EDITORIALS.

GRAND JURY MALICE AND ABSURDITY.

Two reports from members of the Grand Jury will be found in another part of this paper. We direct attention to them and to the names of the persons who signed them. They should be known to the community, and their statements should be examined and estimated at their proper value. Some of these statements are of an extraordinary character. There is nothing surprising in them however, coming from a Utah Grand Jury, for it really seems that as soon as some of our citizens are dubbed with the title of "Grand Juryman," they become as inflated, and vain, and silly as their prototype, the celebrated Valentine Verdict in the play of "The Charcoal Burner." If they were *only* bombastic and arrogant, it would make but little difference how far they might proceed in the line of ridiculous documents, filed in Court and gravely received as reports. For their ravings amount to nothing and their recommendations are never noticed in a practical manner. But they are not content with that. They step entirely outside of the bounds of their duties, and in malice and falsehood go so far as to utter gross libels on the people and the Territory.

The Reports which we publish to-day are conspicuous examples of this. The general report, which it will be observed is only signed by eight members and the clerk, contains some expressions that should not be allowed to pass without comment. An attack is made upon the witnesses brought before the Grand Jury for the purpose of eliciting testimony in alleged cases of polygamy. They are charged with being "unwilling or unreliable" and accused of a "painful exhibition of disregard for the sanctity of judicial oaths." What are the facts in the case? These: That after a Grand Jury was packed, in violation of law and precedent, for the special purpose of finding indictments against persons supposed to have broken the anti-polygamy law; the employment of sneaking spies, who prowled around private dwellings and tried to trap little children and unsuspecting women into admissions of the plural family relations of the households to which they belonged; hunting after ladies, thought to be plural wives recently married; and a resort to trickery, eaves-dropping, deception and the tactics of the lowest species of the despicable informer; reliable information on the desired subject was exasperatingly scarce. The witnesses dragged before this special inquisition could give but little aid, for the simple reason that they were not in possession of the knowledge they were desired to impart.

How can any man or woman testify under oath that a neighbor or acquaintance was married at a given time to a designated person, without being a witness to the ceremony? Witnesses are not expected or required to give their opinion or to repeat common rumor. They are only under legal obligation to speak that which they know. If a man says, under oath, he knows that another contracted marriage with a certain individual at a certain time, and has no other evidence of the fact than what he has heard, or what he suspects, or what he believes, he then certainly "exhibits a disregard of the sanctity of a judicial oath." But when he replies that he does not know, when questioned as to a contract performed in secret and about which he cannot possibly know any more than his questioners, he speaks the truth, and no Grand Juror, swelling with the importance of his mighty office and the majesty of his temporary position, or angry at not being able to extort the information desired, has the slightest right to attack the witness as unreliable, or throw out the dirty insinuation that the latter is a perjurer; and those who do so expose themselves to the scorn and contempt of all reasonable and respectable persons.

These inquisitors next attack our "inflexible and inelastic laws." It appears that they would prefer laws so flexible and elastic that juries could be empanelled, indictments found and verdicts rendered, according to the desires of attorneys and judges anxious to make a name by putting alleged polygamists in prison. Why did not these nine Grand Jurymen make some laws, as elastic as india rubber, to suit their notion? They had just as much right to legislate as to enlarge on the jury question. The Grand Jury is a creation of the law. Its powers are defined by the law. But nothing whatever appears therein which gives them the least authority whatever to make any such silly statements or absurd recommendations.

The trouble does not lie in the number of jurors provided by the Poland bill, but in the course taken to prevent one portion of our citizens from acting as jurors. Let the jury law be carried out according to its letter and spirit and the difficulty would disappear. And we would ask, was the "Potter case" postponed for lack of jurymen? Or was it not because there was no evidence whatever against the accused, and the prosecution hated to give them an opportunity to clear themselves from the charge, and this just because they were "Mormons?" Talesmen are wanted. Exactly. Power is desired to pick up just such jurors as can be handled to order, so that convictions can be had, evidence or no evidence, and the "Mormon people be placed at the mercy of their avowed and unscrupulous enemies. We understand.

This precious nine next attack the Legislature for not appropriating enough money for judicial expenses, and for not leaving the treasury open to be dipped into at pleasure. We would ask, what encouragement does the past history of official disbursements give to the Legislature, for placing large sums of money within the reach of those who desire to handle it? The whole revenue of the Territory would not suffice to meet the demands of men anxious to convict "Mormons" of crime. The late District Attorney went clear to California for one witness, who, he thought, could be induced to give testimony which would inculpate a gentleman against whom no crime could be proven. Witnesses in other cases have been brought at immense expense from the eastern States, and with no result but failure. If our legislators were such fools as to give the key of the Territorial Treasury into the hands of Federal Officials to lock and unlock at will; they would deserve to be relegated to private life, for there would not be a dollar of revenue left for any measure of public benefit, and the witnesses and jurors would be little if any better off than at present; *the cash would flow into other channels.*

This report is manufactured for outside effect, like others of its kind, and the only wonder we feel is to see some of the names which are attached to it, placed there, as we have reason to believe, under strong pressure, but still there, making their owners measurably responsible for the folly and falsehood which it contains.

