DESERET EVENING NEWS.

TRUTH AND LIBERTY.

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WASHINGTON.

President and Mrs. Grant Returned to Washington—Army Movements—Supreme Court Decisions—Senate Movements.

WASHINGTON, 13.—The President and Mrs. Grant have returned to the capital. Henry Clayton of the seventeenth infantry has resigned. Major George L. Febeger has been assigned as chief paymaster of the department of the Pacific, and Major William Smyth to duty in that department. Major W. R. Gibson assigned as chief of the P. M. Department of Texas. Major Chas. M. Terrell is ordered to report to the chief paymaster of the pay district of the Platte, at Omaha; assistant surgeon, Eli McClellan is ordered to report to the commanding general of the department of the South. Major Herbert P. Curtis, judge advocate is ordered to report to the commanding general of the military division of the Pacific.

The supreme court for the district of Columbia, in the case of Taber vs. Sheridan, has decided that current authority does not make a seat in Congress a privilege, excepting from service of civil processes. Nor does the constitution indicate in any way that he can be so exempt.

In the supreme court in the case of Alexander against Roderigus, the judgment of the circuit court of California is reversed; the lands in question are awarded to the appellant, who simply mortgaged them with power to redeem.

In the case of Perren, against the United States, the judgment of the court of claims is affirmed, dismissing for want of jurisdiction the petition of French subjects for recovery of damages by the destruction of property by the bombardment of Greytown in 1854.

The Senate committee on finance met to-day, Sherman, Fenton, Scott, Wright and Ames present. It was understood the majority decided it was inexpedient to report a substitute, or act upon in any way the House bill for the abolition of the duties on coal and salt, and the chairman, Sherman, was directed to notify the chairman of the committee on ways and means, when appointed, that the finance committee will await the announcement of the judgment of the House upon such bills as it may propose next session. This determination will not put an end to the finance committee, as they will still be under general instruction of the resolution of the Senate.

NEW YORK.

That Brooklyn Election again—New Loan—Grand Duke Alexis not heard from—General Sherman and Companions' Movements—Cholera from the Baltic—Several other Items—Stocks.

NEW YORK, 13.—Members of the Brooklyn investigating committee say they have evidence showing that about 1,000 fraudulent votes were cast at the late election, and are sanguine that the canvassers will be compelled to give certificates of election to the majority of the Republican candidates on the county ticket and all the Republican candidates including the mayor, on the city ticket. The report will be ready about Friday, when warrants will be issued for the arrest of the ballot stuffers. Mayor Kalbfleisch professes to be satisfied that he has obtained more honest votes than Powell or Booth, and he will contest the right to the office in the court.

Telegrams from England report that the settlement of the new U. S. loan is proceeding favorably, and the rate of discount thereon has advanced 1¼ @ 1½ per cent. Money was easy in the open market at 3 per cent.

Prince Alexis was not signalled at 3 p.m.

General Sherman, admiral Alden and lieutenant Fred. Grant went down to the *Wabash* at 2 o'clock. Salutes were fired.

The steamer *Franklin* from the Baltic via Halifax is detained in quarantine and it is officially announced that there are forty cases of cholera on board. There were twenty-eight deaths on the voyage, nearly everybody suffering more or less, and were affected in most cases seriously. Further deaths are probable, but a rigid quarantine will be enforced. Every effort will be made to alleviate suffering, but care will be taken to prevent the spread of the contagion.

The following is a correct account of the cholera at quarantine. The steamship *Franklin*, of New Baltic, Lloyd's line, arrived on Saturday night with a number of cases of cholera. She sailed from Stettin Oct 10th, touching at Copenhagen on the 12th, and Christiania. At the latter port she received twenty-two cabin and eit steerage passengers and a crew of sixty-seven men. When ten days out the first case of cholera made its appearance among the steerage passengers, and when the steamer put into Halifax to obtain coal she had nearly 100 cases of cholera and cholera diarrhœa, of which forty have proved fatal. Since leaving Halifax one death occurred, and to-day twelve patients suffering from cholera were sent to the West Bank hospital. The well passengers were also transferred to the U. S. steamer *Delaware*, lately fitted up as a receiving ship by the quarantine authorities. The *Franklin*, after the transfer of her passengers, was ordered to the lower quarantine, where she will be thoroughly disinfected and detained until it is thought safe to allow her to come up to the city.

