DESERET NEWS:
WEEKLY.

TRUTH AND LIBERTY.

PRINTED AND PUBLISHED BY THE
DESERET NEWS COMPANY.

CHARLES W. PENROSE, EDITOR.

WEDNESDAY, - MARCH. 23, 1887.

GENERAL ANNUAL CONFERENCE.

The Annual Conference of the Church of Jesus Christ of Latter-day Saints will commence at 10 o'clock, on the morning of Wednesday, the 6th of April next, at the Stake House in Provo, Utah County.

The officers and members of the Church are respectfully invited to attend.

JOHN TAYLOR,
GEORGE Q. CANNON,
JOSEPH F. SMITH,
First Presidency.

THE OATH AND VOTERS' RIGHTS.

THE ability and willingness of a large number of "Mormons" to subscribe to the test oath in the Supplementary Edmunds Act, continue to agitate "our friends the enemy" in a most exasperating manner. That it does not trench upon any man's belief or the expression of that belief, is an aggravation of their feelings and a blow to their designs from which they cannot recover. They take it as a personal grievance. Having made far-reaching calculations and uttered many boastings, all based on the theory that the oath meant more than it said and was in the nature of a *religious* test which would exclude every "Mormon" from the polls, the discovery of their fundamental blunder affects them like concussion of the brain and scatters their plans as if smitten by a cyclone. Minority control, the goal of their hopes, the "patriotic" (?) and American (?) principle for which they leagued and lied and labored, dodges off into the dim and uncertain distance, and no one sham Republicans and bogus Democrats have to exclaim, "Thou wert so near and art so far!"

Referring to our demonstration of the rights of voters and the lack of lawful authority in any one to challenge a citizen at the polls, or refuse him registration, on account of his membership in a religious organization, the chief organ of the Leaguers, unable to produce any argument against this, pronounces it "misleading," and assails it for "wrong-headedness, falsity and wilful misrepresentation." But it makes no attempt to prove these assertions. It says:

"The News has the audacity to say that 'Mormons' may after taking the oath still advocate polygamy and defend it; that the oath refers to overt acts only. To be sure a Mormon may do this, but only at the expense of what should be his honor because he has sworn he will not do it."

This is followed up by a string of expletives that simply show how mad the writer is at the result, and how deficient he is of any reason to support his ranting. We maintain that the test oath refers only to overt acts, because that is borne out by its language, because its framers explained that this was its sole purpose, and because the Supreme Court of the United States has ruled that legislation cannot go farther than that and remain within the limits of the Constitution.

Everybody who can read, can see for himself that the oath or affirmation does not trench upon belief and does not prevent the defense and advocacy of that belief, whatever it may be. Neither does it relate to membership in any association, civil or religious. The absence of any such test is what ruffles the plumes of the birds of prey and clips both wings of the screaming League vulture. And it is this, in their eyes, fatal defect that they wish to supply by unlawful obstructions at registration and at the polls.

As to the design of the framers and supporters of the oath or affirmation, we cannot do better than cite the subjoined from the *Congressional Record* of February 19th. During the debate in the Senate on the passage of the bill, Mr. Ingalls in reply to objections to the oath spoke as follows:

Mr. Ingalls. Mr. President, the instincts of my nature are such that as one of the conferees upon this bill I was led to act with the greatest deliberation in every particular in which I supposed that its terms might in any way whatever trench upon the liberty of conscience and the absolute and unrestrained freedom of personal belief.

Mr. Edmunds. Or opinion.

Mr. Ingalls. Yes; as the Senator from Vermont suggests, or of opinion; because, claiming for myself the widest liberty to question, to doubt, or to believe as my reason and my impulses direct, I should be the last to refuse that same right to any other person or any other sect, no matter where it might be or what its claims might be for consideration, either by Congress or by contrast with the tenets or doctrines of any other organization.

I understand that the provision of the Constitution which the Senator from Missouri considers to be in some way or other infringed by the terms of this bill is that which is found in the following language:

> But no religious test shall ever be required as a qualification to any office or public trust under the United States.

It is unnecessary for me to say that I have as much respect for the sincere convictions of a Mormon as I have for those of an Episcopalian, a Catholic, a Congregationalist, a Baptist or a Methodist. All religious belief, honestly entertained is respectable. It may be erroneous; my judgment may disapprove and condemn it; but any religious faith is entitled to respect if honestly entertained. It is not the Mormon religion with which we are dealing in this measure, but the practice of polygamy, which is one of the doctrines of a portion of that Church; and if I supposed or believed, or if I could be made to perceive now that there was anywhere in the text of this bill latent even, concealed, any purpose or intent to interfere with the religious belief of even the humblest member of the Mormon Church, any attempt to interfere with opinions entertained upon religious questions, I would disavow it; I would retrace so far as I might my concurrence with the conference report. But I do not so understand it.

