

the windows of the statute." *Coke 2 Inst.* 308. "We have," says Mr. Bishop, "no ecclesiastical courts, and we never had them, even in colonial times; therefore no tribunal in this country can take jurisdiction of this class of questions, (viz. Marriage and Divorce) without the authority of a statute." *Bishop's Merge & Divorce*, Vol. 1, p. 171. No ecclesiastical canon therefore on the subject of polygamy, even if there were one, which there is not, would have any force in this country.

Although the common law is in force in those Territories which have been incorporated into States since the Union, (*Stout v. Keyes* 2 Davy, *Mich.* 184—*Fuller v. The State*, 1 Blackf. 63—*State v. Cawood* 2 Stew. 330, 362.), the question still remains what was the English common law on the subject? And as to the transition from Territories into States, see *State v. Wyman* 2 Chand. 5. In the case before us we are however relieved from any such investigation as Utah still remains a Territory and the transition has not yet arisen, yet some light may be thrown upon the question of common law as prevailing in the States by referring to the State of Ohio, where an enactment having made it a ground of divorce "where either of the parties had a former husband or wife living at the time of solemnizing a second marriage," the court held that its effect was not to make polygamous marriage voidable, but void. *Smith v. Smith*, 5 Ohio State, 32. See also *Harrison v. Harrison*, 1 Philad. 389. Here the voidability seems the effect of the statute, and not of the common law derived from England. An Act of Congress forbidding the interference either civilly or criminally with polygamous unions which may have been effected in Utah prior to the passing of the Act of 1862, would not be altogether without precedent in England itself, for the statute 5 and 6 Wm. 4, c. 64 (31 Aug., 1835) forbids any new proceeding to annul any marriage, already solemnized, within the prohibited degrees of affinity, and provides that all marriages hereafter solemnized within the prohibited degrees either of affinity or consanguinity should be void. *Burgess v. Burgess*, 1 Hagg. Cons. 384, 392. *Reg. v. Chadwick*, 12 Jur. 174, 11 Q. B. 173, 205. *Brook v. Brook*, 9 H. L. Cas. 193.

This statute operated both as a remedial and prohibitory measure—condoning the past but peremptorily forbidding such infractions of the law for the future. It is true that this enactment had no reference to the offence of polygamy, but the law relating to the prohibitory Levitical degrees, specially recognized by stat. 32 Hen. 8, c. 38, and forming the basis of all subsequent judicial opinion on the subject, as defined by Archbishop Parker's table of prohibitions, had been studiously violated, and that by all sections of society, and though such prohibited alliances were only voidable and not absolutely void, the proceeding was not the less illegal; but in the case of polygamous marriages not forbidden by either common or statute law, as in the case of a Territory prior to the act of Congress of 1862, the offence would consist simply of a disregard of the conventional proprieties of society, regulated by the traditional usages of a Christian community. Under these circumstances, an amnesty for the past might perhaps be not altogether unworthy the consideration of a wise and statesmanlike policy. But assuming, for the sake of argument, that polygamy was at any time an ecclesiastical offence, and even continues to be so, let us see what Mr. Bishop says in that respect. "Though we have no ecclesiastical jurisdictions, yet the law of these English tribunals, so far as it relates to the civil affairs of men (*Bishop's M. & D.* c. 18 et seq.) and is applicable to our situation, has become to us a part of our common law, and by legislative enactments it is found variously distributed among such courts as the people of this country have seen fit to establish. Now there are what are termed criminal offences cognizable by the ecclesiastical judges, yet not criminal in precisely the sense of the general common law, but rather as tending to injure the souls of men." (He instances adultery and fornication.) "But it is obvious that in the absence both of ecclesiastical courts and an established religion, these offences and punishments do not exist in this country." *Bishop's C. L.* Vol. 1, p. 46. The offences mentioned by Mr. Bishop

are directly forbidden by the Christian code of morals, and are infinitely more opposed to the true spirit of Christianity than is polygamy; so that, in this country at least, no ecclesiastical law can reach the offence, and as we have seen, in a Territory nothing short of an act of Congress can create or at least define the offence, there being no national common law. The act of Congress, and the act of Congress alone, creates the offence. That act does not profess to be retrospective or to have an *ex post facto* operation and might well be supplemented by some such legislation as has been adopted in Missouri, Texas and California, as before mentioned.

