

elicited it. What right had Judge McKean to thus expose his bias to the world, and bring the administration of justice into contempt? Suppose that in the case of Sickles, indicted for killing Kay, the seducer of his wife, a motion had been made to quash the indictment for some technical defect, and in refusing the motion to quash the judge presiding had said:—"Let all concerned keep steadily in mind, that while the case at the bar is called, the People of the District of Columbia against Daniel E. Sickles, its other and real title is The Peace of Society against Red-handed Murder. The government of Washington City finds in its midst a social code, claiming to come from God, a code which asserts the right of a husband to vindicate his honor by bloodshed. The code arrays itself against the laws. A system is on trial in the person of Daniel E. Sickles. The question is not, 'Is the defendant guilty or innocent of the crime charged?' But it is, 'Shall men be permitted to walk down Pennsylvania Avenue on Sunday evenings, and murder other men who may have disturbed their domestic relations?'"

A judge who should pursue such a course elsewhere, would be apt to lose his official head, or the opportunity of trying the defendant thus passionately assailed from the bench. I do not believe that there is a fair-minded judge in the country, outside of Utah, who, if he had been betrayed in such a case into delivering such language, would afterwards consent to sit as judge upon the trial of a defendant thus prejudiced. I do not believe that there is another community in the country that would not with unanimous voice demand that a judge who had so exhibited his bias should retire during the trial of the defendant in such a case.

And yet I venture to predict that Judge James B. McKean will refuse a change of venire, refuse a change of judges, and insist upon occupying the bench upon the trial of Brigham Young, and I predict further that his course in that respect will be sustained by hundreds in Utah, who are only anxious that Brigham Young, whether innocent or guilty, shall be convicted of something or other, or at least punished for something or other. It will be sustained also by that portion of the newspaper press of Utah which has constantly, since the inauguration of those prosecutions, presented the disgusting spectacle of calling for the conviction and punishment of men accused of crime; prejudging their cases, denouncing all who defended them, and accusing of corruption those who declined to lend the high duties of officers of the government to the dirty work of malicious injustice. It will be sustained by the editors who have bitterly abused the United States Marshal for according to persons in confinement those comforts which are allowed to all persons before trial—who are willing to undergo the expense. It will be sustained by those newspapers whose conductors have found words of encouragement and applause for every insult or indignity or oppression that has been levelled against the Mormons.

But I am not yet through with a recital of the acts of the Federal judges in Utah. The Probate Courts, which for twenty years have exercised jurisdiction in a certain class of cases, have been swept into nothingness by the Supreme Court of the Territory, throwing property rights into litigation, and making invalid and worthless hundreds of divorces upon the faith of which other marriage relations had been contracted. A liquor dealer whose stock was destroyed for selling without a license, in violation of a city ordinance, sued for damages the City Marshal and his deputies who executed the warrant, and the Justice who issued it, and obtained from a selected jury a verdict of \$57,000—\$19,000 for the value of the liquor destroyed and \$38,000 as punishment for those who acted at least under color of authority. The son of one of the Justices of the Territorial Supreme Court—a young man whose zeal outran his discretion on election day—was locked up for a few hours for such disorderly conduct, and he has brought an action against the city officers who detained him, to recover \$25,000 damages. Several persons, committed by a local magistrate to answer charges of felony, have sued out writs of *habeas corpus* before a Federal Judge and been discharged from custody, on the ground that the Mormon Justice had no jurisdiction—the universal rule of law, that the acts of a *de facto* officer cannot thus be collaterally attacked being coolly ignored.

The baser elements of society, gaining courage and support from these decisions, now commit depredations on the public peace and on private property with impunity, until within a year Salt

Lake, from one of the best, has almost become one of the worst governed cities on the continent.

I turn again from the proceedings of the Court to the proceedings of the Grand Jury it impaneled.

In the guard house at Camp Douglas, associated with felons, and within the walls of the city jail, are four men of families, four kind, honest, worthy, harmless men, who are held in close confinement upon the uncorroborated evidence of a self-confessed perjurer—innocent men over whom the shadow of the scaffold impends, while the grand jury which indicted them refused to consider, refused to listen even to, evidence of the perjury of the man upon whose uncorroborated testimony the indictment was found. Before Judge McKean, as magistrate examining persons charged with the murder of J. King Robinson, one Charles W. Baker swore that he recognized Blythe and Toms as the two men with muffled faces who ran from the scene of the homicide in question upon the night of October 22, 1866. After giving this evidence Baker, struck with remorse, or failing to receive his reward, or for both or other reasons, made the following affidavit:—

Territory of Utah, } S.S.
Salt Lake County, }

Be it remembered that, on this the 3d day of January, 1872.