It is not my belief that by any of the provisions of the oath which these people are required to take they are in any manner compelled to abandon their religious opinions concerning any doctrine on which individuals in the Christian world disagree; and I should be glad if the Senator from Missouri, with whom I sympathize in many of the views he has expressed, would point out to the Senate wherein the oath that is prescribed in this bill imposes any religious test which would be obnoxious or inimical to the provision of the Constitution to which I have referred.

Sir, test oaths are not so uncommon as the Senator from Missouri would have us suppose. As the Senator from Vermont has said, no man can enter on the discharge of the high duties he performs here without taking a test oath; an oath that attests the fealty of him who takes to it the Constitution and the laws of his country. No man can be admitted to citizenship, having been a foreigner, unless he takes a test oath, and by that test oath renounces the political allegiance that has hitherto controlled him, and declares that he will thereafter bear himself as a faithful and loyal citizen of this Republic, bear true and loyal allegiance to the Constitution and the laws of the country of which he is hereafter to be a citizen.

Therefore I do not think the report of the conference committee is open to the objections which the Senator from Missouri has offered, and if in any line or syllable it imposes any religious test as a preliminary qualification for exercising political rights, for voting, for serving upon juries, or for discharging the duties of any civil office, I am opposed to it.

The mud-thrower of the League will now perhaps turn loose on the Senator From Kansas. And when he has received his share of "Liberal" abuse, the Supreme Court may be daubed with the same kind of mire for ruling that:

"To suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the *profession or propagation* of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty."

"It is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

These sentences the Court quoted from the language of the patriot Jefferson, and made them its own by adding this endorsement:

"In these two sentences is found the true distinction between what properly belongs to the church and what to the state."

The Court further ruled that

"Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order."

In the cases against the Utah Commissioners, the Court, referring to the Ninth Section of the Edmunds law, decided that,

"The prohibition against excluding any person from the polls, for the reason assigned, must be construed, with the additional injunction, 'nor shall they refuse to count any such vote on account of the opinion of the person casting it on the subject of bigamy or polygamy,' to apply to the action of the board in canvassing the returns of elections, made to them by the officers holding such elections; or, if it includes more, it is to be taken as the announcement of a general principle to govern all officers concerned in the registration of voters or the conduct of elections.

These references establish the truth of our position beyond rational dispute. What we had "the audacity to say," is what has been announced by statute, by the declaration of the intent of the framers of the law, and by decisions of the Supreme Court of the United States, all of which authorities have had "the audacity" to differ from the abusive mouthpiece of the defeated Utah League.

It is not true that any "Mormon" who has taken the new test oath has "sworn he will not advocate and defend polygamy." There is no such promise made or required in the oath. No such pledge may be demanded of a citizen. Opinion is free and speech is free. It is only the "liberty" shouters who are liberty haters, that attempt to suppress opinion and would muzzle free speech. A voter who says he will not break the law nor aid or advise others to do so, does necessarily no violence to his honor, nor does he thereby forfeit his right to think or to say what he thinks, or to convince by argument the minds of others that he is right in his convictions. His agreement relates only to actions which violate law. That is all there is of it, and those who intend to try and force something into it that does not belong to it, will only expose their own folly and evil designs, and render themselves liable to prosecution if they put their purpose into "overt acts against peace and good order."

In regard to the powers of judges of election, we maintain what we have proven; that they are not to challenge but to determine challenges; and nothing has been advanced to rebut this. But it is the duty of those officers to prevent obstructions at the polls by unlawful challenges which would interfere with the free exercise of the elective franchise. An unlawful challenge is one that does not relate to a disqualification specified in the law. A challenge as to opinion or the expression thereof, or as to membership in a religious or other organization, is an unlawful challenge, because the law does not and cannot make either of those things criminal.

The League organ's argument that registration officers may act outside of the lines of the law in order to "satisfy themselves" about the qualifications of an applicant, is refuted by it own citation of the Supreme Court's decision, viz:

"If they have not the right to exact an oath different from that the form of which is given in the Territorial Act, they must otherwise satisfy themselves that persons offering to register are free from *the disqualifications defined in the Act of Congress.*"

No other disqualification can be urged or pretended or enquired about by a registration officer, than those "defined in the Act of Congress." If this was the law before the passage of the supplementary Edmunds Act, when no form of oath was provided by Congress, how much more significant it is now, when the only oath that can be legally presented to an applicant for registration is given in that Act!

