DESERET NEWS:
WEEKLY.

TRUTH AND LIBERTY.

WEDNESDAY, - - Oct. 21, 1874.

MORE EXCESSIVE BAIL.

Now it is a U.S. commissioner who is asking excessive bail. Yesterday two citizens, Shaw and Cushing, were examined before Commissioner Toohy on a charge of resisting U. S. officers, and were held in $5,000 bail each to answer to the District Court.

The full penalty prescribed by law for this offence is imprisonment not exceeding twelve months, and fine of not more than three hundred dollars. Full penalty can only be consistently inflicted when the offence is one of peculiar aggravation, such as when the provocation comes wholly from the resister, or when the act of resistance is of an uncommonly brutal or otherwise flagrant character.

Neither of these qualifications entered into the cases in question, so far as we are informed. The unpleasantness commenced with the provoking rudeness and insolence of the deputy marshal, Pratt, whose sole business was to serve a summons or subpœna upon President B. Young to appear before the grand jury as a witness. A witness is not a criminal, nor a person charged with crime. He is a citizen, presumedly, at least, an honorable citizen, whose presence is simply required in court, as a friend of law and justice, to testify what he may know concerning certain matters charged as offences committed by some other person or persons.

The serving of a summons upon a citizen as a witness therefore is especially an official service that should be performed civilly, courteously, and respectfully. But this was not the case in the present instance. The deputy is represented as acting in an impudent and insolent manner, and in this he exceeded his duty. He demanded to see President Young, and upon being told that he was sick in bed and could not be seen, yet if the deputy could call again shortly Prest. Young's private secretary would be in and would attend to the business, and after a little more insolence the deputy went away without serving the summons. Now the duty of the deputy, according to U. S. laws, did not require him to see President Young, and his demand to see him and the accompanying rudeness were entirely gratuitous, and the rudeness was exceeding his duty. The deputy retired, but returned with the Marshal, and the gatekeeper, probably supposing they designed to force an entrance to the presence of the President, refused them admittance and a scuffle ensued, and the gatekeeper was carried away prisoner.

If the deputy had properly presented his business, as he was in duty bound, he need not have insisted upon seeing the person summoned, but could have left the summons at his house, and properly explained his errand, which would have been all-sufficient for him as a United States officer.

The marshal with several deputies returned, and the subpœna was served upon the President, not directly and personally by the marshal or a deputy, but by the intervention of a third person, thus showing that the marshals admitted that personal service by an officer was not essential. Therefore, why was it offensively insisted on at first? Indeed the marshal himself disclaimed any desire to push himself into the presence of the person subpœnaed. If the deputy had shown as much sense at the beginning, there would have been no unpleasantness.

The marshal is pretty well known to be a profane gentleman, and while on the premises is said to have indulged in profanity, which his duty did not require him to do, and therefore in doing which he exceeded his duty. Now the law does not render it imperative upon any man to have profane language hurled at him, even by an officer of the law, and especially upon the premises of another citizen. It appears Mr. Cushing was indignant at this official profanity and gave the marshal a push to remind him that he was in a place where profanity was not acceptable. This was not resisting the marshal in the execution of his duty, for it had nothing to do with his duty. No possible stretch of duty in a U. S. official requires him to use profane language anywhere, especially upon another man's premises. Besides it was an infraction of a city ordinance, as will appear by the following, which we publish for the benefit of the marshal and his deputies and all other officials addicted to profanity—

"Any person profaning the name of Deity shall be subject to a fine of not less than one, nor more than ten dollars, or from one to five days hard labor, or both, at the discretion of the Court."

Now in regard to exciting to an assault, as the impudence of the deputy and the profanity of the Marshal appear to have done the two persons charged with resisting them, here is another city ordinance—

"Be it further ordained that if any person shall provoke another to an assault by menacing, insulting, slanderous, or abusive language, he shall be liable to a fine in any sum not exceeding fifty dollars, or imprisonment not exceeding two months, or both, at the discretion of the court."

Now it appears that Marshal and deputy made themselves liable under one if not both these ordinances, and in all this they also exceeded their duty under the United States laws. The gentlemen of the law will tell us that a man may forcibly oppose even a person in authority "if in certain cases he abuse such authority, and do more than he was authorized to do," which it appears these officials did.

Under these strong provocations, then, Commissioner Toohy must be considered as asking excessive bail, for if the Court should subsequently find the two persons guilty, it would be under the extenuating circumstances of strong and wilful aggravation on the part of the officers, and therefore anything more than a very light penalty, if any at all, would be entirely unreasonable and savor of vindictiveness.

JURORICAL DISQUALIFICATIONS.