The report on the insane asylum, if possible, is worse than the general report. And we notice that it was adopted unanimously. How a number of men ordinarily intelligent could thus commit themselves is astonishing. There is no such thing in existence as "The Insane Asylum of this Territory" named in the report. The institution which three of their number visited is private property. It belongs to Dr. Seymour B. Young, totally and entirely. It is not the property of the Territory, the County nor the City. It is strictly a private affair. They were so informed when they paid their visit. They had no right there whatever in an official capacity. Their report is an exhibition of extreme folly and "Grand Juryman" vanity. The law gives them no power in the premises. They are "entitled to free access at all reasonable times to the public prisons." But this building is not a public prison nor a public establishment of any kind. They might as well visit and report on a soap factory, or a millinery establishment, or a private bath house. They have covered themselves with ridicule.

But this is not all. Their statements are pronounced by the proprietor entirely false. In another column he gives a general invitation to the public to visit the asylum and investigate for themselves. There are some demented persons in the asylum who are filthy in their habits and violent in their conduct. Did these wonderful Grand Jurymen expect to find these unfortunate but bestial patients in carpeted drawing rooms, surrounded with luxury? We are assured that they are cared for to the satisfaction of their faiends who placed them there, and kept as comfortable as they will themselves permit.

We cannot but think that the object of these self-important persons who have framed this report is to pander to the prejudice existing against the people of Utah, or why should they take the trouble to make up such a statement, and fasten upon the Territory a stigma which at the worst belongs only to an individual, and which it is claimed is entirely undeserved?

We are not at all surprised that the abolition of the Grand Jury system altogether is strongly advocated by many intelligent writers and learned lawyers. For when such repeated exhibitions of folly, pomposity and malice are exposed to the public gaze as the reports which have been filed for a number of years past in the "Third District Court of Utah," a strong argument is furnished for the deserved reform. When men place themselves before the public in such an absurd attitude as the signers of these reports have done, they cannot reasonably complain if they are made the subjects of public derision and public censure.

DANGEROUS LEGISLATION.

The Central Pacific Railroad Company recently paid into the Treasury of the United States the sum of $609,080.69, which settles the Company's indebtedness to the Government up to the 31st of December, 1878. In making this payment the Company offers no dispute as to its right and duty to pay five per cent. of its net earnings to to be applied on payment of its subsidy bonds, but the 20 per cent. and half the earnings from Government business, which were required by the law of Congress known as the Thurman Act, are regarded by the Company as "having been wrongfully extorted in defiance of justice, equity and good faith, in fact, by the law of the strongest."

Our readers will remember that the constitutionality of the Thurman Act, being disputed by the Pacific Railroad Companies, it was tested in the Supreme Court of the United States, and decided against those companies, the law being declared valid and constitutional. Justice Field, however, dissented from the decision, and for his plain spoken opinion received severe censure from the press. But a careful examination of the able document containing the gentleman's Opinion in full, will, we believe, convince most unprejudiced people that his position is supported by law and logic.

To explain this subject clearly it will be necessary to give a brief history of the contract between the Railroad Companies and the Government. By the acts of Congress of 1862 and 1864 these companies were authorized to construct a railroad and telegraph line: the Union Pacific from a designated point on the one hundredth meridian of longitude west from Greenwich to the eastern boundary of Nevada, and the Central Pacific from a point near the Pacific coast, through the State of California and on through the Territories of the United States to the point where it should join the line of the Union Pacific. In consideration of building and keeping in repair a first-class road and telegraph line over the country described, so that the Government could use them for the transmission of dispatches, the conveyance of mails, troops, munitions of war, etc., at reasonable rates, giving the Government the preference of the use of both railroad and telegraph over other patronage, the Government guaranteed to give the right of way over the public lands, with the title to certain sections of land on each side of the road, and issue Government bonds, "each for the sum of $1,000, payable thirty years after date, with semi-annual interest, such bonds to be issued at the rate of sixteen, thirty-two or forty-eight to the mile, according to the character of the country over which the road should be constructed; and would issue patents for the land, and the subsidy bonds as each twenty consecutive miles of the road and telegraph should be completed in the manner prescribed; it being agreed that the company should pay the bonds as they should mature, and that for the security of their payment they should constitute a second mortgage upon the whole line of the road and telegraph, and that one-half of the compensation earned for services to the Government, and, after the completion of the road, five per cent of its net earnings, should be returned and applied to the payment of the bonds; and also, that the company should complete the road by the 1st of July, 1876, and keep it in repair and use thereafter, or upon failure to do so, that the Government might take possession of the road and complete it, or keep it in repair and use as the case might be."

