# EDITORIALS.

## THAT PRECIOUS CHARGE.

We have said but little respecting that strange sermon delivered to the grand jury the other week. Suppose we now indulge in a few remarks concerning it A very peculiar production it is for a judge, very. It will be considered everywhere as a unique document, very. Brother Boreman's remarkable essay does not come up to it. As a forensic effort Brother McKean's probably will not take a place in the pages of legal classics, but as a theological production it may challenge regard as one of the curiosities of that species of literature, not very edifying, not very instructive, not very trustworthy certainly, but something uncommon and odd, something very peculiar.

The Judge adopts for his text his favorite California judicial opinion that courts should take notice of the political and social condition of the community, and then proceeds to attack the territorial legislature, the people, previous authorities, Congress, previous federal administrations, the "Mormons" and especially their religion, with which last the law has nothing whatever to do, only to let it entirely alone. But the learned Judge has a monomania for theological disquisition and diatribe, though he is not much of a fist at the former, and we have not heard of any body who is anxious to accept him for a religious teacher. We once had a judge here, Titus by name, who was rather monomaniacal upon the subject of the negro, but that judicial gentleman was an upright man a good lawyer, and he did unflinchingly regard the law, and would administer it impartially. He was not that kind of a judge who administers only such laws as suit his own ulterior purposes, and refuses to administer any others. Nor would he strain and twist and wrench the law till it suited him? O no. He was not that sort of a man. Though he admired the sons of Africa, he was not a missionary judge.

But let us return to the charge. His honor says Congress, in the Organic Act, took the precaution to invest the Governor with the power of an absolute veto. Congress did nothing of the kind, but it did require the Governor to approve all acts passed by the Legislature, and every time he refuses to sign one of those acts he refuses to do his expressly required duty. His assumption of the veto is a plain and flagrant usurpation of power, for which he should be called strictly to account.

His honor then proceeds to indict the Legislature and endeavors lengthily to show that that body, at various times, passed many acts interfering with the primary disposal of the soil. The Legislature passed no act to interfere with the primary disposal of the soil. When those acts referred to were passed the soil was not in the market. It belonged to the United States, and the Legislature never dreamed of primarily disposing of it. All the acts to which the Judge refers in this connection were well enough understood to be only of a temporary and provisional character, existing until the land should be primarily disposed of by the United States, according to United States law.

His honor ought to know that in the formation of new and especially remote colonies all intelligent men naturally agree to establish some laws and rules for the time being until more permanent public arrangements can be made. It was so here. In order to conduce to the general prosperity and prevent endless disputes and quarrels, the Legislature deemed it prudent to make laws for the temporary control of certain streams and tracts of land, placing the same in the hands of the most prominent and most respected citizens, not for their own benefit alone, but for the public good also. For instance, some of the canyons were thus temporarily granted to parties that they might make roads into them, taking toll for their enterprise and labor, so that the public might with greater facility obtain wood and timber from them, or travel through them, on roads decently made, instead of the canyons being left in their primitive impassable condition. What is everybody's business is nobody's business, and if the canyons had been left for anybody to make roads into, no roads, or very few, would have been made, and such few as might have been made would have been of a wretched description, always out of repair, for nobody would have been willing to repair them on his own account. Hence it became almost a matter of necessity, in early times, for the Legislature to make these temporary grants of land, etc. Perhaps his honor would have preferred continual local disputes and quarrels, and possible anarchy, to these provisional provisions of former times in the history of the settlement of this region. If his honor would, we wouldn't, and the early legislatures of the Territory appeared to have inclined to our view rather than to the judge's. Of two evils, choose the least, if you must choose one or the other. That is what the Legislature did. The judge evidently would have chosen the biggest. However, there is no accounting for tastes. His honor's is very peculiar.

It may be asked, was there no selfishness connected with these grants? Possibly there was sometimes. The Legislature was dealing with human nature as well as with the inanimate wilderness. Human nature is naturally selfish, more or less. If his honor knows any sure method of eliminating all selfishness from human nature, we shall be glad to learn of him, and we have no doubt the Legislature would too. If the Judge thinks these grants were abused sometimes by the grantees, we may say perhaps that was the case, and we have heard of no means yet devised for the utter prevention of abuse.

