and as the afternoon was far advanced he moved that the Convention adjourn until 10 o'clock on Tuesday morning.

Convention adjourned.

SECOND DAY:

TUESDAY, 10 A. M.

THE Convention resumed its sitting in the City Hall at 10 o'clock this morning, and after the transaction of some preliminary business, the following Standing Committees were appointed:

Ordinance, Bill of Rights,&c.—George Q. Cannon, Joseph W. Young, John T. Caine, Abraham O. Smoot, Thomas Fitch, Fraklin D. Richards, William Jennings, John Rowberry, John Sharp.

Legislative Department.—Lorenzo Snow, Albert Carrington, William B. Pace, Aurelius Miner, Charles W. Penrose, Moses Thatcher, Hadley D. Johnson, George Peacock, Lorin Farr.

Executive Department. — Franklin D. Richards, Moses Thatcher, Frank Fuller, Albert K. Thurber, George G. Snyder, William Jennings, L. J. Herrick, Enos D. Hoge, William Hyde.

Judiciary.—Z. Snow, Jonathan C. Wright, John B. Milner, William Haydon, Seth M. Blair, William H. Maughan, George Q. Cannon, Jesse N. Smith, Enos D. Hoge.

Muncipal and other Corporations.—Albert P. Rockwood, Leonard E. Harrington, M. W. Dalton, John Brown, Rees R. Llewelyn, Reuben Miller, John Hague, Lyman W. Porter, Henry Eudey.

Finance and State Dept.—Abraham O. Smoot, David Candland, Appleton M. Harmond, Orrawell Simons, Anson Call, George Burridge, M. D. Hammond, M. W. Merrill, Z. Snow.

Education.—Orson Pratt, Senr., Charles W. Penrose, Wm. B. Preston, Albert P. Rockwood, Thomas Callister, H. W. Sanderson, John Rowberry, John Telford, Jonathan C. Wright.

Militia. — Chas. C. Rich, William B. Pace, Warren S. Snow, Chester Loveland, John Franks, C. A. Madsen, Thos. F. Rouche, *Culbert King*, *Peter* Rasmussen.

Taxation.—Albert K. Thurber, Thomas S. Smith, John Nebeker, George Kendall, David Evans, Platt D. Lyman, Solon Foster, Saml. F. Atwood, Wm. F. Littlewood.

Inpeachment & Removal from Office.—Thos. P. Akers, Jesse Haven, H. A. Holcomb, G. L. Erb, Geo. H. Bryan, Wm. Price, Lorin Farr, Albert Carrington. Aurelius Miner.

Public Instructions.—Joseph W. Young, D. E. Buel, William Snow, Abram Hatch, William W. Cluff, John R. Murdock, Lot Smith, Daniel Thompson, O. N. Liljenquist.

Boundary, Miscellaneous Provisions and Enactments.—Jesse N. Smith, Daniel Tyler, Gilbert Belknap, Lorenzo H. Hatch, John R. Barnes, Edward Dalton, Israel Ivins, Nathan T. Porter, Nymphus C. Murdock.

Schedule and Election Ordinance.—Thos. Fitch, William Morrison, Silas S. Smith, Wm. Bringhurst, Richard Warburton, F. A. Hammond, H. S. Alexander, Abner Lowry, John T. Caine.

The unfinished business of yesterday then came up, being the resumption of the discussion on the motion of Delegate Hayden, for an adjournment *sine die*.

In opposition to the motion, and urging the necessity for a State government for Utah, Hon. Thos. Fitch delivered the following speech:

If there be those, within or without this chamber, who imagine that the members of this convention will be content to go through the form of constructing an edifice of State government, without hope that such edifice will ever be occupied by a living tenant, they mistake the spirit of an earnest people, and the purpose of their representatives.

The object of this convention will not be accomplished until room shall be found upon our national banner for the Star of Deseret, and the question which confronts us at the threshold of our labors is, Will the necessities for a State Government justify some effort and much sacrifice on the part of the people of Utah?

An influential Mormon citizen said to me not long since, upon his return from a trip East, "I am satisfied that there is no safety for us without a State Government, and that we can have no State Government without concessions." He stated the case with mathematical precision. There is no safety for the people of Utah without a State Government, for under the present condition of public affairs, their property, their liberties, their very lives are in constant and increasing jeopardy.

