

THEIR LITTLE GAME.

This city surrounded by hills
Was built by the Saints of the Lord,
Who had fled from the eastern lands
To escape persecution and sword.

"Mormons" and fifty-nine by "Mormons." These cases extend over a period from Feb. 6, 1865 to Dec. 28, 1869.

It may not be generally known, for it has been gotten up in secret, and it was with great difficulty that I obtained a copy, that a memorial has been forwarded to Congress by a clique of forty-five who have appended their names to it, complaining among other things, "that the Probate Courts exercise concurrent jurisdiction with the higher courts," and as the names of several of these gentlemen figure in these records, perhaps the records themselves, while they prove other facts, may be as good an answer to them as need be adduced.

I find a case among the number, of Walker Bros., formerly "Mormons," (of whom Joseph R. Walker, chairman of the memorialists, is the principal partner,) plaintiffs, against James Robbins, a "Mormon," defendant; wherein the plaintiffs recovered judgment on the 11th of June, 1866, for \$497.84. The exhibit also shows three separate cases, wherein Stephen De Wolf, law partner of R. N. Baskin, another of the memorialists, was against "Mormons," as follows: Stephen De Wolf vs. Thomas J. Franklin et al. Plaintiff received judgment 12th May, 1860, for \$278.50 and costs. De Wolf & Standeford, assignees of C. A. Perry & Co. vs. A. Gardner ("Mormon" Bishop). Plaintiff recovering judgment 16th June, 1862. For S. De Wolf vs. Naisbitt & Hindley, plaintiff recovered judgment, 29th Nov., 1868, for \$650.80.

On the exhibit are two cases, wherein John B. Kimball is plaintiff, a non "Mormon" deceased, formerly a partner of H. W. Lawrence, another memorialist, which were decided in Mr. Kimball's favor, and against "Mormons" viz. John B. Kimball vs. George Snow. Plaintiff recovered judgment 13th June, 1859, for \$61 and costs; and against another "Mormon" for \$476.40 and costs. Another memorialist is one of the plaintiffs in the case of Siegel Bros. vs. C. T. Cram (a "Mormon"). Plaintiff recovered judgment, 16th July, 1868, for \$145.10. Samuel Kahn, another memorialist, is one of the plaintiffs in the case of Bodenburg & Khan vs. Brigham H. Young (a "Mormon") and a nephew of President Brigham Young). Plaintiffs recovered judgment, April 2d, 1866, for \$3,255.76.

The exhibit shows that Wells, Fargo & Co., Charles H. Hempstead, ex-U. S. Prosecuting Attorney, Gilbert & Gerrish, Gilbert & Sons, merchants, Rogers, Shropshire & Co., the California State Telegraph Co., and other prominent parties proceeded against members of the "Mormon" church in the Probate Court, and all of them got their cases. Their action attests the confidence reposed in the integrity of those courts, while they were directly interested in the issue. The unbiased action of the court proves, also, that their confidence was not misplaced. I have several cases of a similar kind from Weber, Utah and other counties; but enough has already been said, and I stand prepared to prove, what I before stated, that out of eighty-four cases tried before the Probate Court of Salt Lake county, twenty-five were lost by non-"Mormons" and dissenters, and fifty-nine by "Mormons."

Among the above I find "Appeals to the Probate Court for Salt Lake county, U. T., from Alderman's Courts, Salt Lake City," in which there are thirteen cases, six of which confirm the action of the lower court, while seven decisions are against the city.

I feel proud to see a record like the above; for while it gives the lie flatly to our defamers, it proves that our courts and juries act justly and are not influenced by any religious bias. Our religion teaches honesty and justice; and I am pleased to see it so fully carried out, and let me say to my brethren, that while you pursue an honorable, upright course you need not fear defamation. These men would a great deal rather trust you now than one another. Mr. R. N. Baskin, one of the said memorialists, who is well known to be a prime mover in the clamor for special legislation for Utah, testified before the Congressional House Committee on Territories, June 21, 1870, as follows: "For five years past I have been a resident in Utah, and I must do the Mormons the justice to say that the question of religion does not enter into their courts. In ordinary cases I have never detected any bias on the part of jurors there in this respect, as I at first ex-

pected. I have appeared in cases where Mormons and Gentiles were opposing parties in the case, and saw, much to my surprise, the jury do what was right." I wish we could say as much for them.

A memorial has been gotten up to Congress, called "A Lawyers' Memorial, complaining of our jury law, of the action of our Probate Courts, accusing the Legislature of dereliction of duty, and calling for special legislation. The following are their names:

J. H. Rosborough, Robt. N. Baskin, Wm. P. Appleby, John R. McBride, J. E. Hemmingray, W. W. Gee, W. Haydon, Geo. E. Whitney, S. DeWolf, W. C. Hall, James H. Beatty, M. A. Carter, Albert Hagan, Dennis J. Toohy, Saml. A. Merritt, Thomas Marshall, Jonathan C. Royle, W. W. Woods, Geo. Venable Smith, Reuben H. Robertson, C. W. Bennett, C. H. Morgan, Sol. P. McCurdy, C. K. Gilchrist, Frank Tilford, D. W. Perley.

