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TRUTH AND LIBERTY.

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ANOTHER "JUDGE WITH A MISSION."

The decision of Judge Zane allowing the motion for an open venire for eight grand jurors appeared in full in the EVENING NEWS of Saturday. It was delivered in the afternoon and we had not time to comment upon it except very briefly.

On careful examination it exhibits a "powerful weakness." It assumes that a Court has power to supplement a statute with measures entirely foreign to its text, if the statute is not broad enough for the purposes of the Court. It ignores the principle that a statute on any subject supersedes the common law in relation to that subject. It seeks to justify a departure from the practice of the Utah courts for over ten years, by a violation of a generally established rule. Its sole excuse for all this is a condition of affairs not contemplated in the law, and brought about by the Court's own error in permitting proceedings unwarranted by the law.

The facts are these: The jury practice in this Territory is regulated by the laws of Utah and by the United States statute commonly called the Poland law, which was approved June 23d 1874. It provides that, annually in the month of January, the Probate Judge of the County and the Clerk of the District Court shall each select one hundred names of male citizens of the United States to serve as jurors for the year; that these names shall be written on separate slips of paper which are to be placed in a covered box and thoroughly mixed and mingled; that the Marshal or his deputy shall draw from this box such number of names as the Judge has declared to be necessary for grand and petit jurors for the term; that the persons whose names are so drawn shall be summoned, and such names shall not be returned to the box until a new jury list has been made; that when a grand and petit jury are both required the names for the grand jury shall be drawn first; that a public notice of the drawing must be given by the Judge at least twelve days previously; and that if the attendance of those drawn cannot be obtained other names may be drawn in the same manner.

The territorial law provides that a grand jury shall be composed of fifteen eligible male citizens of the United States summoned and impaneled as provided by law, twelve of whom may constitute a quorum to do business.

At the present term of the Third District Court, names were drawn and jurors summoned as provided by law, but the Prosecuting Attorney challenged the grand jurors as to their practice of and belief in the rightfulness of polygamy and unlawful cohabitation. In some instances the challenge was as to the juror's belief in the rightfulness of "cohabiting with more than one woman in the marriage relation," in other instances the words in italics were omitted. The Court allowed the challenges and compelled the jurors either to answer or decline to answer, and those who answered in the affirmative or declined to answer were rejected. In consequence of this the box was exhausted before fifteen men were obtained for the grand jury, only twelve having been accepted.

The Prosecuting Attorney moved for an open venire; that is, a writ to summon persons from anywhere in the district without having been selected as provided by law, so as to secure the requisite number. After hearing arguments from the leading members of the bar, all of whom declared against the motion, with the exception of one firm, noted for its enmity to the people of this Territory and for its sophisms and pettifoggery, Judge Zane decided to allow the motion, and the writ was issued, returnable forthwith. Persons suitable to the court officials were picked up and sworn in, as related in another column, while an endeavor was made to prevent challenges sought to be interposed by a member of the bar.

The effect of this decision is that by similar or other means to those employed in this instance, the box may be exhausted at the first term of court in the year, and then both grand and petit juries may be selected to suit the Marshal, Prosecuting Attorney or Judge, and thus none but "Gentiles" and those of a hostile class be put upon the juries to indict and try "Mormons" for any charge that may be trumped up against them. The intention of Congress in passing the Poland law is evident on the face of the statute. It was to give the two classes of the community here equal opportunities on juries. The small minority of Gentiles were placed on an equality with the large majority of "Mormons."

This was unfair enough. But the new method of Judge Zane's excludes all "Mormons" and makes up juries to indict and try them, composed of their enemies. The manifest intent of the law is rendered abortive by the Zane legislation.

The Judge asks, "Did Congress intend that this district should be without grand or petit jurors for ten months?" The answer is, No; for Congress did not intend that citizens should be excluded from jury service in any such manner as the Judge has permitted. It is his ruling, not the intent or provisions of the law, which has created the difficulty for which he has sought a remedy and resorted to so desperate an expedient. And this is the answer to most of the queries set forth in his argument. He contends that a grand jury is an essential part of a court for the trial of criminal cases, and that, therefore, when the statute providing for a grand jury is exhausted the Judge may create a grand jury outside of the statute. On the same rule of reasoning as a grand jury is part of the court, when there is no Judge at hand the grand jury may appoint a Judge because accused persons are entitled to a speedy and impartial trial.

A Marshal and a Prosecuting Attorney are each just as necessary to a criminal court as a grand jury. Does Judge Zane mean to say, then, that if from any cause there was no Marshal or deputy authorized to act, it would be within the province of the court to appoint one, and the same in the case of the absence of the District Attorney? If he cannot do this, where does he obtain his authority to make grand jurors by means not authorized in the statute which creates them?