Let us review the situation. In August, 1870, James B. McKean arrived here as Chief Justice of the Supreme Court of Utah Territory, and District Judge of the Third Judicial District. From the hour of his arrival he has been the leading, controlling spirit of the existing movement against Mormon institutions. He is not, perhaps, an immoral man in his private life, and for the purposes of this argument, it is not necessary to inquire whether or no he is a corrupt man, either in private or official transactions, but he certainly is that most dangerous of all public functionaries—a judge with a mission to execute, a judge with a policy to carry out, a judge panoplied with a purpose as in complete steel. Whether or not consciously, but with implacable and unswerving determination, he has steadily subordinated his judicial duties and his judicial character to the fulfilment of his mission and the execution of his policy. Motions are held under advisement for months, civil business accumulates upon the calender, great mining cases are referred or abandoned by disgusted litigants, and still the Judge alternates between the business of an examining magistrate and the pleasure of thanking the Grand Jury for finding indictments. While possessing sufficient knowledge to comply with some of the forms of law, and sufficient personal courage to forward his plans, he is yet destitute of the spirit of impartial jurisprudence. We all know there is a class of minds which, after many years of upright and dispassionate conduct, will, through lust of power or gain, or fame, or other inordinate aim, suddenly develop some insurgent quality which stops nothing short of morbidness, little short of insanity. It is the prestige of his past that this man, notwithstanding his remarkable actions here, continues to receive the support of the Federal administration, while, with some sincerity in the righteousness of his crusade, he wins for himself the endorsement of thousands of persons who only know that they desire polygamy shall be destroyed, and who do not ask the price, nor enquire "how many Athenians are in mourning."

Whether or not this theory be correct respecting the cause, and it is the most charitable of any I can conceive, the result is the same. James B. McKean is morally and hopelessly deaf to the most common demands of the opponents of his policy, and in any case where a Mormon, or a Mormon sympathizer, or a conservative Gentile be concerned, there may be found rulings unparalleled in all the jurisprudence of England or America.

Such a man you have among you, a central sun. What of his satellites?

The mineral deposits of Utah have attracted here a large number of active, restless, adventurous men, and with them have come many who are unscrulous, many who are dishonest, many who are reckless; the hereditary foes of industry, order, and law. This class, finding the courts and Federal officers arrayed against the Mormons, have, with pleased alacrity, placed themselves on the side of courts and officers. Elements ordinarily discordant blend together in the same seething cauldron. The officers of justice find allies in those men who, differently surrounded, would be their foes, the bagnios and the hells shout hosannas to the courts, the altars of religion are invested with the paraphernalia and the presence of vice. The drunkard spouses the cause of the apostle of temperance, the companion of harlots preaches the beauties of virtue and continence. All believe that license will be granted by the leaders in order to advance their sacred cause, and the result is an immense support from those friends of immorality and architects of disorder who care nothing for the cause but everything for the license. Judge McKean and Governor Woods, and the Walker Brothers, and others are doubtless pursuing a purpose which they believe in the main to be wise and just, but their following is of a different class. There is a nucleus of reformers and a mass of ruffians, a centre of zealots and a circumference of plunderers. The dram-shop interest hopes to escape the Mormon tax of $300.00 per month by sustaining a judge who will enjoin a collection of the tax, and the prostitutes persuade their patrons to support judges who will interfere by *habeas corpus* with any practical enforcement of municipal ordinances.

Every interest of industry is disastrously affected by this unholy alliance, every right of a citizen is threatened if not assailed by the existence of this combination. Your local magistrates are successfully defied, your local laws are disregarded, your municipal ordinances are trampled into the mire, theft and murder walk through your streets without detection, drunkards hurl their orgies in the shadow of your altars, the glare and tumult of drinking saloons, the glitter of gambling hells, and the painted flaunt of the bawd plying her trade now vex the repose of streets, which beforetime heard no sound to disturb their quiet save the busy hum of industry, the clatter of trade and the musical tinkle of mountain streams.

The processes by which this condition of affairs has been brought about, as well as the excuse for invoking these processes, may be briefly stated.

In 1856 a great political party declared itself opposed to polygamy as a relic of barbarism. In 1860 that party achieved power in the nation. In 1862 an act of Congress was passed the object of which was to suppress polygamy in Utah. This law was permitted to remain a dead letter upon the statute books. The war to suppress the rebellion, the problems of reconstruction growing out of that war, the proposed impeachment of President Johnson, the various exciting public questions of the day, diverted the minds of legislators and constituencies from the Mormon question, and not until after President Grant's inauguration did the anti-polygamy plank of the Republican platform loom up into national consequence. It was then observed that the anti-polygamy act of Congress of 1862 had never been enforced. The Territorial laws for drawing and empanneling juries, provided, as in all other communities, for a selection by lot. Nineteen-twentieths of the persons eligible to jury duty in Utah were Mormons, who naturally declined to indict or convict their neighbors for a practice which was believed by all to be a virtue rather than a crime. The law prescribed one rule, the sentiment of the community where the law existed prescribed another.

Similar conditions prevented the trial of Jefferson Davis for treason at Richmond. Similar conditions made it impossible to convict a violator of the fugitive slave law in New England. The forty-first Congress was asked to enact a law to meet the exigency, and the Cullom bill was framed. This measure provided that the selection of jurors should be given to the United States Marshal, that polygamists and those who believed in polygamy should be excluded from the jury box, that the wife might be a witness against the husband, that marriage might be proved in criminal cases by evidence of general reputation, and that the statute of limitations should not apply to charges of polygamy. The wisdom and justice of this sweeping measure were seriously questioned by the New York *Tribune*, and other republican papers, and by such leading republican statesmen as Henry L. Dawes of Massachusetts, and Robert C. Schenck of Ohio, but the bill passed the House by nearly a party vote, and failed to become a law only because the United States Senate did not find time or inclination to consider it during the 41st Congress.

