EDITORIALS.

LIQUOR-DEALING AND MUNICIPAL POWERS.

THE singular rulings in the Third District Court on the liquor and billiards cases, as we anticipated, have aroused hostility to the ordinances of other cities besides Salt Lake. The liquor dealers of Ogden, encouraged by the rulings here, entered into a combination for the purpose of bringing down the license fee for the retailing of intoxicants to a mere nominal sum.

They engaged legal services, and on the 29th of April presented a petition to the City Council, asking for a reduction of the license fee to an amount which would just cover the cost of issuing the license. The matter was referred to a joint committee—that on licenses and that on municipal laws, with the city attorneys. These gentlemen met with the petitioners and their attorneys, and after some discussion the latter concluded to modify their petition to a request for the reduction of the liquor license fee to $75 per quarter, one-half of the present amount.

Messrs. Richards & Williams, City Attorneys, by request of the committee, embodied their views of the subject in a written opinion, which was adopted by the committee, reported on Friday, May 13th, to the Ogden City Council, and formally adopted by that body, which also declined to make the required reduction.

This legal opinion is so clear and forcible, is so well fortified by authorities, and covers the ground of dispute so fully that we present it in our columns in full. It also meets the case of this City and the liquor dealers here, sustains the position taken by the NEWS on this important question, and completely—if not designedly—refutes the arguments of Judge Hunter in relation to it. The ideas that a license fee cannot be collected for revenue, and that the taxing as well as the licensing power over liquor dealers is not vested in the City Council, as advanced by his Honor, are here thoroughly exploded.

It is through the courtesy of Messrs. Richards and Williams that we are able to present this well written document to our readers, most of whom, we are assured will peruse it with profit and satisfaction. It should be understood that the Charter of Ogden City includes the prohibitory power over the liquor traffic, a provision that is lacking in the Charter of Salt Lake City, and hence if the dealers of Ogden proceed too far in their attempts to override the very low rate of license which has been fixed upon in that city, the municipal authorities have it in their power to establish prohibition and close every drinking saloon within the corporate limits. We do not say that this would be a politic proceeding in Ogden, unless the dealers take such a course as to provoke it, but we do think it would be a wise measure in many small cities of this Territory where it could be enforced and would really effect the object desired. Following is the text of the opinion:

To the Joint Committees of Ogden City Council, on License and on Municipal Laws:

GENTLEMEN.—The legal questions presented in the several petitions of the merchants, bankers and saloon keepers of the city are identical in effect as to the right and power of the City Council to raise revenue by licensing their several occupations and callings.

Cooley, in his celebrated work on "Taxation," page 103, says:

"License fees may be imposed: 1st. For regulation. 2d. For revenue. 3d. To give monopolies. 4th. For prohibition. The third purpose is inadmissable in any free government. * * * The fourth purpose is entirely admissable in the case of pursuits or indulgencies which in their general effect are believed to be more harmful than beneficial to society.

Among these he rates the sales of gaming implements, the retailing of ardent spirits, etc. The same distinguished author, on page 406 of his said work defines a license as a privilege granted, which must confer authority to do something which would be illegal but for the license, and on page 408 he says:

"The terms in which a municipality is empowered to grant licenses, will be expected to indicate with sufficient precision, whether the grant is conferred for the purpose of revenue, or whether on the other hand, it is given for regulation merely."

He says if there be a mere power to license,

"The intendment must be that regulation is the object, unless there is something in the language of the grant, or in the circumstances under which it is made, indicating with sufficient certainty that the raising of revenue by means thereof was contemplated. If a revenue authority is what seems to be conferred, the extent of the tax, when not limited by the grant itself, must be understood to be left to the *judgment and discretion of the municipal government*, to be determined in the usual mode in which its legislative authority is exercised, but the grant of authority to impose fees for the purposes of revenue would not warrant their being made so heavy as to be prohibitory, thereby defeating the purpose. Where the grant is not made for revenue but for regulation merely, a much narrower construction is to be applied. A fee for the license may still be exacted, but it must be such a fee only as will legitimately assist in the regulation. * * But the limitation of the license fee to the necessary expenses will still have a considerable field for the exercise of discretion when the amount of the fee is to be determined * * In fixing upon the fee it is proper and reasonable to take into consideration not the expenses merely of direct regulation, but all the incidental consequences that may be likely to subject the public to costs in consequence of the business licensed. * * The regulation of the business of huckster, for instance, could seldom be troublesome or expensive, but that of the manufacture and sale of intoxicating drinks could not be measured by anything like the same standard; this business is one that affects the public interest in many ways and tends to many disorders. It has a powerful tendency to increase pauperism and crime. It renders a large force of peace officers essential and it adds to the expense of courts and of nearly all branches of civil administration. It cannot be questioned, therefore, if it is to be licensed by the public authority, that it is legitimate and proper to take into account all the probable consequences, or that the payment to be exacted should be sufficient to cover all the incidental expenses to which the public are likely to be put by means of the business carried on. And all reasonable intendments must favor the fairness and justice of a fee thus fixed; it will not be held excessive unless it is manifestly something more than a fee for regulation."

