The Mormon Folly.

The counsel for the custodian of Brigham Young protests against his release on the order of a Mormon Probate Court, and threatens to test the legality of the discharge in a higher tribunal. but whether the decision of the Mormon Judge be overruled or not, we presume the Mormon prosecutions are virtually at an end. and the prisoners now held in custody under the indictments found in Judge McKean's court must nearly all be released in accordance of the recent decision of the Supreme bench. The more we examine the blunder of the Administration the worse it looks. For it was a blunder made in the face of such clear light that it can hardly be called anything else than the result of wilful ignorance. The Organic law of the Territory prescribes that for the first six days of the term the Supreme Court of Utah shall sit as a District and Circuit Court of the United States, to try offenses against the United States, and when it adjourns as a Federal court it shall immediately reopen as a Territorial court, with the same judges; but with a different prosecuting attorney and different subordinate officials. Its business now is to try offenses against the statutes of Utah, and to decide civil causes under the Territorial laws; and although in certain cases it is empowered to exercise jurisdiction for the United States, the ruling of all the authorities is clear that it is a local and not a Federal tribunal. The point which the Supreme Court has just emphasized is not a new one, but has been established by the precedents of nearly half a century. Chief-Justice Marshal (1 Peters' U. S. Reports, page 546) decided that "the Territorial courts were not courts in which the judicial power conferred on the Federal Government could be deposited; they were incapable of receiving it, as the terms of the incumbents are but four years," while U. S. Judges must be appointed during good behavior. The same view has been reiterated time and time again. The Supreme Court of Iowa held in the case of Lorimer and Gratiot agt. the State Bank of Illinois (1 Morris, p. 223) that "under no circumstances are these courts properly speaking District Courts of the United States; they are mere Territorial Courts having the powers of District and Circuit Courts of the United States, but only when enforcing the laws of the United States." There are opinions of successive Attorneys General to the same effect, and the practice of the Government hitherto has alwaya been in accordance with what was so obviously the law. Now it is evident that while the court is a Territorial court its juries must be impanneled by the proper Territorial officer, its processes must be executed by the Territorial marshal and sheriff, and the Territorial prosecuting attorney must present indictments under Territorial laws. Murder, lewd cohabitation, and other crimes which Judge McKean has recently pursued with so much zeal, are offenses not against the United States, but against the statutes of Utah; and, according to all the decisions we have above alluded to, they could consequently be punished only by the court sitting as a Territorial tribunal and acting through the Territorial machinery.

Exactly why Judge McKean chose to proceed differently is not entirely clear. The Mormon crusade is understood to have been preached at Washington by the Rev. J. P. Newman, a gentleman whose Christian zeal in this instance seems to have got the better of his discretion. Judge McKean was a willing recruit, and the President was induced to support the movement with all the weight of his authority. * * * * * There is a Mormon statute against lewd and lascivious cohabitation; but it was deemed impossible to get a verdict under this law from any jury impaneled by a Mormon Marshal. Judge McKean's device was to declare his court a United States court for all purposes; to turn the local marshal and sheriff and prosecutor adrift; to order all grand and petit jurors to be drawn as United States jurors; and to instruct the United States District Attorney to prosecute all felonies, even those which were only punishable under the Mormon laws. Mr. Hempstead, who was the Federal prosecuting attorney when this gross violation of law was begun, refused to take part in the proceedings and (we believe) resigned. Judge McKean thereupon committed a fresh usurpation by appointing one R. N. Baskin United States District Attorney, ad interim, although the Attorney General's office had ruled that "a Territorial court cannot appoint an attorney for the Territory," and under Mr. Baskin's instructions the prosecutions began. Mr. Bates, who was appointed afterwards, refused to sanction these unwarrantable proceedings, and referred the matter to Washington. The Comptroller of the Treasury, following the well established precedents, refused to pay the expenses of the trials. Attorney General Williams openly condemned Judge McKean's conduct, and declared that his rulings would not stand when they came to be reviewed. But Gen. Grant put his foot down. Law or no law, McKean's court should be a United States court, and if the Mormons could not be punished in one way they should in another. Mr. Bates was requested to resign, and make way for a more ignorant or more docile attorney; but he very properly refused, and declar d he should await the judgment of the Supreme Court.