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## THE ANCIENT POPULATION OF AMERICA.

UNDER the above heading, the *American Antiquarian* has an article which we here append on the evidences which abound in this country of the existence in former times of a numerous people skilled in the arts of peace, as well as of a warlike and savage race against whom the others had to defend themselves. But mystery, dark and profound, overshadows the history of those ancient peoples, and while the explorer and antiquarian discover and ponder upon the numerous proofs of the existence of those tillers of the soil and cultivators of useful art, and of large armies trained to the tactics and implements of war, they find no clue to the origin of either race, nor definite explanation of their rise, progress and fate. The Book of Mormon is the key to the solution of the problem of American antiquities. It is the only and solitary star that sheds light upon the gloom. But its rays once received, the darkness disperses, the mystery vanishes, and all becomes plain and clear; the story of the ancient races is told and the student of this interesting subject no longer pores in the mist seeking in vain for knowledge. Without that book, obscurity reigns and will prevail. Here are the remarks of the *Antiquarian*:

"There are traces of a numerous pre-historic population scattered over nearly every part of the broad continent. No one who has not made a point of observing, would understand how numerous these vestiges are, or understand their design or purpose, yet they are here to present their evidence, to invite our study, and we ourselves are at fault if by comparing and analyzing and attending to their testimony we do not understand the tale.

Let any one go forth into the fields and the meadows, into the hills and valleys, and search for these records of the past, and he can not fail to trace out an alphabet more striking than the hieroglyphics of Egypt, or the inscription upon the buried palaces of the East. These works are replete with a varied story, everywhere the decaying skeletons and the silent skulls remind us mournfully of the death that has swept over the land; but the remains of fires, the debris of camps, as well as the running stream and sparkling spring from which they drank, all remind us how recently the living have passed away.

As we go through the silent earthworks, and see all the preparations they made, the walls and ditches for defense, the enclosures they erected for tombs, we are astonished at the great variety and the wonderful significance.

If there are modes of life which we do not understand, and structures which are still mysterious in their design, they are very expressive of the strange unknown life, of the mysterious religion, the wild aboriginal state. It may not compare with our later civilized condition and modern ideas, for they are only expressive of another condition than that to which we are accustomed.

But the picture of the prehistoric condition cannot be excelled.

Let any one visit one of the renowned defenses situated so beautifully on the lofty hill top, and commanding the distant view of stream and valley, of hill and for-

est, and then look about him and behold the wonderful adaptation for defence and protection, and he will appreciate what were the dangers from the secret foe, and how the war whoop must have startled the peaceful inmates.

Let him visit again the quiet village inclosure, and see the surrounding wall, and trace the place of palisades, or tread the path to the unfailing stream, and walk over the happy hunting grounds and the delightful valleys, and he has a picture of peace which nothing else can give.

Let him then enter the corn fields or the garden beds, or surmount the elevated platform, or enter the ancient courts and courtyards of the agricultural people, and he again has a view of another state of life, which he did not know. Again, let him enter one of the sacred enclosures and look about him and see the altars and the temple platforms, and all the complicated structures, wherever the social fires were lit and the victims of sacrifice were offered, and even if he knows not the worship that then prevailed, it is not difficult to imagine something of the religious customs of the people.

