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PAR NOBILE FRATRUM.

THE ruling of Judge McKean in the Tooele *mandamus* case yesterday is in perfect accord with the spirit that animates the charge recently given to the grand jury in the Second District. While it is true that a judge has an undoubted right to exercise his discretion in submitting a question of fact to a jury for their determination, still that discretion must be exercised in accordance with fixed rules and settled principles of law and equity, and in such a manner as will best answer the ends of justice. The whim or caprice of a judge is not recognized as his discretion, for if this were so there would be as many rules of action as there are different minded judges. Sec. 502, Civil Practice Act, Laws of Utah, which gives the right to a judge at chambers to hear and determine an application for a *mandamus*, must be construed in connection with Sec. 450, and was manifestly intended to apply to applications of this kind where the *facts were admitted* by both parties, and it simply required the court or judge to pronounce the law in the premises. Lord Mansfield, who made as much law as any judge that ever sat upon the English bench, recognized the principle for which we contend, and it has been reserved for the Chief Justice of this Territory to announce a different rule. A decent self-respect ought to prompt a judge to urge upon suitors the propriety of having disputed questions of fact submitted to juries, to say nothing of the positive enactment of the law, and the almost unbroken chain of precedent. Suppose the question had arisen before the Supreme Court of this Territory, as such, would any one conclude that Sec. 592 would warrant that court, in the exercise of *its discretion*, to deprive the parties of the right given them in Sec. 450? Again, would not the delay become greater in the latter case than in the case which we are now discussing? The ruling has been made, therefore we have the right to criticise it, and while it may be urged that the case can go to the Supreme Court of the Territory, we submit, with becoming diffidence, for we are not skilled in legal lore, that it is likely to prove a resort *ab eodem ad eundem*, from Phillip drunk to Phillip sober.

The ruling in this case is akin to the charge of Judge Boreman on the duties of grand juries, and while the little "end man" may be excused for his short comings on the ground of mental infirmity, or a natural incapacity to grapple with any question that requires thought, no such extenuation can be made for the placid-faced and poetically minded Judge who presides over the destinies of this District.

"A wit's a feather and a chief's a rod,
But an honest man's the noblest work of God."

THE OUTLOOK.

THE present attitude of the general government towards the Penn movement in Louisiana has much of significance in it to the reflective mind. It is peculiarly suggestive of thought to the people of this Territory. So lax have the notions of the American people become since the close of the late war on the question of the rights of States, that federal interference in the domestic concerns of a State sovereignty is now as much depended upon and looked for as the idea was formerly scouted. The very short time given to the people of Louisiana in which to permit the Kellogg lawlessness to resume its sway, plainly foreshadows what the President will do unless the voice of the people deters him therefrom. There can be but one opinion so far as the Louisiana matter is concerned, and that is, that there is neither the necessity for nor the right of interference in the premises. What was done during the war and immediately thereafter, either as a war measure or as a policy of reconstruction, cannot be urged as a precedent for or a justification of any resort to force on the part of the authorities at Washington to determine for the people of a sovereign State whom they shall recognize as their rulers.

The rule that has been and is still being invoked with reference to States is one that can be used with double force when applied to Territories. A State is presumed by the constitution and the laws to have the right to regulate its own affairs, while a Territory, being considered but "a breath of Congress," is held to be entirely under its control, and therefore when a trouble arises in a Territory the whole power of the government can be brought to bear upon it, to enforce obedience to its laws and submission to its authority, and this can be done no matter how glaring the wrong may be, or how outrageous the usurpation of power.

Since the passage of the Poland bill the carpet-baggers of Utah have been quietly organizing to precipitate the people of this Territory into a conflict with the powers that be. Step by step has been the onward march to this end, and with the light of recent developments made plain by the authoritative pronunciamentoes of the autocrats of the bench, we feel safe in saying that if there is not a sharp conflict between the people and their rulers in Utah, it will be wholly on account of the good sense and continued forbearance of the people. We therefore take occasion all the time to advise the people throughout the Territory to be patient under these adverse circumstances, and by their conduct show the world where the fault really lies. The reprehensible conduct of the Judge of the Second District, in rejecting men as jurors on account of their religious opinions, in the very teeth of legislative enactment, the fulmination of a charge to his grand jury so utterly at variance with established practice and settled precedent, coupled with the action of the Judge of this District in the Tooele case, where the right to a trial by jury upon the plea of legal discretion was dismissed, the insolent behavior of this same judge toward members of the profession who have grown grey in its service, all conspire to prove what we have said and ought to convince the most skeptical that our apprehensions are not ill-founded.

