TRUTH AND LIBERTY.

Salt Lake City, Wednesday, March 2, 1881.

THE DESERET NEWS.

Richarter

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THE DESERET EVENING NEWS. One Copy, one year, with postage \$10.50 " six months, 5.25 44 three months 66 --- TERMS-IN ADVANCE ----

LOCAL AND OTHER MATTERS.

FROM WEDNESDAY'S DAILY, FEB. 23.

Returned -Elder Hyrum Jensen, of Salina, returned last evening Feb. 22nd, from his mission to the northwestern States, upon which he started April 13, 1880. He labored in Iowa and Minnesota under the direction of Elder Wm. Palmer. He feels glad to breathe the pure air of Utah again, and has the consciousness of having done good while working in the Lord's vineyard. The Lord has blest him in trying to do right, and he has a testimony to this effect to bear to all the world. The Poisoned Lady.-We are re- the people is astonishing. quested to state that Mrs. Margaret A. Blizzard, whose sudden death on the strike. occurred on the 19th instant, supposed to have been caused by poison, satisfied at home, should come over no trace of which, however, could to this country and see the condition be discovered by the attendant phy- of the people. Then, I think, they is thought to have been taken to in- homes in the tops of the mounduce sleep, the lack of which she tains. continuously complained of, was born at Treforest, Glamorganshire, days ago it was freezing. South Wales, August 18, 1849. Elders Robert T. Burton and George G. Bywater conducted the services on Monday last, which were attended by a large number of friends. Deceased was a devout and faithful member of the Church of Jesus Christ of Latter-day Saints, and died without a sigh or struggle. A quiet smile seemed to rest upon her countenance oven in death.

uated for the purposes designed, besides by its contiguity with the Lake, being especially advantageous for boating, yachting, bathing, etc."

Excerpts of Correspondence.-Elder Oscar F. Hunter, writing from 49 Sabina Street, Nottingham, England, on Jan. 29th, to Elder Henry Walsh, of this city, says:

My health is good and I am enjoying my mission.

Hucknall has a good room to meet in, and the spirit of investigation is manifest in that vicinity.

A good many of the "Salvation Army" have attended our meetings, and many acknowledge that they hear more truth in our meeting once, than they can if they continue a life time in their own.

South Normanton is doing a good work "tracting," and emigrated quite a number last summer.

Nine Elders are laboring in the Nottingham Conference at present, and have plenty to do.

