

# HON. THOMAS FITCH INTERVIEWED BY A N. Y. "HERALD" REPORTER.

The Hon. Thomas Fitch, leading counsel and attorney for Brigham Young, stopped at the St. Nicholas hotel on Tuesday night, and left on Wednesday to keep a lecture engagement at Bennington, Vermont.

As Mr. Fitch is directly from Salt Lake City, and acquainted more directly with the Mormon situation in its legal aspects than probably any person in the country, a *Herald* reporter was sent to sound him on the crisis.

He occupied a cosy parlor with his wife, a lady of fine literary culture and spirituelle face, Bishop Sharp, Hon. W. H. Hooper, and one or two Gentiles on good terms with the Mormons had left their cards upon the table. Mr. Fitch is a heavy-set, Italian looking young man, with fine chestnut brown eyes, a brown and red complexion and a black moustache. He was very free and natural in his manner, but avoided close inquiries as to the habits and character of the federal officials in Utah.

"Mr. Fitch," said the *Herald* representative, "are you the sole counsel for Brigham Young?"

"No, sir, my firm (Fitch & Mann) probably lead in his business at Salt Lake. Besides, he retains Hempstead and Kirkpatrick, Snow and Hoge, Miner and Stout and Legrand Young. Our attorney at Washington city is Curtis J. Hillyer, of Nevada. All the above are Gentiles except Snow, Young, Miner and Stout."

"Was it by your advice that Brigham Young suddenly left Salt Lake for southern Utah?"

"Not especially. I think it was prudent, however, under the circumstances. Brigham Young makes a sort of tour of the churches and settlements every year as far as St. George, on the border of Arizona. He had started when he ascertained that the grand jury had indicted him for lewd and lascivious conduct and cohabitation, but he immediately returned, waited quietly to be arrested, and on his following arrest he gave bail in the sum of \$5,000. Then hearing that other indictments on old and trumped-up charges of murder were being prepared, he waited three weeks to see them produced. He finally sent for U. S. Marshal Patrick and asked him if he had any such indictments. Patrick replied that he had not. Mr. Young then said he was prepared for the annual trip, and as the court had indicated to his counsel a postponement of the trial on the existing indictment until late in the winter, he thought of making no further delay. He departed in his carriage in broad daylight. I saw him go myself. After he had gone a day or more, Judge McKean took out of his pocket an indictment that had lain there in secrecy for a month and issued a warrant upon it for his arrest for murder. Hence the hue and cry over the alleged flight. It is ridiculous, and has been telegraphed east to injure the old man."

"Was it legitimate for Judge McKean to keep an indictment so long concealed?"

"No. Utterly unprecedented. The grand jury found the indictment on the 28th of September; the warrant was delayed till the 28th of October. Such concealment is never used except when the defendant is supposed to meditate escape, but there was Brigham Young waiting all the time to be arrested."

"Will he probably return and submit to arrest and incarceration at Camp Douglas, on the unbillable charge of murder?"

"He may; but I shouldn't blame him if he refused to walk into this deadfall."

"Why do you say deadfall?"

"Because, under the jury-packing system now practiced in Utah, and the rulings and chargings of the court, he has no chance whatever. In fact, he has been found guilty in advance; for when McKean opened this term of the court he said that the institution and system of the Mormon church were on trial; and made a harangue against them."

"What is the general estimate of McKean among the legal fraternity of Utah?"

"He is a fanatic, without much knowledge of law, determined to secure convictions of these people at whatever cost. He believes that the end justifies the means; thinks he is sustained by the administration; that it is his religious duty to crowd the Mormons hard, and he has also, he supposes, a chance to gain a great political reputation. He is a very determined man, however, of considerable personal courage, but not fit to be a judge. He is a preacher and an elocutionist."

"What are said to be his ambitions?"

"Political promotion in the East, either in New York State or at the President's hands."

"Are the two other justices more impartial?"

"I have not sufficient knowledge on that head to answer intelligently. Strickland acquiesces with McKean uniformly. Hawley differs from McKean with respect to the Mormons, only that he would reach the same end less boldly and with more semblance of regard to legal precedents."

