DESERET NEWS.
WEEKLY.
TRUTH AND LIBERTY.
WEDNESDAY, - JAN. 15, 1879.

HUMAN LAW AGAINST DIVINE LAW.

THE decision of the Supreme Court of the United States, in the Reynolds case will occasion some surprise among people of various shades of opinion. Few, if any, entertained the belief that the decision of the lower courts would be confirmed. It was generally thought that the case would be returned on one or more of the technicalities involved in it, several manifest irregularities in the trial proceedings having been permitted, all of which were ably presented in the plea of the appellant's counsel.

But, if the press dispatches announcing the decision are correct, the court of last resort has not only decided that the anti-polygamy Act of 1862 is constitutional, but that the District Court was justified in receiving hearsay testimony; in discriminating against the defence, and in favor of the prosecution in the empanneling of the jury; and in other proceedings out of the usual course, as set forth in the argument for the appeal. It was on these irregularities that those who expected the Court to sustain the Act of '62 anticipated a ruling which would necessitate a new trial.

It would not be fair to criticize the reasoning of the Court leading to its decision, from the meagre report which has reached us by telegraph. The argument which attempts to draw any parallel between the religious marriages of the Latter-day Saints and the religious human sacrifices of the Hindoos and others, is so childish as to merit only a smile, and to evoke a sentiment of pity for the person who advances it; and we hope, for the credit of the Chief Justice and his august associates, that the telegraph has done them an injustice. Any man who can discern no essential difference between a system which promotes, preserves and cultivates life, and a practice which tortures, mutilates and destroys; between an act which contains no elements of crime in and of itself, and one which embodies the essence of criminality; between a creed that invades no human rights and a custom that tramples upon them to the last extremity, must be possessed of a cloudy mind and a feeble understanding.

But the question that naturally arises in the public mind is, What are the "Mormons" going to do about it? So far as we understand their views and feelings we should say, they will leave the matter in the hands of the Almighty. The Church of Jesus Christ of Latter-day Saints is composed of people who are, chiefly, citizens of the United States. Their object in settling the once arid wastes of these mountain regions, was to dwell together in peace where they could serve God according to the dictates of untrammeled conscience. Many of them came from foreign lands. When they took the oath of allegiance to the constitution and government of the United States, they made no promise of submission to any interference with their religious liberty. Neither did they agree that Congress or any court should decide what might or might not be considered a part of their religious faith. Freedom of belief implies freedom of practice; the first without the second is less than a shadow, it is a sham. An enactment which professes to secure the former without protecting the latter is a deception and a snare. Marriage to them is essentially religious in its character. Celestial marriage, including the doctrine of plurality of wives, was revealed to them directly from God. It does not matter who may dispute this as a fact, they have evidence of it which to them is complete, leaving no room for doubt. The skepticism or disbelief of others makes no difference whatever to them. Congress, many years after this doctrine became an integral part of their religious creed, the practice of which was commanded by the Almighty, passed a statute, declaring what God had authorized a crime against the law. The Supreme Court now affirms that law to be valid. Does this affect in any way the truth that God has revealed and commanded it? Not in the remotest degree. The principles which underlie plural marriage are just as true to-day as they were at any previous time, and no human law or court decision can possibly alter or abrogate them. The issue is between the Supreme Being and those who venture, ignorantly or otherwise, to oppose His purposes and designs. Daniel was apparently at issue with Darius. But the conflict really was between the King of Kings and those who sought to establish human decrees above divine commands. History has recorded the result.

We do not think there will be any trembling of limbs or faintness of heart over the ruling which has just been enunciated. Neither is there any cause for excitement, or even a ripple of alarm upon the surface of our profound tranquility. But that decision portends trouble to the country. If courts can decide what is or is not religion, the liberties of all sects are endangered. It is a poor rule that works only one way. That which now strikes at "Mormonism," may soon smite some other religious organization that happens to be in the minority. We regret the ruling more because it is an undignified submission to popular prejudice, than from any apprehension of its effects upon our people. And we see far more cause for fear of its general than its local results. It is the lifting of the head-gates for the entrance of a very small stream, but that is the first flowing of a terrible flood to come; and the roaring of the fierce waters of religious intolerence sound faintly in the distance, while we quietly look at the trickling streamlet that runs towards our feet.

Another question that arises is, What is to be done about the defendant? Is there to be no further effort in his behalf? It has been suggested that President Hayes be petitioned for his pardon. We assent to this and will support it, but solely on this ground: Brother George Reynolds has submitted his case as a test. He is not required in justice to suffer for the acts of a whole community. He has not been chosen as a scapegoat. Seeing that his is a test case, we think that President Hayes should look favorably on a request for his release. But neither he nor any of us wishes to ask man's pardon for our obedience to a law of God. We do not want to see any one so foolish as to court suffering or invite penalties; we think it the duty of every man to take all proper means to escape the consequences of an unjust and oppressive statute. But if God commands, and obedience to His mandate necessarily requires sacrifice and suffering, who will shrink from duty or cringe and crave for human pardon? The doings of a whole people should not be packed upon one pair of shoulders, therefore we hope to see and sign a petition for Brother Reynolds' relief. But that request should not and must not compromise, in the very smallest degree, the unshaken faith of the Latter-day Saints in the truth of the principle for the practice of which Brother Reynolds has been condemned, nor our testimony of its divine orgin, no matter what decision may be rendered by legislators or judges, by Presidents or Emperors, or by all the civilized and heathen nations that constitute the whole world.

