EDITORIALS.

THE UTAH COURTS NOT SUSTAINED.

We notice that several anti-"Mormon" papers are endeavoring to impress the public with the notion, that the decision of the Supreme Court of the United States confirms the rulings of the Utah District Courts on the cohabitation question. The wish was father to the thought. It is a great mistake or a sheer fabrication. The decision confirms nothing, gives an opinion upon nothing, but withdraws such opinions on the subject as were formerly enunciated by the Court. It simply dismisses consideration of the subject for lack of jurisdiction.

Looking at the matter rationally, this disposition of the matter, under the circumstances, should bring an opposite conclusion to that reached by the papers to which we have alluded. The decision in the Cannon case sustained the ruling of the lower court. But that is now withdrawn, so that the ruling stands on its own merits or demerits, without sanction from the higher court. So far, it was a prudent thing to do. It is generally conceded by lawyers that the views of the majority of the Court were opposed to all precedent, and that Judges Field and Miller were right in dissenting from the opinion. The cancellation of the Opinion leaves the highest court uncommitted on the question, and so, if it should ever come up again, that decision will not stand in the way of a different conclusion more in accord with the established meaning of terms in criminal jurisprudence.

It will be urged here, no doubt, that the question cannot come up again, under the latest decision. It will be well not to jump at conclusions too rashly. It is quite possible that a change of opinion on that point will have to be made. There are more ways than one to accomplish most things, and when justice cries out for a remedy, it is generally the case that the law furnishes something of that nature, if not by one method, then by another. And that a remedy is now demanded for a serious evil is easy of demonstration. But of that we may discourse further on.

The decision is not to be considered as affirming the action of the lower court in the Snow case, for it appears pretty evident that it was more because an affirmatory decision could not be given, than anything else, that the case was dismissed. After exercising jurisdiction in the Cannon case, and listening to the arguments in this case, exhibiting unusual interest and taking pains to get at its merits, the Court could have consistently ignored the question of jurisdiction entirely, seeing that it had not been sprung on either occasion. Why then was advantage taken of, it to escape the responsibility of a ruling on the important questions involved? Was it not because an adverse Opinion would have had to be rendered, and this would have been considered advantageous to the people whose domestic relations it was desired to disrupt? Thinking people will take this view of the matter. And this will also lead to a conclusion the reverse of that jumped at by some of our contemporaries.

If the Supreme Court could have consistently sustained the course of the lower courts in segregating indictments, and in constructing criminal cohabitation out of platonic association; in making a law so elastic that penalties for a misdemeanor can be multiplied so as to imprison a defendant for life and ruin him financially; in construing cohabitation when the parties do not cohabit, in view of the determination to enforce the law to the utmost there is no doubt that the Court would have done so. But the arguments of counsel against such monstrous rulings were so cogent and the reply of the Government attorney was so weak that the case would have had to go against the lower courts and therefore the Supreme Court dodged the issue. It was an easy way to slip out of a difficulty. But it was not a dignified nor courageous course to pursue.

There is, therefore, not the slightest ground for the assertion that the decision sustains the rulings of the lower courts, in any particular, but on the contrary, the indications, if anything, are all the other way. They go to show that those rulings would not stand the test of fair judicial scrutiny. But they serve a determined purpose, and so are allowed to stand and accomplish their work,—without apparent responsibility upon the highest judicial tribunal.

The necessity for some competent and conclusive definition of the meaning and scope of the third section of the Edmunds Act, must be apparent to every fair mind. It is not in accordance with justice that the people affected by it should be left to the mercy of a Prosecuting Attorney without scruples of conscience, who interprets the law as his needs require for convictions, and whose word is echoed by the courts from whose judgment there is no appeal. It is a United States law and should be defined in a conclusive manner by a United States Court. The District Courts of Utah are Territorial Courts. The Supreme Court of the United States, in the Reynolds case, explained that they have the same jurisdiction in certain cases as the circuit and district courts of the United States, but that "this does not make them circuit and district courts of the United States," and the Court said "We have often so decided."

If the provision in the Revised Statutes in regard to the Territory of Washington was made applicable to Utah, as it ought to be to all the Territories, appeals would lie to the Supreme Court of the United States in all cases wherein the Constitution or any law or treaty of the United States is in question. That is a righteous provision and ought not to be limited to one Territory alone. If it were extended to Utah there would be some protection to the citizens against the diverse and unjust decisions made in the Territorial courts, at the will of a fee-hunting and malicious prosecuting officer.

The rejoicings which are had over the decision of the upper court show that fair investigation is what the promoters of the raid upon the "Mormons" least desire. They gloat over the opportunity which it assures of unchecked assaults upon the liberties of the people of Utah. It settles no point of law, it does not say that the Utah courts are right in any particular, but it leaves an unpopular people to the onslaughts of their persecutors in the name of the law, without appeal to a proper tribunal. Those who can rejoice over such a condition of affairs are not to be numbered among the magnanimous of the earth, and their names would be sadly out of place in the list of the just.