Has it ever occurred to our readers that it is and has been for some time table talk amongst the most rampant of our Federal officers in Utah—that the County of Tooele could be made the judicial stronghold of the Third District, from whence persons could be drawn who would be put where they would do the most good? Does not the recent action of two of the supreme judges in their respective districts warrant us in believing that it is the intention of the ring to manipulate the drawing of jurors, that a mere charge against some parties will certainly be followed by conviction? On what other hypothesis can such conduct be accounted for? Simply none. It is a bad cause that requires a judge to assume the role of an attorney, and a sad commentary on the judiciary of the country, that there are men wearing the judicil ermine who are not more learned than witty, and not more advised than confident, and whose conduct is governed by expediency, and is not the outcropping of that integrity which should be the portion of every right-minded judge. We therefore conclude that in no time in the history of the Church has there been so great a need of high moral courage, and the exercise of those virtues for which the Latter-day Saints have been so justly pre-eminent, as there is to-day.

CARPET-BAGGERS CATCHING IT.

THE ill odor in which the carpet-baggers are with the people is producing its natural results. The Kellogg crew at New Orleans "fled at the first fire," their rotten government crumbled to dust at once, and the people rejoiced in an easy and complete victory, which nothing but federal bayonets can reverse. In fact the carpet-bag regime is flimsy in the extreme, it has neither vigor nor virtue, excepting what it derives from federal bayonets, and it is only when it is certain of support from them that it puts on its airs of arrogance and official impudence. Withdraw the army and leave the government to the people, and the carpet-baggers become as weak as water.

In Colorado also, the carpet-bag regime, on the strength of federal support, is showing its characteristic insolence of spirit and its usurpative proclivities, and the people of that Territory are nursing their indignation and their wrath for the present, but probably not for ever.

Perhaps in no portion of the Union does carpet-bagism go to greater lengths at times than in Utah. But it is not always successful, and if the people of the Territory, under carpet-bag assumption and usurpation, exhibit that extraordinary patience which our esteemed Chief Justice says he needs but manifests that he does not possess, it is that the long delayed retribution of the carpet-baggers may run on interest and be all the more overwhelming when it does fall upon them.

THAT PEREMPTORY MANDAMUS.

THE final decision of Judge McKean in this matter deserves more than a passing notice. We published the opinion substantially as it was delivered on Thursday. Now that the first agony is over, we propose a brief review of the history of this case, and, without assuming to be authority on the matter, express the opinion that we hold on the subject. It shall be our endeavor to treat this question with fairness, yet at the same time with earnestness, and present the facts as they appear to us by the record.

It is an admitted fact that Judge Rowberry has been for years the acting Probate Judge of Tooele county, also that he was Mr. Brown's competitor in the election contest last August. It is also a fact that, of the whole number of votes cast, or represented to have been cast, Brown secured a majority. Whether the clerk of the Probate Court did the ministerial act required by law of him, that is, give Brown a certificate of election we cannot say, as one side affirms and the other denies it, but it matters not when viewed from a legal standpoint whether he did or did not. As to the action of the treasurer in refusing to approve Brown's bond, it stands on the same footing with the Governor's action in issuing a commission, and neither acts affect the question under consideration.

Now upon this state of facts, what is the position of the respective parties? Rowberry in possession of an office for which he was *prima facie* defeated at the last election, but still holding over by virtue of the law, which says that he shall hold until his successor is elected and qualified; and Brown claiming *prima facie* that he was legally elected and demanding to be admitted to Rowberry's place. This then was the position of the parties at the time the application was made for the writ. Now on this state of facts was *mandamus* the proper remedy?

We shall assume two propositions of law to be correct—

First, That the title to an office cannot be litigated in an application for a *mandamus*, for where there is any doubt the court will not interfere in this way, but put the parties in the first instance to an information in the nature of a *quo warranto*.

Second, That in a *quo warranto* proceeding, the court can go behind both the certificate of election and the commission of the Governor, and determine the legality of the votes cast for the respective candidates and for whom, as a matter of fact, the majority of the votes were given or intended to be given, which is the only way that the question of title can be settled.

Now, then, if Brown really was elected, then Rowberry was not, and is clearly a usurper, and being a usurper was mandamus the proper remedy to be invoked by Brown? We say not. The statute provides for exactly that kind of cases in chapter 5 of title 8 of the Practice Act, and allows the court, in its discretion, to impose a fine not exceeding $5,000, if the usurper is found guilty. This, then, if we are correct in our statement of the law, was the proper course to be pursued by Mr. Brown, and it is no answer to this to say that an appeal would lie and the term of office elapse before a final judgment could be had, for in each case the Court will still decide who the legal officer was. This is an *extra* judicial view of the case, and is sufficiently answered by saying that it is not the law. But if a further answer were needed it is to be had in the fact that the emoluments of an office are coincident to and follow the legal title, and that the fine which the court can impose in addition to this as a penalty is intended to deter usurpers from illegal practices, and has been considered by the legislature as ample to accomplish that purpose. The fact that one set of officers are *in* and another set of officers *out* ought not to be permitted to weigh at all in the legal determination of the case, and it is in this fact that is to be found the beginning of the series of errors into which the court has been betrayed in the course of this proceeding. The assumption of the court that there is a controversy between the Church and the State is unfounded in fact. If it were the case, the dignity of the bench requires the presiding judge to follow the mandates of the law alone, and, if the law is defective, leave that error to be corrected by the law making power.