As to claim-jumpers, with whom his honor seems to tenderly sympathize, we may say that characters of that class are everywhere considered the enemies of the community and of peace and good order, and in every community they are held to be entitled to little consideration and rough handling. We have no sympathy to waste on them.

His honor thinks it dreadful that the Legislature should allow extensive limits to municipalities, and the most dreadful of the consequences of this extensive municipal jurisdiction is that it enables the municipal councils to enact ordinances, covering large tracts of country, over which ordinances the Governor's veto is powerless. That is a most dreadful consequence, certainly. What a pity the Governor's usurped not authorized absolute veto should be interfered with in the least! What a pity he should not be allowed to foist his marplot veto into every dish, territorial, county and municipal! Such infallible wisdom as his ought to be universally accepted. However, if this obstruction of the veto is the only evil result of extensive municipalities, we will try to bear it with fortitude. The almost universal rule throughout the Union is for the veto not to be absolute. We could get along with a limited veto as well as the rest of our fellowcitizens do.

Meantime if the Judge wishes to enjoy a reputation for sanity, he will cease to talk such silly rubbish about the Governor and his veto. It is sheer, unmitigated nonsense. When a man makes a speech to the public, he is not talking to a parcel of lunatics. Neither do we consider that a judge, when he is charging a grand jury, is justified in entertaining the idea that he is charging a parcel of lunatics. We do like to hear a little good sense from a public officer, and especially from the bench. Nowhere ought good sense to be more common nor more highly appreciated than in the court room. How any man of understanding, any man of sane mind, could write or utter such a mess of ridiculous trash regretting that municipal ordinances cannot be covered by gubernatorial absolute veto, surpasses our comprehension? Is the judge with a mission anxious to accord to the ex-Governor of Oregon, with a dubious webfoot reputation, more than papal infallibility? Does his honor think that the 100,000 people of the Territory ought to bend the neck and bow the knee in abject adoration of the unapproachable Solonic wisdom of an imported governor, who, after he has made unwilling adversaries, and set trains of mischief in motion, abruptly turns tail to those adversaries, and bravely flees from the red field of danger when he thinks sought-for difficulties are thickening and longed-for crises are approaching, leaving his poor Secretary to bear the blame of the action and endure the brunt of the anticipated conflict? We are not yet prepared to worship such an official, or to ascribe to him omniwisdom, if the Judge is. We are not ready to mourn the fact that such an official is not yet endowed with omnipotent balking power over every enterprise and interest in Utah. Indeed, we are heretical enough to contend for the American doctrine that the 100,000 people are fully as likely to be blessed with a little wisdom as the solitary Governor is, and that whatever powers are not expressly delegated to the ruler remain with the people. These views may be very displeasing to the mission jurist, but they are ours, they are American in character, and for their utterance we charge him nothing. O no, Mr. McKean, if you consider the gubernatorial veto absolute, we are not ready to wish it universal. An all-embracing veto may be all very well for serfs and cravens, it may delight the heart of the Judge, but it is not exactly the thing for free American citizens. At all events it is not the thing for us. So we cannot join his honor in bewailing its non-existence. On the contrary, if large municipalities are the potent instruments of curtailing the scope of the veto, or of preventing its universality, then for big municipalities we shall vote, and shout, "Big municipalities for ever!"

## THAT PRECIOUS CHARGE AGAIN.

Talking of absolute veto, even the President of the United States does not have it, and we have heard no American, nor any other human being, sane or insane, express the wish that the President's veto were either absolute or universal. But we have not heard the Judge's opinion upon that point. He may differ from all the rest of mankind regarding it.