Thus it will be seen that our position is impregnable on both questions. The test oath relates to actions, not opinions or the expression thereof. And no qualifications can be required of a voter other than those defined in the law. All extraneous oaths and questions, whether relating to opinion, intent or connection with a creed or an organization, are unlawful and to be treated with the contempt they deserve. And if any man is refused registration or the right to vote at the polls, because of his refusal to subscribe to unlawful oaths or answer unlawful interrogations, he has his remedy in a suit for damages against the officer who is responsible for his rejection, and that official may be also prosecuted for felony.

Citizens of Utah, learn your rights and then maintain them; The villains who have plotted to destroy your liberties have played their game and lost. Now in their rage they are hatching further mischief and intend to try by "Liberal" trickery to effect that which they failed to secure by legislation. The law is on your side, keep on the side of the law. And take care that no threats and no pretense of authority that is unlawful, deprives you of that precious right, the free and full exercise of the elective franchise.

BOULANGER'S PRESENT.

THE fact that a number of Russians have had a sword specially made for General Boulanger and formally presented to him, is in itself a small matter, and if unconnected with something else would not be worth cabling across the Atlantic or wiring across the continent; but the "something else" in this instance is the important element in the case. It was stated some days ago that the popularity of France in Russian circles had risen several points in the social indicator, and was still rising; that the mere mention of the word "France" created unrestrained and unaffected enthusiasm, and it remains for the reader to decide whether or not, in the present complication of European politics, *that* means anything. We think it does.

This Boulanger is so far a kind of prodigy. A few years ago he was an unknown entity in French affairs except in a very limited sphere; being made Minister of War in the French Cabinet, that fortunate condition of things in which the calling makes the man and the man magnifies the calling, has resulted. Suddenly as his own fame came such a transformation in the war preparations, army organization and system of preparations as has made Germany call for more men for longer terms; Austria to be in a constant state of alarm and preparation; Italy, Spain and other second-class powers to content themselves with having nothing whatever to say on the subject; and Russia to be completely given up to admiration of her former enemy.

A great and peculiar man is Boulanger, and a great if not invincible alley would Russia be in the coming struggle. Putting this and that together, his reception of a sword at the hands of the Muscovites has a pretty broad significance.

UNFAIR DISCRIMINATION.

THE difference between the treatment accorded in the courts to Latter-day Saint defendants in contradistinction to that dealt out to non-"Mormons," in favor of the latter, is a matter so common that it seems almost superfluous to allude to it. This absence of necessity to dwell upon and agitate the subject is, however, merely apparent and not real. The smallest departure from equality of rights in the administration of the law should be duly noted and denounced. Equality should be contended for even when the prospect for redress is dim and distant.

When the name of a "Mormon" defendant is called that he may appear for trial in a case of unlawful cohabitation, if he has been detained for some cause it has been usual for the District Attorney to demand the forfeiture of his bonds forthwith, and for the Court to so order. The proviso has been made, however, that the order of forfeiture would be vacated in case the defendant should appear at any time during the current term, the law making this imperative. Several cases in which such a preceding occurred came up a short time since.

Now note the distinction: Yesterday in the Third District Court the names of Duncan McDonald and Herbert A. Slade, indicted for prizefighting, were called. There was no response, and the counsel for the defendants requested that the case be continued for the term, Mr. Dickson interposing no objection and the Court acceding without a remark. This course was taken notwithstanding that it is a notorious fact that one of the defendants named (McDonald) has left the Territory. No one supposes for a moment that had the defendants been "Mormons," and especially if they had been charged with the horrible offense of maintaining their families, any such slackness of administration would have been exhibited.

Officials who manifest unjust discrimination in administering the law are, in our opinion, totally unfit for the discharge of such important duties as their position imposes.

"JUSTICE'S JUSTICE" IN UTAH.

THE case of Henry Grow must be placed on the long list of instances in the prosecution of "Mormons," in which the law has been perverted and verdicts have been found in opposition to the evidence. In refusing to set aside the verdict and grant a new trial in this case, sufficient might be learned from the remarks of the court to sustain our statement. And when the minutes of the trial are closely scanned, it must be evident to any reasonable and unprejudiced mind that whatever may have been the relations between the defendant and the chief witness for the prosecution, the evidence utterly failed to establish the charge against him.

