

DESERET NEWS: WEEKLY.

TRUTH AND LIBERTY.

WEDNESDAY, - Sept. 16, 1874.

WHAT THEY MEAN.

WHAT the "Liberal" crowd mean, what they purpose to do, is to break up the people of this Territory, so far as they are set to cleave to their religion. The constitution prohibits the federal power from interfering with establishments of religion, or the free exercise thereof, but many federal officials, with their partisans, take upon themselves to determine what citizens shall accept and what they shall not accept as parts of their religion, and these officials and their supporters openly advocate and engage in aggressive measures upon those establishments of religion, which, in their wonderful wisdom, they decide are not parts of religion, thus setting themselves up as religious censors for the people, instead of being content to fulfill their proper duties as civil officers under the law and the constitution. This is the unwarrantable position in which several of the federal officials for this Territory have placed themselves, and they have gone so far as to proclaim that they are here as representatives of the federal government for the purpose mainly of engaging in a crusade against the religion of the "Mormon" people.

In pursuance of this declared design these officials seek every possible occasion against the "Mormon" religion and people, seek to embroil them in vexatious quarrels, and harass them with tedious and expensive litigation, in order to wear them out and break them up, rob them of their wives and their children, their liberty and their property, and make them strangers and outcasts in the land which gave them birth, or which they have adopted under the constitutional promise of freedom and equal rights. In this wicked spirit are all these special prosecutions of prominent "Mormons" conceived and furthered. This spirit caused the election riot, and incites to the continual endeavor to break down the municipal and other local authorities and nullify the municipal ordinances and other local laws. It is this spirit that seeks to tear to pieces and destroy established and honored family relations. It is this spirit that seeks to take away from the people one right after another, until finally they will find themselves so stripped that they will have nothing left but the right to exist, and they may even be told that they are not fit to live.

JUDGE BOREMAN'S SERMON.

OUR readers will peruse with more or less interest the fervid sermon of Judge Boreman, which he delivered to the grand jury of the Second Judicial District on the 8th of the present month, and the more part of which appears in to-day's News. It was quite an effort, in its way, and will be considered as one of the curiosities of the literature of jurisprudence. The people of this Territory ought to rejoice—they are well blessed with religious federal officials. Two Methodist judges, a Governor who can talk to Sunday schools and lecture adults on the Bible with spread-eagle glibness and bombast, equal to the pious Schuyler's, and there are others who can hold the candle to them in the same noble work.

But let us return to Brother Boreman, and notice briefly some of the things which he says in his sermon. The Judge complains that the territorial Legislature is hostile to the courts because at the last session of the Legislature that body did not appropriate for his court as he expected it would. We do not see the force of the Judge's assumption. There may be many good reasons, besides special personal hostility, why a Legislature does not appro-

priate means as some individuals outside wish it would.

The Judge charges that a spirit of disloyalty and persistent hostility to the General Government exists throughout the whole Territory. It is sufficient answer to this to say, that every well informed person on that grand jury could have given his honor the lie direct upon this point, if it had been advisable to do it.

The Judge makes considerable parade over asserting that neither the government nor any federal official is prompted by a spirit of persecution. We make no charge against the government, but we happen to know to the contrary of the Judge's assertion respecting some of the officials. As to their respect for the law, does the Judge take the public to be fools?

The Judge says, "With men's religion, Government has nothing to do." That is precisely our view, and precisely what in substance the Constitution declares.

The Judge complains that the local Legislature has legislated upon the occupancy of the public lands and that the people here have used timber from the same. Does his honor not know that early and isolated settlers do better to establish local laws than to live without law and order? Does he think they ought to have burrowed in the ground like moles, instead of using the timber in the mountains for houses and other buildings.

Next, fraudulent land entries are treated upon. If there are any, let justice be done in the matter. If it be, perhaps some of the Judge's friends will not go scot free. The same may be said concerning several other offences which his honor mentions.

The Judge refers to illegal voting. It will be bad for the "Liberal" party if all instances of this kind be prosecuted.

Celestial marriage comes in for extensive notice. Of the nature of this his honor knows very little, and his remarks concerning it are full of falsehoods and misrepresentations. We have not space to say more about this point now, further than that we know of no influential "Mormon" who has denied that kind of marriage.

The Judge says—

"Of all places on earth, a court of law is the place in which no man should make a false statement. Courts seek the truth in every case, and every party coming into court is bound to detail the truth and nothing else. Because a man is in court, he is not justified in swearing to a falsehood, and if he is an honest man he will not do it."

This is excellent doctrine, but, as everybody knows, in this country it is a doctrine seldom put in practice. We heartily wish courts would always seek to elicit truth and to administer justice.

The Judge complains that there are no free schools in Utah. The principal reason that we have heard urged against free schools is the desire to keep the taxes at a low figure. The Judge and his charitable friends are at liberty to endow free schools in every county in the Territory if they wish.