THE REYNOLDS CASE.

As there are rumors in circulation that Bro. George Reynolds has been arrested, in consequence of the reported ruling of the U. S. Supreme Court on his appeal, it is perhaps advisable for us to make a few remarks on the subject.

The telegraphic dispatch conveying the intelligence of the decision is only a news report, and is entirely unofficial. Before any action can be taken against the defendant in the case, the ruling of the higher court must be transmitted to the Supreme Court of this Territory, and thence communicated to the Third District Court, before which the trial was conducted. No arrest can take place until the proper formalities have been complied with.

It is not at all impossible that the telegraphic report contains some inaccuracies. While it is most likely correct that the court of last resort, under popular pressure, has ruled that the Anti-Polygamy Act is constitutional, it is still probable that the rulings of the lower courts have not all been sustained by the higher. As we intimated yesterday, there were irregularities in the proceedings in the District Court which it was widely believed would be decided in favor of the appellant, and thus necessitate a new trial. Among them are these:

At the first trial, Brother Reynolds' second wife appeared in court and gave testimony in relation to her marriage with the defendant. Evidence of the marriage with his first wife was obtained from her parents. But this trial was invalidated in consequence of the illegal empaneling of the Grand Jury which found the indictment. At the second trial the second wife did not appear. The subpœna issued for her appearance was returned unserved. It was not shown that the witness was dead or that due diligence had been used to procure her attendance. And the court permitted two persons, who had been present at the former trial, to testify that they heard her give such and such evidence on that occasion. This is irregular and contrary to the general practice.

The grand jury which indicted the defendant was empanneled according to the Territorial statute and not according to Federal law, and the indictment being for an offense against the latter, the Grand Jury, it is contended, should have been empannelled according to the laws of the United States.

Then there were petit jurors, some accepted and others rejected, it is alleged, improperly. Two supposed to be anti-Mormon were accepted, although they admitted having expressed or formed an opinion as to the guilt of the defendant, the Court overruling the challenges against them. Others, "Mormons," were rejected who had formed no opinion on the subject, but simply declined answering irrelevant questions in regard to polygamy.

These are some of the minor errors on which the appeal was grounded, and the ruling of the Supreme Court on these, has not yet been ascertained. We prefer waiting until the full text of the decision is had, before deciding upon the status of the case, or saying much upon the arguments of the Chief Justice.

We are pleased to see that there is no excitement over this matter, and to note the calm reliance upon the Almighty which is exhibited by the saints generally, in view of the reported ruling of the court of last resort.

THE SUPREME COURT DECISION.

WE have just received by telegraph that portion of the ruling of the Supreme Court of the United States in the Reynolds' case which relates to the main point at issue, namely, the constitutionality of the anti-polygamy Act of '62, connected with which are the questions of the constitutional scope of religious liberty and of criminal intent. The report seems yet to be incomplete.

The arguments of the Chief Justice are the same, old, oft-refuted pleas of the opponents of our faith. The attempt to harmonize legislation against an integral part of a religious system, with the constitutional proviso forbidding such legislation, and to draw a line between faith and practice, limiting religious liberty to the former and excluding it from the latter, is painfully weak and borders on absurdity. To say that the Constitution merely guarantees freedom of opinion and not liberty of action in religious matters, is to contradict its language and to make its effects a nullity. Congress could not, if it would, prevent or abridge religious opinion. A man can believe what seems right to him under the most despotic government that ever cursed humanity. The only liberty that any legislature or ruler could impair or destroy is liberty of action. And if the words "free exercise" in the Constitution do not mean the carrying into effect of religious beliefs, they have no signification at all.

Of course there must be some bounds to the liberty which is contemplated in "the supreme law of the land." It cannot be extended to the commission of things *mala in se*. No one must be permitted to commit acts which are essentially criminal in themselves, under the plea of religious promptings. Where shall the line of demarcation be drawn? How far does the constitutional protection to the "free exercise" of religion extend? The Chief Justice says, "Congress was left free to reach actions which were in violation of social duties or subversive of good order." Granting this, can it be truly shown that the practice of plural marriage, under the Divine law of the Church of Jesus Christ of Latter-day Saints, violates any social duty or subverts good order? We say not. The facts support us in this assertion. Some of our very best men, who are patterns of social virtue, and prominent promoters of good order, and who would be acknowledged as such in any community where mere prejudice against plural marriage was not allowed to be the judge, are the husbands of more wives than one. No better or more exemplary members of society can be found upon the surface of the globe. The quotation from Jeffersen is most unfortunate for the position of the Chief Justice. It has never been shown that the marriage system of our Church has ever "broken out into overt acts against peace and good order." Therefore it is not necessary "for the rightful purposes of civil government for its officers to interfere." It is, then, "a matter that lies solely between man and his God," and, by the Judge's own showing, outside of the powers of Congressional legislation.

