DESERET NEWS:
WEEKLY.

TRUTH AND LIBERTY.

WEDNESDAY, - March 25, 1874.

IT GIVES HIM TIME.

THE Chief Justice informed the Clerk of his Court that courts for counties would not interfere with the duties of the present term of the Third District Court. The District Court can be suspended weeks at a time to accommodate his Honor, but not a day to accommodate a county or the people thereof.

His Honor gains two advantages by this staving off. He gains time, and he needs time. It is an important element with him, so important that he takes three weeks at a spell for recess by way of commencement of his term of court. By deferring ultimate decision concerning the holding of courts in and for counties, his Honor gains time to hunt out legal technicalities to prove that he cannot hold such courts. Again, he gains time to see what Carey will do with McKee's bill, because, if that bill becomes law, there will be no particular need of holding courts in and for counties, as court matters will be entirely out of the hands of the people and their representatives, who therefore will not be expected to say a word about them, the appointed judge and marshal and attorney, and their deputies, being all-sufficient to take upon themselves the entire business of regulating court matters, and of appropriating a large share of the taxes, too, to reimburse them for their trouble.

WOULD KEEP HIM BUSY.

IF the nine counties comprised within the Third Judicial District were all to make appropriations to meet the expenses of courts for counties, and the Chief Justice were to condescend to honor such action by holding a court in each county for the trial of cases pertaining to such county, it would be likely to keep his Honor busily employed. Here he is taking a three weeks' recess or suspension of his District Court term, to give him time to cogitate upon a number of important cases submitted after argument. This three weeks is only one recess or suspension. There may be many more, Heaven knows how many, before the term closes. But this of three weeks is pretty well for a beginning. Suppose we allow a three weeks' recess or suspension of court for each of the nine counties in the District when his Honor comes to hold courts in and for them. That would not be an unreasonably high estimation, for his Honor, for he would certainly need some time to ponder over the inevitable important cases after they were argued and submitted. Nine three weeks are twenty-seven weeks, and twenty-seven weeks are nearly seven months. Taking into account the time occupied by journeyings from county to county and a few days for rest and recuperation between the holding of the courts, and nine months would be taken up without any sitting days of court, leaving three months for his Honor to sit and hear cases and give his learned decisions in and for the counties only. This estimate only allows his Honor one liberal recess or suspension of court for each county. We do not see how he could possibly get along with only one. We do not see how he could consider all the important cases submitted after argument in and for a county in one short recess or suspension of three weeks. Precious little time, too, there would be for argument. The attorneys would soon have to learn perforce the wonderful merit of brevity. Cast iron rulings of limitation would be the standing order for them.

But, under that order of things, what would become of the District Court and those important cases which his Honor says he could not try in a court in and for a county? What would become of United States cases? What would become of the Supreme Court and its sessions? Above all, what would become of Hollister and his informers and their 400 small beer cases?

Now we do hope the parties litigant, the county officers, the lawyers, and the people at large in the District will see at once the utter impossibility of his Honor honoring the law and the liberal offer of Salt Lake County, and we presume other counties will follow suit, to provide means for holding court in and for the counties. He could not possibly do it. We have shown why the time would utterly fail for his Honor to hold one term of court in and for each county in twelve months. He would require a year of twenty-four months, at least, to get round the whole nine counties once a year. It would keep him trotting around in an unmercifully hard and continuous manner. The counties should show a little leniency with his Honor, and not require him to work himself to death. They don't want to kill him dead as a door nail with courts and cases, do they?

HY HE DID IT

THE public would wonder, on reading the Chief Justice's letter relating to holding courts, why his Honor introduced such extraneous matter in it—why he enlarged upon his heavy three or four hundred case docket, why he lugged in Hollister and his 400 small beer cases, why he was careful to rehearse that the County Court had taken a new, to him, but, even he must confess, a legal departure, why he plaintively alluded to the heavy brain work he was doing in considering important cases out of court, why he declared that county authorities could not limit a term of his District Court, why he was careful to say that some of the District cases were U. S. cases, and several other things. Of course nobody ever before suspected the power of the county courts had any limitation. Nobody had any idea that U. S. cases could not be tried in a court for a county. Nobody ever dreamed that his Honor, though his court was suspended, was working like a beaver for the dispatch of court business and the good of the country. Nobody had ever heard of Hollister and his home brewed beer cases before. Nobody knew that the County Court might have considered the Territory the most proper party to provide for the trial of Territorial cases in District courts, if the judges would do their duty. Nobody knew, or suspected, or thought, or dreamed of all these extremely important things, and therefore his Honor must have concluded to seize the opportunity to tell them all. Most people, however, will come to the conclusion that, after all, his Honor merely enlarged upon all these extraneous points for political effect at Washington, and in the Eastern States generally, and to make it appear what a hard worked official he was, and what a dreadful lawbreaking people his Honor had to deal with in Utah.

