may contrive, and has recognized only to the right to circulate, and no reference to any right to enjoy the usual public means of circulating which his fellow-citizens enjoy, and for which he is taxed and made to pay in common with them.

Against this view it seems to us more in accordance with sense and reason to say that the emphatic declaration of the Constitution made to forever preserve the

PRINCIPAL SAFEGUARD OF LIBERTY,

That Congress should not pass any law abridging the freedom of the press, is violated by any law which takes away any of the ordinary methods of circulating printed matter.

There are two principal questions in this case, and none more important have ever been submitted to this tribunal. The first is, whether Congress may, in virtue of its authority to make laws necessary and proper in order to carry into execution the powers expressly granted to it, pass a law manifestly and avowedly for the sole purpose of suppressing a business within a State, which that State has the right to authorize, and over which Congress has no direct control. The second is whether a law prohibiting the circulation of certain written and printed matter open to no objection save that it relates to a certain business not criminal in itself, and permitted by the laws of some of the States, by the ordinary and usual means of circulation provided by law for the public generally, abridges the freedom of circulation, and, by consequence, the freedom of the press.—Boston (Mass.) Herald.

INJURED BY A THIEF.

Mrs. Wilson Severely Hurt by Colliding With a Stick of Timber.

James McCloskey is an individual that makes his living by picking up anything he can lay his hands on. Last night he went into a lumber-yard on Steuart street and shouldered a long stick of pine lumber, 2x6, and started to walk off with it. He reached Market street all right, and then ran the end of his load against the head of Mrs. Wilson of 221 Turk street, knocking her down and severely injuring her. McCloskey paid no attention to the prostrate woman, but continued on his way. Officer Mahan saw her fall, ran to her assistance and placed the timber-thief under arrest. The injured lady was placed in a hack and sent to her home, and McCloskey was taken to the South Harbor Station and booked for drunk.

LOOKING AROUND.

The Mayor and Street Committee on a Tour of Inspection.

Mayor Sanderson and Supervisors Taber, Hunt, Wilkinson, Carnes, Burling and Jackson spent the day on a tour of inspection. They first visited the new City Pound; thence went to Arlington and Charles streets, where intersected by the railroad track, and examined into the complaints of the citizens of that section to have bridges constructed over the track. They next went out to Seventh avenue, the scene of the strife between Adolph Sutro and the Spring Valley Water Company, and surveyed that district. What their conclusions are they have not announced, but they will be able to pass intelligently on those matters when required to.

Shemer Not to Blame.

The charge of manslaughter against Robert Shemer, the engineer of the Cliff House train that ran over and killed George Curlin on Sunday, the 14th inst., was dismissed by Judge Rix yesterday.

The census men found in the United States 14,056,750 horses, 2,296,532 mules, 16,019,591 cows, 36,875,648 oxen and cattle, 43,431,136 sheep, 50,624,106 swine.

ACROSS THE BAY.

George L. Bradley's Will Presented for Probate.

Ground Broken for an Electric Road—Sale of the Coleman Block—The Suicide of Bacon—Cash in the Treasury.

The last will of George L. Bradley, the well-known capitalist, who recently went to Oakland to live with his wife, from the Hotel Pleasanton, San Francisco, was filed for probate in the Alameda County Clerk's office yesterday afternoon. He left an estate valued at about $300,000, of which $85,000 is in various securities, among them shares of the San Jose Light and Power Company, valued at $23,000. He had real estate in Fresno of the value of $115,000 and real property in the city and county of San Francisco valued at $60,000. The will, which was written by the testator on July 11, 1889, gives the entire estate to his widow, Margaret L. Bradley, and his daughter, Mrs. Annie L. Wallace, wife of R. B. Wallace, to whom also is bequeathed all that portion of the land and improvements in the Laguna survey remaining in his name. The devisees have agreed among themselves to devide the estate equally among themselves.

Last evening Rev. J. J. Staub and Miss Minnie Wands were married at the Plymouth Congregational Church. The groom has been selected to take charge of a church near Portland, Oregon.

Mayor Melvin Chapman has signed the ordinance fixing the tax levy for 1891-92 at $1 10.

SHIPPED TO YUMA.

The outfit for grading and ballasting railroads belonging to Grant Brothers, and that has been at work on the California and Nevada narrow-gauge near Walnut Creek, was shipped to Yuma yesterday. One of the firm stated that it had twenty-five miles of railroad to grade there for the Southern Pacific Company, that had been temporarily replaced after the washouts during the winter.

Ground has been broken on the electric road to East Oakland. The ties are laid on Eighth street, between Webster and Alice, and the rails are expected daily. The contract has been let from Broadway to East Eighteenth street.

The conference regarding the Walkerley estate resulted in an agreement that the widow shall receive $416 per month for herself and the same allowance as guardian of her child.

The trial of the Pratt-divorce case will be resumed at 10 o'clock this morning. Mrs. Pratt was being cross-examined on Friday when the case went over.

ANOTHER GUESS IS IN ORDER.

The Rev. Thomas McSweeney, rector of St. Francis de Sales parish, speaks positively in regard to the latest guess that Mrs. Theresa Fair during her lifetime made the donation of $75,000, and says 'the lady was not the donor, neither was Mrs. Leland Stanford, whose name has a number of times been mentioned in connection therewith.

Mrs. F. M. Chambers outwitted Assistant Jailer Murdock yesterday and obtained admittance to see the vagrant William Warner. The vag called her "My wife" and she responded "Husband," and commenced to stroke his beard and kiss him, when Murdock forcibly ejected her.