The Judge thinks if the "Mormons" really believed the law against polygamy unconstitutional, they would eagerly run into court and have it tested. Would they? The Judge gets his bread by attending court, but it takes the bread out of the mouths of the people when they go to court. That's an important difference.

The Judge elaborates grandiloquently upon the government of the United States. This is all very good, but in practice not quite true. The government of this country is theoretically the best in the world, but as some portions of it are carried out, in this Territory for instance, it is one of the worst in the world.

The Judge says there is among the people of the United States no bitterness against the "Mormon" people. The Judge does not speak the truth here. Sometimes there is a great deal of bitterness, and at other times not so much. This is a patent fact.

As to personal and religious liberty in America, of which the Judge boasts much, we believe have been in countries where there are far more personal and religious liberty without licence, and far more respect for the law, than there are in America. That is our

opinion, and we have had experience.

The Judge says— "The government and the people of this nation are determined that polygamy shall die, and it is the most egregious folly for the polygamists and their friends to try to prevent it. It is supreme nonsense for eighty thousand, or a hundred thousand people to array themselves against forty millions of people, upon a question like this. The Government is in earnest, and it is well for the people to realize this fact."

The Judge would have stated the real point of this point better if he had said, "The Government and the people of this nation are determined that Heaven's laws shall not prevail in this nation, and it is the most egregious folly for the Almighty or his friends to try to prevent it." The Judge will find it a hard thing to butt against Omnipotence.

We must skip over almost everything else in the Judge's sermon. One thing we will notice. He says the Grand Jury must hear no witness for the defence. He runs this idea into the ground. The Grand Jury may have no authority to run after persons who, they think, would testify in favor of the person accused. But they have a right to send for a witness if they think he could throw light upon the subject investigated. Otherwise, in this Territory for instance, all the liars and perjurers which "civilization" has brought to the Territory, and their name is legion, could be heard by this grand jury and their testimony taken and acted upon for indictment, and not a soul must be heard, according to Boreman, who might say anything to rebut their testimony, and so favor the accused. Is not this the way to crowd the courts with litigation, harass and oppress citizens, and burden the Territory with debt and consequent enormous taxes? What sane person would dream of such a one-sided inquisition as a means of eliciting truth and securing justice? And then upon this possibly perjured testimony twelve enemies might indict. The Judge seems to take for granted that the chief business of the grand jury is simply to indict, and therefore he tells them that they need only hear one side of the question—that of the accusation.

The Judge used this language, "You are not to summon nor have before you any witnesses for the defence," and, "I repeat therefore that the law allows you only to hear witnesses for the prosecution."

Now the rule of the law that has been adopted in nearly every State and Territory in the U. S. is about in these words—

"The grand jury are not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge they should order such evidence to be produced, and for that purpose may require the District Attorney to issue process for the witnesses."

The grand jury ought to find an indictment when all this evidence before them, taken together, is such as, in their judgment, would, if unexplained or uncontradicted, warrant a conviction by the trial jury. In the San Francisco Chronicle of the 12th, we find the same rule of law insisted on, substantially, that we contend is correct. Now we submit that Judge Boreman is either ignorant of the law or has a missionary object to accomplish in giving to the grand jury the foregoing rule.

Here are the remarks of the Chronicle—

"It is a well recognized principle of law that grand juries have no right to find an indictment in cases in which they believe that a petit jury would not convict. Such a course would be oppressive and unjust to the accused party, by putting him to the needless trouble and expense of a trial, and it would be unjust to the public by imposing upon the county the useless expense of a trial. The Grand Jury

are the absolute judges in regard to matters of this kind. The law bestows upon them the exclusive power of passing upon the question, 'Is there any probability that in case we should find a 'true bill' a petit jury would convict?'"

But what need has the Judge for a grand jury at all, seeing that his charge is a very general indictment of nine tenths of the community?

CHARGE to the GRAND JURY

OF THE

SECOND DISTRICT COURT,

Delivered at Beaver, Sept. 8, 1874,

BY

HON. JACOB S. BOREMAN,

U. S. Associate Justice.

GENTLEMEN OF THE GRAND JURY:

You are now legally empanelled as the grand inquest in and for the Second Judicial District of the Territory of Utah, and have taken a solemn oath to discharge your duties fearlessly, honestly and impartially. From the heavy responsibilities of that oath you cannot now escape. There is not one of you but who has, upon oath, said that he had no conscientious scruples in regard to finding indictments for any and all crimes specified in the laws of the nation and of the Territory.