Personally appeared, Charles W. Baker, who was by me sworn in due form of law, and who, on his oath, did say that he is the identical Charles W. Baker who was a witness in an examination before the honorable James B. McKean, Chief Judge of the Supreme Court of the Territory of Utah, commencing on the 14th day of December and terminating on the 23d day of December, 1871, at Salt Lake City; wherein John L. Blythe, James Toms, Alexander Burt and Brigham Y. Hampton were charged with the murder of Dr. J. King Robinson, at Salt Lake City, in the County of Salt Lake and Territory of Utah, on the 22d day of October, 1866.

He further says that the testimony which he then, on said examination, gave was wholly untrue and false. He further says he was hired to give said testimony by S. Gilson. That it was agreed between him and the said S. Gilson and others.

That he was to be paid the sum of five hundred dollars, no matter what might be the event of the proceedings, and one thousand dollars for each person that was or might be convicted.

That during the time he was engaged in said testimony and detained, his board was paid by said Gilson and others, at the Revere House, in said city.

He further says he had a plat of the grounds and of the street in the City of Salt Lake, near to the place where the murder was committed, furnished him by S. Gilson.

Which plat, before he gave evidence, was by him carefully studied, so that he might understand it. He further says that since he so gave his testimony he has carefully reflected on the enormity of the crime he has committed and is aiding in carrying out, and he has concluded to make amends, so far as it is now in his power.

He therefore voluntarily now makes this statement upon his oath.

He further says that, on or about the 16th day of December, 1871, he had a conversation with Thomas Butterwood, who then informed this affiant that he was hired to give his testimony, in the above named case, and that his testimony was not true.

(Signed) C. W. BAKER.

Subscribed and sworn to before me this third day of January, A. D. 1872.

JOHN T. CAINE, Notary Public.

After making this affidavit, somebody persuaded Baker to go before the grand jury, and repeat the false statements he had made before the examining magistrate. While Baker was giving his testimony, the grand jury had in their possession the affidavit I have just read, and yet, will it be believed, they refused to consider this affidavit; they refused, although requested, to send for the three witnesses by whom the fact of Baker's voluntarily signing and swearing to it could have been proved; they refused to even question Baker about it, or to ask him to explain it, while upon his testimony alone they indicted Blythe and Toms? There was no evidence so base, so worthless but was sufficient to indict a Mormon upon, there was no evidence sufficiently damning to indict a man who would swear against Mormons.

From the closed doors of this grand inquest, the counsel for Blythe and Toms turned to Judge McKean. Upon

a proper legal affidavit they asked him to have Baker brought before him for examination upon a charge of perjury. He refused to issue a warrant, or make any examination, on the ground that he was officially informed that the grand jury had the subject under consideration! Baker was then arrested and taken before a Mormon justice. The lawyer who acted as deputy district attorney on the examination of Blythe and Toms, appeared here as Baker's counsel, and waived an examination, thereby admitting that there was probable cause to believe Baker guilty of perjury; and Baker was committed to jail, where he now is, in default of \$3000 bail. The usual practice of *habeas corpus* to procure his release has not been resorted to, perhaps because unpleasant facts might thereby be made public, and his confinement will not be made lengthy, for he will probably be discharged as soon as the Grand Jury can again get together and officially ignore the charge.

I will not pursue this dreary record further. A volume of details of acts of injustice and tyranny might be compiled from the official records, but one more instance will suffice.

Brigham Young, an American citizen of character, of wealth, of enterprise, an old man who justly possesses the love and confidence of his people, and the respect of those who know and comprehend him, is to-day a prisoner in his own house in charge of an officer. Judge McKean refuses to admit him to bail, although the prisoner is ready to give any sum demanded, and the Attorney-General of the United States has requested that bail be taken. There is nothing but the lenity of the United States Marshal and the caprice of his persecutors between the prisoner and the cell of a common guard house. If he takes an airing in his carriage, accompanied by the officer who has him in custody, a howl goes up from those newspaper organs of the prosecution, who lustily call for a tin plate, and irons, and prison fare for him—and all this upon the uncorroborated oath of one of the most remarkable scoundrels that any age has produced, a man known to infamy as William Hickman, a human butcher, by the side of whom all malefactors of history are angels, a creature, who, according to his own published statement, is a camp follower without enthusiasm, a bravo without passion, a murderer without motive, an assassin without hatred.

Who shall say that no man will ever be convicted by an American jury upon the testimony of such a witness? That which a peculiarly constituted grand jury has commenced, a peculiarly constituted petit jury may continue, and a peculiarly constituted court complete. The end may be and doubtless will be the logical consequence of the beginning. One year ago no man would have predicted such a beginning, and who shall say that the tide will turn this side the grave? Who shall prophecy the end?

