DESERET NEWS.
WEEKLY.

TRUTH AND LIBERTY.

WEDNESDAY, - MAY 7, 1879.

THE PRESIDENT HAS SOME BACKBONE.

As was generally anticipated, President Hayes has vetoed the army appropriation bill, with the provisions attached repealing those sections of the Revised Statutes authorizing the presence of troops at the polls during elections. We do not see how the President could have done otherwise. Leaving aside the question of the policy of his party, and the stigma that would have attached to him if he had acted in opposition to the principles so vehemently enunciated by the Republican leaders in and out of Congress, it would have been viewed as a mark of weakness on his part and a surrender of principle, if he had yielded to the pressure brougnt to bear upon him under peculiar circumstances and signed the bill with its obnoxious attachments.

We do not think the Democrats will gain much political capital by their attempt to force the Executive into an endorsement of legislation to which he is opposed. No good can accrue to the country from the stoppage of the usual supplies, and the thinking portion of the people will fail to fasten upon the President the responsibility of the situation. They will look upon the measure as a political dodge rather than legitimate legislation, and will value it accordingly.

There are very few persons, however, who desire to retain on the statute book the objectionable clauses against which the Democracy has arisen in force. The presnece of troops at the polls is contrary to the spirit of republicanism, and that perfect freedom of political action to which every citizen of the United States is entitled. The law permitting this was a war measure, or rather one that was considered necessary in the condition of society that was a consequence of the civil war. Granting that the need for it has passed, and that the obnoxious provisions ought to be repealed, it appears to us that the proper way to abolish them would be by the regular process of legislation, and not by tacking repealing clauses on to a bill that is merely financial in its nature. True, there are precedents for this, but they were not in the shape of menaces, as the present movement can but be regarded. Legislative provisions have been heretofore added to army appropriation bills, but they were not annexed, as in this instance, with the avowed object of trying to compel the Executive to assent to their enactment.

If the President, on the passage of a repealing bill should interpose his veto, the odium would then rest upon him and the party which he represents, and they would appear in a very bad light before the country. But as the case stands now the President will rather gain than lose in the estimation of the public.

It might be thought that the President ought to yield to the views of a large majority of the people's representatives. But it should be understood that under our national Constitution the Executive forms as essential a part of the Government as the Legislative. The veto power is a necessary constituent of our political system. The President has the right to the exercise of his judgment on all matters of legislation as much as the Senate or the House of Representatives. He is supposed to be chosen for his possession of those qualities which will enable him to act with wisdom and decision in just such positions as the present Executive now finds himself. He is not expected to act in an arbitrary manner or in the mere interests of a party to which he may be attached. He gives his reasons for objecting to any measure which he finds himself unable to endorse. And the arrangement that only by a two-thirds majority vote, a bill can be passed over his veto is eminently proper, is founded in wisdom, and while it prevents the establishment of laws that are but the expressions of a party and do not embody the real sentiments of the majority of the people, it prevents the autocratic exercise of the one-man power and the subversion of the popular will by any attempt at monarchial authority.

Congress has wasted a vast deal of valuable time squabbling over the passage of the bill that has been vetoed. All the war measures that have become needless as well as sources of annoyance and strife, ought to be wiped from the statute book. But this, in our opinion, ought to be done in a legitimate way. Stopping the supplies is applying force to the Executive, and this we view as improper, and just as anti-republican, under our form of government, as would be an attempt on the part of the President to coerce the Congress.

The whole matter, as it has been presented before the country, we regard as a party struggle for prestige during the coming presidential campaign, and we do not think it will result in much benefit to the Democrats nor harm to the Republicans. But whatever may be the result, Rutherford B. Hayes will gain more respect by his veto than signing the bill would have brought him, and those who have accused him of having an eel instead of a backbone will have to acknowledge that they were considerably mistaken in the man. This veto message will be found in this evening's NEWS.

The document, which was most likely prepared by Secretary Evarts, treats of the subject at considerable length. As we did not receive the greatest portion of it until after our usual time of going to press, comments upon it are necessarily postponed.

A RELIGIOUS TEST FOR JURORS.

AT last the prosecution in the Miles polygamy case has obtained a "suitable" jury, that is, one composed of non-"Mormons." This morning the number was completed and the trial proceeded. We do not wish to say any thing upon the case, its merits, or its demerits. Let the evidence, if there is any, be produced and let the twelve good men and true decide upon it without regard to rumor, popular prejudice or legal sophistry. But we have something to say about the course taken in selecting the jury.

The proceedings in the case are worthy of note. They were out of the ordinary course of judicial proceedings. Jurors were excluded from serving, solely and simply on account of their religious belief. The principle was virtually laid down that no "Mormon" could sit on that jury. Fitness for the position was not affected by any question of actual bias, expressed opinion, lack of intelligence, inability or disinclination to convict or any really legal disqualification, but religious faith and nothing else determined it.

