

## DESERET NEWS.

WEEKLY.

TRUTH AND LIBERTY.

WEDNESDAY, - AUG. 20, 1879.

## JUDICIAL FALSEHOOD NUMBER SEVEN.

BOREMAN in his unparalleled attack on the Executors accuses them of receiving commissions to which they were not entitled, specifying some items and referring to others which he says they took out of the estate "without authority under the will," and further states:

"They are entitled to commissions, if on anything, upon the money which passes through their hands, but the will nowhere says that they shall have commissions on the property conveyed to devisees."

In connection with this is the assertion that they paid out money "for work which they should have done themselves or deducted the charge out of their commissions."

Let us briefly investigate these charges. We turn to the Will and find this provision in regard to the fees of the Executors:

"I authorize them to take as their joint commission three per cent. on principal passing through their hands, to be charged but once on the same principal, and five per cent. on income; but they shall make no charge as on a rent for any homestead occupied by my legatees."

Is there anything here which limits the commission of the Executors to a percentage on actual cash passing through their hands? Not a word. Would it have been just to make such a limit? Certainly not; for the handling and distribution of the real estate property incurred far more trouble, labor, skill and responsibility than the disposition of the personal property. And what is the rule in such matters? Let us refer to the law on the estates of decedents:

"When no compensation shall have been provided by will, or the executor shall renounce all claim thereto, he shall be allowed commissions upon the amount of the whole estate accounted for by him as follows: For the first thousand dollars at the rate of seven per cent.; for all above that sum and not exceeding ten thousand dollars, at the rate of five per cent.; for all above that sum at the rate of four per cent., and the same commission shall be allowed to administrators. In all cases such further allowance may be made as the probate judge may deem just and reasonable." (Compiled Laws of Utah, section 934.)

It will be perceived that the law allows a larger rate of per cent. than is specified in the will, in cases wherein the will does not mention the amount, and this is not upon the money handled but upon "the whole estate accounted for." Thus, the unjust judge had nothing in the law to guide him in making such a statement as the above, and the will does not bear him out in the least. We therefore class his assertion with the others we have exposed, and denounce it as falsehood number seven.

Now let us examine his statement about the payment of expenses out of the commission allowed to the Executors. The same law from which we have quoted says in regard to an executor or administrator:

"He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as the court may deem just," etc. (Comp. Laws, sec. 932.)

It will be seen by this that fees or commissions, in compensation for services, are separate and apart from the expenses entailed in the management and distribution of an estate, as common sense as well as custom and legal enactment make plain to the most ordinary mind.

But the man who sat on the bench and insulted the Executors by his false accusations, did not stop to consult common sense, the evidence in Court or the direct provisions of the will. He had a chance to go to three leading "Mormons," and with

his usual bovine wrath, he butted at them savagely, without regard to truth, honor or decency. We have re-produced and refuted seven of the principal falsehoods in his Decision, and on them he is held up to the contempt and despising of all civilized humanity.

## AN IMPORTANT MOTION.

In the suit of the heirs versus the Executors, the following petition has been filed in the Supreme Court of the Territory, and a copy has been served by the counsel for the defense upon the plaintiffs:

In the Supreme Court of the Territory of Utah.

Emeline A. Young, et al. vs. George Q. Cannon, et al., etc.

TERRITORY OF UTAH, } ss.  
Salt Lake County.

George Q. Cannon, Albert Carington, and Brigham Young, being each duly sworn, doth each for himself depose and say: That on or about the 14th day of June, 1879, Emeline A. Young, in behalf of herself and the heirs-at-law and legatees of Brigham Young, deceased, filed her complaint as plaintiff, in the District Court for the Third Judicial District of said Territory, at Salt Lake City, against these affiants as the executors of the last will of Brigham Young, deceased, John Taylor and others as defendants. A copy of said complaint is hereto annexed and marked exhibit "A," and made a part hereof, and affiants refer to the same for the full names of all the parties in said action, the nature and scope thereof, and the allegations on which the action is founded.

That at the same time and without notice and before answer, receivers were appointed of "all the property, real and personal and assets" of Brigham Young, deceased, and these affiants, as such executors ordered to deliver over to such receivers, or one of them demanding the same, "all such property and assets of whatsoever name, nature or kind and wherever situated." The receivers were appointed on the verified complaint only.

A summons on said complaint was duly issued out of said court and served, and on or about the first day of July, 1879, these affiants, as such executors and defendants, answered to said complaint, in said action, and a copy of their answer is annexed to and made a part hereof, marked Exhibit "B," and these affiants pray the same may be considered as part of this affidavit.

On or about the 12th day of July, 1879, the affidavits of Wm. S. McCormick, J. G. Sutherland and John R. McBride were filed in said court, copies of which are annexed and made a part hereof, and marked respectively Exhibit "C" and Exhibit "B," and thereupon the counsel of said plaintiff moved the court for an order directing that a warrant for attachment for contempt issue against these affiants. That upon the said affidavits and pleadings, an order for an attachment was made in said action in said court, a copy of which is annexed and marked Exhibit "E." Upon such order a warrant for the arrest of these affiants, which recited that these affiants had omitted to deliver certain property (not naming any specific property) of the assets of said Brigham Young, deceased, and upon said warrant these defendants were arrested and held to fail to answer the alleged contempt, and on the 14th day of July, 1879, these affiants answered in writing to the said charge of contempt, a copy of said charge being annexed and marked Exhibit "F," and made a part hereof.