OBEDIENCE TO LAW AS CONSTRUED BY THE COURTS.

The visit paid by Governor West on Wednesday to the penitentiary and the overtures he made to the prisoners confined therein for alleged infraction of the Edmunds law, in our opinion, do honor to his head and heart. We believe his efforts were made in good faith and with a desire to relieve the people of this Territory and the Government of the United States from a grave difficulty. That he was not successful is due to the situation. He is not to be blamed, neither are the incarcerated gentlemen with whom he conversed on the subject.

The proposition was this: If those who are now suffering imprisonment under the Edmunds Act will promise to obey the law in future, as construed by the courts, the Governor will petition the President to pardon them, and in this request he will be joined by Chief Justice Zane and District Attorney Dickson. The response of the prisoners who had an opportunity to reply was not favorable to the proposal. There are obstacles in the way which the Governor cannot fail to appreciate when he takes a square look at them.

Before a truthful man can make a promise, he must know definitely what it signifies. Can any one explain the meaning of the phrase, "obedience to the law as construed by the courts?" Governor West could not answer the question when propounded to him by the prisoners. One court interprets the law in one way, another court in another way. In the case of Apostle Lorenzo Snow Judge Zane differed from Judge Powers. Which was right? Whose rendering are the prisoners to promise to obey? In the Third Judicial District the same Judge has given at least half a dozen different and conflicting rulings as to the meaning of the law.

Men who have conformed strictly to one construction have been put in the penitentiary under a fresh construction made to cover their case. When this new interpretation of the law has not met the conditions another has been manufactured, the object being to imprison the accused whether he had obeyed the law as previously construed by the court or not. The evident intention of the defendant to live within the law as he understood it, and as he had the right to understand it from the definition of the court, has never been taken into account, but he has been punished to the full extent of the law, just the same as though he had wilfully violated it with full intent.

First, unlawful cohabitation was construed by Judge Zane as "treating more than one woman as a man's wives without going through the forms of marriage." This was understood to signify sexual intercourse. Next, when a defendant offered to prove that he had not thus cohabited with his wives, but that after the passage of the Edmunds Act all such relations had ceased, the same court refused to receive the testimony, ruling that sexual intercourse was in no way essential to the offense. It was declared to be the holding out to the world as wives and living with the women that constituted the offence. Later still, when it was shown that the parties had separated, that they did not live together, the same court ruled that if they associated together, the man holding the women out as wives the offense was committed. At present the "holding out" is not essential. When no evidence is adduced that the man has introduced the plural wife as such, or that he has treated her as a wife in the general sense of the term, he is convicted all the same if the relationship is not denied. In the latest case, one visit to a wife in her illness when the defendant was living with another and her only, was construed to constitute unlawful cohabitation.

How, then, can men who find themselves in prison, associating together, having been convicted under totally different constructions of the law, consistently promise to obey the law as construed by the courts? Judge Zane himself has used the word chameleon to illustrate the capabilities of the law to many-hued and various constructions. In one case he ruled that when the defendant had served his term of imprisonment, in order to observe the law he might choose which wife he pleased and live with her alone. Then when a case came for trial in which this rule had been adopted and lived by in good faith, the court ruled that cohabitation with the legal wife was implied—although the evidence proved the implication wrong—and so the defendant was convicted of cohabiting with more than one woman, when he had only cohabited with one, and had kept the laws as construed by the courts. There are men now in the penitentiary who, during the time covered by the indictments against them, have neither lived with nor held out to the world more than one woman as their wives, and yet these two elements were formerly and for a long time proclaimed by the courts as essential to the offense.

The inducement held out to the prisoners is therefore a delusion. They would not know, to begin with, what the promise comprehends, and if they made it in good faith, under the latest construction of the courts, they would have no security that a new construction would not be promulged, and then they would be liable to renewed persecution and imprisonment. They might be caught in a skilful snare. Many of them have been ensnared already. Believing they were obeying the law, they are suffering the extreme penalties of the law, and their belief was founded on the meaning of the law as construed by the Courts.

We do not wish to imply that Governor West is a party to any attempt at deception. We believe his endeavors were *bona fide*. But, like Apostle Snow, we have no faith whatever in the pretensions of Messrs. Dickson and Zane. They have laid traps for the feet of men and have succeeded in catching them. The Governor has the right to his opinion of their sincerity. The prisoners and the public have a right to theirs. We have watched the career of those pretended friends to the prisoners. Cunning, intrigue, trickery and pettifogging have entered into the proceedings against the "Mormons," and while good, honorable men, respected by all who knew them, have been entrapped through the deceptive and unstable constructions of the law that have prevailed in their turn for a day, vile and filthy creatures who have wallowed in bestiality have had protection in their crimes. And while the law has been strained to its utmost extent, and bent and warped at will to convict husbands and fathers on the enforced and extorted testimony of virtuous wives and children, the law has been shrunken and contracted almost out of sight, and in some cases thrown away defiantly, to relieve the debauchee, the resorter to vile houses, the destroyer of chastity and the depraved and guilty libertine.