WHAT IS COMING?

THE present term of the Third District Court, says the Chief Justice, stands adjourned to an early day, that is, it was adjourned for about three weeks. The reason for this adjournment, as given by implication by his Honor, was that he wanted, in the meantime, to consider some important cases that had been submitted after argument.

Now surely some extraordinary decisions may be expected from his Honor when court opens again. After this three weeks period of incubation, his puissant and comprehensive mind will be sure to hatch something above and beyond the common run of judicial decisions. There must be something truly wonderful, stupendous, in embryotic process in his Honor's mighty brain, and the result will certainly be something imposing, great, grand, something to arrest the attention of the civilized world, especially those who pay any attention to matters of jurisprudence. Has his Honor half a dozen Tichborne cases engrosssing his attention, to the consideration of which he is devoting all the vast resources of his learning, and all the vigor, energy, and acumen of his powerful and brilliant intellect? We know they are not Hollister's 400 small beer cases. But whatever those extraordinary cases may be, one thing may be relied upon—the public will be on the *qui vive*, on the re-opening of the Third District Court, to learn what intricate and profound judicial problems have been absorbing the Chief Justice's attention and occupying and exercising his comprehensiye and sagacious mind during these eventful three weeks. A little patience, and we shall see, the whole world will know, and possibly may be electrified by the grand revelation. Let us hope, however, that in this case, there will be no realization of the fable of the mountain laboring and the mouse resulting. That would be a disappointment altogether too grievous to be borne with any approach to equanimity or fortitude.

JUDICIAL AFFAIRS IN UTAH.

IN the House of Representatives, March 11, the *Congressional Record* says, the Speaker, by unanimous consent, laid before the House a communication from the Attorney-General, in answer to a resolution of the House of the 2nd inst., in relation to judicial affairs in the Territory of Utah, which was referred to the Committe on the Judiciary, and ordered to be printed.

It will be recollected that the resolution above referred to was the following, presented by Mr. Merriam—

"*Resolved*, That the Attorney-General of the United States be, and he is hereby, instructed to communicate to this House any information in his possession relating to judicial affairs in the Territory of Utah; and also to furnish to this House a copy of a communication from Judge James B. McKean, bearing date Nov. 12, 1873, relating to this subject, and addressed to the Attorney-General of the United States"

The House may now be edified by McKean's version of the situation here, and probably by his suggestions concerning what ought to be, and what Congress ought to do in order to bring about what ought to be. McKean entertains some very peculiar ideas pertaining to judicial matters, for a United States judge, or for a judge in any republican country. He may have given expression to some of his peculiar ideas in this communication to the Attorney General.

MORE LIGHT FROM THE JUDGE.

IN answer to a petition of a number of prominent citizens to Chief Justice McKean to take advantage of provisions made by the County Court of this county for the holding by him of a court in and for the county, his Honor, as will be seen elsewhere in to-day's NEWS, has favored the public with a few more rays of light upon judicial matters.

His Honor appears to say, briefly in the above—

1. That his District Court term is pending, and he can't leave that to hold court in and for a county.

We fancy we have heard something like this before from his Honor. We do not see much in this objection, because holding court in and for this county would not be hindering District Court business, but effectually helping to dispose of a large portion of it.

2. That it would be of the nature of a degradation or lowering of judicial dignity to go from the bench of a District Court to that of a court for a county.

Not at all. Courts in and for counties have the sanction of congressional and local law, and the support of precedents in this and other Territories. There is no degradation in doing one's duty.

3. That Hollister has 400 small beer cases, besides the other U. S. cases, which cannot be heard in courts for counties.

Who said they could? This is not the first time the public has heard of Hollister and his small beer cases. Why should these small beer cases be lugged into notice so much? The Chief Justice must have a morbid affection for them. But to the public this everlasting harping about Hollister's 400 is getting monotonous. What have the counties to do with Hollister and his small beer? Why does not his Honor go to work and hold his six days' sitting in District Court and dispose of Hollister's small beer and other U. S. cases, and not go about cackling over them like a garrulous old woman? Here he has all these U. S. cases, and yet he broods over a few equity cases for three weeks, as long as a female rooster covers a sitting of eggs, hoping by All Fool's Day to incubate as many decisions, and not leave an addled ovulum in his judicial nest. Why does he not hold this District Court, including the U. S. portion of the term, and have done with it?

4. By implication, over the lawyers' shoulders, that the local legislature is responsible for the "inextricable embarrassments" of the courts.