Governor of this Territory in the executive and judiciary of a State, performance of an executive duty. and therefore the opinions of the The solution of this question has re- State courts are authority in the quired an examination of a large case at bar. The following cases number of authorities; although were either against the Governor or some of them seem to be in conflict | the head of some State department, with others, it will be found, I think, in all of them mandamus was reupon a close examination, that but fused: Hawkins vs. Governor, 1 few are really in conflict with the Pike, 570; Law vs. Towns, 8 Gro. R., preponderance of authority. The 360; People vs. Bissell, 19 Ills., 229; act required of the respondent by the State vs. Governor, 1 Dutch, 331; alternate writ is quite dissimilar to Houston &c.R. R. Co. vs. Randolph, the ordinary duties of a board of 24 Texas, 317; Sennit Petition, 32 supervisors, or the canvassers of Maine, 508; Chamberlain vs. Sibley, election returns. The two Missouri 4 Min., 309; State ex rel cases, 39 Mo. 388 and 56 Mo. 480, re- Bartley vs. Governor, 39 Mo., lied upon by counsel clearly show 388; Maurun, Adjutant Genethe different character of the duty of ral, vs. Smith, Governor, 8 R. I., 192; election canvassers and the act of There are cases which decide that a the executive in declaring one mandamus against a governor may among all other persons to be the be issued, directing the performance one elected; in one case it is an act of a ministerial duty, but the weight clerical in its nature, performed by of authority is greatly the other an inferior officer whose duty is way, for the reason the courts do specifically assigned to him either not and will not put the judiciary in by his superior, or by the statutes conflict with the executive, and that GRAEFENBERG and is purely ministerial, in the it was never intended they should. other case the duty is one of many, In the language of the defender of imposed upon the executive solely the Constitution, "A separation of for the reason that its performance the departments, so far as practicais properly within the sphere of exe- ble, and the preservation of clear cutive powers and obligations. Section 1862 of the U.S. Revised the fundamental idea in the crea- FEMALLE COMPLAINTS. Statutes, 1878, provides that the Del- tion of all our constitutions, and egate to Congress "shall be elected doubtless the continuance of regulaby the voters in the Territory quali- ted liberty depends on maintaining fied to elect members of the Legisla- | these boundaries." Webster's works, tive Assembly." But neither this vol. 6, p. 122. nor any other statute Federal or Ter- In the case of the United States ritorial, directs or in anyway indicates | ex rel Goodrich vs. Guthery, Secrehow he shall proceed, or upon what tary of the Treasury, 17 How. 284, evidence he shall determine who is the Court says: The power of the sicians, or by her friends, and which would appreciate their comfortable elected. He is left to his own method courts of the United States to comof solving the question. In some mand the performance of any duty cases there hay be no difficulty or by either of the principal executive question, others may be in- departments, or such as is incumtricate culties requiring the best of the government, has been strongly judgment and discretion in deter- contested in this Court; and, in so far mining who is elected. It matters as that power may be supposed to not that in one particular instance, have been conceded, the concession one candidate may receive twenty has been restricted by qualifications, times as many votes as all others, it which would seem to limit it to acts is the rule of law that applies in all or proceedings by the officers not imcases, that is to guide the court. If plied in the several and inherent the judiciary can interfere in one functions or duties incident to his Third District Court, delivered his case, it may in any, whenever in its office; acts of a character rather exopinion in the above case. It having opinion the Executive is pursuing, traneous, and required of the indivibeen announced that the opinion or about to pursue, a course contrary dual rather than of the functionary. to the views of the court. If the In the same case the court says: It duty of the Governor in determining is admitted that by, mandamus no court room was nearly filled by the who has the greatest number of act of an executive officer can be ex-C. Rich to his home in Bear Lake, public anxious to hear the decision. votes thrown by the voters of the amined which involves the exercise Territory qualified to elect members of his judgment or discretion. been summoned to attend the rer would be overruled as to the of the Legislative Assembly, and In Decatur vs. Paulding, 14 Pefuneral of Mrs.Blizzard, his sister in second and fifth grounds, and sus- the issuing of the certificate of elec- ters p. 497, C. J. Tanney says: "Nor tion is not a judicial act, it is far can it (the Court), by mandamus, from being merely ministerial; it is act directly upon the officer, and at least an executive duty of a poli- guide and control his judgment or tical character, which may at times discretion in the matters committed require the best and soundest discre- to his care in the ordinary discharge tion. The State of Nevada ex rel. of his offic al duties. Selden Hetzel vs. the Boart of Com- The interference of the courts with missioners, 8 Nev. 309. I have thus far referred mostly to ties of the executive department of the Territorial laws, and to the spe- the Government, would be produccial provision of Congress. We will tive of nothing but mischief, and we now look at some of the opinions of are quite satisfied that such power the Federal and State courts, involv- was never intended to be given to ing the same or similar questions. | them." Commissioner of Patents The Federal constitution creates, vs. Whiteley, 4 Wall 534. Gaines and the organic and statutory laws vs. Thompson, F. Wallan, p. 351.



NEW YORK TRADE.

Vol. XXX.

And restore health to those suffering from general debility and nervousness. Sold by all Druggists, 25 cents per box.

Back Again.-Hon. James H. Hart, one of the party that left here last week to accompany Apostle C. came back on Monday night, having law, but did not arrive until after the tained as to the first, third and services were over. Brother Hart left Apostle Rich and party at Randolph on Monday morning, so that by this time they should have reached Paris. Preparations were being made at that place to give Brother Rich a rousing welcome on his return. The following telegram received yesterday at 4-30 p. m. from Paris, has been handed in since the above was in type:

A good work is being done in the Norwich Conference.

I suppose I shall be among those who emigrate in the spring.

The weather has been as cold as has been known for 40 years. Lots of snow, some of the roads impassable from drifts.

The poverty and distress among

Hot times in Manchester. Colliers

Some of the Saints who are not

To-day it is like spring. Three

THE MANDAMUS CASE.

THE OPINION OF THE COURT

At 2 o'clock this afternoon Judge Twiss, in the Court Room of the would be delivered at this hour, the Judge Twiss said that the demurrt) grounds. As to the fourth ground-the most important onehe would read his opinion, as follows:

lines of division between them, is

and full of diffi- bent upon any executive officer of



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IMPORTANT NOTICE I

Mrs. Sarah D. Rich:

"President Rich has just arrived

To this alternative writ the reterference of either branch with the cretion is required, and that directty has a Driving Park Association, spondent demurs and assigns other would imply dependence and ing him by a peremptory writ of the organization of which took place at Provo last Saturday evening. The among other reasons or grounds of inferiority, when by our peculiar mandate to do an act within the choose from over 500 Finest Sorts. Our Great demurrer the following: officers are John W. Brown, Presiframe of government there exists scope of his official power, which he Specialty is growing and distributing Roses. "That said writ does not state equality and independence." THE DINGEE & CONARD CO. Rose-Growers, WEST GROVE, CHESTER CO., PA. has on demand in the exercise of his dent; A. O. Smoot, Jr., Vice-Presifacts sufficient to constitute a cause If in reply to this it should be said discretion refused to perform, would dent; W. D. Roberts, Se retary; B. of action, or sufficient facts to entitle that the Governor of a Territory is be assuming a grave responsibility Bachman, Treasurer. These, with the plaintiff to a peremptory writ of E FOR DEAF not the Governor of a sovereign unsupported by authority of law, Messrs. Jas. E. Daniels, Jr., H. Ormandate, and State, it may with equal propriety which might result in irreparable ser, M. Box, and J. Thomas, consti-"That this court has no jurisdicbe said the Supreme Court of a Ter- mischief. tute the Board of Directors. The Garmore's Artificial Ear Drums tion of the person of the defendant ritory is not the supreme judicial The demurrer will be overruled as capital stock is \$2,500, in \$25 shares. in said official character on the subcourt of a sovereign State. Both ot the 2nd and 5th grounds of demur, The Association has purchased 37 PERFECTLY RESTORE THE HEARING acres of land, about two miles south | ject of this action." and perform the work of the Natural Drum. are the creatures of the Federal and sustained as to the 1st, 3rd and Always in position, but invisible to others. All This position of the respondent Government, and each has the same 4th ground. of Provo, for its park. The Enquirer Conversation and even whispers heard distinctly. We refer to those using them. Send for descriptive circular. raises the bald, naked question of relation to the other in its sphere Mr. Brown gave notice of appeal Address JOHN GARMORE & CO., "It is said to be most suitably sit- the right of this Court to direct the and functions of government as the from the decision. S. W. Cerner 5th & Bago Sts., Cineinnati, On

The alternative writ of mandamus charges that at the last general election the relator received by a large majority, the greatest number of votes cast for Delegate to Congress; that he was a resident of this Territory, and qualified to receive votes for said office, and to be declared elected thereto. That due demand was made upon El: H. Murray, Governor of this Territory, that he Acting-Governor. That on the 5th

the performance of the ordinary du-

of this Territory recognize the three | It is my opinion that the action of home. He has stood the journey ILLUSTRATED WEAND DESCRIPTIVE AND PRICE declare the relator elected, which dewell, and feels firstrate. The people great co-ordinate branches of the the Governor of this Territory in demand was refused; that subsequentturned out en masse to welcome Government, the legislative, execu. claring who is, or may be elected ly on the 8th day of January, 1881, him home. tive and judicial, but no attempt | Delegate to Congress, and in issuing said Murray left this Territory, GEORGE OSMOND." has been made to define with any a certificate of election to the person whereby the respondent became the special care, the nature or extent of who may be by him declared to be the powers of either. Care, there- elected, is a part of the ordinary day of February, 1881, demand was FROM THURSDAY'S DAILY, FEB. 24. fore in all cases, near the extreme performance of his official duties, as made upon him to declare the rela-Will be mailed FREE to all applicants, and to customers without limits of the powers of either depart- the executive of this Territory; that More Favorable.-N.T. Guymon, tor elected to said office, and ment should be taken, lest we tres- the declaring of any person elected writing from Huntington, Emery to issue a certificate accordingly, lanting 1500 variaties of Vegetable and Flower Seeds, Plants, pass upon the enclosure of another, and issuing a certificate of County, on the 6th inst., states that which was refused. That he for the executive in the performance election to such person as since his last communication, the has no plain and adequate remedy of a duty purely and exclusively be- required of him by section 1862 of D. M. FERRY & CO., Detroit, Mich. weather has taken a change for the in the ordinary courts of law. The longing to itself, is as independent of the United States Revised Statutes. better in that locality. For three respondent is therefore commanded the judiciary as the judiciary is of 1878, are acts requiring the exercise weeks it had been more like spring. I to declare George Q. Cannon electthe executive. Each is independent of judgment and discretion, and this Stock was doing first rate. Prospects ed to the office of Delegate to the of the other in the performance of court cal not by writ of mandate di-BEAUTIFUL EVER-BLOOMING were good for grass and crops, and House of Representatives for the any act solely within the sphere of rect what particular course of action if fine weather continued, plowing 47th Congress of the United States, its powers. In the language of Mr. he shall or shall not take in the would begin in a few days. General and to issue a certificate accordingly, Justice Wagner in State ex, relvs. performance of an official duty withor that he show good cause before health, good. Governer 39 Mo. 288, giving the in the sphere of the functions of his this Court. opinion of the Court says: "The in- office, when the exercise of any dis-Driving Association.-UtahCoun-

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