of 55,000,000 people, in administering the "Edmunds" law, as he does or has. He surely must have been out of his reckoning. He could not have got the views of that large number of people of whom he speaks. Something is wrong somewnere, as see the following clipping from the *Herald*, which expresses also the views of the New York *Evening Post*, Boston *Advertiser*, Philadelphia *American* and lots of other papers:

"Some days ago we referred to the fact that nearly all of the prosecutions have been carried on under the third section of the act which provides punishment, not for polygamy or plural marriage, but for plural cohabitation, which is made a misdemeanor. The Mormons assert that the Federal Courts have refused to enforce this section against Gentiles who were guilty by their own confession. According to the telegraphed abstract of the report, the Commissioners reply that 'the law was not directed against individual lascivious practices, but against the assault by the Mormon Church upon the monogamic system.' This will not do. The law is plain. It specifies a crime and provides punishment for 'any male person' who commits it. This law should be enforced against all who violate it in Utah, whether they be Mormons or Gentiles."

The Saints just at the present ought to take special comfort from the saying of Our Savior: "Blessed are you when men revile you and speak all manner of evil of you falsely."

Praying that we may hold on to the iron rod,

I remain yours,
E. J. BROOKS.

JUDGE ZANE'S DECISION.

In the District Court for the Third Judicial District of the Territory of Utah.

Decision of the Court in the motion of the application of Oscar C. Vandercook for a writ of *habeas corpus*, Friday, Dec. 11, 1885.

The Court delivered the following opinion:

The sheriff in his return to this writ of *habeas corpus* justifies the arrest and detention of the petitioner under a warrant issued by the justice of the peace on a complaint charging the plaintiff with a violation of section 1996, chapter 8, of the Compiled Laws of Utah, 1876. This section is as follows: "Every person who keeps a house of ill-fame in this Territory resorted to for the purpose of prostitution or lewdness, or who wilfully resides in such house, or who resorts thereto for lewdness, is guilty of a misdemeanor."

This section describes three offenses, first, keeping a house of ill-fame resorted to for purposes of prostitution and lewdness; second, residing in such house, and third, resorting thereto for lewdness.

The petitioner is charged with the last offense, and counsel for petitioner insist that this offense is described in the statute in such vague and uncertain terms that the court cannot say that it describes any offense, and second if it does describe any offense, the term lewdness is equivalent to prostitution, and a male person cannot be guilty of prostitution in a legal sense, and therefore his conduct, being a male person does not come within the definition; and an act of adultery or fornication is private or open lewdness.

The word lewdness may be used in many connections and its meaning thereby be fixed. As used in the section quoted there is no difficulty in ascertaining its meaning. The law is aimed at bawdy houses and adopts three modes of punishment to suppress them. One is by punishing the keeper, another by punishing persons who wilfully reside in the house, and the other by puishing persons resorting thereto for those practices which characterize such houses. Each and all tend to suppress the evil. The injury to society would close by its suppression; it would cease to be a bawdy house if all persons were prevented from going to it for lewdness; the business would be closed up, and the house suppressed. It would be unreasonable to hold that the term lewdness means the lewdness of females alone. In the connection as found, men as well as women can be guilty of such conduct; and if so they are equally guilty under similar circumstances. The second objection is that the warrant does not describe the offense with sufficient certainty. The language is that on the fifth day of August, 1885, at this city, county and Territory, S. J. Fields did keep a house of ill-fame, resorted to for the purpose of prostitution, and the petitioner, well knowing the house to be a house of ill-fame did unlawfully, then and there resort thereto for lewdness. The time and place of the offense is given. The house and its character is mentioned, and the knowledge thereof by defendant that he unlawfully resorted thereto for lewdness. The act and the purpose for which he went is stated; the offense is described in the terms of the statute. This is usually held sufficient in an indictment; in other words, as a general rule it is sufficient to describe the offense in the language of the statute. There are exceptions, some statutes refer to common law offenses generally without giving a particular description; in such case it is necessary to use other language. Here the offense applies to all classes of persons. Construe the section, and it mentions a particular act time and place and the purpose. The offense consists of the act, and intent. Here it is stated, for lewdness, which is to say, that the party went to the house for the purpose of lewdness; with the intention to commit lewdness; my impression is that this complaint sufficiently describes this offense. It certainly describes it so that persons of ordinary intelligence could understand what was meant by it. That is sufficient.

The statute makes the offense a misdemeanor, and the statute of 1878 provides, that misdemeanors shall be punished by fine less than three hundred dollars and by imprisonment not exceeding six months. The statute of 1884 gives justices of the peace jurisdiction of misdemeanors in terms. It is insisted, the law giving justices of the peace jurisdiction of misdemeanors is of no effect, because the legislature of the Territory had no power to pass it. The powers of the legislature are enumerated in the acts of Congress relating to Utah, and the first one is, the act approved September 9th, 1850. Among other things the ninth section provides: "The jurisdiction of the several courts herein provided for, both appellate and original and that of the probate courts, and of the justices of the peace shall be limited by law." "As limited by law" should be held to mean as limited by any valid law limiting the jurisdiction, and of course any act of Congress limiting such jurisdiction would be binding, unless, in violation of the Constitution of the United States; and as far as the jurisdiction is limited by the acts of the Territorial Legislature, it would be valid if the Legislature possessed the power to pass the law. Section 6 of the act referred to is as follows: "The legislative power of said Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and provisions of this act." It forbids any law with respect to real estate, and for the location of property of the United States, and providing that the legislative assembly and governor shall submit to Congress the laws passed by them, and if it is disproved shall be null and void.

The question is as to what is the effect of this language: "That the legislative power of said territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act." The power is broad as I have stated. As I have stated, the jurisdiction of the justices' courts is a rightful subject of legislation. It is a subject upon which every State in this country—in this Union—and all of the Territories, have legislation, and *there can be no controversy as to that* fact within reasonable limits.

Section 3 of the act of Congress, approved April 7th, 1874, relates also to the jurisdiction of justices' courts. The language is: "The district court shall have exclusive original jurisdiction in all suits or proceedings in chancery, and in all actions at law in which the sum or value of the thing in controversy shall be three hundred dollars or upward, and in all controversies where the title, possession or boundaries of land, or mines or mining claims shall be in dispute, whatever their value, except in actions for forcible entry or forcible and unlawful detainer; and they shall have jurisdiction in suits for divorce."

It gives the District Court exclusive jurisdiction of cases where the sum or value of the thing in controversy is $300 and upwards. Of course that excludes the jurisdiction of justices of the peace, when the sum or value of the thing in controversy is $300. The sum referred to here, of course, relates to value and it don't relate to imprisonment.

The real controversy, in this case, is, as to whether the defendant is guilty of the conduct charged, and inasmuch as it involves the imposition of a fine, it may be said the fine is in controversy; and so far as it relates to imprisonment, it may be said that the liberty of the person is in controversy. Liberty or imprisonment is not mentioned in the law just referred to.

There is another provision in this same section which is as follows:

"The jurisdiction heretofore conferred on justices' of the peace by the Organic Act of said Territory is extended to all cases where the debt or sum shall be less than $300."

This limits the jurisdiction of all cases for debts or sums of money claimed, but has no reference to imprisonment for misdemeanors, and it is argued that it is unreasonable to assume that Congress intended to limit the fine to $300, and permitted a court jurisdiction of a case where the imprisonment might be six months. It would seem that the imprisonment would be more important than the fine. But the statute does not refer to the imprisonment. It is said if there is no limitation to this power of territorial legislation, then it may give justices of the peace general jurisdiction in all criminal cases, but I am disposed to believe, and I presume the Court would have no hesitation in holding the law void if the Legislature should attempt to give justices of the peace jurisdiction in cases of felony. Such action would be without authority. The history of such jurisdiction in these courts would be without a precedent.

The Court would resort to the principle applied by the Supreme Court of the United States to an act of the Territorial Legislature attempting to give the probate courts of this Territory general jurisdiction in all cases.

From the analogies of the Organic Act relating to courts in Utah, and from the general history of probate courts it was presumed that Congress did not intend to give the territorial legislature power to provide that probate courts should have jurisdiction in all cases; that the jurisdiction of those courts was defined and never possessed such power, and the same reason would apply to the justices of the peace.

The important question here upon this point is as to whether there is a precedent for this action of the territorial legislature. Without having examined the various acts of the legislatures of the different States, I am of the opinion that it would be found in some States they have jurisdiction of misdemeanors where the punishments is by fine and imprisonment; in others their jurisdiction would be confined to such cases as one simply punished by fine, but in others it would be found, I think, that justices of the peace have jurisdiction in cases where the punishment is by fine and imprisonment. Justices of the peace and police magistrates of the various States have jurisdiction of the offense of keeping bawdy houses, of residing therein, and frequenting such houses, and the offenses by lewd and lascivious conduct. The mere fact that the Legislature has given a greater punishment to this offense than is usually given to those cases where justices of the peace and police magistrates have jurisdiction, would not authorize the court to hold the provision in question void.

The right of appeal is left to the party if injustice through incapacity, or for any other reason is done.

It is argued further that the 7th section, page 121, of the Laws of Utah, 1884, forbids prosecutions of this offense in any other way than by indictment.

The section is: "That the first clause of section 117 of said act be amended so as to read as follows: 'All public offenses triable in the district court, except cases appealed from the justices' courts, must be prosecuted by indictment.'"

And inasmuch as the justices of the peace have no authority to summon a grand jury, they have no jurisdiction, and inasmuch as this party was not indicted by the grand jury against him, the proceeding is illegal. It is also claimed that this section is in conflict with the statute giving justices of the peace jurisdiction of misdemeanors. In the case of Ferris against Higley, 20th Wallace, page 381, the Court says: "The common law and chancery jurisdiction here conferred on the district court and supreme courts is a jurisdiction very ample and very well understod. It includes *almost every matter, whether of civil or* criminal cognizance which can be litigated in a court of justice."

And further in the case the Court says: "The fact that the judges of these latter courts are appointed by the federal power, paid by that power—that other officers of these courts are appointed and paid in like manner—strongly repels the idea that Congress, in conferring on these courts all the powers of general jurisdiction, both civil and criminal, intended to leave to the territorial legislature the power to practically evade or obstruct the exercise of those powers, by conferring precisely the same jurisdiction on courts created and appointed by the territory." The territory would not have the right to oust the District Court of its jurisdiction to try all cases of misdemeanor. The jurisdiction is conferred by act of Congress, and of course it cannot be ousted, as the Supreme Court has held by an act of the Legislature of the Territory. But the question arises whether these two provisions can stand together. The rule is that where different acts relate to the same subject they should be harmonized, unless they are so opposed that they are irreconcilable. The language is: "All public offenses triable in district courts, except cases appealed from justices' courts, must be prosecuted by indictment."

I am disposed to hold that all offenses commenced in the District Court and triable in it, shall be commenced by indictment, but it don't apply to prosecutions commenced and triable in the justices' court, and that both provisions should stand together. I am of the opinion that the district court and the justices' court have concurrent jurisdiction in this class of offenses and having concurrent jurisdiction, the one that gets jurisdiction first is the one to try the case.

There was another point raised with respect to the constitutionality of this law. It is held that the constitution gives to the defendant, in a case of this character, the right to an indictment. Article 5 of the Constitution is as follows: "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury' except in cases arising in the land or naval forces," etc.

These crimes of keeping of a bawdy house, the residing in it and frequenting bawdy houses, has never been held to be infamous crimes. It may be in the estimation of some, infamous, but courts have not so held.

Article 6 provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature of and cause of the accusation; to be confrontrd .with the witnesses," etc.

There is no question but the common law jury means a jury of twelve men, but this provision has not been held to apply to inferior misdemeanors, and some courts have held that the right of trial by jury is preserved if it can be secured by appeal, as it may in this case. If the justice of the peace has jurisdiction of the case and is authorized to summon a jury, though the statute may say six men, if the defendant claims twelve he must have that number, if the Constitution gives it to him, and the law limiting the number to six, in that case, would be utterly void, and he would be entitled to a jury of twelve men. Having power to try the case and to issue a *venire* for a jury he should issue it for the number the law fixes, which would be twelve.

The next section is: "In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved; and no fact tried by jury shall be otherwise re-examined in any court of the United States, than according to the rules of common law." This provision is limited to such cases as the law at the time of the adoption of the constitution, gave the parties the right to a jury in. It was adopted in view of the common law, and the common law did give a jury in all cases.

The same reasoning will apply to this constitutional provision as was applied to the preceding. I am of the opinion that this motion to discharge the defendant should be denied, and it is so ordered.

LETTER FROM DELEGATE CAINE.

The Omaha *Herald* of the 11th contains the following letter written by Utah's Delegate, Hon. John T. Caine, to President Cleveland:

HOUSE OF REPRESENTATIVES,
Washington, D. C., Dec. 7.

SIR,—Since our conversation this morning additional sensational statements have been sent from Omaha and Washington, and published throughout the East, which are so false and such outrageous misrepresentations of the facts in regard to the actual situation in Utah that I am constrained to lay before you the truth.

The adjutant general of the army apparently authorizes the statement that "the Secretary of the Interior and the Attorney General received reports from the Governor, United States Marshal, and other officials there, to the effect that the disposition of the Mormons is quite offensive, that demonstrations are being made of a threatening character, and that the slightest accident is likely to cause a riot in which the residences and offices of the United States judges, district attorney and other officials may be mobbed and perhaps personal violence attempted," etc., etc.

You, sir, and your constitutional advisers have been deceived by designing men who seek to create in the East the impression that the Mormon people are unruly and turbulent. The ordering of additional troops to Utah is the result of a deliberate attempt on the part of the republican United States officials here to create the impression that there is danger of a Mormon outbreak. The object of this is, first, to make it difficult for a democratic administration to remove the officials, and second, to influence Congress to enact legislation in the interest of a desperate ring of adventurers who seek to control the government of the Territory in spite of the fact that they constitute an infinitesimal portion of the population and have no interest in the material welfare of the great bulk of the people.

The Mormons have been subjected to a systematic attempt to goad them to a hostile act. The Federal judiciary has persistently ruled so as to shield disreputable non-Mormons from punishment for "lewd and lascivious conduct," while Mormons have been prosecuted with the utmost rigor for unlawful cohabitation under the so-called Edmunds act, which makes it a crime for men to cohabit with more than one woman. The chief justice of the Territory and a majority of the court have held that the Edmunds law applies only to Mormons, and a man who was arrested on a charge of debauching his sister-in-law was discharged by Chief Justice Zane on the ground that the Edmunds law was not intended to be a general corrective of morals. When a deputy marshal, a married man, was arrested by the police on a charge of "lewd and lascivious conduct" with a woman not his wife, Judge Zane on habeas corpus proceedings promptly dismissed the accused on the ground that adultery or fornication was not lewd and lascivious conduct unless it was practiced in public. On the other hand, prominent Mormons, who had separated themselves from their plural wives immediately on the passage of the Edmunds law, and had endeavored to honestly obey that law, were indicted for unlawful cohabitation, and when they asked the right to prove that they had not had sexual intercourse with their plural wives, Chief Justice Zane ruled that such evidence was immaterial and irrelevant; that unless they had publicly abandoned their plural wives they were guilty of "holding them out" as their wives, which constituted their offense of unlawful cohabitation under the Edmunds law. It mattered not that in the entire history of civil and criminal judicature, no English or American court had ever held that cohabitation meant other than sexual intercourse, the Mormons had to go to jail, because they did not publicly renounce their plural wives.

In the execution of the Edmunds act the utmost latitude has been given to the marshal and his deputies. Domiciliary visits had been common, and spies and informers had been encouraged to ply their infamous trade. When a reputable Mormon resented an gratuitous insult by a deputy marshal on the street, he was fined by Judge Zane and sent to jail for five days on the untruthful charge of attempting to intimidate an officer of his court. The stories about attempts to lynch Collin, and the gathering of Mormons for that purpose, and the necessity for placing Collin in the hands of the military for protection, are altogether false. The sensational reports telegraphed from Omaha about a mob going to Fort Douglas and demanding Collin are manufactured for a purpose. There is no necessity for the presence of additional troops in Utah. You, sir, as well as your advisers, have been imposed upon by Governor Murray and Marshal Ireland. These representations are maliciously false. The Mormons understand perfectly that every effort has been made and is being made, by characterless federal officials to provoke an outbreak. The Mormons know that they would be doing themselves an irreparable injury by attempting any violence or unlawful act. They have not, under the most intolerable and unjustifiable conduct of federal officials, disturbed the peace or in any way resisted the execution of the laws. The Mormons ask only for an impartial administration of the laws, and just treatment. They have appealed to the supreme court of the United States and are patiently awaiting a decision by that high tribunal on the rulings of Judge Zane. They believe that his extraordinary interpretation of the law will be rebuked. The Mormons do not object to the presence of the troops in their midst. They do object, however, to the sending of troops on false pretenses. They object to being misrepresented and set before the world as defiant, turbulent, and given to mob violence, when all their history proves to the contrary. Those who have demanded and secured reinforcements sent to Ft. Douglas have not been animated by an honest purpose, but with the object of annoying, and if possible, of goading the Mormons to violence. The Mormons insist that the reasons assigned for sending additional troops to Salt Lake are outrageously false.

Very respectfully.
JOHN T. CAINE.