Again Judge Cooley says on page 400, speaking of what may be licensed:

"Where revenue is the purpose, enough has been said to show that there is practically no limitation whatever."

Judge Dillon, in his work on Municipal Corporations, defining the "nature of license powers," vol. 1, sec. 291, says:

"Charters not unfrequently confer upon the corporation the power to license and regulate, or to license, regulate and tax certain avocations and employments. * * Concerning useful trades and employments a distinction is to be observed between the power to 'license' and the power to 'tax.' In such cases the former right, unless such appears to have been the legislative intent, does not give the authority to prohibit, or to use the license as a mode of taxation with a view to revenue."

This standard author again says, vol. 2, sec. 609:

"The taxing power is to be distinguished from the police power, the general nature of which has before been adverted to. The power to license and regulate particular branches of business or matters is usually a police power, but *when license fees or exactions are plainly imposed for the sole or main purpose of revenue they are, in effect, taxes,* * * * Ordinarily the mere power to license or to subject to police regulations, does not give the powers to tax distinctly for revenue purposes, *but it may give the power* when such appears from the nature of the subject matter and upon the whole charter or enactment to have been the legislative will, but not otherwise."

In the case of Ward vs. Maryland, 12 Wallace 423, the Supreme Court of the United States had under advisement a statute of the State of Maryland, requiring a license upon a sliding scale very similar to ours, but discriminating against non-residents, and upon *this* feature of the statute the case was taken from the Supreme Court of Maryland, which held the statute constitutional in all its provisions, to the Supreme Court of the United States, and the latter court, in an able opinion by Justice Clifford, held that it conflicted with the Constitution of the United States in this feature of discrimination between residents and non-residents, but as perfectly within the legitimate sphere of State legislation in all other respects, and the Supreme Court throughout its opinion calls and treats it as a tax.

In the case of Mason vs. Trustee of Lancaster, 4 Bush 407, the Supreme Court of Kentucky had this license question before it on a statute conferring on the Trustees of the town the right "to tax and the right to license all taverns within the limits of said town," and fixing the tax therefor at not exceeding $200, and for which the Trustees required the sum of $125. The Court, by Chief Justice Williams, said:

"The legislative power of raising revenue for the State or local communities has not been restricted by the State constitution nor inhibited by the Federal Constitution. The power to raise revenue being unrestricted, this Court cannot interfere with the statutes whilst the enactments are confined to such purposes, however impolitic it may seem. This licensing system has been so long exercised by this State, so generally adopted and exercised by our sister States and the United States, that we cannot doubt the constitutional power in the Legislature to enact such statutes; and whilst confined within revenue purposes, such statutes are beyond our control.

These elementary works and decisions leave the question in a clear and intelligible light, and they are supported by numerous other authorities.

Whenever the fee for license leaves the domain of mere police regulation and enters the jurisdiction of revenue, it ceases to be a mere license fee and becomes a tax.

Revenue is raised by taxation in some one or more of the multiform modes employed for such purpose. But whether on property, on the person, or on the calling, and whether by direct assessment or license fee, or all combined, when the purpose is revenue, it becomes a tax, hence the power to tax includes all these modes of taxation, and confers the power to raise revenue.

When the power conferred is merely to license and regulate, it falls strictly within the purposes of policy only, but when the power is given, either expressly or impliedly, to *tax*, then it is for revenue purposes. And so long as the license fee is kept within revenue purposes, the discretion of the Council is unqualified and not liable to be subordinated to any other than the legislative power of the Territory, and especially so where there is no limit by general statute.