Since the above fourteen additional cases of cholera, from the steamer *Franklin*, have been admitted to the West Bank hospital.

Henry C. Cooper, clerk of the naval office, is held in $30,000 bail, charged with placing cancelled stamps on the manifest of the ship *Rhoderick Dhu*.

It was agreed to-day that unless the government shall be ready to prosecute the cuban general Jordan early in December a *nolle prosequi* will be entered.

Marcus A Herrick, a prominent member of the Stock Exchange, is dead.

The Broadway widening assessment matter was argued in the supreme court. Decision reserved.

NEW YORK, 13.—Gold steady, sterling 8 5-8; governments firm.

Stocks strong. Pacific mail among the most active; W. U. T., 65 5-8; Quicksilver, 19½; W. F., 53; Pacific mail, 47½.

LONDON, 13.—Consols, 93½; money, 93½ @ ½, account.

PARIS, 13.—Rentes, 56 francs 87 centimes.

FROM VARIOUS PLACES.

Ellery E. Daniels, defaulting cashier at the Webster National bank, Boston, has been sentenced to five years imprisonment.

The friends of Frederick W. Lincoln, a promising young author, of Boston, fear he is among the victims of the Apache Indians in Arizona. He was connected with Lieut Wheeler's exploring expedition.

Robert Collyer, the "Unitarian Vulcan," of Chicago, is receiving liberal contributions from Unitarians to rebuild his church.

Mrs. Lydia Sherman, the alleged poisoner, expresses every confidence in her acquittal. Her trial is put off till the first Tuesday in December. She shows no signs of insanity. Few believe her innocent.

Opinion of Chief Justice J. B. McKean.

DELIVERED NOV. 13, 1871.

Territory of Utah, Supreme Court. Paul Englebrecht et al, Appelles, vs. Jeter Clinton, J. D. T. McAllister et al, Appellants.

On the 27th of Aug., A.D. 1870, the defendant Clinton, an Alderman of Salt Lake City, issued to the defendant, McAllister, the Marshal of said city the following warrant—

To John D. T. McAllister, city Marshal of Salt Lake City, or any of his deputies, to whom these presents shall come, greeting—

Whereas, on this 27th day of August, 1870, before me, Jeter Clinton, one of the Aldermen of the city of Salt Lake, personally appeared one William G. Phillips, who was by me sworn in due form of law and on his oath did say, among other things, that one Paul Englebrecht is "the owner and keeper of a building situate on second South Street, between East Temple and First East Streets, in said city, known as the Merchants' Exchange, and therein he, the said Paul Englebrecht, has a large quantity of spirituous and vinous liquors, as he firmly believed, and which said liquor, as the aforesaid firmly believed, is established and kept therein by the said Paul Englebrecht for the purpose, among other things, of unlawfully selling and disposing of the same without first obtaining a license from the City Council for so doing;"

And I having investigated the said charge and satisfied the same is true in fact,—

You are, therefore, hereby commanded forthwith, after these presents shall come to your possession, to enter said building and seize and demolish all things by you found therein, which is made use of for the purpose of unlawfully selling or otherwise disposing of spirituous or vinous liquors, and that you arrest the said Paul Englebrecht, and forthwith bring him before me, to be dealt with as the law provides.

Given under my hand this 27th day of August, 1870.

JETER CLINTON,
Alderman of said city.

With this warrant as his authority, the defendant, McAllister, and seventeen other defendants who accompanied him as a *posse commitatus*, entered the designated building, and in the absence of the plaintiff, Englebrecht, destroyed a large quantity of spirituous and vinous liquors, and the castors, bottles and vessels containing them, the property of Englebrecht and his partners, the other two plaintiffs Pehwske and Lutz.

The plaintiffs brought an action against the defendants and claimed judgment in a sum equal to three times the value of the property so destroyed, under the following statute—

"If any person * * * wilfully and maliciously injure, destroy, or secrete any goods, chattels or valuable papers of another, * * * he shall be imprisoned, not more than one year, or fined not exceeding five hundred dollars, or both fined and imprisoned at the discretion of the court, and is liable to the party injured in a sum equal to three times the value of the property so destroyed, or injured or damaged, sustained in a civil action. (Laws of Utah, p. 57, sec. 102.)