It was argued that because the Poland law does not in terms exclude the power to provide a method for summoning more jurors than are provided for in the law, therefore the Legislature or the Court may properly make such provision. Is not this the baldest kind of nonsense? If our Legislature had added to the Poland law provisions for the selecting of additional names, would it not be declared an impudent attempt to supersede an Act of Congress? And if the Legislature may not presume to do this, is it lawful for a Court to assume legislative functions and such too as the Legislature may not exercise? And does not every tyro in the study of law know that a statute which provides for the selection of a jury, or any other thing, excludes every other method than that which is thus provided? Is it necessary to tack on to every enactment a provision that every other than the one therein prescribed is excluded? Does not the very fact that a statute is made for a given purpose, carry with it the exclusion of anything contrary to its provisions for that purpose? And is it not clear that when Congress provided the method by which juries should be drawn, every other method became illegal?

In the case of the State of Maine vs. Simons, which the Judge commented upon, the Court held that as the power was vested in the Legislature by the State Constitution to provide for selecting a jury and the Legislature had done so, there was no other lawful power of selecting a jury. Is not this exactly the present case? Power has been given in the Organic Act to our Legislature over "all rightful subjects of legislation." It is indisputed that among these is the right to regulate the selection of juries, and the Legislature has exercised this power, which can only be interfered with by Congress, and cannot be infringed upon by the Courts. The laws of the Territory and of Congress then, in regard to the selection of juries in this Territory are paramount and exclusive, and there is no other power by which the selection of a jury can be provided. The Judge's own argument on this point goes directly against his conclusion.

It is evident to those who have watched the proceedings that this whole movement was intended and is part of a plan. The haste with which the illegally summoned jurors were brought into court and sworn in, and the obstacles thrown in the way of Mr. F. S. Richards when he endeavored to challenge the illegal jurors, is evidence in the same direction. If His Honor is another "Judge with a mission" he had better be careful in his imitation of the course of McKean, who permitted his zeal to run away with his discretion and whose decisions, when carried up to the court of last resort, made him the derision of the bar.

We have no doubt that Judge Zane's blunders will have the very opposite effect to what has been intended. We doubt whether the Supreme Court of the Territory will sustain his method of selecting juries, and should a test case go up to the highest tribunal in the land, it is almost certain to result in discomfiture to our latest "Judge with a mission."

A LESSON UNHEEDED.

For several months preceding the presidential election of 1880, the newspapers of the country were engaged in the same disreputable work over which they are now sweating, and laboring like beavers—besmudging the public and private characters of the candidates. But even the dirt-throwing of that campaign is overshadowed by the foul political fight now in progress.

It is not improbable that this species of political warfare influenced the

mind of Giteau, the murderous crank who assassinated Mr. Garfield, and others who, at the same time, as will be remembered, imagined they had missions of a similar character. Even if there were no other reason than the danger to which vituperative tactics in politics expose public men, it ought to be sufficient to cause a halt in that disgraceful method, resort to which is all but universal in this country.

Should some lunatic, after the campaign is over, get possessed of the idea—engendered and fed by the journalistic onslaughts upon the candidates—that it is his particular mission to free the country from the presence of one whom he considers a usurper, tyrant or corruptionist, and slay the incumbent of the presidential chair, the papers who contribute the most largely, unintentionally of course, to such an event would utter the loudest wails over the calamity and express the strongest denunciations of the atrocity.

It does not appear that the lamentable fate of President Garfield amounts to a feather's weight in influencing the journalistic calumniators of prominent political candidates.

WHAT JUDGE ZANE MAY EXPECT.

THE organ of slander in this city sets itself up as the organ of the Federal officials, and this morning very weakly feigns to espouse the cause of Judge Zane against the criticisms of the News and Herald. But, as usual it drifts into vulgarity and wallows in personalities. The question discussed by the News was the unlawful filling up of a grand jury. The open venire was the subject ventilated. Judge Zane's personal character was not touched upon in this paper. But the Tribune, avoiding the question of the lawfulness of the present grand jury, flings all kinds of epithets at the Judge, pretending that we are authority for its blackguardism. Speaking of the parting plaudits of the Judge's friends before his departure for Utah, it says:

How he must despise them that through all the years there they never found out that he was an idiot and scoundrel, and that he was as tyrannical as he was stupid and corrupt! He might as well learn first as last, that he is in a place where if he will serve the majority, he will receive only cringing and obsequious adulations; if he dares to oppose them he will never again have credit for either a sensible or honest thought.

Who has called the Judge "an idiot and a scoundrel?" or intimated that he was "stupid and corrupt?" No one but the Tribune vituperators. The language is theirs. It is the common talk of those "high-toned American gentlemen." They feast on blackguardism and grow fat on abuse.