"Do these justices show any feeling of sensitiveness as to the severe criticisms passed upon them by eastern jurists?"

"Well, they think that the American people are indifferent about the means of exterminating Mormonism, so it be killed off. They do not know enough law to care for

professional estimation. They are popularly said to 'jump' mines and precedents with equal facility."

"What took you from Nevada to Utah, Mr. Fitch?"

"Mining litigation. I moved there May 1. My connection with the Mormon trials probably followed from my position on the Cullom bill in Congress last winter, when I made the only speech against its passage on the Republican side. I opposed it because it took the selection of juries out of the hands of the local officers and out of the scope of the law of the Territory. It made the United States Marshal the despot of Utah, and excluded from the jury box nineteen twentieths of the people. And yet Judge McKean, by his rulings, has passed the Cullom bill in advance of its passage by Congress, and Mr. Baskin, the author of that bill, is actually the United States attorney in Utah, getting convictions under it."

"You do not appear to place faith in the newspaper letters from Utah?"

"No. They are Munchausenisms, which tickle us at home, while they probably do hurt at a distance. The Federal officials write most of them. These old murders are supported by the evidence of the desperado who did them, and that of Yates happened fifteen years ago, in the Mormon war, which the administration of that time passed over. Is there any reason clearer than this that the present court has come to make havoc, and will go any lengths to do it? The very order and prosperity of the Mormons are hateful to them."

"Do you have any sympathy with polygamy?"

"None. In my speech in the Hawkins case I called it 'a cruel and encompassing system of barbarism,' whether endorsed by the old testament or the Mormon revelation. There are allowances for it there, however. When the Mormons went to Utah the women were in excess, and it devolved upon a man to take care of more than one to keep the unmarried from starving. It was preached as a religious ordinance to credulous people, and was practised remote from monogamous mankind. They did not begin it with criminal intent. Society has caught up to polygamy, and its hours are numbered; but what is the use of galloping over all law and decency to make martyrs and seed for it? Why treat it with the spirit of preachers and zealots, instead of as statesmen and surgeons? Save the life of Utah—its frugal and temperate labor, its acquisitions and its uses for all the mines and settlements of the central continent! Those are my sentiments."

"What is the value of Utah?"

"Well, its mines are equal in value to those of Nevada, which have produced from \$120,000,000 to \$150,000,000. The real estate, capital, &c., are probably not less than \$70,000,000. And this is Mormon work. Labor in Utah in the mines costs only two dollars a day, or half as much as all round us."

"Do you think an exodus from Utah was ever contemplated?"

"Yes. I know it was debated, but Brigham put his foot on it. It is not required. Every interest of Utah has been disturbed, however, by these crusaders."

"What is the solution of the thing?"

"Self-government. Admit them as a State, under a constitution enacted by themselves, relinquishing for all the future polygamous marriages. Follow the advice of Hamlet, 'Those that are married already shall stay married.' The mere discussion of this constitution prior to its enactment will shed more light on the error of the thing than all the judicial terrors of our courts, and if the Mormons ever agree to give up polygamy they will do it without mental reservation and in perfect candor and simplicity."

"What will be the political complexion of such a new State?"

"Extraordinary. It is a State without partisanship, and it will vote for Presidential electors in the spirit of the old electoral provisions—that is, looking to the character of the electors only; and leaving them uninstructed as to their preference among candidates. You see all politics has been shut out of Utah. Our newspapers take no sides in it, and the Mormon people are of neither party."

"To return to the federal court, Mr. Fitch. Is it impartial among the lawyers?"

"That it don't become me to say. We had a funny thing there about the time I left. Mr. Miner, a Mormon lawyer, moved an arrest of judgment in the Hawkins case, and, among other things, said an officer of the court had played poker with the jury. The judge said this was slanderous, and unless apologized for Miner should be disbarred next day. I believe, however, it was confirmed on inquiry, and the judge, in his best elocution, forgave Miner with censure."

"Is the practice of McKean's court embarrassing?"