The essence of crime is the intent. Latter-day Saints who practice plural marriage under the regulations of the Church of which they are members, honestly believe it to be right. More than that. Under certain circumstances they sincerely consider themselves under the most solemn obligations to engage in it. They not only have the example of ancient worthies who walked and talked with God, but are in possession of a positive command of the Almighty enjoining it upon them as a duty. Seeing that in obeying this divine behest they infringe upon no person's rights, either of life, property or liberty, wherein do the elements of crime appear in their marriage relations? Who cannot perceive the essential difference between the carrying out of this religious ordinance, and acts such as stealing, swindling, maiming, assaulting, killing, or injuring or destroying property? Congress declared an establishment of our religion a crime. This did not and could not make it a crime *per se*, and those who have practised their religion, although they may have violated this enactment, cannot in reason, in justice, or good common sense be pronounced criminals in reality.

We have no further space or time to discuss this subject, the dispatches having only arrived this afternoon.

A FAIR FIELD AND NO FAVOR.

THE people who settled Utah and redeemed it from the silence and sterility of centuries, have just cause of complaint against those who claim the position of representatives of the government and of the majority of the citizens of the United States. They may rightfully complain that they never have fair play. From the rise of the Church of Jesus Christ of Latter-day Saints until the present date, they have been misrepresented as to their personal character and religious faith, and, whether before courts or executives, the law has been stretched and perverted to their disfavor. Numerous instances of this might be quoted, but we prefer referring to present circumstances rather than to past history.

When the so-called Poland bill became a law, an appearance of fairness was exhibited in giving to the "Mormons" the selection of one half of the names on the jury list, and the "Gentiles" the other half. But this was only an appearance. In fact it was exceedingly unfair. The "Mormons" formed at least nine-tenths of the community for which this law was framed, and their opponents, at the very most, only the other tenth. Yet their numbers on the jury list were made equal. This, one would suppose, was a sufficient discrimination against the members of a certain religious faith, and in favor of their avowed adversaries. But this was not all. United States officers, appointed by the Government, were empowered to perform the duties that properly belonged to Territorial officers elected by the people, and all civil, chancery and criminal jurisdiction was taken from the probate courts, leaving them only power in divorce and the settlement of estates of decedents. Another thing. And to this we draw special attention. When a grand or petit jury is to be drawn, this law makes it the duty of the Marshal, or his deputy, to draw from the box into which the names on the lists have been put, such number of names as the Judge may designate. Let us see the effects of this.

By counting the odd numbers opposite the names of the jurors drawn at Ogden on the 8th inst., it will be perceived that the grand jury contains *thirteen* non-"Mormons;" and by counting the even numbers, that five only are "Mormons." Twelve of the whole number must agree in order to find an indictment. Thus the vote of the five "Mormons" in a case under dispute would be completely nullified. By taking the same process with the petit jury list, it will be found that it contains the names of twenty-nine non-"Mormons" against eleven "Mormons," and when the peremptory challenges allowed are considered, it will be seen what may result.

How could this happen on a fair shake—of the box? The law says that the slips containing the names shall "be placed in a covered box, and *thoroughly mixed and mingled*, and thereupon the United States Marshal, or his deputy, shall proceed to *fairly* draw by lot," etc. This is not the first time that such a remarkable preponderance of names of non-"Mormons" have been drawn from the box. Does any disinterested person think for a moment that this would repeatedly occur, if the slips were "thoroughly *mixed and mingled*" and "fairly" drawn?

We have previously directed attention to these singular proceedings. We do not know whether any one has been deputed to see that the law in regard to this matter is properly carried out. What is anybody's business seems to be nobody's business. But we think this a very important matter. It is well understood that the officials of the Government, here, are anxious and eager to proceed against prominent "Mormons," and that some of their predecessors have not scrupled to twist and wrest the law, and prostitute the power in their hands, to vent their bigotry and spleen against some of our best men. And we have recently heard of one prominent official having stated that he intended to obtain a large sum of money from the Government for prosecutions in Utah, and that he would use it to secure the conviction of a gentleman who is under indictment, and who, with a fair trial before a fair jury, could not fail to be acquitted.

These are times when every one should be on his guard and on the alert, so that the unscrupulous may not obtain unlawful and undue advantage. We do not complain against honorable, fair and conscientious opposition or warfare, but we do denounce as *vile and beneath* the dignity of man, to say nothing of official honor, any attempts to reach alleged infractions of the law by dastardly and wilful perversions of its letter and its spirit. Give us a fair field and we ask no favor.

A GREAT MISTAKE.

WE consider it necessary to say something in relation to a statement which has appeared in the *Ogden Junction*, to the effect that all persons who have married a plural wife since 1862 are liable to prosecution. We should not have referred to it but for the fact that the editor persists in his assertion, after being informed by a correspondent of the well known fact that the United States statute of limitations bars trial and punishment for any offences against the laws of the United States, except a capital offence, unless an indict-