The great infirmity of the legal propositions upon which these petitions are based is that the powers conferred by your charter, and the purposes for which conferred, are not properly construed; as the petitioners seem to deny the legal right to include both police and revenue purposes in the license fee, when both license and tax powers are conferred. But it is a clear legal proposition that where both powers are conferred, then both regulation and revenue may be combined in the same license fee, and if it does not transcend the limits of both purposes it is not subject to legal attack; and this too is the case when the ordinance is silent, as ours wisely is, as to the purposes for which the fee is exacted.

By sections 32, 35 and 37 of the charter, express power is given "to license, *tax* and regulate auctioneers, merchants, retailers, grocers, ordinaries, hawkers, peddlers, brokers, pawnbrokers, money changers, hacking, carriages, wagons, carts, drays, porters, billiard tables and pin alleys."

And by section 7 of the Act of February 15, 1872, amending the charters of incorporated cities, "bankers, agents, expressmen, express companies, telegraphers, photographers, assayers, smelters, crushers," and other like occupations or pursuits are added.

By section 31 of the charter, power is given "to license, regulate, prohibit or restrain the manufacturers, sellers or vendors of spirituous or fermented liquors and others.

Were this latter the only section of the charter and amendments, indicating the legislative intent, we would say, as to this calling, the license fee could not exceed the requirement for police purposes. But there are so many sections which indicate revenue as embraced within the licensing power and purpose, that we cannot doubt that this calling is included, for we can perceive no reason, either moral or legal, why the Legislature should have intentionally exonerated this calling from license, for revenue purposes and the general burden of the city government, while the other and more harmless, less expensive and less disturbing callings are included.

By sections 17, 18, 19, 23, 24, 25, 26, 28 and 29 of the Charter, general powers are conferred on the Council, such as are common to nearly all the cities in the United States, to provide for the general police regulations, improvements of streets, alleys, bridges, etc., light and water, city buildings and the payment of its debts. Yet, by section 17, the city is so limited in the amount of direct taxes that these objects could not be accomplished without revenue from licenses, while no limits are placed on license fees. And if the retailers of ardent spirits are not embraced in the word "*retailers*" as found in section 32, which expressly authorizes a tax, we are at a loss to know what that word was intended to mean, as all other retailers are mentioned under the designation of merchants, grocers, etc., and as this word is found in the next preceding section authorizing a license and regulation but not a tax on this calling, it was appropriate to name it in section 32, authorizing in express terms a tax. The words *of ardent spirits* were doubtless unintentionally omitted after the word "retailers."

But section 57 of the Charter expressly authorizes the Council to enact "such ordinances and resolutions, not contrary to the Constitution and laws of the United States and the laws of the Territory, as may be necessary and expedient to carry into effect the powers vested in the City Council." Looking at this and the other sections quoted, and at the general scope and authority conferred in the Charter, we are decidedly of the opinion that this calling is within the revenue as well as the police purpose. If, however, it was certain that it came within the police purpose alone, still when all the collateral consequences of this traffic are considered, the Council has a large margin for its discretion, and unless certainly beyond the proper limit for police purposes, the license fee could not be subverted.

In conclusion we would say that the prohibitory powers of the Council is granted by express and unequivocal terms, and it may become a grave question, if this disturbing, demoralizing and expensive calling is to be exonerated from a due proportion of the revenue burdens of the city government, whether justice to the people you represent, and to the other burdened vocations, does not require at your hands an energetic and vigorous exercise of this prohibitory power. Indeed, the history of the times shows that there is a large growing and most respectable public sentiment almost everywhere, which favors prohibition of the liquor traffic, even when it contributes largely to the revenues of the local communities.

Respectfully,

RICHARDS & WILLIAMS,
Attorneys for Ogden City.

May 12, 1881.

A NEW MOVE AGAINST THE "MORMONS."

FOR pure malice, rank injustice, mean dishonesty and murderous bigotry against the Latter-day Saints—commonly called "Mormons"—commend us to the professedly "Christian" journals and preachers of free America. They have been the chief disseminators of slander and falsehood, by which popular prejudice has been created against us, and the prime instigators of the bloody and unlawful deeds that have been done for our extermination.

Among the numerous suggestions that have been offered of late to the Government for the "stamping out of Mormonism," is one from the Chicago *Interior*, a pious Presbyterian organ of latter-day Phariseeism. Here it is:

"Let the lands and tenements of the Mormons be thrown open to original entry by civilized settlers * * * Let it be understood that the army will keep out of the way in Utah for four years, and that the use and occupation of Mormon property for one year is to give a pre-emption title. There are enough young men in the West and South who are seeking homes, to finish up the pest, fumigate the Territory and to establish themselves in ninety days after the word 'go' is given."