The latter part of the paragraph we have quoted will read exactly right if the word "minority" is substituted for "majority." Only a difference of four letters, but it sets forth the situation as it is. Every judge that has sat on the bench while that unprincipled sheet has had existence, has been denounced and derided and lashed with the vilest epithets, if he has dared to decide on any question in a manner opposed to its anti-"Mormon" designs. And when decisions have been rendered which were oppressive in their effects upon anything "Mormon," but which were afterwards set aside by a higher court, their praises have been so very sweet as to be sickly and nauseous to a man of sense. Laudations loud and long for anything anti-Mormon, blackguardism and personal invective for everything, however just and lawful, that has been in the least favorable to the "Mormons;" that has been its course almost from the beginning. And Judge Zane may expect from that sheet just exactly that which it falsely states will be the course of the majority here.

The News will stand upon its right to criticize any public act of any public official, and will do so on principle. The Tribune, unless it changes its policy, will refuse to see anything good in an officer who does not play into the hands of the small clique of adventurers whose objective point in the control of the affairs of this Territory. Soft soap for the pliant flagellation until he submits or is removed for the independent one, who does not dance to their piping or whistle in their key. The sweet epithets they use this morning, are a small sample of their stock in trade.

"AND A VOICE SAID, WRITE."

THE letter from Elder George C. Lambert which we publish to-day, contains suggestions which we commend to all our people who have come from abroad. Those who can write in style suitable for publication, would accomplish much in correcting the erroneous impressions that have been made upon the public mind, through the falsehoods concerning our faith and doings that have been so widely circulated, if they would send an occasional communication to a respectable paper published in the neighborhood from which they emigrated. And every one who can write at all should inform their friends who are

left behind of the welfare and progress and of the true condition of affairs in Utah.

There is no need to exaggerate anything or paint the facts in too vivid colors. The simple truth is all that is necessary to counteract the falsehoods which have been scattered broadcast by apostates and "Mormon"-eaters, through the public press and by private communications. Why should not the Saints be as active in this good work as those who turn sinners again are in their works of bitterness and deception? Satan seems always on the alert, and as soon as a person who has testified of the truth becomes imbued with the spirit of that Wicked One, no matter how lymphatic he may have been as a servant of the Lord, he is waked up to a lively hostility in opposing that which he once sustained. The Evil One keeps his followers in a constant state of venomous activity. They seldom let an opportunity slip of speaking evil concerning the truth. Surely those who are engaged in the work of God ought to be at least as vigorous and alert as their enemies.

In this country, people from the Old World have so much to occupy their time and attention, engage in so many new duties, and find so many things to learn and unlearn, that they have little leisure or inclination for correspondence. And they often become so engrossed in the labor of bettering their temporal condition, for which they gain opportunities not afforded in the countries from whence they came, that they forget their former friends and associates and the promises made to send them news from Zion. This is not right. They should remember their agreements, and think how they would long for a letter from Utah if left behind in the place of their old neighbors.

In these days of slander and widespread misrepresentation, when from pulpits and press and personal correspondence, floods of falsehood are sent forth to poison with prejudice the public mind against "Mormonism," every Latter-day Saint should be ready to do his or her part in stemming the evil tide. Do not forget the Divine command of this dispensation: "Let every one that is warned warn his neighbor." Write to your friends, immigrants from the old countries, and you that can do so in a fitting manner, set forth the truth in letters to the local papers of your native towns. By this means you may do as much good as if you went on a mission, and will smooth the way for the Elders who are laboring in the ministry. You will not lose your reward.

THE WORK IN ENGLAND.

WHY DON'T YOU WRITE TO YOUR FRIENDS?

42 ISLINGTON, Liverpool,
September 6, 1884.

Editor Deseret News:

When I learn of what our brethren in the Southern States have to meet with at the hands of those who are opposed to the Gospel, I feel that the Elders engaged in the British mission have really nothing to complain of in the treatment which they receive, without it be on the score of indifference. They have far more of that than active opposition to contend with. The prejudice against us here is probably not less than in the United States, but it manifests itself in a less violent manner. We have noisy interruptions at our outdoor meetings occasionally, hear of anti-"Mormon" lectures and sermons once in a while, and now and then get written down in the papers, but the opposition seldom goes further than this. Whether our immunity from violence is due to the wholesome dread of the "bobby" and the magistrate or the peaceable and tolerant spirit prevailing among the people, I am hardly prepared to say—probably to both. The laws of Great Britain, though perhaps scarcely as good as those of our own country, are certainly much better executed, and the people learn to respect them accordingly. I regard the lawlessness which prevails in the United States, and which is manifest not only in the mobbing of "Mormon" Elders, but in lynching and riots and other violent demonstrations that frequently occur, as a natural result of the laxity with which the laws have been enforced in that nation. The trifling manner of dealing with criminals in that land, especially where they have money or influential friends, has brought the law and the dispensers of it into contempt. I am sure that I admire the expedient manner in which criminals are punished by the courts in this country. There is no foolishness about it. There are no thrice-convicted Hoptons in England, living at the public expense as a result of the blundering of judges, or half-splitting technicalities raised by lawyers. The penalties which are awarded to criminals in this country do not always seem to me commensurate with the crimes committed, but they get their awards with a dispatch which is really refreshing to one who has been disgusted with the hang-fire style of the American courts.

