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TRUTH AND LIBERTY.

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CHARLES W. PENROSE, EDITOR.

WEDNESDAY, - OCT. 29, 1884.

PEOPLE'S TICKET.

FOR DELEGATE TO CONGRESS,

JOHN T. CAINE.

THE TENNESSEE MARTYRS' FUND.

PRESIDENT'S OFFICE,

Salt Lake City, October 22, 1884.

To the Presidents of Stakes, Bishops and Members of the Church of Jesus Christ of Latter-day Saints,

DEAR BRETHREN AND SISTERS: A short time since we addressed you an open letter, in which we suggested that the Presidents of Stakes might open a subscription in the several Stakes as a free-will offering to assist the families of the Elders who were martyred on the 10th of August last in the State of Tennessee. Though the names of Brother Condor and family, whose sons were also cruelly murdered with Elders Berry and Gibbs, and the names of other Saints were not mentioned in our letter, it was the intention to devote, if necessary, a portion of the means subscribed to assist them in emigrating from the State of Tennessee, for they were threatened with death if they did not immediately abandon their homes and take their departure from the State.

Already the telegraph informs us of the flight of some of these poor people under the most harrowing circumstances, being compelled to leave their homes and their property unsold, and o get out of the State as best they can. Their condition appeals strongly to us for aid. The means subscribed by the various Stakes has come in very slowly, and our object in writing this to you at present is to have more energy shown in collecting and sending in subscriptions, so that our brethren and sisters whose lives are threatened, can be speedily relieved from their distressed condition.

Many of the Saints in these mountains know what it is to be driven rom their homes by mob violence. They can therefore feel for their co-religionists who seem to be left entirely to the vengeance of the bloodthirsty mob, the authorities of the State appearing to be so indifferent to their fate that they have not interposed by word or act, so far as we have heard to prevent the threatened violence. Many of our brethren, we understand, have property, which if they could sell, would supply them with the necessary funds to move elsewhere.

But of what avail is property, however valuable, to its owner under such circumstances as surround them? It is evidently the design that they shall not have the opportunity to sell their possessions. The mob that murdered innocent people will neither hesitate at plundering those whose property may tempt their cupidity, nor at driving them out of their bounds naked and destitute.

Bishops and Presidents of Stakes should immediately send in to this office whatever available funds they may have in their hands that have been subscribed as suggested in our previous letter.

Your brethren,

JOHN TAYLOR,

GEORGE Q. CANNON.

PRIESTHOOD MEETING.

The regular monthly meeting of the Priesthood of this Stake will convene in the Assembly Hall, at 11 o'clock a. m., next Saturday, November 1st. Reports are expected from all the Wards of the Stake.

By order of the Stake Presidency.

J. D. STIRLING,

Stake Clerk *pro tem.*

THE DELEGATE ELECTION.

We suppose it is generally known that there is to be an election on the 4th of November next for a Delegate to Congress from Utah. If not, the news should be thoroughly circulated. Two years ago the whole Territory was stirred up in regard to a similar election, by the visits of both candidates to the principal cities and towns and the general discussion of the platform of the two parties. At present there appears to be little interest in the subject and no excitement. We do not think there is any need for excitement, but we are sure there ought to be considerable interest.

It is of very great importance that the people of Utah should have a proper representative in Congress. The efforts of the enemies of popular government in this Territory, through their agents and acquaintances in Washington, are pretty well understood. They should not be permitted to have things run all their own way. And considering the lack of correct information on the "Mormon" question among our National legislators, it is absolutely necessary for the welfare of Utah that some one should be on hand in Congress to impart that information and correct errors, so far as it is possible to communicate the truth.