That the said district court proceeded to hear and determine the matter of the alleged contempt, and on the 30th day of July, 1879, made and filed an opinion and findings, a copy of which is annexed and marked exhibit "G," and made a part hereof, and thereupon a final order and judgment in said proceedings was made in said court and filed on said 30th day of July, 1879, a copy of which is annexed and marked exhibit "H," and made a part hereof.

And these affiants say that they are advised and believe that in the proceedings aforesaid, and especially in making the findings and final order and judgment aforesaid, which are respectively set out in

exhibits "G" and "H," the said district court of the Third Judicial District of Utah, did not regularly pursue the authority of such court, but exceeded the jurisdiction granted to it by law.

The affiants therefore pray that a writ of *certiorari* issue, directed to the Third District Court for said Territory, commanding the said court to certify fully to the Supreme Court of the Territory of Utah, a transcript of the record and proceedings of the case of Emeline A. Young, etc., plaintiff against these affiants and others, defendants, including all proceedings against these affiants in the matter of the alleged contempt, at such time as may be fixed for such return, that the same may be reviewed by said supreme court, and also requiring the said plaintiff, Emeline A. Young, and her co-plaintiffs and said Third District Court to desist from further proceedings in the matter of the alleged contempt, and in enforcing the judgment and order therein against these affiants.

SHEEKS & RAWLINS,  
BENNET & HARKNESS,  
Attorneys for executors.

The Territorial Supreme Court sat on Friday the 15th inst., when the arguments on the above motion were heard.

## GEORGIA ASSASSINS ARRESTED—LET JUSTICE RULE.

WE are gratified to learn that three of the assassins who were engaged in the murder of Elder Joseph Standing, are now in the custody of the Georgia authorities. They should have a fair trial. We hope it will be a *bona fide*, impartial, judicial investigation.

There is no doubt from the evidence now before the public, that the deed was a cold-blooded murder. It was instigated by hell-inspired "Christian" bigots, whose passions were inflamed by the wilful misrepresentations of infamous anti-"Mormons," male and female, whose present abode is in this Territory. Before God and Eternal Justice, the souls of the latter are stained with the innocent blood of Joseph Standing. To the same causes are traceable the outrage in North Carolina, where the cowardly "Christian" mobocrats beat and whipped defenceless men and women for believing in an unpopular creed. Two of the victims were an old lady and gentleman, over seventy years of age. Those acquainted with them testify to their simple honesty and general upright character. Their only offence was receiving the gospel as taught by the Latter-day Saints.

As an instance of the integrity of the old man who has been thus abused, the following is related and vouched for: A short time ago he burned some charcoal, on a contract, and made out his bill. It was subsequently discovered that charcoal to the value of \$1.50 charged for had not been delivered, and a new bill had to be made out. The old gentleman went to the place appointed for payment, seventy miles distant, and drew the money, and on his return found that by mistake he had presented the uncorrected account. He thereupon footed the seventy miles to return the \$1.50 which he had received in excess of the proper sum. How many of the wretches who whipped the old man for his religion would have been as honest as he? How many of the miserable hypocrites in this city, who have aided in producing the feelings which have led to murder and violence, would have acted as he did?

We notice that all decent journals in the country that comment on the Georgia tragedy, denounce it as an atrocious murder. But some of them, by way of an attempt at palliation, allude to the teachings of our missionaries, as though they were engaged in inducing people to break the law against polygamy. Nothing could be more untrue. Our Elders are sent out to preach the gospel of faith, repentance and baptism for the remission of sins, to confirm converts by the laying on of hands for the gift of the Holy Ghost, to organize branches of the Church, and to exhort the Saints to gather to Zion. They have just as much right to do this as the preachers of any so-called "Christian" denomination under the sun. If the tenets

they hold seem absurd to sectarians, so do many of the creeds of Christendom appear absurd to us. They have no more cause or excuse for using force to prevent proselytism, than we have. We claim the right to believe what seems true to us, and to promulgate it wherever we find opportunity. We freely accord that right to others. We do not as for it as a privilege; it is a right for which we will contend, to the full strength of our abilities, mental and physical.

It may be objected that the "Mormon" Elders preach polygamy. They have a perfect right to do so if any one will listen to them. They may use all the arguments in its favor that are at their command. There is no law, constitutional or unconstitutional, against believing, preaching and advocating plural or any other kind of marriage. The ruling of the United States Supreme Court in the test case, absurd as it is in some respects, does not go so far as to presume that there is. On the contrary, it sustains the right of belief and argument, while it forbids the practice of polygamy. The cry of anti-"Mormon" preachers and writers has been for years, "You may believe and preach what you please, but you must not practice your belief."