It becomes my duty now to give you in charge, in general terms, the matters and offences which should occupy your attention, referring to the laws in regard thereto, and to urge upon you a thorough investigation of the facts of every alleged offence. You are not to, and it is not your province to, decide what is law and what is not; that is a matter for the Court, or your more immediate legal adviser, the Assistant District Attorney (Judge Wheden), to instruct and direct you in. You are to examine facts and not the law, and in your investigations you are not to summon nor have before you any witnesses for the defence. This is a rule far older than our nation and common throughout the nation. The Grand Jury is the accusing jury, the Petit Jury is the trial jury. Were you allowed to examine both sides of a case, you would thus deprive the Court and Petit Juries of the powers and duties allotted to them. You would thus remove cases from the court room to the grand jury room. I repeat, therefore, that the law allows you only to hear witnesses for the prosecution.

You are, gentlemen, virtually, a dual Grand Jury; for upon you devolves the double duty of investigating offences against the United States and offences against the Territory. It would be advisable, therefore, that you divide your investigations into two classes, corresponding to this division in the law—and first devote your time to investigating offences against the United States, and when through with these, turn your attention to Territorial matters. In this, however, as in your general course of proceeding, you will act under the advice of the Prosecuting Attorney (Judge Wheden). The law authorizes him to visit your room at any time and to confer with you, and he can question witnesses; but neither he nor any one else, not a Grand Juror, should be present when a vote is taken upon any matter before you, nor should any opinion upon any case be given by any juror in the presence of the Prosecuting Attorney, nor in the presence of any one else not a Grand Juror.

You are called to act as a grand jury, now, in accordance with a late act of the Congress of the United States and not in pursuance of any Territorial statute. Over a year ago, I sought to enforce the laws through a grand jury without Congressional action, hoping that in so doing, I should be sustained by the people through their Legislature. In this I was greatly deceived, for the Territorial Legislature last winter scouted the idea of paying the officers, whom, in the absence of any one whatever authorized to act, I had appointed to summon the juries and to attend to the other duties of executive officer of the Court at that term. The Legislature thus showed an unwarranted hostility to the courts and a disgraceful opposition to the enforcement of the laws in Utah. Some of the members of that body and others in sympathy

with this repudiation of legitimate court expenses, took great pleasure in pointing (when it suited their purpose) to my action at that time in calling juries, as evidence that I had no difficulties in securing juries in my district. These same persons, however, well knew that I had secured such juries in spite of defective Territorial statutes and in spite of the unfriendly spirit of the local power; and they well knew that their assertion of there being no difficulties in the way of getting juries and enforcing the laws in this district were utterly untrue, and without any foundation whatever. Congress has, however, very lately and very justly come to our aid and placed the courts above the control of local and hostile authority. Such action of Congress would not have been necessary had not a spirit of disloyalty and persistent hostility to the General Government existed throughout this whole Territory. In doing this the government is not prompted by any spirit of persecution as some would have you believe. Nor will you find any federal official in this Territory, I believe, who would desire or countenance anything like persecution. The people in this Territory friendly to the Government, who have come to this Territory from various parts of the Union, as they have the right to come, desire only that the laws be respected here as elsewhere in the Union; that crime may be put down here as elsewhere, and not be allowed to stand defiant as it is doing and has done for years in this Territory. They want security for life and for property, a higher standard of morals, and equal and exact justice to all. When men talk to you that the government and its friends desire to persecute any people here for their religious opinions, they well know that their statements are bald falsehoods, and they well know that all that is desired is that crime shall not continually go unwhipped of justice. With men's religion, government has nothing whatever to do.

I shall now note and call your special attention to some of the more important United States statutes against crime.

The Government of the United States owns all the lands of this Territory, to which they have not given title or authorized to be located or entered. Yet we find that men all over this Territory, for years past, have been plundering these lands of the timber. And the legislature itself has had the effrontery to convey vast tracts of land and timber to certain individuals, its favorites, when that Legislature had no more title nor right so to do, than you now have; and, indeed, the Legislature had no more right to transfer this land and timber, than the adversary of mankind had to the kingdoms of the world which he offered to our Savior. It is your duty therefore to find indictments against all who have cut off or destroyed or removed any of such timber from any public lands. And in this, as in every other matter, it is your duty to summon all witnesses who you are informed or have reason to believe, know of such offence having been committed.

In regard to the entry of lands also I would call your attention to the fact that no man has the right to enter more than one tract and whoever hires another man to enter for him is committing an offence and should be punished. A few unscrupulous men may thus defraud the Government of vast tracts.

It is your duty to examine into every case of mail robbery or tampering with the mails in this District, that may come to your knowledge.

The same may be said in regard to counterfeiting.

It is likewise your duty also to examine into every case of violation of the United States revenue laws. There are cases of this kind in the district, to which I call your attention.

It becomes your duty also to investigate the matter of illegal voting and indict such as have violated the law of Congress in this respect. Illegal voting cannot be stopped except the parties so voting be checked and taught to know that they must respect the laws. There is no Territorial statute to punish illegal voting and hence all such cases come under the United States statutes, or they are not punishable at all. The Territorial election law is the best adapted to cover fraud of any election law I have ever known, but it cannot