Hon. John T. Caine, who has served the community well and faithfully, has been selected again by the representatives of the People's Party, for the Delegate to the Forty-ninth Congress. In opposition to him the so-called Liberals have chosen a person by the name of Smith—Ransford Smith, to bear the defeat of 1884. He is a rabid anti-"Mormon," full of the animosity and false notions that characterize the ferocious "Mormon"-eater. Of course he cannot be elected. That is not even expected by the clique that make him their tool. But the People's candidate should go to Congress backed by the hearty support of his constituents, and assured by the large vote that elects him of the faith and interest of the large majority of our citizens.

For this reason we call upon all the committees and leading spirits of the People's Party to see to it that the voters are waked up in their respective districts to the necessity of going to the polls on Tuesday, November 4th, to cast their ballots for the candidate of their choice. They should not be caught napping. No elector should neglect the duty that devolves upon him or her, under the impression or with the excuse that the votes of others will be sufficient.

It is important that a big vote should be polled at the Delegate election, and therefore let every man and woman having the legal right to vote go, without fail, to the poll on election day. Every vote counts one on either side, and every citizen holding the franchise has a sacred duty to perform. All hands to the polls!

RUDGER CLAWSON'S SECOND TRIAL.

NO CHANGE OF VENUE ALLOWED—AN OPEN VENIRE ISSUES FOR FIFTY NAMES—EMPANNELING A JURY IN PROGRESS.

As stated last evening, Judge C. W. Bennett closed his masterly and brilliant argument in support of the motion made for the defense for a change of venue from the Third District Court, for the Clawson polygamy trial, at five minutes past three o'clock, and was followed by Mr. C. S. Varian, who replied in behalf of the prosecution. He said in effect:

The counsel's presumption is that every Mormon is a polygamist, and that no non-Mormon can be found who is not under the control of the Salt Lake *Tribune*. The law says no believer in polygamy can sit on a polygamy case, and I see no reason why he should. It must be established to the satisfaction of this Court that the defendant cannot secure an impartial jury in this district. The facts are that the Salt Lake *Tribune* may have published articles which may have been injudicious, but what evidence have we of any effect of these articles? The *Tribune* is alleged to have a great influence; I hope it has, and I wish it had more; but if it reaches every household in the Territory, as counsel claim it does, it would be just as impossible to secure an impartial verdict in any other district as in this. But the charge of counsel, I believe is a libel upon all reasonable minded men. People nowadays are rather prone to weigh newspaper statements, and decide upon their correctness before they adopt them. Again, how does the gentleman know the effect these newspaper articles may have had upon the minds of those dissenting jurors? He don't know; and I apprehend that no one ever heard of a change of venue on account of any articles a newspaper may have published on the case in trial. Mr. Varian read several authorities supporting his position, and concluded by saying that no facts have been adduced; and no one can tell whether or not these *Tribune* articles have had the effect claimed, until it has been shown to the court that it is impossible to bring here a jury who will try this case impartially; let us try and see by bringing fifty or 100 citizens of this district into this court, whether we are unable to obtain an impartial jury, and then the defendant's claim will either stand or fall; if no jury can be obtained, then we, on the part of the government, will consent as willingly as any one for a change of venue.

Mr. Zera Snow followed briefly on the same side, and as the defense wished to make no further argument, the matter was then submitted.

Judge Zane consulted the authorities that had been mentioned, and after weighing the pros and cons for some little time, rendered the following decision:

The defendant makes his motion on the ground that he can not receive a fair and impartial trial in this district, and the law provides that the trial may be removed from the district where the indictment is found on the application of defendant. The law also provides that the court may order the change if it is satisfied that such circumstances exist as defendant alleges. The question to determine is, do the affidavit and exhibit show that his representations are true? The court must not only take the representation of defendant, but must draw its conclusion from the facts stated. The first representation is that a trial of the defendant was very recently had; and secondly, that the Salt Lake *Tribune* has made numerous comments, criticizing the defendant and his witnesses and made many representations to his prejudice; and third, that the list prepared has been exhausted, and that those who might be brought in on an open venire would be more prejudiced than those drawn from the box.