The Coleman Block, at the corner of Twelfth street and Broadway, occupied by the Oakland Savings Bank, is reported to have been purchased by Thomas Prather, President of the Union National Bank. The consideration is said to be over $100,000. The deed has not yet been placed on record.

Mary C. Davis has sued Merton Davis for a divorce on the ground of desertion.

NOTHING HEARD FROM HIM.

Nothing has yet been heard from John Sydney Kinnear, who disappeared one week ago. One of the police officers thinks he saw him on a local train on Thursday evening. It is also said that Kinnear recently borrowed considerable sums of money from friends, and it is believed that he has skipped the country and will send for his family later on.

Rosalie Swett yesterday sued Donald Swett for divorce, on the ground of ten years' desertion. She wants $1000 as a division of property and a portion of Donald's $150 per month. George Noble has sued Minnie Noble for a divorce, on the ground of desertion. Minnie has left George and will not return.

The immediate friends of the late J. H. Bacon affect to believe that he was not in financial straits and had not been dealing in real estate, but the Recorder's books show that he had been in it during the brief boom period a few years ago, and it is believed that he never entirely recovered the reverses of that period.

Sheriff Hussey has taken three incorrigibles named Lulu Ehle, Guy Davis and Frank Lightfoot to the Whittier Reform School. Mr. Hussey went by steamer, and is not expected to return before the end of the week.

ARRAIGNMENT OF HOWELL.

The arraignment of John G. Howell on the charge of murdering R. S. Colvin was continued in Judge Greene's department of the Superior Court until to-day on account of his counsel being engaged in the M. B. Curtis examination in San Francisco. Mrs. Howell accompanied him to the Courthouse from the jail.

A series of lectures for the benefit of the teachers of the Oakland public schools has been arranged by Superintendent McClymonds on psychological subjects by Professor Earl Barnes of the Leland Stanford Jr. University. It is understood that outside teachers will also be invited to attend these lectures.

The cash in the Alameda County Treasury was counted yesterday by Dr. Bart Morgan, Chairman of the Board of Supervisors, and County Auditor Whidden. The amount actually in the treasury was $130,190. The amount disbursed during the month was $44,897 and the receipts $5555.

James Wilson, the young man arrested on a charge of picking the pocket of Mrs. Sleven of San Francisco on the Seventh-street local train, has been held to answer on the charge of grand larceny, with bail fixed at $1500.

ALAMEDA.

The Electric Light Plant Not a Good Investment.

The Catholic Ladies' Aid Society has presented Rev. Father McNaboe, pastor of St. Joseph's Church, with a purse of money.

A lawn party for the benefit of the Christ Episcopal Church will take place to-morrow evening at the residence of R. H. Magill, on Buena Vista avenue.

It is reported that the ladies of the Unitarian Society realized nearly $1000 for the Building Fund of the church out of their entertainment in the booths at Oak and Center streets.

J. H. Busch has been sued by Dr. J. C. Tucker for $125 alleged to be due for two months' rent of the premises occupied as a saloon at the corner of Park street and Santa Clara avenue, and for $17 alleged to be due for water.

The temperature of Len Harris was normal yesterday, and the ugly wound in his neck made by the train-robber's bullet is rapidly healing. Before he was shot he had contracted a severe cold, and has since been troubled with a cough. At one time fear was entertained that pneumonia would set in, but all danger is passed away, and to all appearances the detective will not give up the ghost for awhile.

Trustee Randolph stated yesterday morning that the Trustees had been negotiating with the Oakland Gas, Light and Heat Company for the sale of the electric light plant, but no conclusion has been reached. The Trustees ask $40,000 for it, the amount it originally cost. The Oakland company wants an exclusive franchise to operate an incandescent plant, and if it is granted for the term of fifty years will agree to furnish the present number of arc lights for street-lighting for $500 per month. W. M. Menton has made a still more liberal offer. He is willing to undertake to furnish ninety-three arc lights, the number now supplied by the municipal plant for $350 per month, provided he has an exclusive franchise for electric lighting and motor power in Alameda. It is the opinion of a large number of tax-payers that the municipal plant is not a good investment and will always be a big drain on the city treasury.

A Complicated Relationship Will Ensue.

A double engagement, strange because of the relationship of the contracting parties, and notable because of the wealth and social position of all concerned, is announced from Bar Harbor.

Horatio N. Slater, the many times millionaire of Webster, Mass., is soon to marry Miss Mabel Hunt, the younger daughter of the late William Morris Hunt, the artist. Mr. Slater is credited with 65 years, while his promised bride is barely in her twenties.

It is also announced that at the same time Mr. Slater's son, Samuel, will wed Miss Mabel's elder sister, Enid. There will be a complicated relationship in the Slater family.

Just when the weddings are to take place is a matter of speculation. One rumor has it that the first will occur on the 15th of this month at Mizzentop, the country-place of the Hunts. How soon afterward the son will follow in his father's footsteps is not known, but it is not unlikely that the marriages will be celebrated at the same time, and that Bishop Doane will perform the ceremony.—N. Y. World.

FROM HEALDSBURG.

The Session of the Seventh-Day Adventists—Interesting Notes.

Editor Morning Call: The principal event of the week was the opening of the long-talked-of camp-meeting of the Seventh-Day Adventists last Thursday evening. The grounds, situated in the beautiful grove of Squire Willson, just southwest of Healdsburg, are very pleasantly