"Yes, Judge McKean is only a sort of missionary exercising judicial functions. We never expected him to be unprejudiced, but we suppose that he might like to appear consistent. You see, in the first instance, after hearing an argument upon the point at law he declared that he was a United States court, that the Territorial legislature had no power to prescribe rules for his court as to selecting juries, and that he would not draw juries by open venire but by selection, as in United States Courts. We lawyers put up with this and expected him to hold on consist-

ently to it, so that we should prepare our cases as for a United States court."

"How did he violate his decision?"

"Why, he resolved himself into a United States Court for all purposes prejudicial to Mormon defendants, and whenever the Territorial law was severer on them than the laws of Congress he resolved back again into a Territorial Court. For example, the United States laws give the defendant ten jury challenges and the prosecution only two; while the Territorial law allows six and six. The United States statute of limitation disbars all but capital crimes after two years of non-prosecution, while the Territorial law bars nothing. Now, McKean wants a Territorial Court to challenge the jury and prosecute after many years by Territorial permission, but a United States Court to empanel a jury, etc. He played shuffle with jurisdiction and demonstrated to Mr. Young's counsel and those of other indicted polygamists that he would be bound by neither law nor consistency, but would do whatever he had the physical power to do to secure a conviction. Therefore I say, as counsel to Brigham Young, that if he does absent himself from such a tribunal until the United States Supreme Court at Washington passes on a test case we have sent there, he will only anticipate the advice of his counsel."

"What is that case?"

"Engelbrecht vs Clinton and others—in all twenty defendants. The prosecutor is a liquor seller who defied the municipal license law of Salt Lake, and by the provisions of a Territorial statute brought suit for the destruction of his stock 'maliciously' by Justice of the Peace Clinton and a posse Comitatus. The jury was packed by the Marshal's manner of drawing, and for \$19,000 worth of liquor Engelbrecht got a verdict of \$57,000. The Justice's process was legal on its face and not malicious. The verdict was therefore atrocious, although confirmatory of the law which allows three times the value of destroyed property. We expect an early hearing of this case to test the validity of the jury abuse which is involved in all the other trials."

"This manner of packing juries by personal selection gives great power to the Marshal, does it not?"

"Certainly. The Marshal (Patrick) is a good man and popular; but any of his deputies, no matter how corruptible, can also pack a jury. The facilities for corruption are, therefore, such that out of many great mining litigations in his court, not one has yet come to trial, the contestants not daring to proceed. Our community is filled with adventurers, attracted by the mines, who own nothing on the spot. A purchasable deputy marshal can make a jury of these, buy them beforehand, make his pick from them and affect the titles to property worth millions."

"How should the juries be picked?"

"According to the law of the Territory—by lot. The statute of the United States says the manner of choosing in federal courts shall assimilate to that of the State or Territorial courts within which the particular United States court may be. Mr. Attorney Hillyer, therefore, asked McKean to charge the marshal to select from the assessment roll by lot. McKean refused to assent. In Brigham Young's case the marshal went out and ransacked for twenty-three jurors; three out of this picked lot were discovered to be Mormons, and McKean ruled them off."

"What was the actual title of the offence against chastity for which Young was indicted?"

"Lewd and lascivious conduct and cohabitation—an old statute made to protect Mormon decency. There is but one such statute in terms in any State code—Massachusetts—and this has been interpreted by the courts to apply only to open licentiousness, and not to secret cohabitation. The offence meant is against public decency, not chastity. The court wanted to indict Young for adultery, but could not get one of his wives to complain. They would not indict for polygamy, because the second marriage could not be proved, being secretly performed. The old man, therefore, is made to pass under a law he signed as a polygamist and which was passed by polygamists."

Here some interruption happened and we broke off a very interesting conversation.—*New York Herald*, Nov. 16.

PLEASANT NEWS FOR TWO DAYS.—The Cincinnati "Times" thinks something is sadly out of gear in mundane physical affairs, judging by the following from that paper of Nov. 17—

"All the rain that has been denied to us seems poured in fury on the Celestial Kingdom. The terrible inundations continue there, and the loss of one thousand lives is reported in one town. Famine in Persia, typhoons in Macao, twenty thousand square miles of land and people inundated in the north of China, destructive earthquakes in South America, and coal mines still on a burst in England—truly, this is pleasant news for two days."