After the "Mormons" have opened this region to settlement and civilization, redeemed the sterile wastes from solitude and worthlessness, turned the streams upon the parched and barren soil, made grain and fruit and flowers to flourish where sage and sand were once all that met the eye, built up homes and towns and schoolhouses and churches and public buildings, and bought and paid for the land which they made of value by their toil and enterprise, the Government which took their money is to declare the sale void, and encourage others to swarm in and rob them of their lawful possessions. And it is a "Christian" paper that counsels this!

"The use and occupation of Mormon property for a year is to give a pre-emption title" to any "Christian," after the order of the *Interior*, who seizes and holds the land. The cry is to be "Amen. In the name of the Lord let us rob somebody!" Sweet "Christian" counsel! Admirable advice to young people! "Go west, young man, and get rich by robbing the Mormons!"

But did the eminently honest and sanctified *Interior* ever think about what the "Mormons" might be doing at the time when these new-fangled "pre-emptors were trying their hands at "the use and occupation of 'Mormon' property?" We trow not. The Presbyterian *Interior* had better send a Christian spy or two into the "Mormon" interior to see whether the robbing process is likely to be attended with any degree of safety, not to say success. Even a religious paper that has any decency left, when discussing the "Mormon" question, should denounce the atrocious suggestion of the *Interior* and all others that tend to the perpetration of foul wrong in battling with supposed heresy. The *Congregationalist* of Boston has the following to say about it:

"For a Christian journal to advocate wholesale robbery, which inevitably would be accompanied with more or less bloodshed, and the possibility of which would attract the ruffians in the West and stimulate them to their worst deeds, is amazing as it is wrong."

It really seems as though sense and reason, as well as justice and fairness depart from all who make a hobby of opposing the system called "Mormonism." Presidents, politicians, lecturers and journalists, preachers and people, they descend into folly or rush into madness and insensate fury. We advise the *Interior* to put a wet cloth on its head and then retire and read the Sermon on the Mount.

JURORS' FEES IN CIVIL CASES.

THE jurors in the case recently decided in favor of Z. C. M. I. recover their fees for services rendered. This is quite just and proper. The course of Z. C. M. I. should be followed in all civil cases. It is a matter of justice to jurors, many of them business men, to be compelled by law to leave their business and remain for a more or less definite period subject to the requirements of the court, and in many cases of dispute between private citizens, without any compensation for labor and loss of time. If the law requires their services the law should provide for their compensation.

The question may here be asked, why has not the law made such provision? Some hard talk has been indulged in, by persons who seize every opportunity to find fault at the expense of the Legislative Assembly. That body has been called up to reprobation for not providing for jurors fees in civil cases. What has been done simply to create public feeling. Those who make the most noise about it are they *who are* least affected by it. And they know this when they are *misrepresenting* when they seek to find fault.

The Legislature of 1880 did pass a bill providing for jurors fees in civil cases, and the only reason why it is not now a law is because of the absolute veto power; which has been so many times used against the best interests of the people. The bill provided for a deposit on the commencement of each civil suit requiring jury service, and for the disposition of the money to jurors. It was not considered right that the Territory should pay the expenses of private civil causes, and encourage litigation by feeing people to settle personal disputes. The parties should pay for their own litigation and have just as much right to pay jurors fees as court fees.

But the Governor vetoed the bill, and so the poor men who spend their time for litigants for nothing may grumble at the Executive if they want to complain, and not at the Legislature. And the anti-"Mormon" growlers should snap, if they must, at the non-"Mormon" Governor in assailing the Assembly they are "barking up the wrong tree."

THE GARFIELD-CONKLING CONFLICT.

THE Garfield-Conkling war is the chief present subject of political conversation. It threatens to have serious results to the Republican party. While Garfield, from his position as the head of the ticket, was made the head of that party, Conkling is by far the stronger and more adroit politician, and the greater and profounder statesman. He is no common man. He has made his mark in the history of his country and stands head and shoulders above all other members of his party in the great State of New York. He is therefore a foe not to be despised.

The real cause of the conflict between these two prominent politicians appears to be, a failure on the part of the President to carry out a tacit agreement with the Man