The defendants sought to justify, under the foregoing warrant, and an ordinance of the City Council of the said city, section 7, of which is as follows:

"Sec. 7. Any person having reasonable cause to believe that any house or place mentioned in the foregoing action of this ordinance, is established and kept for the purpose of manufacturing, selling or otherwise disposing of spirituous, vinous, or fermented liquors, without first obtaining license from the City Council, and will make oath of the same, describing the place and if upon investigation it shall so appear, the mayor or alderman before whom such complaint has been made, may issue his warrant, directed to the city marshal, or any of his deputies, commanding him to enter said house or place and demolish all things found therein, made use of for the purpose of manufacturing, selling or otherwise disposing of spirituous, vinous or fermented liquors, and to arrest the person or persons owning, keeping or conducting said house or place, and bring him or them before the court, and such person or persons on conviction shall be liable to a fine not to exceed one hundred dollars, and imprisonment not to exceed six months, or both fine and imprisonment, at the discretion of the court."

The case was tried in the Third District Court, at the September term, 1870, and the jury returned a verdict in favor of the plaintiffs for the sum of $59,063.25, the same being, in the language of the jury, "three times the value agreed upon by us of the goods of the plaintiffs destroyed by the defendants." Judgment was entered upon this verdict. We, the defendants, appeal to this court. Other facts will be stated in the opinion of the Court. Snow and Hoge and A. Miner for the appellants; Baskin and Maxwell for the appellees."

McKEAN, C. J.

Passing by all questions touching the regularity of the papers on appeal to this court, let us go at once to the merits of the case, first premising that the questions necessary to the decision of the case are neither numerous nor difficult. 1. Is section 7 of the ordinance cited, lawful and valid? 2. Is the warrant valid, or was it void on its face? 3. Were any errors committed on the trial? 4. Did the evidence justify the verdict of the jury?

It appeared on the trial that the plaintiff, Englebrecht, had no notice of the proceedings against him and his property, until after the property in question had been destroyed. The other plaintiffs were not even named in the warrant. Whether an ordinance that authorizes the destruction of property, on an ex parte affidavit, is valid or void, is not even a debatable question. It is in violation of the most sacred constitutional guarantees. No court has a right to exercise such arbitrary powers as the 7th section of the ordinance in question was intended to confer. This being so, it is not necessary to inquire whether the Alderman, Clinton, was lawfully vested with judicial authority or not.

The warrant on its face recited the fact that Phillips had made oath that he "firmly believed" so; it commanded that forthwith property used for certain purposes be demolished, leaving the marshal to judge what property; and that Engelbrecht be arrested and brought before the alderman to be dealt with as the law provides. It clearly appeared from the face of the warrant that it was issued under the void provision of the ordinance in question, that Engelbrecht had not yet been dealt with as the law provides, and that the property too was ordered to be demolished before he could have been thus dealt with. The warrant was therefore void on its face, and that too without any reference to the question whether the alderman could or could not exercise judicial power. The warrant being void, it is no protection to those acting under it.

The questions raised by the challenge to the array of jurors, have been several times passed upon by this Court in other cases, and overruled.

Section 172 of the Utah Code reads as follows:—"Either party may challenge the jurors; but when there are several parties on either side, they shall join in the challenge before it can be made, unless the Court otherwise order or direct. The challenge shall be to individual jurors, and shall be peremptory or for cause. Each party shall be entitled to six peremptory challenges." Each of the defendants claimed the right to interfere six peremptory challenges, which would have made considerably over one hundred challenges for all of the defendants. Any other construction of the statute than that all the plaintiffs were entitled to six and all the defendants were entitled to six peremptory challenges would be manifestly absurd.

The defendants exercised to the utmost their right to challenge jurors both peremptorily and for cause. Having done so, they cannot now dispute the lawfulness of the jury.