It was required by the Act of 1864 that if the Central Pacific Company accepted these terms it should file its written acceptance within six months. The proposition was formally accepted within the given time and the contract was made complete. But on May 7, 1878 the so-called Thurman act was passed, arbitrarily altering the terms of the contract without the consent of the companies. "By the contract only one-half of the compensation for transportation for the Government was is to be retained and applied toward the payment of the bonds. By the Act of 1878 the whole of such compensation is to be retained and thus applied. By the contract five per cent. only of the net earnings of the road were to be paid to the United States to be applied upon the subsidy bonds. By the act of 1878 twenty-five per cent. of the net earnings are to be thus paid and applied. By the contract the only security which the Government had for its subsidy bonds was a second mortgage on the road and its appurtenances and telegraph line; and the company was allowed to give a first mortgage as security for its own bonds, issued for an equal amount. By the Act of 1878 additional security is required for the ultimate payment of its own bonds, and the subsidy bonds of the United States, by the creation of what is termed a sinking fund—that is, by compelling the company to deposit $1,200,000 a year in the Treasury of the United States, to be held for such payment, or so much thereof as may be necessary to make the five per cent. net earnings, the whole sum earned as compensation for services, and sufficient in addition to make the whole reach twenty-five per cent. of the net earnings."

Justice Field considers that by the passage of this Act the government is made independent of its legal obligations, is rendered able to violate its contracts, and is endowed with power to exercise judicial functions; and, as the Central Pacific Company is a corporation formed under the laws of the State of California, that in its case the supremacy of the Federal power over the State is subversive of the rights of that State; all of which is contrary to the Constitution. The learned Judge shows that the companies fulfilled their part of the contract and that there is no complaint that they failed to do so, and holds that the Government is equally bound with a private person or firm to fulfil its part of the obligation. He says:

"It is the exaction from the company of money for which the original contract did not stipulate which constitutes the objectionable feature in the Act of 1878. The act thus makes a great change in the liabilities of the companies. Its purpose, however disguised, is to coerce the payment of money years in advance of the time prescribed by the contract. That such legislation is beyond the power of Congress I cannot entertain a doubt."

The power under which the Thurman Act takes shelter is supposed to be contained in the Act of 1864, which says:

"Congress mey at any time alter, amend or repeal this Act."

But the Act of 1862 reads as follows:

"And the better to accomplish the object of this Act, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress may at any time—having due regard for the rights of said companies named herein—add to, alter, amend or repeal this Act."

Justice Field shows that the two Acts are to be read together; that they deal with the same subject and are to be treated as if passed at the same time; that the power of mendment in the *Act of a '62 must be held to apply to* the power reserved in the Act of '64; that as the title to the land could not be revoked, nor the bonds be recalled, *so the rest of the contract could* not legally be changed or destroyed; that when the Government of the United States entered into that contract, it laid aside its sovereignty, and put itself on terms of equality with its contractors; that it was then but a civil corporation, as incapable as the Central Pacific of releasing itself from its obligations, or of finally determining their extent and character; that it could not release itself and hold the other party to the contract, it could not change its obligations and hold its rights unchanged; that it cannot bind itself as a civil corporation, and loose itself by its sovereign legislative power; that if the Government had cause of complaint against the Companies it could not undertake itself, by legislative decree, to redress the grievance, but was compelled to seek redress as all other civil corporations are compelled, through the judicial tribunals.

He further shows the difference between a legislative act and a judicial act. "The one determines what the law is, and what the rights of parties are with reference to transactions already had; the other prescribes what the law shall be in future cases arising under it. Wherever an Act undertakes to determine a question of right or obligations, or of property, as the foundation upon which it proceeds. such Act is to that extent a judicial one, and not the proper exercise of legislative functions." To justify the taking away of vested rights, there must be a forfeiture, to adjudge and declare which, as the great Webster declared, "is the proper province of the judiciary." Acts to impair the obligation of contracts are not the exercise of a power properly legislative, and infringe upon the provision of the Constitution which declares that no person shall be deprived of property "without due process of law," that is, a regular course of procedure through the courts.

It is claimed, and perhaps truthfully, that these railroad corporations, through the accumulation of vast wealth, have become a dangerous power in the country, and that it is for the good of the nation that some restrictive measures be adopted. But this does not authorize the Government to violate its contracts with those companies nor to compel them to hand over money, which lawfully if not justly belongs to them, into the treasury of the United States. And it is certainly a more dangerous thing than the growth of these monied corporations, that the Government should be endowed with power to break its agreements and obligations at will, and compel the payment of private money into the public treasury. We therefore agree with Justice Field in his powerful argument on this subject, and deeply regret the gradual descent of the highest tribunal of our country, from the high position it once occupied as an impartial and incorruptible body to the level of party measures and the influence of political and personal considerations, apart from the rigid rules of constitutional law and unbending justice. Since the foul breath of party politics tainted the spirit of the Supreme Court, and its power was lent to aid in a presidential fraud, its virtue has been sullied, its judgment warped, and the deep respect of this great nation for its decisions has been gradually growing smaller and weaker.

PRESBYTERIANS AND POLYGAMY.

Salt Lake City,
Nov. 20, 1879.

Editors Deseret News:

Paul Gide, in his "Women in Ancient and Modern Law," says: