

THE DESERT WEEKLY

PIONEER PUBLICATION

ROCKY MOUNTAIN REGION.

ESTABLISHED

TRUTH AND LIBERTY.

JUNE, 1850.

NO. 5.

SALT LAKE CITY, UTAH, SATURDAY, JANUARY 21, 1893.

VOL. XLVI.

HERE'S AMNESTY DEFINED.

When the modified juror's oath, which appears elsewhere, had been prepared for the Third District court yesterday afternoon, the News was assured that the time had come when Judge Zane would be willing to give to the public his opinion on the intent and scope of the President's amnesty proclamation. The opportunity to solicit an expression from him came this morning, when an imperfect and rather unintelligible report of what his honor was quoted as having said to a reporter of a morning cotemporary was called to his attention. It is with pleasure and satisfaction that the following opinion, given in his exact words, is presented to the public:

"The interview in this morning's *Herald*, to which you call my attention, was obtained upon the street, and I presume the reporter failed to comprehend or remember accurately what I said. I will state more fully what I intended him and the public to understand.

"The amnesty proclamation as it appeared in the papers concludes: 'I Benjamin Harrison, President of the United States, * * * do hereby declare and grant full amnesty and pardon to all persons liable to the penalties of said act by reason of unlawful cohabitation under the color of polygamous or plural marriage who since November 1, 1890, have abstained from such unlawful cohabitation, but upon the express condition that they shall in future faithfully obey the laws of the United States hereinbefore named,' etc.

"From this it appears that the pardon and amnesty is confined to the crime of unlawful cohabitation; and it extends to all who committed the offense prior to November 1, 1890, and who have obeyed the law since, and have not been convicted as well as to those convicted of that offense. If the offense was committed before that date, the amnesty and pardon applies though convicted afterwards. All the penalties and disabilities of such offense are removed and the person so amnestied and pardoned may hold office, vote and sit on juries.

"The amnesty and pardon does not reach or apply to persons convicted of polygamy, bigamy, incest, adultery or fornication. The statute of limitations of three years applies to these

offenses not affected by the amnesty and pardon.

"A person convicted of unlawful cohabitation committed before Nov. 1st, 1890, and who afterwards obeys the law, may sit on a jury, hold office or vote. The oath prescribed for jurors was changed so as to permit persons pardoned and amnestied to take it. It still requires jurors to state on oath that they have not been convicted of polygamy, bigamy, incest, adultery or fornication.

"Instead of requiring the juror to state that he is not a polygamist and that he does not associate or cohabit polygamously with persons of the other sex, he is required in the oath to state the legal effect of those terms, viz., that he does not claim, recognize or associate with more than one woman as wife. If a man separates from his polygamous wife and does not claim, recognize or associate with her as his wife, he is not a polygamist in a legal sense. He cannot be, unless he at the same time intends to renew such polygamous association.

"A man cannot obtain a divorce from his polygamous wife, because there is no marriage contract nor never was to dissolve. Such a contract is utterly void—the law condemns it, and when the parties separate with the intention of living separate and apart and with the intent not to associate as man and wife, and continue such separation with such intention the polygamous relation is ended; that is the only effectual way that such a relation can be terminated. If a divorce could be granted it would not sunder the relation without such separation, nor would amnesty and pardon terminate it without such separation.

"It is not necessary that any formal agreement in writing or otherwise should be entered into. If there is such an understanding in the mind of the party and he ceases to associate polygamously with his plural wife, in law he is not a polygamist. And after such separation as long as such intent continues he may furnish her support if he chooses, as he may any other woman or any man or child.

"In society an individual assumes many relations; usually they are lawful ones, but some people assume unlawful ones. The polygamous relation belongs to the latter, and a lawful marriage belongs to the former."

Later in the day a News representative sought out Governor Arthur L. Thomas and obtained from him the following expression of opinion. It will be observed that the head of the executive department as well as the head of the judicial department of the Territory emphasize and agree with the views already expressed by this paper. The Governor says:

"The question is 'Does the pardon restore the right of a person disfranchised under sec. 8 of the Edmunds law, approved March 22, 1882, to vote and hold office?'

"To vote, one must register and take the oath prescribed in sec. 24 of the Edmunds-Tucker act.

"To hold office one must be a voter qualified to register and vote, and since the passage of the Edmunds-Tucker act, the official oaths have been made to conform to sec. 24 of the act.

"Following what seemed to me the effect of the decision of the Supreme Court of the United States in *re Garland*, I had supposed the pardon removed all political disabilities, imposed directly or indirectly as a consequence of the offenses pardoned; but others now claim, basing their opinion, mainly, on the decision of the United States Supreme court in *re Murphy et al.*, and especially the language on pages 42 and 43, that the pardon does not affect or remove political disabilities or restore the right to vote or hold office. The court held that section 8 did not attach a penalty to bigamy or any crime and hence was not an *ex post facto* law. It was held by the court there was a passive status in which one who had previously committed a crime remained, though he was only living with one woman, was violating no law, and the offense itself was barred, and that this status remained until he in some way, not pointed out by the decision, should get rid of this status, which characterized him as a polygamist within the meaning of section 8 of the law. This passive and in itself innocent status has occasioned much difficulty and has stood in the way of men honestly desiring to obey all laws, and it is now claimed that, as it is not punishable, and the disfranchisement not a penalty for a crime, it is only a law prescribing the qualifications of voters and not affected by the pardon.

"The argument again the effect of the amnesty does not convince me. Giving full effect to the language of