With respect to the first: The effect of the trial has been upon the minds of only eight men that defendant was guilty. It is hardly to be presumed that the trial as reported in the papers has had the effect upon all minds claimed by the defense.

With respect to newspaper comments, they may have had the effect upon many claimed, but they may also have had this effect, that some people may have said I would like to see the other side before adopting a belief, and many people may not have read the reports at all.

The question is, whether the inference of the influence these articles have had upon the public mind is a true and proper one. No public demonstration has taken place, and as far as we can see there is no generally popular feeling upon the subject. The fact is, I think, that most men will be influenced rather by the evidence, than by newspaper reports of it.

With respect to the last fact that the jurors are brought in upon an open venire and that they will be more likely to be prejudiced, I hardly see much in that charge. I am of the opinion that the application upon the mere affidavit of the defendant is not sufficient. The motion is overruled.

An exception was taken by the defense and Mr. Bennett then made a motion for a continuance till the next term of court. This too, was overruled.

The Judge stated in answer to Mr. Varian's inquiry, that no more names remained in the box, and the regular panel was thereupon resorted to. The names of Messrs. Turpin, Hill, Winder, Loder, Bates, Earl, Sappington, Davis, Archibald, Booth and Pack, were called, and these gentlemen took their places.

Messrs. Loder, Sappington, Davis and Booth were excused, as they had served on the jury which tried the case before.

Messrs. Hardman, Jensen, Green and Asmussen were then called to the box to make up the deficiency.

Mr. Varian then applied his crucial test to each: "Do you believe that it is right for a man to have more than one living and undivorced wife at the same time?"

Messrs. Turpin, Hill, Winder, Bates, Earl, Archibald, Hardman, Green and Asmussen all answered the question in the affirmative.

Messrs. Pack, Oviatt and Jensen all declined to answer, and amid the laughter of the crowd the whole 12 men were excused, and the jury box was again depleted. The names of Messrs. Proctor, Neal and Farrell were called, and the clerk announced these were all the names remaining of the regular panel.

Mr. Varian moved that open venire be issued.

Mr. Bennett objected upon the ground that there was no law authorizing it; objection overruled.

Judge Zane instructed Marshal Ireland to take an open venire for fifty names, returnable this morning at 10 o'clock.

The court then adjourned.

Thursday, 10 a. m.

The District Court was called to order at the usual hour this morning, but it was fully half-past ten o'clock before anything that could be termed business was transacted. At that time Marshal Ireland came in with the venire of fifty names, made returnable at the opening hour of to-day's sitting. A further delay of ten minutes occurred, and the Judge then asked the cause, or if there was any objection to the names presented by the Marshal. Mr. Bennett answered that there was, and they were then engaged in copying the names for the purpose of specifying their objections.

The copying being done, Mr. Bennett presented a written challenge of the defendant to the panel of jurors just returned, on the grounds of a material departure in the method of obtaining them, from the one heretofore employed, and that not only were they summoned on an open venire process, but were all served in Salt Lake City, and all but two were residents of Salt Lake County, and therefore not selected from the body of the District.

The prosecution denied the latter ground and Marshal Ireland, Deputy Marshal Greenman and Deputy Marshal Pease, were then each sworn and put upon the stand to testify as to where and upon whom they served the subpœnaes.

Judge Zane overruled the objection, it appearing to him, he said, that the Marshal had not evinced any intention of confining his official act to residents of Salt Lake City or County.

Mr. Bennett then repeated his objection in a slightly different form, viz: That the jurors had not been taken from the body of the Third Judicial District, but all except two from Salt Lake County, and none from Davis or Tooele. This too was overruled.

The empanneling of the jury then commenced, and Messrs. J. T. Beers, B. C. Harvey, Charles Conner, R. Mackintosh, H. Collins, C. J. Carmon, H. Denhalter, —— Knapp, and A. Podlech, were summoned into the jury box, where J. J. Farrell, W. C. Neal, and George Hardman were already seated.