Many years ago there lived a great statesman by name Edmund Burke, a man whose philosophy, whose eloquence and whose power are indelibly imprinted upon the English history which he helped to make, and this man, after many years of vast and varied experience in the government of a great empire, declared that the object of all government was to get twelve honest men into a jury box. He said in effect that the British government with its fleets and armies, its Kings and Peers, its parliaments and courts, its vast mechanism and its mighty revenues, was only valuable to the people it governed and only true to its purpose in so far as it was able to secure to any Englishman, whose life or liberty might be imperiled, twelve impartial men to pass upon his case. That which was true in the British empire a hundred years ago, is doubly true in the American Republic to-day. Of what avail our conquests of territory, our growth of liberty, our advances in letters, arts, and arms, if we cannot give to every accused citizen, whether dwelling at the centre or upon the confines of the republic, a fair and impartial trial, before a fair and impartial jury of his peers? You may take every other privilege from the citizen and if you leave him that he has much to hope, much to be thankful for. A fair, unprejudiced, honest jury is an innocent man's city of refuge, a persecuted man's fortress, a fortress impervious to the assaults of faction, and standing high above the baffled waves of prejudice and passion. Where is that fortress to-day for Utah? Its crumbled bastions lie silent and defenceless under the feet of power. Where is your city of refuge? Its towers and battlements, no longer

shining through the mists, are lost in the darkness of prejudice which environs them. The religious and secular leaders of Utah—men who are respected by many honest, earnest people who are not of their faith, men who are believed to be innocent by many influential and independent journals not of their way of thinking, men who are held fast in the embrace of a hundred thousand hearts, men who have filled the land with monuments of industry and progress and human happiness are likely to be sacrificed because a manufactured and unjust public sentiment demands their conviction, and because there is a judge who has the power and disposition to select a jury who will comply with the demand. What if really it is not the intelligent, impartial judgment of the country that demands this, what then? You cannot easily uproot a prejudice which is the growth of thirty years of slander, you cannot change a conviction which is the consequence of a quarter of a century of misrepresentation. You cannot obtain an impartial jury by a selection from those who ignorantly or advisedly are your foes, causelessly perhaps, needlessly perhaps, unwisely and unintentionally perhaps, but still your foes.

I say deliberately that with the history of the past behind me, with the signs of the present before me, with the pervading feeling in the minds of those from whom alone juries will be taken, with the declared opinions of the judges as recorded, I say with sorrow and humiliation, that the Mormon charged with crime who now walks into the courts of his country, goes not to his deliverance but to his doom, that the Mormon who in a civil action seeks his rights in the courts of his country goes not to his redress but to his spoliation.

And there is no prospect of relief, except through a State government. It is true that the lower house of Congress has passed a bill to allow appeals to the Supreme Court of the United States in criminal cases from the Territories, but it is not probable that this bill will pass the Senate. The declared policy of the Senate and especially of its judiciary committee for some years past has been adverse to such a law.

The present Grand Jury has found six indictments for murder and seven indictments for lascivious cohabitation. The defendants in these cases include Brigham Young, Joseph A. Young, Daniel H. Wells, George Q. Cannon, Hiram B. Clawson, Hosea Stout, W. H. Kimball, and others less generally known.

This is but a beginning,—what will be the end? Look over your public history and guess if you can the possible extent of the perils which environ you. Consider the facts and consider the falsehoods. There is not a misfortune which has befallen the people of Utah, there is not a slander that has been circulated against them, there is not an evil deed committed by a desperate outcast anywhere in this Territory during the last twenty-five years, but that may, by the help of perjury and malice, be framed into an accusation and conviction of hundreds of innocent men. Consider that when the Mormons turned their backs upon the Missouri a quarter of a century ago, and sought in the distant deserts a place where they could preach and practice their strange faith unmolested, they were followed each year by a few desperate outcasts. They were joined by men who were out-lawed for crime as the Mormons were out-lawed for religion; men who had committed deeds whose detection was imminent, or men who sought to escape the pangs of conscience. Such men followed the tide of Mormon emigration, they attached themselves to Mormon trains, they professed belief in the Mormon faith, and devotion to the Mormon leaders. They made themselves useful in a hundred ways by their knowledge of frontier life and a frontier country. It was impossible to know their histories, it was impossible to fathom their motives. They were often brave or desperate men whom it was not safe to offend, and so they were tolerated, given food, given shelter, given employment, although seldom wholly trusted. In all ages such men have sought the society and protection of religious associations. Every monastery of central and southern Europe in the last century contained a few robbers and murderers who became monks to escape the rack, and sought the sanctuary to shun the jail. Let such men be tempted by a promise of safety or money, or be threatened with punishment, and they will come forward and attempt to swear their crimes upon others whose lives and hearts contrast with theirs as