Absolute and universal veto is not republicanism, it is strictly foreign to the genius of American government, it is dictatorship, autocracy, absolute absolutism, the supreme, uncontroverted, all-powerful I, a supremacy and an omnipotency of power which Deity alone does or can exercise. The absolute and universal yea or nay is the mysterious potency, the omnipotent influence, which Tyndal and Huxley acknowledge they cannot fathom, and which no man has found out, but which, so far as political and cognate matters in Utah are concerned, the Judge evidently thinks he ought to find in a poor, week, fallible, not very reputable, spread-eagle webfooter, an ordinary specimen of humanity, who, in the ceaseless procession of sublunary events and the inscrutable dispensations of Divine Providence, happens to have been appointed governor of the Territory.

The Judge complains that the Legislature has considered its own resolutions valid and passed laws concerning the jurisdiction of the Probate Courts and created certain local offices. Wonderful things, these, for a legislature to do, which has been endowed by Congress with power extending to all rightful subjects of legislation, consistent with the U.S. Constitution and the Organic Act of the Territory.

His honor also takes it upon himself to charge the incumbents of those offices and the Probate Judges with being, with scarcely an exception, open violators of the laws of the land. With much more reason and truth, and with quite as much propriety of conduct, we might say that the incumbents of the federal offices in Utah have been, almost without exception, open violators of the laws of the land, though we are not so foolish as to say anything of the sort. Yet we may say we have heard some very disreputable things of some of those officers, and we are satisfied there was good foundation for the reports. It is a matter of public notoriety, also, that one of those officials, yet an incumbent, was condemned by the highest court in the land for having taken a most unwarranted and illegal course for months together.

His honor seems to think it enormous that the Legislature should provide that the unclaimed property of deceased persons should be appropriated to benevolent purposes, subject to recovery by any legal claimant who might subsequently appear. We do not see any impropriety in that. It appears to us a more liberal arrangement even than that in England, where the property of heirless decedents goes to the Crown, while everybody knows that the Crown has no need of it, being already enormously rich.

The next complaint is that in early times a law was made by the Legislature against the citation of precedents in court, and one providing that lawyers' fees should not be recoverable at law. The first provision, we take it, was designed to lessen litigation and to have simple local law, in its manifest spirit and intent, and evenhanded justice administered without unnecessary delay and expense. The idea that lawyers' fees should have the character of debts of honor did not originate in Utah. It is an old doctrine, an old world doctrine.

His honor then complains of the territorial law forbidding a physician to poison a patient without the patient's consent, of which we need say no more.

His honor says the Legislature has passed an act establishing the Church of Jesus Christ of Latter-day Saints as the State Church, and in effect prohibiting the free exercise of religion on the part of seceders and dissenters. The Judge has not only very peculiar tastes, but he has a very peculiar method of drawing deductions. He gives a section of the law incorporating that Church, and he seems to forget the following words in that section—

"Said church holds the constitutional and original right, *in common with all civil and religious communities, to worship God according to the dictates of conscience,*" etc.

"Inasmuch as the doctrines, principles, practices, or performances support virtue and increase morality, and are *not inconsistent with or repugnant to the constitution of the United States,*" etc.

In the face of the above how the Judge can reasonably assert of the Church that it was thereby established as the State Church, and prohibiting the free exercise of religion on the part of persons outside of the pale of that Church, we must confess we cannot see.

This act of incorporation was pretty well canvassed by the Congress of the United States in 1862, but that honorable body does not seem to have come to any such conclusions as his honor, the Judge, has. Perhaps Congress is not endowed with such sharp, penetrating, far seeing, comprehensive sagacity as his honor is in matters of this kind. It is not everybody who can see so far into a politico-theological millstone.

But his honor has a purpose in that deduction, he aims to make it appear that the above act of incorporation is held to cover his favorite doctrine of "blood atonement," upon which he proceeds to enlarge in his own peculiar style. Now his honor, with his very peculiar mental vision, may see things in this light, but we certainly do not. His honor, by his very peculiar method of ratiocination, may make it all as clear as mud to himself, and may verily believe that everybody else must see through his spectacles, and come to the same extraordinary conclusions as he does. But perhaps he will allow us to assure him that such is by no means the case. If a cow wears green goggles, that will by no means convert the bare, brown desert into a luxuriant and verdant meadow, though the silly creature may think that there are nothing but green fields within the range of its vision. His honor seems to be laboring under a similiar hallucination, mentally, in comprehending the character and relations of the Church of Jesus Christ of Latter-day Saints.