The people are only nominally interested in the question of who is the person rightfully entitled to discharge the duties of an office, for *quo warranto* is practically a civil action by the code in which, in the name and under the cloak of the commonwealth, the real parties in interest, the respective candidates, litigate their respective claims, and it has been decided by courts of the highest respectability that it stands precisely upon the same footing as any other civil action under the code, with the exception that a fine may be imposed, in the discretion of the court, upon one who is really guilty of exercising the functions of an office to which he has no legal right.

We are therefore of opinion that the action taken by the "Liberal" candidates for office is all wrong, and that there was no necessity for the indecent haste that was manifested to get possession of the books, papers, and paraphernalia of the office of Probate Judge.

A PARTISAN AFFAIR.

THE public generally, who are not versed in the technicalities of the law, look upon the Tooele embroglio as a partisan affair from beginning to end, so far as the actors on the "Liberal" side are concerned.

First, it is confidently believed, and upon good grounds, that extensive frauds were perpetrated at the election by the "Liberals" and that the "Liberal" candidates were not elected.

Second, it is contended that some of the "Liberal" candidates are not eligible to office.

Third, regarding these points, the course of Judge McKean is considered to have been unwarranted and indecently hasty, and that all through the case he has manifested more of the bias of a partisan than the impartiality of a judge.

Fourth, the whole affair has a very suspicious look, and it seems impossible to receive it as at present decided as in the interests of right and justice.

The Governor, the marshal, and others, official and unofficial, went over to Tooele making inflammatory and incendiary speeches in the rankest partisan spirit, which is a most reprehensible act in official characters.

Although it was urged by those who had the best opportunities of knowing that the "Liberal" vote very largely exceeded the number of "Liberal" electors, yet the Governor lost no time in commissioning the candidate they elected, and the Judge plainly showed all through the case that he meant to do all in his power to install the "Liberals" in office, though he must have been sensible that they were legally in the minority, and that their election was a fraud. He issued a mandamus compelling the county treasurer, not to act as he thought legal and right, but to act just as the judge and the "Liberals" wished him to act, and thereby to accept sureties for the "Liberal" candidate which he believed to be worthless.

The Judge, knowing these things, and notwithstanding the charges of fraud at the elections, persistently pushed the case to a hasty conclusion. He could have shown that he wished the right to prevail, by submitting the whole affair to full investigation and decision by a jury, but this he resolutely refused to do, and proceeded to decide the whole matter himself, in a hurry, and in a manifestly prejudiced, ill-tempered, savage, and partisan spirit.

He claimed that if he submitted the whole subject to a full legal investigation, the term of office might pass away ere it was settled. This, however, was no reason at all, for it applied even more powerfully to the other side. There is good reason to claim that the election of the "Liberals" was a fraud and that the Judge must know that. The more reason then that the old incumbents, who have been re-elected and accepted and qualified time after time, should be retained in their offices, rather than the "Liberal" adventurers installed, before the whole matter was definitely settled. The strong probability, we might say certainty, is, that if the matter is fairly investigated before an impartial tribunal, the "Liberal" candidates will be declared not elected and not entitled to office, and then Judge McKean's undue haste to install those candidates, his absolute refusal to have the whole matter fully and fairly investigated at the first, and his one-sided action in the matter will not emit the sweetest perfume. Upon him will come the chief responsibility of the, consequently, illegal acts of the "Liberal" candidates installed by his action.

To the County Superintendents of Sunday Schools throughout the Territory.

BRETHREN,—Knowing the great interest you all feel in the success and prosperity of our Sunday School Union, we take pleasure in submitting to you the financial result of our Jubilee, held in the New Tabernacle on the 24th July.

After all expenses were paid in connection with it, we had a net balance on hand of $500.00 in cash, now deposited in our Savings Bank; several thousand Jubilee Song Books, all paid for, near $200.00 outstanding debts for song books, besides other property, amounting in all to at least $1200.00.

At our next monthly meeting of Superintendents, Teachers, &c., which will be held during October Conference, and at which we sincerely hope to have representatives from every County in the Territory, the wisdom and propriety of calling upon the poets and composers of Hymns, for contributions, suitable for a Sunday School Hymn Book, will be discussed, also its publication, with tunes to each hymn attached, all of home talent.

But as such a work will necessarily absorb a considerable time before completion, it is earnestly recommended for each school to use the Juvenile Song Book until then, as the majority of the songs in it are well adapted, and expressly designed for juvenile capacity; they can also be used as prizes, so as to have them freely circulated in every school, among those children that can read and appreciate them.

If the Superintendent of each school throughout the Territory will be kind enough to make arrangements for taking from 25 to 100 copies, according to the number of the schools, and those who know themselves indebted to the Union for some already had, will come prepared to liquidate the same, and take back another supply, we shall have additional testimony, and unmistakable proof of their determination to look after the interest of their own school, as well as sustain that of the Union.

As many of the Bishops are now taking a lively interest in the Sunday School labors, we would suggest that their influence be solicited to encourage the parents of the chil-