Mr. Bennett here interposed the objection, which was at once conceded by the prosecution, that the fifty names should be put into the box and jurors drawn therefrom according to usual custom. This was accordingly ordered to be done. Names were then drawn and called as follows: H. Collins, Wm. McRae, J. T. Beers, B. C. Harvey, W. C. Dunbar, jr., Boyd Park, A. J. Paddock, P. E. Fitzgerald, Charles Conner. As these gentlemen took their seats, the others who had been called up before, vacated the jury box.

H. Collins, being questioned, stated that he had read all the papers during the late trial, and formed and expressed an opinion as to the guilt or innocence of the accused, which it would require evidence to remove. He was challenged for implied bias and excused. William McRae was challenged for similar reasons and excused. J. T. Beers confessed to the same, and being closer interrogated, said he believed the defendant was guilty of polygamy. This raised a laugh, and was evidently more than the prosecution wanted, and Mr. Varian hastened to draw from the juror that his belief was a general opinion formed in regard to all such cases as this, with no particular bias against this defendant. This meant, if it meant anything, that he believed everybody guilty of polygamy who was charged with it. Mr. Varian, not wishing to lose this juror, tried hard to show that he was not ineligible to act, as he had not expressed or formed an unqualified opinion as to the guilt or innocence of the accused. He was ably opposed by Mr. Bennett, and a lengthy discussion ensued and Judge Zane, after consulting authorities and summing up the arguments of counsel, turned to the juror and said: "Do you mean to say you have formed an unqualified opinion?"

Mr. Beers—"Yes."

Mr. Varian—"Oh, he don't."

Judge Zane—"It seems to me that this would be actual bias, instead of implied."

Mr. Dickson—"Would your opinion readily yield to sworn evidence?"

Juror—"It would."

Mr. Varian—"You don't pretend to know anything about the guilt or innocence of this particular defendant do you?"

Juror—"I do not."

Q.—Then your bias is against a certain class of cases, and not this particular one, or against the offense tcharged and not this defendant?"

A—"Exactly."

The juror being further questioned said he had conversed about the present case and the late trial also; had read the *Tribune* articles during the last trial, and admitted expressing a partial opinion regarding the case, even after being subpœnaed; because he was auxious to get off from serving.

The Judge here said that if all were excused who wanted to get off, they could never get a jury, and it was his opinion now that the juror was not incompetent. He therefore announced that the challenge would not be sustained. The juror then passed, the delense taking an exception. The court took recess till 2 p.m.

At the re-opening of court this afternoon the examination of jurors resumed. B. C. Harvey, W. C. Dunbar, Jr., and Boyd Pack were challenged and excused for implied bias.

A. J. Paddock had read the papers, some in relation to the trial, including a *Tribune* editorial, but did not know that he had formed or expressed any opinion as to the guilt or innocence of the accused. He was challenged by the defense for implied bias. Cross-examined by the prosecution, he said he knew nothing of the case except what he had read in the papers; he believed he could act impartially and fairly as a juror, as he did not have an unqualified opinion in regard to the guilt or innocence of the defendant. The prosecution denied the challenge and the Court sustained the denial. The defense then challenged Mr. Paddock for actual bias, and Mr. Benett asked him if his wife was not a well known anti-Mormon writer. He admitted it, also that he was employed in the office of the Utah Commission. He was excused on the score of being an employee of the Government, the prosecution conceding the point.