Each construction of the courts under the prompting and manipulation of the Prosecuting Attorney, has proved a trap for the feet of the defendants who followed. The courts, left to do as they please or as directed by the officer for the prosecution, with juries packed to convict, can now have things their own way for a season. They have proven to the people that they have no respect for their own rulings. They are not bound by their own constructions. There is nothing to prevent them from construing the law so as to entrap these men again, if the prisoners were to promise to obey the law as at present construed by the courts. Governor West may believe that they would not do so, but the public think differently. What can we reason from but what we know?

On Saturday O. P. Arnold is to stand trial again. He has three counts in one indictment to meet. That means, in the tender mercies of the court as prompted by the District Attorney, eighteen months imprisonment and nine hundred dollars fine, besides costs. Accusation usually means conviction under the present crusade. When Mr. Arnold was accused before, he acknowledged the offense and promised to obey the law as construed by the court. But watch the proceedings. The law is now construed by the court in a manner entirely different to its construction when Mr. Arnold was first placed in jeopardy. Under its first construction he could not now be convicted. The inverted ruling will be brought into use. He will find himself in a trap. No matter how closely he may have observed the law as construed by the court in his first case, he can be convicted under a new construction in this case, and the penalties can be inflicted upon him threefold. Suppose the Court asks him if he will obey the law in the future, as construed by the Court. Would the question be anything but a snare? Apply this to the prisoners now in the penitentiary, and the Governor will see where they stand and the uncertainty and unreliability of any assurance to them of future freedom.

The Governor's principal conversation was with Apostle Lorenzo Snow. His case illustrates our argument. The evidence for the prosecution showed conclusively that he had only lived with one wife for several years. By mutual arrangement this was with a wife who bore him children. The others he provided for but did not live with. He only cohabited with one woman but was convicted for cohabiting with more, the court ruling that it was to be implied that he cohabited with his first wife though the evidence showed that he had not. What would be the meaning of his promise to obey the law as construed by the courts? He had done so, strictly, as construed by Judge Zane in the Musser case.

But suppose he is required to keep the law as construed by Judge Powers in his own case. How can he do that? He must not wive with any but his first wife. But in one indictment it was ruled that Sarah Snow was his first wife, and in another indictment that Adeline Snow was his first wife. Must he live with both? If so he can be entrapped again. If he lives with Sarah only he can be caught on the ruling that Adeline is his first wife. If he lives with Adeline he can be ensnared on the ruling that Sarah is his first wife. And under the ruling of Judge Zane in the latest case, if he lives with one and should step in to see another when dangerously ill, he could be sent again to the penitentiary, notwithstanding his pardon or any amnesty that might be extended. If Governor West will study the Snow case he will see one very urgent reason why the prisoners cannot consistently agree to obey he law as construed by the courts.

Then take the Naisbitt case. He had kept the law as construed by the courts according to the best of his understanding. He had lived with but one wife. His first and second wives being dead he lived with the third, whom he considered his first living wife. But Judge Zane ruled that another wife, with whom he had not lived, but from whom he had separated, was the first wife, and he had by her request called to see her once when she was confined to her bed with sickness, and so he was convicted of cohabiting with more than one woman, when it was proved that he had only cohabited with one. Now how is he to agree to obey the law as construed by the court? If he should live alone and one of his wives should need his presence in some dire extremity, he must refuse to visit her or be in danger of imprisonment. What profit would there be in making a promise that no one but a brute would intend to keep or could keep?

The law is now interpreted in such a way that it is impossible for a man who has more than one wife and a spark of humanity in his composition to obey it as construed by the courts. At first the court admitted that it was a man's duty to support his plural wives and families depending upon him. Now the fact of his so supporting them is adduced as evidence of his infraction of the law. If a man agrees to obey the law as now construed, he virtually promises to cast off those who are depending upon him, to have no association with them, to recognize them in no way as connected with him, to have nothing to do with them. He may not treat them as he would a friend or acquaintance. He must not visit them even if on a bed of sickness. Who is going to agree to anything of the kind, even to escape from a prison and the company of the lowest felons? If death is better than dishonor, perpetual imprisonment is preferable to the infamy such conduct towards those who are bound to a man by the most endearing ties and by the obligations of a solemn and holy and enduring covenant.