Last week was Conference week. Of course we had to attend to Conference business, giving it preference as to time on our hands and space in our pages, and also had to hospitably entertain as best we could those of our country friends who might call upon us. With all sincere men who make profession of religion, their religion is the first and foremost thing, and their actions are correspondingly influenced. Consequently, having our attention and space so pre-engaged, and pretty fully occupied, we had little time or space to spare to pay our respects to matters judicial. We did publish the charge to the grand jury, and offered a few very brief comments upon the same, and also recorded the most important other acts of the court, but little more. There are several cognate subjects, such as the impanelment of the jury, the finding of indictments, conduct of officials, etc., upon which a few words might have been profitably said. It is to be hoped, however, that our comparative silence upon these interesting subjects will not be attributed to any lack of respect in the least degree, but to the exercise of that intuitional judgment which every intelligent and honest professor of religion has of the preference in attention due to the things of the court of heaven above the things of the courts of earth. This is all the explanation or apology we have to offer in this matter, and we sincerely hope that it will be acceptable to the judicial portion of the community as well as to the public at large.

In this article we propose to say a word or two upon the disqualifications of persons to sit as grand jurors, as insisted upon, in the impanelment of the present grand jury, by the U. S. prosecuting attorney, and sustained by the U. S. judge on the bench.

Non-citizenship. Of course a grand juror must be a citizen.

Non-residence. A grand juror must be a resident for six months previous.

Opposition to capital punishment. A man whose conscience would not allow him to agree to the punishment of death could not be a grand juror. This question is generally though not invariably put and insisted upon elsewhere to a person drawn for a grand juror. It is a rule devised for the especial benefit of the Quakers.

Living or believing in polygamy, or plural marriage. Challenges for this cause are not common. In fact they are peculiar to the U. S. courts in this Territory.

So far as we have learned, the above four were the only points urged by the Prosecuting Attorney. The three first, with collateral points, being commonly acted upon in courts generally, we will pass over, and proceed to consider the fourth—polygamy. This is not a crime of itself. Four-fifths of mankind hold it to be otherwise. It is not an offence against any law of this Territory. The law of the United States makes it an offence, but cannot make it a crime in the popular acceptation of that word, which has a morally guilty meaning. The polygamy or plurality of wives of the "Mormons," being an establishment of religion, by revelation from God, supported by the Holy Scriptures, and practiced by the ancient prophets of God, is therefore not a fit and proper subject for congressional legislation, the scope of which is absolutely limited in this direction by express prohibition of the Constitution of the United States. Polygamy being an establishment of religion, Congress has no power to make a law either in favor of it or in disfavor of it, for it is a matter that can only be constitutionally decided upon by each citizen, as right or wrong for him, according to the unbiassed dictates of his own conscience. The people of this Territory do not consider it a crime, they do not consider it an offence, but they do consider it an honorable estate expressly provided, authorized, sanctioned, commanded and blessed by Heaven itself, and therefore an essential part of their religion, which could not be rejected nor dishonored by them without endangering their acceptance in the sight of God and their eternal salvation in his presence, any more than the rejecting or dishonoring of any other principle of divine truth, or essential to salvation, could be safely indulged in.

The practice of and belief in this religiously established form of marriage was particularly urged as a matter of disqualification for a grand juror. In the Poland bill, under which the court is acting, there was a provision excluding polygamists from serving on juries, but the provision was rejected and thrown out, showing that Congress was not in favor of making that point one of disqualification. Yet, in spite of this action of Congress, the court here allows the point as a valid one for challenge and rejection of persons for jurors. What are we to think of this? Can it be considered a legitimate exercise of judicial discretion? Or must it be viewed as a determined effort to convict in a certain direction, law or no law?

In consequence of the above action of the court, "Mormons" are almost if not completely excluded from the grand jury by which "Mormons" are to be indicted, and in all probability will be from the petit juries by which "Mormons" are to be tried. Is this law? Is this justice? Is this republicanism?

Now this unconstitutionally declared offence is the only one which was urged and accepted as disqualifying a citizen from being a grand juror. No actual crime, *mala in se* as well as *mala prohibita*, was urged as a disqualification. No man was asked if he was a drunkard, if he was profane, if he was a gambler, if he was a thief, if he was a seducer, if he was an adulterer, if he was a whoremonger, if he was a traitor, if he was a murderer. These crimes passed unmentioned, while the honorable condition of plural marriage was viciously pitched upon without fail, and one of the gentlemen questioned, upon stating that he did not consider that a crime, became at once the object of concentrated religio-magisterial surprise and wonder.

Thus a conscientious polygamist, no matter how good a citizen, no matter how true and honorable a man, no matter how pure and self-sacrificing a patriot, cannot sit upon McKean's juries. Liars, perjurers, drunkards, profane swearers, gamblers, thieves, adulterers, whoremongers, murderers, men guilty of treason, or any other real crime on the statute book, may be sitting on that grand jury now, so far as challenges were concerned, to indict citizens, and similar characters may be yet sitting upon the petit juries which will traverse those indictments and pronounce guilty or not guilty, whileguilty or who has more wives than one, or who religiously believes it right to have more wives than one, is determinedly rejected, though he may have been well known all his life as a moral, virtuous, upright, useful, respected citizen, entirely without reproach.

Who is responsible for this state of things? The officers of the court, and, directly, them alone. It is a fearful responsibility. What is their object in taking such a course? That they themselves must declare. But it will require a vast amount of explanation and special pleading to convince the public that it has been taken in the interest of either law or justice.

A PETIT JURY AT LAST.