The grand pageant of the assembled multitudes passes before him as they gather at their annual feasts, or at their religious ceremonies, or their great burials, or for their war expeditions. In imagination he sees in one place the merry-making and the dance, he hears the music and the laughter; but at another he looks upon the smoke and the slaughter and the mysterious rites. Here he beholds the "very great burning," the solemn mourning, the sacred burial; there he sees the plumed warriors, armed with their stone axes and flint spears and maces, either in fleets of canoes, navigating the waters, or in long lines traversing the forests. Everywhere the scene is suggestive of a life which has passed away. Whether one stands on the lofty pyramids of Mexico, which once reeked with the gore of human victims taken in battle, and slaughtered as sacrifice, or among the extensive dwellings of the Pueblos, where such multitudes gathered for defense or for residence, or among the sacred enclosures of the mound builders, where a still stranger people once lived and toiled and worshipped—yet each structure is suggestive of a life which once prevailed, but which has passed away, and of the prehistoric condition of this continent.

## A JUDGE SHOULD HONOR THE LAW.

AN esteemed correspondent at Beaver sends us a communication on the voluntary removal of Judge Boreman from the Second Judicial District to take up his abode in Salt Lake City, and the law which provides that the Judges shall reside in the districts to which they are assigned. He remarks:

"Now that is all well enough, but where is his district? Echo answers, 'where?' Certainly not the Second Judicial District of Utah Territory, for he has several months since sold his residence therein and moved out of said district with the avowed intent of practicing law in Salt Lake City."

We consider that when a Judge, to use our correspondent's words, "removes his family, his goods and chattels into another district," with expressed intent to follow some other business than that of his office, he is not entitled to the authority nor the emoluments of that office. But we do not think our friend views the term "residence" as it is intended to apply in the law. A man's house is frequently called his residence, but this word has more than one signification. A person can legally reside but in one place; yet he may have several residences (or houses) in as many different districts. He can sell all his residences, considering the term in the light of property, but he cannot sell his residence, considered as his domicile or place of abode. Thus, Judge Boreman might sell his house residence in Beaver, and retain his legal residence there.

This is a point that should be understood, as it affects the questions of citizenship and the right of voting. A citizen must reside in the precinct

wherein he votes. That is, his domicile must be therein. He may not own a house there, and yet own several houses in other precincts, but his place of residence is where he dwells, and he can vote in that precinct only. An alien must prove residence in the United States for a given period before he can become naturalized. He may own no house or other property therein; or he may have taken a trip outside of the United States during that period, but if his abode, his domicile, has been within the limits of this country for the prescribed length of time, it is counted as his residence, although he may have been necessarily absent temporarily.

So, if Judge Boreman has sold his house (sometimes called a residence) in Beaver, and he and his family have merely come to Salt Lake on a visit, he has not thereby lost his legal residence in the Second Judicial District. But if he has removed his goods and chattels as well as his family, started private business in this city, and avowed his removal from his former place of abode, he has really changed his residence in law and in fact, and if not legally deprived of the right to sit on the judicial bench of the Second District, as our correspondent contends that he is, he has at least violated the law which defines his duties, and he has thus added another proof to the long list of evidences that he is unfit to its as a judicial officer and a representative of the Government of the United States. Let those who administer the law be the first to honor the law.

## BEAR LAKE STAKE CONFERENCE.

The Bear Lake Stake Conference was held in Paris, Saturday and Sunday, November 8th and 9th, 1879.

Present on the stand—C. C. Rich, of the Twelve Apostles, James H. Hart and Bishop Pagmire, of the Stake Presidency, and the bishops and representatives of the several wards.

After the opening services the reports of the various wards were rendered verbally, and showed a satisfactory state of affairs in the several wards.

Elder Amos Wright, missionary to the Indians, gave a very encouraging report of his labors and the condition of the various tribes among whom he is laboring.

President Hart expressed his pleasure at the reported condition of the Saints in the various wards of the Stake, and exhorted them to follow the example of our Savior as taught in the New Testament. Dwelt upon the requirements of our Heavenly Father, also of the Priesthood, its duties and requirements, and upon the necessity of all who have received a portion of the Holy Priesthood magnifying their respective callings, particularly the bishops; encouraged the Saints in a continuance of their labors on the Logan temple; dwelt upon the skepticism of the Christian world in regard to modern revelation, and explained the inconsistency of their several beliefs.

Adjourned till 2 p. m.

Benediction.