Not so. That responsibility rests with the Governor and the Judge. Under the same laws courts were held before the advent of his Honor, and have been held in other districts since his advent, and business has been disposed of. The Governor refused to sign two bills, passed at the late legislative session, which contained provisions purposely prepared to obviate judicially complained of difficulties. The Chief Justice found no obstacle to the holding of courts as long as he could hold them illegally, but since the Supreme Court of the United States decided that he must hold them legally, he has not seen fit to hold them at all, except for the trial of such cases as he chooses.

5. By implication, that the local Legislature has paralyzed Federal authority, except on the equity side of the Federal courts.

Nothing of the kind. It was the U.S. Supreme Court at Washington, not the Legislature of Utah, that paralyzed such federal authority as McKean assumed to exercise on the bench here, because it was unconstitutional and illegal.

6. Directly and positively, that the local Legislature purposely made its legislation of an obstructive character.

Not according to the facts. The obstructiveness lies with the Governor and the Judge.

7. That the Probate Courts exercise the jurisdiction given them by law.

Why not? Is not the Chief Justice satisfied with annulling the acts of the Probate Courts by *habeas corpus*? Does he wish them to give up the ghost entirely?

8. That he will continue his District term to hear equity cases and such others as he may think he is unobstructed in considering.

Well, why does he not put those cases through promptly, and then take up the courts for counties, and try the remainder of the cases, which he says he can't try in the District Court?

9. That when he gets through his District Court term, he will consider the merits of the courts for counties, in the legal aspects of the question.

Which in all probability means that when he has concluded that term, if it is before September and the McKee bill should not be put through before then, he will try to find some legal technicality, to excuse himself from holding courts for counties (a very little thing would be sufficient), so that he may continue to ungenerously throw the blame of the judicial "inextricable embarrassments" upon the local legislature, and retain unimpaired his darling argument for congressional intervention. It is wonderful, when people do not wish to escape "inextricable embarrassments," how perfectly successful they are, and what a very slight molehill obstacle becomes a very mountain of difficulty to them, yea, how a straw or a feather is eagerly magnified into an insurmountable obstacle. It is about so with the Chief Justice and his courts. He does not want to hold courts, and he will not hold them, unless he can have authority, laws, officers, and juries according to his own notion.

AN ARGUMENT FOR.

FROM the tenor of Chief Justice McKean's two letters upon courts in and for counties, it will be seen that he evidently wishes it to be understood that he has an enormous amount of work before him in his District, so much that he is hard pressed for time to attend to that part of it which he claims he can transact under the present, what he terms, obstructive state of the law. How he would manage to get through with all kinds of business, if, in his view, there were no such obstructive state of the law, every body must conjecture for himself, but many must think that a number of the cases would be a long time on the docket before they were reached, and that the Third District Court would soon get into a condition similar to that in which the English Chancery Court used to be with accumulated cases before Brougham set the fashion of rendering rapid judgments and thus clearing off the musty docket, some cases on which previously dragged through a body's lifetime.

Now these implications of heavy business and brief time are an excellent argument in favor of the extended jurisdiction of the Probate Courts. If the Judge has too much to do, and he does seem to signify that he has, is it not bad policy on his part to condemn the Probate Courts for helping him and to prohibit them from touching a single case? That seems a kind of dog in the manger policy, something at once both very stupid and very malicious.

Suppose, for instance, our overworked Chief Justice were to change his policy on the bench, and decide that the Probate Courts might exercise, unopposed by him, the extended jurisdiction conferred upon them by law, and he were to adandon his unwise *habeas corpus* decisions, respect the action of the inferior courts, and, in the matter of the cases adjudicated by them, sit himself in District Court merely to hear and determine appeals from the Probate Courts, not to deny the jurisdiction of those courts, but to affirm or reverse their decisions as he might fairly consider most in accordance with law and justice. Then all these obstructions of the law and all these "inextricable embarrassments," of which he complains, would be removed effectually, conflict of jurisdiction would immediately cease, his Honor would be relieved of the drudgery of a vast amount of adjudication, everything judicial would move along as harmoniously as clockwork, and the confidence of the people in the courts would soon be completely restored. We respectfully commend this simple, easy, and entirely practical solution of the judicial difficulty, to the serious and candid consideration of the Chief Justice and his learned associates.

THAT WONDERFUL CHURN.

AS everybody saw, it required somebody to rise and explain about that wonderful California patent churn. It was stated that Budd Smith and a party of Californians were in Washington after a patent for a wonderful churn that would convert milk into nearly an equivalent weight of butter in a few seconds, without the aid of any mixture, and with the loss of only a small quantity of pure water, one gallon of milk weighing a little more than eight pounds, being converted, in thirty seconds, into seven pounds and three quarters of butter, by some sort of galvanic action in the churning.

As everybody expected, the truth was not all stated, and everybody expected that when it was, there would not be seven pounds and three quarters of butter, though there might be that weight of some other kind of substance.

Now it is stated that it has been discovered that false representations have been made concern-