The President perhaps does not yet realize the full consequences of his blundering obstinacy. Not only are the Mormons irritated and the Gentiles placed in danger, but the illegal arrests of the past two years are all punishable. The indictments were void; the trials were not trials by a legally constituted court; the sentences were usurpations; the officers who executed the processes were trespassers. The organic act of the Territory provides that the United States Marshal shall execute "all processes issuing from the courts when exercising their jurisdiction as Circuit and District Courts of the United States," and there his authority stops. When he arrested Brigham Young on Judge McKean's warrant he was guilty of false imprisonment, for which he can be prosecuted. The money he has advanced—about $8,000—for fees and expenses, cannot be recovered from the United States, and of course will not be paid by the Legislature of Utah. The $7,000 additional now due to witnesses and jurors also constitutes a debt incurred without authority. There seems to be every prospect of endless vindicative litigation in consequence of the doings of this fictitious coart, and the violations of law have been so gross and so clear that it is likely to go hard with the offenders. After this it is to be hoped that the President will leave the courts alone.—*N. Y. Tribune.*

The Utah Squabble.

All the arguments of the *New Northwest*, pathetic and otherwise, have not changed our views in relation to the recent squabble between Messrs. Claggett and Hooper, the details of which we publish to-day. It is a fact that a road has already been built and is rapidly being extended over the ground covered by the demand of the Salt Lake and Colorado company. This Utah southern line was built to meet the necessities of the Territory, and there is no justice in granting a charter to another organization over the same ground simply because the wants of the people could not wait the dilatory action of Congress. We of Montana may be in the same boat yet. Then if we were to go on and build a number of miles of road, we should consider it terrible injustice if some outside company was afterwards granted a charter over the route that we had occupied, so that they might either blackmail us, or make our work valueless. Neither is there any justice in such a proceeding because one party happens to be Mormons, and the other Nevadians, who befriended Mr. Claggett and buried his brother. Calls of gratitude are very strong; but never to be listened to at the expense of duty and justice. * * As for Mormonism and polygamy, which formed the staple of Mr. Clagett's arguments, that has always assailants enough. * * * *

Except on * * provocation we do not believe in one delegate invading another's jurisdiction, and we give the following authority on an almost similar point:

"Mr. McCormick, Delegate in Congress from this Territory, has shown good sense by refusing to interfere in New Mexico affairs, a 'favor' recently asked of him by a few partizan idiots who are grieved over the election of Gallegos (Democrat) as Delegate from New Mexico over the Republican candidate."—*Prescott Miner.*

Helena Gazette.

Civilization in the Indian Territory

The national policy in relation to the Indians has recently sustained a heavy blow in the murderous affray which has taken place in the Indian Territory. The ferocity, recklessness of human life, contempt of all forms of law, and sanguinary desperation there manifested, show conclusively that the segregation of the red men upon the lands set apart for them, and the according to them of a separate government, have not really tended to civilize them. It is, however, certain that the experiment has not received anything like a fair trial. The Government, while placing the Indians in possession of free institutions, and pointing out to them the means of progress and enlightenment, has from the first neglected to guard them from the insidious danger of the scum of white civilization. The result might have been foreseen. The worst ruffians in the whole country have fled, from time to time, into the Indian Territory, and have taught the half-civilized savages there all the vices they themselves possessed. It was the duty of the nation to protect the Indians from just this danger, for from this direction principally were they threatened with ruin. All the philosophy, all the benevolence, all the gentleness, all the wisdom of the best government policy, could not make head against the damning work of whisky and white ruffianism. In opening the door wide to these influences, Government laid itself open to the suspicion (so far as the Indians were concerned) of preaching one thing and practicing another. The border ruffians, gamblers, thieves, and murderers, who made the Indian Territory their sanctuary, would naturally, and as a matter of course, be regarded as average specimens of American civilization, and the red men can hardly be blamed if they modeled themselves after the majority of the whites with which they were brought in contact.

How utterly the Indians have failed to imbibe the theories of free and liberal government is shown in the recent massacre. A court sitting armed to the teeth; a jury every member of which deliberated hand on trigger; a prisoner who took the stand rifle in hand, and with two revolvers in his belt; a court-room crowded and overawed by a gang of turbulent desperadoes, not only ready but willing to commit wholesale murder if there was any prospect of justice being done. To such a scene the subsequent carnage seems appropriate. The Marshal and his posse arrive to arrest the murderer on trial, in the event of his acquittal. They are at once fired upon by the other assassins, and a fierce and bloody struggle ensues, in which a score of lives are sacrificed. The whole affair is altogether savage, barbarous, brutal, and it is certain that none of the participators can be regarded as other than uncivilized. Nor can we expect anything better from the Indians so long as the ruffianism of the country is permitted to find an asylum in the Indian Territory. These infamous characters must be kept out at any and every cost. This is a duty which the Government owes to the tribes and to itself, and in the non-performance of which the country becomes responsible for a very serious wrong to the wards of the nation. The Indians can never be civilized while they are forced into contact with border ruffianism.—*Sacramento Record.*

Legislation Against Polygamy.