It is admitted that the defendant has two wives. But that is not the offence of which he was accused. The charge was "unlawful cohabitation." Prosecution for polygamy was barred by the statute of limitations. It was not denied that he had lived with his wives up to the passage of the Edmunds law. There is no present offence against the law in that. But since the passage of that law or during the time covered by the indictment, the defendant and his plural wife, so the evidence showed, had ceased the cohabitation which had continued up to that time. They agreed to this separation, and the plural wife testified that it had been actual, as a matter of fact. A house was built for her which she owned and occupied. The defendant, it was shown, had called at the house a number or times while it was being finished and repaired, to give instructions to the workmen, and after that to convey letters to his grand-daughter who lived with the plural wife. but it was not shown that he had entered the dwelling and it was denied that he had ever even sat down in it during the time mentioned in the indictment. He had been away from home a few nights during that period, but that was accounted for by his sleeping in a bed which he occasionally occupied on the Temple block where he was employed.

What evidence was there then, to support the charge? Not any, except his calls at the house where his plural wife resided, for the purposes specified in the testimony. Passing by Judge Zane's ponderous attempts to be funny, there was nothing criminal in the calls of Mr. Grow, if he had been as old as the Court wished to intimate, nor if the plural wife were as young and attractive as the Court pleased to portray. The conduct of the defendant as described in the evidence was not in any way a breach of the law. But the Court seems to have imagined a great deal, and the jury appear to have shared in the surmising. Oother people may have had similar suspicions. But what is there in all that in the nature of proof sufficient to establish guilt?

The legal presumption seems to have been reversed in this case, as in many others of a similar character. The fact of the defendant's previous relationship and present status as regards his plural wife are taken as evidence against him, while the law presumes that the intimacy previously existing ceased when it became unlawful. For the purposes of the prosecution, the presumption of his guilt seems to have been taken instead of the presumption of his innocence. In common justice and according to all lawful criminal procedure, some proof of the defendant's guilt was necessary to his conviction. But it was not shown that he had dwelt with the plural wife, that he had lived with her in any other sense than as all people live together who inhabit the same neighborhood.

Judge Zane repeated the palpable absurdity which he uttered many months ago, in order to make the term cohabitation stretch into unprecedented significance. His argument is this: "They were together, they lived—they lived together *i.e.*, they cohabited." Is not that an original definition of the term cohabitation to be used in a criminal sense? We quote the following from his opinion, as printed in the organ which claims to represent his Honor and the court officials generally. We do this that our own report may not be objected to as partial:

"Continuous cohabitation need not be proven with more than one woman. For illustration, a mariner, who is sometimes away from his home for months and even years, still cohabits with his wife; according to the rulings of the higher courts the holding out to the world more than one woman as a wife was as much a violation of the law as the continuous living together as man and wife. If a man by his actions or conduct, or both, leads persons who observe and who are called to pass upon his conduct, to believe that he is living in violation of the law, this constituted unlawful cohabitation."

The Supreme Court of the United States in its latest ruling on this question said:

"The offense of cohabitation, in the sense of this statute, is committed if there is a living or dwelling together as husband or wife. It is inherently a continuous offence, having duration, and not an offence consisting of an isolated act."

"Continuous cohabitation" must be proved, then, or the offence charged is not substantiated. No such cohabitation was shown in the Grow case, but the absence of it was sworn to, therefore the verdict was contrary to the evidence. The Judge's illustration of the mariner who is presumed to cohabit with his wife though frequently absent from home for long periods, has no parallel in the present case. The cohabitation can be presumed with the legal wife only; in regard to the plural wife the legal presumption is to the contrary. And even in regard to the lawful wife, if a separation had been agreed upon and there was positive testimony that the agreement had been carried out, the presumption would be set aside.

It is not true that the higher courts have ruled that "the holding out to the world more than one woman as a wife was as much a violation of the law as the continuous living together as man and wife." There is no such offense known to the law as "holding out to the world more than one woman as a wife." Polygamy consists of marrying more than one, unlawful cohabitation of a continuous living or dwelling together with more than one. "Holding out" alone is not made criminal by law, and no "higher courts" have said that it is. A man may be disfranchised because he is a bigamist or polygamist, but he cannot be prosecuted for maintaining that status alone. So the Supreme Court of the United States ruled in the cases against the Utah Commission. The Court said:

"Disfranchisement is not prescribed as a penalty for being guilty of the crime and offence of bigamy or polygamy; for, as has been said, that offence consists in the act of unlawful marriage, and a prosecution against the offender is barred by the lapse of three years by section 1044 of the Revised Statutes. *Continuing to live* in that state afterwards is *not an offence*, although cohabitation with more than one woman is. But as one may be living in a bigamous or polygamous state without cohabitation with more than one woman, *he is, in that sense, a bigamist or polygamist and yet guilty of no criminal offence.*"