But I was going to say something about the prejudice that exists here and elsewhere against the Saints, and I have drifted away from the subject. Many of your readers would doubtless be surprised to learn what absurd ideas prevail in the enlightened nation of Great Britain, and equally so perhaps in other places, concerning the people of Utah. Strange as it may seem,

there are plenty of people to-day who believe that "Mormon" converts after arriving in Utah are kept in servitude and never allowed to escape, nor even allowed to write a letter to this country without its being scrutinized by the Church officials. They believe the young women on arriving there are culled over by one grade after another of the Church authorities and selected like prize heifers at a fair, and obliged to marry the men who take a fancy to them; that men are compelled to marry a number of wives; that wives are forcibly taken from their husbands, and all such absurd stories as Mrs. Paddock and writers of her class have industriously circulated about the "Mormons." Of course, some have their minds disabused of their ideas occasionally by people returning to this country from Utah on visits, and through Elders who have formerly been known here, coming from there as missionaries; but as fast as wrong impressions are corrected in some quarters they extend in many others, through the lying reports which are continually being circulated about us, and which the Elders have no adequate means of contradicting.

Now, it has occurred to me that if our "old country" people in Utah, who are qualified to act as newspaper correspondents, were to contribute an occasional article to the newspapers published in the region of their old homes, they might aid materially in removing the prejudice that exists. Few of the newspapers of this country or America, or even of continental Europe, will refuse to publish such letters if brief, and well-written, and not too strongly flavored with "Mormon" doctrines. Religion could be avoided, and the remarks confined to a description of the country, its history, its resources, its system of agriculture, the customs of the people, the condition of the aborigines, the political status of the Territory, etc., and much good be done by giving correct information upon these points. And then after awhile, when the confidence of the editors is secured, a judicious admixture of religion and news might be made palatable. The amount of good that could be accomplished through opening up such a correspondence is really inestimable. I would like to see it tried.

"What have you done with Swift?" demanded a fellow at one of our outdoor meetings lately, with the fierce look and accusing manner that one might imagine a Scotland yard detective would have on nabbing a "suspect."

"Swift! What Swift?" enquired the Elder addressed, with visions of the Kirkdale jail looming up before his mind.

"Why, Swift of Lodge Lane! John Dean Swift! screeched the fellow, still more fiercely, as the crowd gathered close about to hear the story of a man having been spirited away by the "Mormons."

"We have done nothing with him," replied the Elder, regaining his composure.

"Didn't he go to Utah with the Mormons several months ago?" shouted the inquisitor, as if still bent upon fastening the guilt upon that persecuted people of having made away with him.

"I believe he did," said the Elder, and what of it?"

"Why have we not heard from him since? That's what I'd like to know?"

The question was a poser. The Elder couldn't answer it; for sure enough Brother Swift, like many other Saints who have gone to Utah, has forgotten to report himself to his friends in England since he arrived there, and they are left to their own conjectures as to his fate.

This case is one of many. Almost everywhere the Elders go they hear complaints from people about their relatives or acquaintances in Utah never writing to them, and the people think there must be some other cause for it than mere negligence or disinclination. Now it would greatly assist the Elders in their labors if those in Utah having acquaintances here would write to them occasionally, or even send them a copy of the News now and then. But such correspondence is not equal to that I have before suggested, for many people here are ashamed to have it known that they have relatives in Utah who are "Mormons," and keep all letters and papers received from them to themselves for fear of scandal. If, however, the letters from Utah were published in the newspaper, not only would the relatives and friends get to read them, but the general public also. The letters coming to this country from disaffected persons in Utah are not so apt to be suppressed as the more favorable ones, and, therefore, more freely. I will make an exception in the case of one, though, even of this class. The last time I was in Nottingham I heard of a man who emigrated last year, writing back that he was dissatisfied with Utah, and was going to return to England. He couldn't even buy a drink of beer without going forty miles for it. I should not object to that letter being published.

The work of proselyting goes on but slowly in this mission at present. In some districts it really seems to be closing up altogether. The Elders, however, are laboring with commendable zeal, determined to do their duty in faithfully warning the people by the distribution of tracts, out-door preaching, and all the other methods usually resorted to, and so far as I know, they are enjoying pretty good health. My own health is very good, and I feel well in my labors.

Your Brother in the Gospel,
GEO. C. LAMBERT.