To-day the citizens drawn for petit jurors were to be in court, ready for the trial of any case. Of course this is an important event, because the jury will be, we believe, the first legal jury, for trying all kinds of cases, in this district for more than four years. The present incumbent of the judgment seat, on his inauguration here, proceeded to have juries empanelled according to his own notion, but the way he proceeded was authoritatively pronounced to be not according to law and therefore his juries were illegal and all their acts null and void. After that the Judge became afraid, or he was cross—anyway, he would not empanel juries under the Territorial laws, for criminal cases, nor was he anxious to do it for any cases, until the passage of the Poland bill by Congress, which took the jury matter and others out of the hands of territorial officials, and put them in the hands of U. S. officials, a movement with which exact justice had nothing to do.

When he came to act under this new law, having thereby a chance to have things more his own way, and less the way the people wanted them, his long time dilatoriness forsook him, and he gave evidence that he was getting in a hurry to go to business, so he pushed the grand jury empanelment ahead somewhat hastily. He may do the same with the petit jury. It is generally believed that he had no good reason for refusing to empanel petit juries under the territorial laws, and certainly the delay thereby occasioned in the administration of matters judicial was hardly considerate toward the public interested, and did help to crowd the docket with cases now waiting to be acted upon. The docket is consequently a heavy one, and the Judge probably has before him, in cases already on file, and immediately anticipated, enough business to keep him pretty steadily engaged for a twelvemonth. This press of business, however, is generally regarded as principally his own fault, in refusing to empanel juries according to territorial law. But the responsibility of his decisions in this connection rests with himself. Now that he is going on with the empanelment of juries, it is to be hoped that petit juries will be obtained who will strive to render verdicts impartially, according to law and justice. The best citizens desire this, and the worst are entitled to no more.

Let Loose the Dogs.—The municipal authorities of New York city have repealed the dog ordinance of the early part of the summer. The dog pound is closed, and the mission of the dog catcher comes to an end. Seven thousand of the canine tribe have been municipally sent to their long homes the present season. What a heap of sausage meat!

Local and Other Matters.

FROM FRIDAY'S DAILY, OCT. 16.

Are You Indicted?—This promises to be the grand popular hail and salutatory on the streets and elsewhere, indoors and out.

Cleaning them Out.—Most of the water tanks having become nearly filled up with sediment, they have undergone the process of cleaning out to-day, under the direction of Marshal McAllister and Supervisor Hyde.

The Temple.—Work on the Temple is progressing nicely. Five additional courses of rock have been laid on the east and portions of the north and south walls, while the balance has been raised three courses, and the work of laying will continue until seven courses have been laid all round this year. Portions of the walls are now fourteen feet above the ground level, and already have an imposing appearance.

General H. A. Morrow.—By courtesy of a gentleman of this City, we have been permitted to peruse a letter to him from General H. A. Morrow, late Commandant at Camp Douglas, in which we find the following kindly expressions concerning this City and people:

"I assure you I left Salt Lake with great good feelings towards its industrious and frugal population. I shall always remember the many acts of courtesy and kindness I received, and I will never cease to wish prosperity and happiness to a city which attracted me so much by the beauty of its surroundings, as by the many excellent traits of its people."

The letter was dated at Sidney Barracks, Neb., Sept. 19th.

The Navahoe Country.—John D. Boyd has just returned from a lengthened visit to the Navahoe country, where he has been engaged in assisting to pacify that tribe. It appears that some of their number were killed in a quarrel with some white men, and ever since the Indians have been unruly and discontented. Harney, the agent, is about to take twelve of the chiefs to Washington, and their tribes have agreed to keep the peace till they return. Mr. Boyd made the trip from Fort Defiance to Pioche in twelve days. He brought in one of the peculiar blankets for the manufacture of which the Navahoes are so famous. It was a beautifully woven fabric, strong and very durable, of several colors, forming an agreeable and well contrasted pattern. Mr. Boyd starts to-day on his return, and will spend some time in the Moquis villages during the absence of the agent on his trip to Washington.—*Pioche Record, Oct. 13.*

Suspicious Conduct.—About four o'clock yesterday afternoon, a man in a buggy accosted a couple of girls in the 11th Ward, one named Armstrong and the other Snape, aged respectively about ten and twelve years. He asked them to take a ride with him, but wanted them to leave behind them two smaller children which they had in charge. They could not do that, so all got into the vehicle and were driven to the east bench, towards Camp Douglas. He fondled them and acted familiarly towards them, and told them that he would like to take them away with him and marry them when they got older. After getting them to promise to meet him this afternoon he drove back and left them at the place where he took them up.

Mothers should caution their girls about receiving any advances from strangers, there being a set of scoundrels around this city at present, utterly devoid of every principle of true manhood. That fellow should be looked after.

A Senseless Act.—Some parties have shown their utter lack of good sense by playing off what they may, on account of their brainless condition, consider a practical joke, under which, however, unmitigated malice is evident. A crazy person named Henry Spencer was made to believe that he was a deputy marshal—for the matter of that, he has as much sense as some of the genuine article display—and a paper was given to him which he was told was a writ for the arrest of President Young, which he was empowered to serve. He went to the office of the latter accordingly, and was soon afterwards taken to the City Hall and placed in jail.