His honor seems to be at once strangely fascinated and sorely exercised over this matter of blood atonement. He cannot get away from it. Like an ill-fated vessel within the circle of the maelstrom's influence, he sails round and round the whirlpool, unable to get away, a helpless prisoner, hopelessly held by the dangerous influence. Now this subject may have resistless charms for the Judge, but it has none whatever for us. Our admiration is for the way of life and not for the way of death. Whatever may be his honor's real situation, we are happy to inform him that we are not within the charmed circle of the irresistible influence of that doctrine, as he expounds it. So we can talk rationally about it, which we are sorry, very sorry, to say his honor does not appear to be capable of doing. It is a subject, too, concerning which, if a man cannot talk sensibly, he would do far better to hold his tongue and say nothing. A man may be a fool, but, if he is, it is not incumbent on him to blazon that unhappy fact to all the world. If he holds his tongue he will not be blabbing his unfortunate condition to every body. The lion's skin effectually covered the carcass of the jackass until the silly animal opened its mouth and let its tongue wag and its assinine voice be heard. Then disguise was no longer possible, and the stupik animal's hypocrisy and deceit were demonstrated and undeniable.

But why does the Judge rate the "Mormons" over their belief in "blood atonement," when his honor is guilty of belief in the very same doctrine? He professes to be a Christian. The Almighty is represented in the Bible as saying, "Whoso sheddeth man's blood, by man his blood shall be shed." Again, it is written in the Scriptures, "Without shedding of blood is no remission."

Further than this, human governments have adopted this divine principle, and upon the strength of it have incorporated the death penalty in their laws. Accordingly it happens, curiously and aptly enough for our argument, that his honor sits in the judgment seat where men, under certain circumstances, are sentenced to death. Why does he do this, if he does not believe in the doctrine? Does he mean to say that he is a self-pronounced, self-convicted hypocrite?

Again, his honor allows the validity of the jury challenge of non-belief in this doctrine. He rejects men, otherwise eligible, from his jury box solely on the ground that they do not believe in the doctrine of blood atonement, and because, therefore, that they cannot conscientiously bring in a verdict subjecting a criminal to the death penalty. How is this? Is not his honor entirely unreasonable and absurdly inconsistent, in broadly and emphatically condemning the "Mormons" for believing in blood atonement, and at the same time throwing them out of the jury if they do not believe in it? What must they believe or do to please him? It strikes us that he is a man uncommonly hard, if not impossible, to please. How can we rationally come to any other conclusion? Where can he discover grounds or reasons for his objections to the "Mormons" believing in this doctrine? We can see none, and we are driven to the inevitable conclusion that he has become chronically and queerly querulous.

The Judge seemingly thinks much upon what is termed the "Morrisite" affair, and another unhappy affair in the South. The first named was the judicially required execution of a process issued by a United States Judge. As to the second, why have not the U. S. courts taken the proper steps to investigate it without prejudice? The matter has been in their hands long enough; and they have always been threatening, harassing, and hindering the probate courts, and pulling their work to pieces after it was done, whenever they have ventured to do any. The course of the U. S. courts and some other U. S. authorities upon this subject has been such as to induce the popular impression that, unless they could implicate certain persons, they had no desire nor inclination to judicially investigate the matter at all.

By another of the Judge's peculiar mental efforts, he makes the deduction that "the legislators and popular leaders of Utah regard those military and civil public servants who, in Utah, acknowledge their paramount allegiance to be due to the national government, as being 'guilty of treason' and deserving 'to be punished with death.'"

This deduction will strike every one as being so extremely absurd that we shall waste no words upon it, further than to suggest that the Judge has lived in the Territory between four and five years, in open enmity to those "legislators and