WANTS IT STOPPED.—The Cincinnati "Gazette" wants the persecution of the "Mormons" stopped, and says the "Times" of that city, it will not budge an inch from that position. The "Gazette" has taken a sensible stand in that matter.

## Correspondence.

SALT LAKE CITY, Nov. 20, 1871.

Editor News:—Dear Sir,—In October 1870, I attended the organization in this city of a Teachers' Association, which held its meetings weekly, over which Dr. Park was elected to preside. During the winter and until the month of June last, the meetings were continued regularly. Many interesting subjects connected with the teacher's art were canvassed and kindred intellectual treats dispensed and enjoyed.

On Wednesday evening, the 11th ult., the meetings were resumed. On the evening of the 18th, the subject of normal schools was introduced, on which several teachers and myself made many remarks and the subject was continued.

At the meeting of the 25th, Miss Mary E. Cook read an interesting laconic paper on the introduction of normal schools, and was followed by Professor Carl G. Maeser, who delivered an extemporaneous address on the same subject. The association resolved itself into a normal class, and Prof. Maeser was appointed to lecture and give illustrations on the simplest and best methods of teaching numbers to primary classes. As Professor Maeser was indisposed, Miss Mary E. and Ida I. Cook gave illustrations of approved methods of imparting to children the first idea of numbers. The illustrations were entertaining and instructive.

On the 7th inst., at the annual meeting for the election of officers, the following were elected—For president, Karl G. Maeser; vice president, Levi W. Richards; secretary, Camilla C. Cobb; treasurer, Mary E. Cook; corresponding secretary, Ida Ione Cook; executive committee, Prof. K. G. Maeser, Miss Mary E. Cook, Mrs. Eleanor J. Pratt.

It seems to me, Mr. Editor, that the live school teachers of this city cannot refrain from attending these meetings, where there are those who are fresh from the first schools of the East, and who have been associated with the most approved modern educators.

An era in our educational interests is dawning upon us, and the spirit thereof seems to rest upon teachers and school authorities. The material interests of our country have seemed to demand almost the exclusive attention of our most active minds, but the time, I believe, has fully come when the education of our youth will occupy greater prominence, especially with our legislature, county courts and municipalities.

The inbred educational sentiment predominated in Utah's first legislature to that extent that a handsome appropriation was made in behalf of the interests of education. That the Legislative Assembly now will be less generous can hardly be anticipated. I look forward with anxious solicitude to the legislature which sits in January, 1872, believing that means will be devised which will enable the trustees to grade the schools, employ competent teachers who have passed examinations, and hold certificates commensurate with their ability.

ROBT. L. CAMPBELL,  
Supt. of Schools.  
And ex-officio member of the Teachers' Association.

OGDEN.—The "Junction" is still confident on the tin question—the assayers find it, Cornish miners declare it is tin, and the tinners use it, and that is considered good evidence.

Prof. O. Pratt was to lecture in the Tabernacle last evening.

A new cosmorama had been exhibited in the Seventies' Hall.

A boy who had been working for Mr. Thos. Bingham, at his mill on Skunk Creek, was lost in the snow. Mr. B. had been hunting in the mountains a day and a half for him, but unsuccessfully.

The selling "without licence" game was in operation at Ogden as well as here.

The missionaries had arrived safely at Omata.

An assay, by Mr. V. E. Bossel, of ore from a new discovery, returned \$61 silver to the ton.

John Majesks, five years old, was accidentally shot in the arm by John Anderson, ten years old, Nov. 18th. Wound doing well.

DOESN'T LIKE IT.—The Oakland (Cal.) "Transcript" objects to the U. P. R. gentlemen objecting to the crusade against "Mormonism," and thinks that the "Mormon" people have persistently committed one crime [which we deny] and possibly others, that the railroad people are "at the least impertinent" "to interfere with the course of justice and morality." Now do save that mark, Mr. "Transcript," please. To talk of justice and morality in connection with the crusaders! That is really too much.