The examination of the jurors was at first conducted in open court, and the questions propounded to them were put by the prosecuting attorney and counsel for the defence. But as the answers given were too much in favor of the "Mormon" position to suit the court and its officials, the trires who were appointed to examine the jurors as to actual bias, afterwards conducted the inquisition in private. That the course taken in this trial may be made a matter of record among our people and be clearly placed before the world, we insert here the report of the examination of one juror both in open court and in private before the triers, which may be taken as a sample out of thirty or forty.

Robert Patrick was sworn—Do not know anything of the case. Have heard of it. Have not formed or expressed an opinion as to the innocence or guilt of the defendant. No biss to prevent me giving a fair trial.

By the prosecution—Did not read all the testimony. Believe I read a portion of it in the *Herald*. It did not make any impression. Am a Mormon, but not in polygamy. Believe in the revelation as a law of God, and those acting according to the revelation are doing God's will. I know of the law against polygamy, and believe Congress had a right to pass it. My mind would not be influenced, as a juror, in trying a person for going into polygamy under the revelations, because all are amenable to the laws under which we live.

Challenged for actual bias; excepted to by the defense; exception overruled, which is also excepted to.

By the defense—Believe polygamy is in accordance with the laws of God. It is prohibited by the laws of the land. It would be my duty to find a man guilty, if he should so be proven. It would not take any more evidence to convince me in this case than in any other. I do not think I have anything to do with the punishment. It would be my imperitive duty to find the defendant guilty if the law and the evidence warranted it, and I should do so.

Challenge denied. Judge Rosborough and W.W. Gee and J. Golthwaite, Esqrs., were appointed triers."

The examination before the triers was conducted in private. Following are the questions asked and the answers given during the inquisition.

Question—Do you believe the revelation Joseph Smith received was from God?

Answer—Yes, Sir; I do.

Q.—Then you could not convict Mr. Miles for obeying the law of God?

A.—I don't understand that Mr. Miles is on trial for obeying the laws of God, but for breaking the laws of the United tates.

Q.—Which do you prefer, the laws of God or the laws of the Uniten States?

A.—When a man breaks the laws of the United States he is amenable to the United States; when he breaks the law of God he is amennable to God.

Q.—Does your religion obligate you to favor a man who is a polygamist?

A.—No, sir. I do not allow any man to influence me, either in church or state, when sworn to be a juryman.

Q.—Then you have no bias in regard to this case?

A.—No, sir.

Q.—You would convict Mr. Miles if the evidence was sufficient?

A.—Yes, sir.

Mr. Gee then said, You may retire to the jury box. The inquisitors followed soon after, and said the challenge was sustained for actual bias. The juror was thereupon excused.

Three points have been established by this wholesale examination and exclusion of "Mormon" jurors. First, that the "Mormons" are prepared, under oath, to testify of their faith in the divinity of the revelation through Joseph Smith on celestial marriage, including the doctrine of plurality of wives. Second, that while they believe that the law of God is superior to the law of man, yet they would perform their duty as jurors, when so sworn, and render a verdict against one of their own faith, if the evidence was as competent as would be required in any other case. Third, that in prosecutions for polygamy, "Mormons" are deprived of the constitutional right of trial by "a jury of their peers of the vicinage," and must submit their cause to a jury packed by the prosecution.

We admire the attitude of our brethren who have so plainly, truthfully and boldly asserted their religious convictions when placed on oath in a court of the United States. But on what ground can the position taken by the prosecution be defended? The Constitution declares that "no religious test shall ever be required as a qualification to any office or public trust under the United States." But in the Miles cast the test of these jurors was purely a religious one. And it was not a question of practice, but of belief, which the Supreme Court of the United States, in its remarkably illogical decision in the Reynolds case, admits is perfectly free and cannot be interfered with by congresses or courts. Here were dozens of men competent to act as jurors, judged by every legitimate and usual test, rejected because they declared their *belief* in a revelation received from God by the Prophet Joseph Smith.

The questions propounded on this point were such as ought not to hrve been permitted in a court of justice, particularly in a country where religious liberty is one of the boasted rights of all. Reply to them could legally have been declined. It is no business of the District Attorney nor of the Judge what either of those men believed on matters of religion. We consider that in putting those questions the Attorney violated the "supreme law of the land" and that in permitting them the Court became a *particeps criminis*. They may call these utterances "treasonable;" for when "Mormons" presume to criticise the acts of public men, the most ridiculous epithets are applied to them, and the words "treason" and "disloyalty" are freeely used if we venture to disapprove of the course of the most insignificant official. But these are our sentiments and we are perfectly indifferent as to their displeasure at them. We think that an outrage has been perpetrated by one officer and connived at by the other, and claim the right to hold up the course pursued in this case to public scorn and indignation.

Of the cause itself we now say nothing. We do not wish to try it on paper. We leave it in the hands of those whose duty it is to prosecute, defend and sit in judgment upon it. But we will venture the hope that the jury which has been empanelled from among those who are avowedly opposed to the convictions of the accused, will try the case upon the evidence, and not upon the prejudiced presentations of a public prosecutor deeply anxious for a conviction, nor the unreliable enunciations and unjust demands of "common fame," which is too often guilty of common falsehood. A fair trial is the right of the defendant and this is all we ask for him.