P. E. Fitzgerald had not formed or expressed any opinion as to the merits of the case, and was passed.

Charles Connor had read and heard of the trial, and read a smal portion of James E. Caine's testimony in the *Herald*, but had not formed or expressed any opinion, etc., and felt entirely free from bias in the premises. He was passed. A juror named Proctor, not heretofore noticed, was discovered in the box, and W. C. Neal were both excused for believing it was right for a man to have more than one living and undivorced wife at the same time. J. J. Farrell, P. E. Fitzgerald, J. T. Beers and Charles Connor all answered that question and the one in relation to cohabitation in the negative, and were accordingly passed by the prosecution. J. J. Farrell was questioned by the defense and admitted having read some of the evidence adduced at the former trial and had heard casual allusions to it, but had no opinion as to the guilt or innocence of the defendant, and was conscious of no bias for or against. He was passed. The defense challenged J. T. Beers peremptorily and he was excused. The others were sworn and took their seats.

The next batch of names called were J. B. C. Glanfield, J. G. Davis, James Fitzgerald, Sam Levy and W. L. Pickard. Mr. Pickard not being present, it was proposed to go on drawing other names, but to this the defense objected until Mr Pickard should have taken his seat; as it was the ordinary procedure which now ruled, since the Poland Act, under which one name might be laid aside and the next called, was not governing this action. The Judge overruled the objection, to which the defense excepted.

M. H. Brisacher, R. Mackintosh, Charles Barnett, Henry Denhalter and James Fowles were then called up. The defense objected to the jurors who had just taken their seats being sworn on the *voir dire*, for the reason that their names were not regularly called, two names of parties absent having been laid aside and others called meanwhile. The objection was overruled and the defense excepted.

Mr. Glanfield, who had to be loudly spoken to on account of deafness, admitted an opinion formed and expressed, and was excused. Mr. Davis was excused for the same reason. Mr. Fitzgerald had read Caine's evidcencin the *Tribune*, but had formed no opinion and could sit as a juror and act impartially. He was passed. Mr. Levy was excused for having an unqualified opinion. Mr. Brissacher was excused for the same reason, and Mr. Mackintosh for the same. Mr. Barnett was passed, also H. Denhalter and James Fowles. The questions as to polygamy and cohabitation were then put by Mr. Varian to Fitzgerald and answered in the negative, and the empanneling was in progress at last advices from the court room.

THE CLOSE OF THE CLAWSON CASE.

THE Rudger Clawson case took a sudden turn this morning, as will be seen from our minutes of the court proceedings in the testimony of the witness Lydia Spencer. Her change of position from the firm refusal to testify last evening to the open acknowledgment, this morning, of her marriage with the defendant, will no doubt occasion much surprise and the reasons for it will be asked for. We can give them. The young lady is possessed of just as much self-will and determination as Belle Harris or Nellie White, and would we have no doubt, borne any punishment that might have been inflicted upon her with unflinching fortitude. Her friends were determined to stand by her and engaged special competent counsel to aid her. They put all the consequences, pro and con before her, but failed, up to the time she went into the witness box, to learn what she intended to do. She remained firm in her resolve. But her husband's wish was that she should give way and acknowledge the truth and let him take the consequences, instead of her being placed in jeopardy by refusing to testify. Her bodily condition also was such that protracted imprisonment would have been highly injurious.

We believe that the community will say that under all the circumstances she did just right. We know that the Clawson family think so and that she is fully sustained by them in giving her testimony. A conviction is now assured. But with a jury selected as this has been and with the threat of violent and unstinted newspaper abuse if they failed to convict, no other verdict could be expected, even if the essential witness declined to testify and went to prison for contumacy. Her refusal would have been taken by the jury as evidence against the defendant—although legally it is not evidence—and the result would doubtless have been the same.

An appeal will now be taken and the various errors in the proceedings be tested. Among these the most important is the method resorted to of impaneling a jury. If an open venire can be issued when the regular jury list is exhausted, we might as well have no jury list at all. The methods by which it can be exhausted have been abundantly exemplified during the present term of the Third District Court. If the common law is to prevail in the presence of opposing statutes, what is the use of enacting them? The controversy is an interesting one and may go up to the court of last resort. All that we ask for is that the prosecution and execution of the law shall itself be legal; then whatever the result may be we shall not be found repining or