The Senate Committe on Territories has completed the bill to abolish polygamy in Utah, and the indications are that it will be brought up for action before the adjournment of Congress. A dispatch states that its provisions are practically the same as those of the Voorhees bill, now in the House Judiciary Committee. It authorizes the Courts to proceed against Mormons who practice polygamy, and makes the fact of cohabitation and acknowledgement of marriage sufficient for conviction. It does not appear what condition the bill leaves the wives and children of convicted polygamists in, but the presumption is that it bastardizes the latter and throws the former upon the world dishonored. If this be the effect of the bill, we have no hesitation in predicting that it can never be put in operation. The question is an extremely difficult one from all points of view, but attempts to solve it as Alexander settled the problem of the Gordian knot cannot succeed. Polygamy is repugnant to all our moral and social convictions, and there can be no difference of opinion as to the propriety of abolishing it. But the course to be taken is another matter, and requires the most serious consideration. As we have frequently pointed out, the difficulties of the case are fearfully enhanced by the culpable apathy of the Government in the past. It has permitted polygamy to grow into an established institution, and has accorded it a *quasi* recognition. It is for this reason almost impossible to take any steps towards the abolition of the evil without inflicting wrong upon the innocent, and entailing much misery and heart burning. Nor is it at all certain that the Mormons would submit quietly to the operation of such a law. The presumption rather is that they would oppose forcible resistance, take up arms against the Government, and render necessary the employment of the military arm. Should this be the case the results may easily be predicted. The Mormons would be defeated, and probably driven out of Utah, but they would not abandon polygamy. Wherever they went, the sense of persecution would nerve them to continue the contest, and religious bigotry would elevate the issue into such prominence as to render a peaceful solution hopeless. It may be said that the authority of the Government and the decrees of the nation ought to be sustained at all hazards, and that if the Mormons elect to defy the law, they must take the consequences, like other malefactors. The sober second thought of the country, however, will recognize the injustice of a policy which involves innocent women and children in ruin and shame. If polygamy could be tolerated for twenty or thirty years, as it has been, surely the rights of the rising generation and of the Mormon women are of sufficient importance to justify the extension of clemency to those who are now actually married. A law that prohibits all polygamous marriages after a certain date, while legitimizing the issue of past polygamous unions, would meet all the requirements of the case, and would eliminate from the controversy those perplexing and dangerous points which now render the settlement of the question so difficult. And when it is remembered that the nation is morally responsible for the existence and continuance of the evil up to the present time, such a course appears the more demanded by every principle of justice and right.—*Sacramento Record.*

ANOTHER EXTENSIVE CONFLAGRATION AT PIOCHE.—The following Des. Tel. dispatch was received last evening—

Pioche, Nev., May 5th.—A portion of Pioche is again in flames and ashes. The fire broke out at 3.30 p.m. to-day, near the head of Main Street, and spread with frightful rapidity. The alarm was given instantly and every one who was capable of doing anything whatever, was on the ground in hot haste. The Hose Fire Company was powerless to do anything, as their building and apparatus were among the first to be destroyed. There was no available water except what was on hand in the various houses throughout town, and this was so very limited as to be ineffectual. To add to the misfortune, a strong breeze was blowing in the direction of the lower part of the street, For a time it seemed as though the whole town would inevitably be sacrificed to the devouring element. At last, after the flames had been raging nearly one hour, they were overcome by the tearing down of a building in the path of the flames, and spreading blankets saturated with water on the roofs. The scene of the disaster is terrible. The Grand Hotel, the Silver Park House and many other prominent business houses have been burned. The loss is not less than $50,000, and it may reach $100,000. The origin of the fire is not yet known.

FIRE AT PIOCHE.—The following comes per Des. Tel. line—

PIOCHE, 6.—The telegraph office last evening was abandoned during the fire. The instruments, etc., were removed. the operator using a pocket instrument for business purposes.

BOYS.—Fanny Fern says of boys—

"Had I the planning of them, every mother's son should be in a state of torpor like that of the claw-sucking bears in winter, at the mischievous, careless, unlovable period between the donning of the first short jacket and donning the first long-tailed coat."

Now has not Fanny had something to do with the planning of some boys? If not, either she has not lived properly up to her privileges, or she has been slightly unfortunate in her endeavors to do so.

DIED.

In the 20th Ward, of this city, May 4th, at 5.45 p. m., of marasmus, HEBER T., son of George and Mary Ann Reynolds, born July 12th, 1870.