Governor West may not wish to view this matter in the light of religion. His business is of course to see that the laws are properly enforced. But in making his proposition he steps a little beyond the line of strict duty, in a humane movement to accomplish good. For this reason he may take something more than a mere legal look at this important question. If not to him, to the prisoners with whom he conversed this *is* a matter of religion. There is their side of the matter to be looked at as well as his, because there are two parties to an agreement.

Apart from the religious aspect of the question, it cannot be properly considered by any one. The family relations of the prisoners and of those who are yet to suffer from the special proceedings inaugurated in this Territory are based upon a religious foundation. They were actuated by religious principles in forming their marital arrangements, and on religious grounds they stand to-day. Laws have been framed with a view to the suppression of a religious system, and the supporters of that system are enduring wrongs on that account. No other offense but that which has been made one by a law against their religion, is pursued with the bitterness, animosity and legal vengeance that are exhibited towards this. When men are actuated by religious enthusiasm and religious convictions, any proposition which they are asked to consider must have some reference to their religious position. If not, it will fail to meet the issue.

We hope our friends in prison will set forth their views in response to the kind invitation of Governor West. If they were not debarred by the petty animosity of Marshal Ireland from receiving the DESERET NEWS, we would urge upon them the propriety of a respectful but firm and conscientious statement of their position and feelings in regard to the proposition. It should be signed by all the prisoners who were addressed by the Governor. We are satisfied what would be its purport. If they could have agreed to the terms offered they might just as well have kept out of jail. They were offered freedom before they went. But it was at the price of dishonor.

Obedience to the law as construed by the courts may seem, at first sight, a simple and proper thing to promise. But when that involves treachery to loving women, breach of contract with dependent and trusting wives and children, and violation of the most sacred covenants with Almighty God, where is the being deserving of the name of man who can make such a promise either with or without intention to preserve it inviolate?

THE ROOT OF THE MATTER.

The proposition of Governor West may seem, upon a superficial glance, to be very fair and one that any good citizen might accept. He simply asks that the "Mormons" who are in the penitentiary will promise to obey the law as construed by the courts, and agrees to plead with the President for their full pardon. We have no doubt that the proposition really means a pardon for a promise; the Governor has not made this advance without good reason.

But to understand this matter properly we must look beneath the surface. It is easy to promise, but sometimes hard to fulfil. If the prisoners who have been approached were not honorable men, they could give their word, escape from bondage and then take their own course regardless of the agreement, using the best means in their power to avoid detection. But they are not men of that stamp. The strongest answer that can be given to the charge that the "Mormons are perjurers, is their refusal to make an unworthy promise which would save them from fine and imprisonment. Verbally agreeing to obey the law as construed by the courts, they could, when convicted, avoid a prison and the heavy fine. They do not promise because they have regard for their word and honor.

This promise involves a great deal more than appears on its face. It means not only the repudiation of family ties that have existed for many years and the abandonment of women whose whole lives and interests and happiness are at stake, but the violation of other promises that are as sacred as any vow or plea can possibly be. The plural marriage of the Latter-day Saints, improperly called polygamy, is founded on a revelation from God to the Church. Its opponents may not believe that. But their disbelief has nothing to do with the question. The people who are requested to make certain agreements touching this matter, the revelation is an undoubted reality. It is the word of the Lord to them.

It begins with a divine communication on the eternity of the marriage covenant. It explains the method by which a man and woman may be joined together by God's holy ordinance for time and all eternity. The union thus cemented, under specified conditions, for ever. It is for this world and for the world to come. That which is thus sealed on earth by divine authority is sealed in heaven and is binding on the parties eternally. The revelation follows with the doctrine of plural marriage by which a man duly qualified may receive in the same everlasting covenant more than one wife. Each wife thus given to him of the Lord is his forever.

The covenants made between the parties are sacred. Unless through transgression they are without end. He who breaks them violates a sacred obligation and forfeits the everlasting and ever increasing benefits that flow from faithful observance thereof. The effects of such infidelity are far-reaching. They bear upon all the parties to the contract. And they extend into the eternal worlds and throughout all everlasting ages. All this, if foolishness to the world is vital and immortal truth to the Latter-day Saints, who enters into their life and associations and interests, spiritual and temporal.

These are facts that cannot be ignored in the consideration of the question now being agitated. Setting them aside casts out the marrow of the whole matter. It is easy to say "religion cannot be considered, only the law must be maintained," but that is a one-sided and imperfect view of the situation. The root of the matter is imbedded in the soil of religion, and the secular law, while it may hack some of its branches will never materially affect the plant unless the root can be reached.

The "Mormon's" religion appeals to his internal nature. It takes hold of the powers of the soul. His sacred covenants with God and his wife outweigh in his mind all material considerations. His affections and ties of family, joined to his religious convictions, make him strong in his determinations to hold to that which he feels and knows to be right. It is useless to tell him that this is not religion. You might as well try to