2 o'clock p. m.

Singing and prayer.

The reports of the various associations were rendered by their respective presidents, and were full and satisfactory. The report of the Sabbath Schools was very satisfactorily rendered by Bro. A. Galloway, who has lately been set apart to fill the position of Stake superintendent.

Counselor C. O. Card, of Cache Valley Stake, described the work of progress on the Logan Temple, the walls of which had reached a height of 55 feet; stated that there were about 90 or 100 men working in the several departments, and expressed his sorrow that they were not prepared to progress more rapidly; spoke of the magnitude of the mission of building temples, and stated the necessity of the Saints doing their best to further the great work.

Benediction.

Sunday, 10 a. m.

After devotional services, Elder C. Nibley, of Logan, likened the religion of the Latter-day Saints to the building of a house; said we were building a religious structure, and figuratively elucidated the dif-

ferent degrees of progress and the different ways of construction; strongly denounced the system of trying to build ourselves up by hobbies, etc., but exhorted the Saints to obey the dictates of God's Holy Spirit in gathering material for this structure. He dwelt at some length upon his experience in Liverpool while on a mission to Great Britain, and was very thankful for the great amount of good he had derived therefrom.

Elder Samuel W. Richards felt his weakness and diffidence; spoke very feelingly to the Saints to guard their thoughts and actions, more especially their thoughts, as they are the precursors of and accessories to their actions, and for which we shall be held to answer at the great tribunal of God. Bore testimony to the truth of this work and to the promises held out to the faithful by scripture and revelation.

Prest. Hart then presented the general and local authorities of the Church, which were unanimously sustained, after which he made a few remarks, endorsing those of the previous speakers and encouraging to the Saints; bore his testimony to the truth of this latter-day work of battling for the truth; strongly denounced the actions of men who were fighting against God, and predicted their downfall which he said was inevitable. Benediction.

2 p. m.

Singing and prayer and administering the sacrament, after which Apostle C. C. Rich addressed the conference, exhorted the Saints to be more diligent in thought, said they did not do enough thinking compared to their talking, and as a rule were too staid in their habits, illustrating his remarks by a statement of the ways of the people in several parts of Europe and Asia; they do not seem anxious for improvement, but are content to dwell in the same habitations and follow the pursuits as their forefathers. He dwelt at length upon the necessity of thoroughly investigating the principles of our religion; said he disliked the habit of a great many of the Saints in becoming acquainted with the faults of others and utterly neglecting their own; exhorted the Saints to be more careful in their daily deportment and not to treat the things of the gospel in a careless manner. He explained the duties of the Saints in their daily lives, and exhorted them to live up to them, that they may reap the reward of the just.

Singing and benediction. Adjourned for three months.

THOS. MINSON,  
ROBERT SPENCE,  
Clerks.

## EDITORIAL NOTES.

There will be a total eclipse of the sun on the 11th of January, visible to the western quarter of North America, the Pacific Ocean and the extreme northern edge of Australia, being central and total along a line distant twenty miles south of and parallel to a line drawn through Monterey City and Mariposa, Cal., and Salt Lake City.

England is compelled to import a great many other articles of consumption besides breadstuffs. The value of the eggs and poultry she purchases from foreign markets amounts annually to \$40,000,000. Most of these latter products are obtained from France, her former bitter enemy.

As usual at this season predictions of a severe winter are common. The latest we have heard of is from an Indian source. The Plutes prognosticate deep snow, high winds, and extraordinarily cold weather about Christmas time. The early disappearance of the birds, the heavy growth of moss upon the trees and the deep burrowing in the ground of animals and worms, are the signs which tell them of a rigorous winter. There are also certain insects which make provisions against the cold by rolling themselves up in coverings which they weave about their bodies in the fall. A mysterious instinct, which the wisest cannot fathom, tells these insects when to make their coats warm and thick, and the Plutes hold that the thicker the coverings the colder the forthcoming winter. So long as we have plenty of snow in the mountains for the next season's irrigation we can stand a little extra cold and nipping frosts.