On the cross-examination of one of the plaintiffs, who was called as a witness on the part of the plaintiffs, it appeared that the items stated in the complaint were made out from invoices and accounts of sales. The defendants counsel then moved for an order to compel the plaintiffs to produce such invoices and accounts of sales. The court refused to make such order. The defendants' counsel should previously have given the plaintiffs notice to produce those books or writings, or should, on the trial, have moved to strike out some designated portion of the plaintiffs' testimony, unless they were produced or their absence accounted for. The motion that was actually made was unreasonable. Had the jury rendered a verdict against the defendants for the actual value of the property destroyed, and not for three times such value, it would now be a pertinant question whether such verdict was proper under the pleadings in this case. The charge of the court touching that question now cuts no figure in the case.

The exceptions taken by the defendants' counsel to the charge of the court, and to the refusal of the Court to charge certain things, were general. No one thing in particular was pointed, even those portions of the charge that were favorable to the defendants were covered by the general exceptions. This Court will, therefore, not cast about for possible errors which the learned counsel were unable to indicate.

There was evidence that the property of the defendants was destroyed by the act or procurement of the nineteen defendants against whom the verdict was rendered; there was also some evidence leaning upon the charge of malice; upon all the evidence the jury found that the property was wilfully and maliciously destroyed, and assessed the damages at three times the value of the property. There being some evidence, the verdict must stand. The judgment of the Court below is affirmed.

J. Hawley delivered his opinion in the case of Wm. Jennings appellant, and James P. Pruner appellee, reversing the judgment of the Court below and awarding a new trial.

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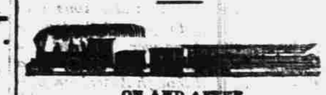

ON AND AFTER

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1871.

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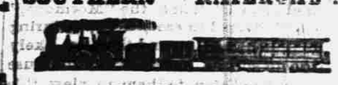

ON AND AFTER

Wednesday, Sept. 6th

1871,

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WILL RUN

DAILY,

Leaving the Utah Central Depot, Salt Lake City at 7.10 a. m. and Sandy Station (nearest p. o. to Little Cottonwood Kanyon,) at 6 p. m.

SUNDAY TRAINS

Leave U. C. Depot at 7.10 a. m. and 4.30 p. m and Sandy Station at 8.30 a. m. and 6 p. m.

FARES:

Salt Lake to Big Cottonwood Station 50 cts.
" Little " " $1.00
" Sandy " $1.00

Twenty-five cents additional will be charged when the fare is collected on the train.

For all information concerning Freight Passage, apply to

D. O. CALDER,
General Freight and Ticket Agent.

FERMOREZ LITTLE,
SUPERINTENDENT.
d285 tf

Central Pacific Railroad.

Passenger Sunday Excepted.	Express Train Daily.	AUG. 27, 1871.	Express Train Daily.	Passenger Sunday Excepted.
4 00 PM	8 00 AM	San Francisco	9 45 PM	7 30 PM
4 42 "	8 40 "	Oakland	9 12 "	7 00 "
5 50 "	7 00 "	Alta Junc.	5 50 "	3 15 "
8 26 "	12 25 PM	Stockton	1 28 "	7 50 AM
10 30 PM	4 10 "	Sacramento	10 10 AM	10 00 AM
	6 10 "	Marysville	9 00 "	
	7 00 "	Colfax	6 00 PM	
	2 30 AM	Sacramento	1 45 "	
	6 25 "	Colfax	9 45 "	
	11 50 AM	Reno	1 00 AM	
	8 10 PM	Winnemucca	1 00 PM	
	12 00 M	Battle Mountain	4 [illegible] "	
	6 40 PM	Elko	8 45 "	
	6 20 AM	Ogden	5 20 PM	

EASTWARD. WESTWARD.

T. E. GODMAN, Gen. Passg'r & Ticket Agent. A. N. TOWNE, Gen. Supt.

CORN and OATS
For Sale by the CAR LOAD
Or Retail.
T. R. JONES & CO.
Half a Block South of U. C. Depot.

SCOTT, DUNHAM & CO.
DEALERS IN
HILL FINDINGS,
Miners' Tools,
Shelf Hardware,
IRON, STEEL, Etc.;
East Temple or Main-st.
Below 2nd South-st