The murder of Elder Standing and the beating of the North Carolina Saints involve the right of religious liberty and the freedom of speech. The polygamic question does not rightfully enter into the matter. There is no evidence that the scourged Saints ever intended to practice plural marriage, or that the martyred Elder ever advised such a course. He was simply preaching the gospel, these outraged people merely obeyed its first principles; and this alone is their offence. If "Mormon" preachers may be murdered with impunity for preaching their tenets, the preachers of other churches may, in turn, share the same fate from the hands of bigoted opponents. When once the barriers that guard the right of free thought and speech are broken down, there is no telling where intolerance will stop. This is therefore a matter for the consideration of all classes of people.

We have expressed the desire that the murderers of Joseph Standing be brought to a genuine trial. We have reasons for entertaining some doubts concerning it. The murderers of Joseph and Hyrum Smith were never brought to justice, and the would-be assassins of President Taylor were never placed in legal jeopardy for their crime. The law has never been vindicated against the house-burners, woman-violators, child-brainers and bloody assassins, who, led up "Christian" preachers, drove the Saints from Missouri and Illinois. The life-tide of the martyrs of this Church still calls for justice upon the heads of those who spilled it on the soil of this liberty-boasting republic, and hitherto has called in vain except to the God of Israel who has given the nation, in the civil war, a foretaste of the vengeance yet to fall, if the crimes against the Lord's anointed are permitted to remain without redress.

We call on the sovereign States of Georgia and North Carolina to cleanse themselves of the stains which now disfigure them, and upon all the supporters of the liberties guaranteed by the Constitution of the United States to aid in putting down the monster of intolerance, which, commencing upon the "Mormons" will, if allowed to proceed, advance upon other votaries of unpopular creeds, until might, conquering right, will establish in this professed land of religious freedom, a dominant sect swaying dominion over the consciences, fortunes and lives of the people. Let Justice arise and take a stand in Georgia!

## IS THE CHURCH CORPORATION ORDINANCE REPEALED?

THERE is considerable discussion among lawyers and many others, over the question of the repeal of the Ordinance incorporating the Church of Jesus Christ of Latter-day Saints. This ordinance was passed by the Assembly of the provisional State of Deseret, and afterwards adopted by the Legislature of the Territory of Utah. In the anti-polygamy Act of '62 it was de-

clared to have been validated. But the second section of that Act repeals or attempts to repeal a portion of it. That our readers may fully understand this matter we give below the Ordinance and the repealing clause:

## An Ordinance incorporating the Church of Jesus Christ of Latter-day Saints.

Sec. 1. Be it ordained by the General Assembly of the State of Deseret: That all that portion of the inhabitants of said State, which now are, or hereafter may become residents therein, and which are known and distinguished as "The Church of Jesus Christ of Latter-day Saints," are hereby incorporated, constituted, made and declared a body corporate, with perpetual succession, under the original name and style of "The Church of Jesus Christ of Latter-day Saints," as now organized, with full power and authority to sue and be sued, defend and be defended, in all courts of law or equity in this State; to establish, order and regulate worship; and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

Sec. 2. And be it further ordained, that said body or church, as a religious society, may, at a general or special conference, elect one "Trustee-in-Trust," and not to exceed twelve Assistant Trustees, to receive, hold, buy, sell, manage, use and control the real and personal property of said church, which said property shall be free from taxation; which Trustee and Assistant Trustees, when elected or appointed, shall give bonds with approved security, in whatever sum the said conference may deem sufficient, for the faithful performance of their several duties; which said bonds, when approved, shall be filed in the General Church Recorder's office, at the seat of general church business, when said bonds are approved by said conference; and said Trustee and Assistant Trustees shall continue in office during the pleasure of said church; and there shall also be made, by the clerk of the conference of said church, a certificate of such election or appointment of said Trustee and Assistant Trustees, which shall be recorded in the General Church Recorder's office, at the seat of general church business; and when said bonds are filed, and said certificates recorded, said Trustee or Assistant Trustees may receive property, real or personal, by gift, donation, bequest, or in any manner, not incompatible with the principles of righteousness, or the rules of justice; inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses for public worship and instruction, and the well being of said church.

Sec. 3. And be it further ordained, that, as said church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience," to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ; for the security and full enjoyment of all blessings and privileges, embodied in the religion of Jesus Christ free to all—it is also declared that said Church does, and shall possess and enjoy continually, the power and authority, in and of itself, to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions, for the good order, safety, government, conveniences, comfort and control of said Church, and for the punishment or forgiveness of all offences, relative to fellowship, according to Church covenants; that the pursuit of bliss, and the enjoyment of life, in every capacity of public association and domestic happiness, temporal expansion, or spiritual increase upon the earth, may not legally be questioned; provided, however, that each and every act, or practice so established, or adopted for law, or custom, shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker; inasmuch as the doctrines, principles, practices, or performances, support virtue and increase morality, and are not inconsistent with or repugnant to the Constitution of the United States, or of this State, and are founded in the revelations of the Lord.

Sec. 4. And be it further ordained, that said church shall keep, at