After the adjournment or about the time of the adjournment of the second session of the 41st Congress, James B. McKean was appointed Chief Justice of Utah, and with military promptness he proceeded by his decisions to establish, as rules of law, the propositions of the defeated Cullom bill. He decided in the case of Hempstead vs. Snow that the Court over which he presided was a United States Court, that it was not a legislative but a constitutional court, and that the Territorial Prosecuting Attorney was not, even when prosecuting offenders charged with violation of Territorial laws, the proper prosecuting officer of his court, but that the United States District Attorney was such. He decided in the case of Patrick vs. McAllister that the Territorial Marshal was not in any case the proper executive officer of his court, but that the United States Marshal was such in all cases. He decided in another case that the Territorial Legislature of Utah had no power under the organic act to prescribe rules for obtaining juries to try any cases in his court, and in prescribing rules himself for that purpose he declined to consult the assessment roll, or invoke the usual method of selection by lot, but he ordered the clerk to issue an open venire to the United States Marshal.

Thus the first proposition of the defeated Cullom bill, that the Marshal might pick, I will not say pack, the jury, was decreed into existence. A temporary delay in starting the engine of persecution was caused by lack of fuel, the controller of the treasury declining to audit the bills for the expenses of this court thus elevated to a United States tribunal, and the Territorial officers declining to pay our Territorial funds to persons not authorized by Territorial law to receive them, but fuel was found somewhere, and the machinery began to move.

In September, 1871, a grand jury was summoned by the United States Marshal to attend the Third District court of Utah. From the counties of Salt Lake, Tooele, Summit, Green River, Davis, Morgan, Weber, Box Elder, Cache and Richland, containing a population of about 60,000 Mormons and 10,000 Gentiles, 23 grand jurors and 17 talesmen were selected and summoned. Of these forty persons seven were Mormons and thirty-three were Gentiles.

Each of the seven Mormons was examined on his *voir dire*, and to the questions of the U. S. District Attorney, each replied in effect that he was a member of the Church of Latter-day Saints, that he believed that polygamy was a revelation to that church, and that in his own case he would obey the revelation rather than the law. When asked the further question as to whether this belief in the revelation would affect the action of the juror in voting for or against an indictment for polygamy, some jurors replied that it would affect their action, others that it would not. The U. S. District Attorney stated to the court that he intended to bring a number of accusations of polygamy before the grand jury, and challenged the seven Mormons for bias. Judge McKean sustained the challenge and dismissed the Latter-day Saints from the box.

Thus the second proposition of the defeated Cullom bill was established by the decree of Judge McKean. The seven Mormons whom the U. S. Marshal had made a show of summoning were ruled off, and 60,000 people in the third district deprived of the privilege of representation in the jury box.

It is a fact worthy of notice that this grand jury—from which Mormons were excluded because they believed in polygamy, never found a single indictment for violation of the act of Congress fo 1862, and never, so far known, sent for a single witness upon, or attempted to consider any accusation of,—polygamy indictments for "lewd and lascivious cohabitation," under a rusty old Territorial statute, were found by the score. Indictments for murders committed fifteen or twenty years ago were found by the dozen, upon the unaided and uncorroborated testimony of a witness who confessed himself the principal in these murders. But the threat of "indictment for polygamy," having fulfilled its mission by furnishing an excuse to exclude Mormons from the grand jury, was heard no more.

I pass for the present from this grand jury to further review the process by which Judge McKean vitalized the abortive Cullom bill.

A man named Thomas Hawkins had been indicted under the Territorial statute for the crime of adultery, and in October, 1871, he was tried before Judge McKean and a jury. Two or three Mormons who chanced to creep on the Marshal's venire were asked if they believed in polygamy, to which question they replied yes. They were further asked if they blieved a man could be guilty of adultery, who committed the act constituting that offence, under a claim of plural or polygamous marriage. The reply was, no. Whereupon the District Attorney challenged the jurors for bias, and the judge sustained the challenge and directed the jurors to leave the box, although there was not a line of pleading on record, nor a word of council or client, by which the judge could judicially conjecture, much less know, that the defendant would set up any polygamous marriage as a defence to the charge of adultery.

Hawkins was convicted on the sole evidence of his wife, who, in despite of the protest of counsel, was permitted by Judge McKean to testify in the case, and thus the third proposition of the defeated Cullom bill, that a wife might testify against the husband, was established by decree of the Judge. Hawkins was subsequently sentenced to pay $500 fine and be imprisoned for three years' and he is now in the Territorial prison pending an appeal to the Supreme court of the Territory. From present appearances he is likely to serve out his term, for his bonds pending an appeal have been fixed at twenty thousand dollars, and his whole property would not suffice to pay his $500 fine. Judge McKean refused for three months to sign the bill of exceptions for Hawkins' appeal to the Territorial Supreme Court, on the ground that the bill was too voluminous, that it contained a record of all the proceedings in the case, proceedings reported

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