THE THUMB-SCREWS OF THE LAW.

THIS morning, Counselor Daniel H. Wells was placed in custody of the United States Marshal by Judge P. H. Emerson, who adjudged him in contempt because he declined to answer questions propounded by District Attorney P.T. Van Zile, in relation to the secret religious ceremonies of the Church of Jesus Christ of Latter-day Saints. He is to appear before the Court at 10 o'clock to-morrow morning, to show cause why he should not be punished for contempt. Meanwhile he is at liberty on parole.

Last October, when the Miles case was before Commissioner Sprague, the District Attorney made the boast that he would yet cause all the rites of the Endowment House to be exposed in open court. He made one step towards the accomplishment of that boast this morning. That is, he attempted to do so. But he did not succeed very well. Counsellor Wells declined to answer the questions, because he considered himself under obligations not to do so, and that the Attorney had no right to ask them. We commend the course of the witness. He has manifested his perfect willingness to impart all the information at his command on matters relevant to the case. But when interrogated in regard to the dress worn in the sacred rites of the Endowment House he declined to answer. He informed the Court that the same dress was worn in the ceremonies of that House when marriage was not solemnized as when that ordinance was administered. But when questioned as to its peculiarities, shape, style, etc., he very properly refused to gratify the attorney's impertinent curiosity.

We claim the same right to perform our ordinances in secret as the Masons, Odd Fellows, Sons of Temperance, or any other Order of Brotherhood, and also to preserve inviolate every agreement not to divulge them to the world. The District Attorney has no more right to put a witness on the rack to extort from him "Mormon" secrets, than to elicit Masonic secrets. His object is to establish a certain marriage alleged to have been performed. The witness told him enough to make clear the point that a description of the dress desired would not aid him in his case, because the fact of an individual appearing in that garb would be no evidence that he or she had been engaged in a marriage ceremony, seeing that it was worn alike by parties to that ceremony and by others not participants therein.

It is time that this impudent and boastful attempt to pry into affairs that only concern the individuals who attend to them, and the Church of which they are members, received an effectual check. We hope that every person who is questioned as was Counselor Wells, will exhibit the same amount of honor and back-bone as he has done. "It is better to suffer wrong than to do wrong." Not always will these outrages be permitted. We would much rather be in the place of the man committed to jail for refusing to divulge sacred secrets, than in his who commits him. We would prefer risking the chances for this world, to say nothing of the world to come, when justice will rule and the measure meted out will be measured back with interest. A Mason who revealed the secrets of his Order, would be an object of scorn and contempt, not only to his betrayed brethren, but to every honorable minded non-Mason. So, a "Mormon" who exposes in public what he is sacredly enjoined to keep private, is unworthy of the respect and confidence of a decent person of any shade of belief or disbelief.

And this attempt to force a witness to explain in court religious rites which, besides being secret to his Church, are irrelevant to the cause at issue, will be, or ought to be, denounced by every fair-minded person and paper in the civilized world. The attorneys who badger "Mormon" witnesses seem to think that they have the right to make a witness answer in a way to suit the interrogators. If he fails to do this they are angry, and if he does not happen to know anything of the matter in hand his lack of knowledge is put down as perjury. We protest against this unfair and unjust course towards men and women who are as anxious to be truthful and honest in their statements, whether on oath or otherwise, as any persons on earth. Witnesses are not required to testify of anything but what they *know*. Their opinion, or something they may have heard by rumor is not evidence. And no attorney or private individual is justified, morally or legally, in making insinuations against their veracity, because they speak only of the things they know and testify but of that which they have seen. Much less has an attorney the right to put on the thumbscrews of the law, and try to wring from a witness secrets which have no bearing upon the case, and which the latter considers himself under sacred obligations to keep locked up in his own bosom.

It is claimed that "Mormons" are under "terrible oaths" in regard to these secret ordinances. If this is true, why should officers of the law try to make "Mormons" break such engagements and thus become perjurers, and when they do not answer to suit their inquisitors accuse them of perjury? We protest against this course as an outrage against common decency, an insult to honorable men and women who desire to respect Constitutional law, and a violation of long established rules of jurisprudence. The reign of those who commit themselves in this fashion will be cut short in righteousness, as sure as Justice lives.

THE CASE OF "CONTEMPT."

This morning, according to the order of the Third District Court, the case of Counselor Daniel H. Wells was postponed till 2 p.m.

At that time Counselor Wells appeared in court with his counsel, J. G. Sutherland, Esq.

Judge Emerson stopped the progress of the Miles case and gave Counselor Wells an opportunity to purge himself of the contempt in which he placed himself yesterday. Thereupon that gentleman took the witness stand, stating that he would try to answer the questions if possible.

The court reporter read the question, Do the candidates for marriage wear a green apron at that time?

Answer. At what time? I have performed that ceremony without such attire, at the bedside of the dying.

Question by Attorney Van Zile. Do they wear a green apron at marriages in the Endowment House.

Mr. Hagan here objected to the introduction of testimony relating to the Miles case as the prosecution had closed its evidence, and wished to know