Do these gentlemen know that in making these assertions they are simply reiterating the allegations of Gov. Woods? Are they aware that the Legislature does not claim "original jurisdiction" for Probate Courts, under the Organic Act; but under an act of the Legislature which the Organic Act empowers it to pass? Do they know that a few days after his Excellency, Gov. Woods, made that very singular statement to the Legislature, in his veto message, "That there has not been a jury impaneled in this Territory for more than three years, where a verdict could have been valid nor can there be under the laws now in force," that a bill was presented, by Mr. Snow, Territorial Attorney, to the Legislature for the payment of a Grand and Petit Jury and for the expenses of a court held in Beaver County by Associate Justice Boreman? Are they aware that Associate Justice Emerson presented his views to the Legislature, in regard to what was required to put his court in working order; and that that body passed a bill for that express purpose; which bill was vetoed by the Governor? Do they know that a new jury bill was also introduced and passed, with a view to meet these very complaints; and that this bill was also vetoed? Do they know that in the case of Englebrecht the Supreme Court of the United States sustained our jury system and that Chief Justice McKean, himself, acknowledged that he "had been wrong in holding that the Legislature had not the right to create the office," viz., that of Territorial Marshal, which was the great question in dispute, in regard to obtaining a legal jury? And do they know that the Supreme Court of the United States in the Snow case has decided that "there is necessarily no conflict between the Organic Act and Territorial laws?" Most of these are professional gentlemen, and I submit that they ought to be acquainted with these facts before making such assertions. If, as stated by Justice Bradley, of the United States Supreme Court, "There is necessarily no conflict," the conflict must be unnecessary. The Legislature has done all it could to remedy the alleged evil. The Governor will not have it remedied, having vetoed every measure passed for that purpose. Do they know that, if the Governor had not unlimited veto power, these bills would have been passed by unanimous vote of the Legislature? In view of these things, accusations against the Legislature, charging it with obstructing law, come with a very poor grace.

We must now turn over a new leaf; and after having examined the action of our courts in sustaining justice, see what others have done in opposing justice, protecting and liberating criminals, encouraging lawlessness, drunkenness and lasciviousness, and shielding crime. I am sorry to have to make such an expose, but am necessarily obliged to show the contrast in the vindication of right. In England they have their Blue Book. I am afraid that I shall have to open the Black Book.

The following is a list of the names of parties convicted before the Police Court of Salt Lake City, for violation of a city ordinance, and subsequently discharged by the Third Judicial District Court, as reported by Andrew Burt, Chief of Police:

"Charge—Selling Liquor without License, May, 1870, to February, 1873, Paul Englebrecht, eight cases, \$700; July, 1870, William S. Godbe, two cases, \$200; October, 1870, to April, 1872, James Gordon,

eleven cases, \$1,050; September to November, 1871, Tucker & McKim, five cases, \$450; October 18, 1871, to July, 1872, James Turbett, eight cases, \$800; October, 1871, to July, 1872, Charles Loomis, four cases, \$400; October, 1871, Dou C. Butterfield, one case, \$100; December, 1871, to May, 1872, Shoales & Maynard, four cases, \$400; January, 1872, to June, 1873, Lawrence & Mann, eleven cases, \$1,100; February, 1872, to June, 1873, Steper & Hannak, six cases, \$600; March, 1872, Henry Wagener, one case, \$100; March to April, 1872, Charles Niderhoper, two cases, \$150; April to August, 1872, Moore & Cavillie, two cases, \$200; April, 1872, C. C. Carrol, one case, \$100; April to July, 1872, Henry G. Wright, seven cases, \$700; April, 1872, to July, 1872, Auer & Murphy, eight cases, \$800; April to October, 1872, Phemkie & Lutz, four cases, \$400; April to October, 1872; Mat Brannan, two cases, \$200, July, 1872, M. Conner, one case, \$100; July, 1872, William J. Jones, two cases, \$200; Harry Briston, one case, \$100; July, 1872, John Metz, one case, \$100; July, 1872, Loomis & Jones, two cases, \$200; July, 1873, Hale & Lannan, nine cases, \$900; July, 1872, Kirby & Barber, one case, \$100; July, 1872, Charles Yeoman, three cases, \$300; September, 1872, John F. Halley, one case, \$100; September, 1872, John Savage, one case, \$100; October, 1872, Edward Connelly, two cases, \$200; November, 1872, William Smith, three cases, \$300, ninety days in City Jail; June, 1873, John Bietol, one case, \$100; Gus. Aisleg, June, 1873, two cases, \$200; Pape & Cupid, two cases, \$200; June, 1873, Mansfield, Atchison & Steel, two cases, \$200; June, 1873, E. S. Mansfield, two cases, \$200; September, 1873, J. D. Lamb, two cases, \$200; October, 1872, D. B. McGhee, one case, \$100; July, 1872, Sarah Jones, one case, \$50. Total, 127 cases and \$12,450 fines."

"April 14th, 1870, James Camp was brought before the Police Court, charged with assault and battery, found guilty and fined \$15; discharged on a writ of habeas corpus by Judge Hawley, Sept. 5, 1873, C. H. Kitchin, arrested, charged with running billiard tables without license, fined \$100; discharged on habeas corpus by Judge McKean."

It would be an interesting study to find out how many of these names, and many more to come, are on those memorials forwarded from this place requiring special legislation. If persons are at a loss to hunt them out, I may be able to assist them. But then these parties need not complain, for it seems the courts, as now organized, have all the power needed to protect violators of the laws.

It may be said that Justices Hawley and McKean had a right to exercise their judgment in their official capacity about the legality of the city ordinance which imposed these fines. True, to a certain extent, when governed by law, but when we consider that all of the rulings of Chief Justice McKean, to which exceptions were taken, for the space of about eighteen months were overruled and nullified by the action of the Supreme Court of the United States in the Englebrecht case, a little more modesty would be more becoming. It certainly does not show well in view of these things to stand forth so prominently as the friend and protector of law-breakers.

Chief Justice Titus, in the Tierman case, sustained the acts of the Legislature in granting the City Charter; the authority of the city in framing and passing ordinances, the officers of the city, including Aldermen, in their official capacity to their fullest extent, and in conclusion said: "In all but the name, these aldermen are Justices of the Peace; their qualifications, powers and jurisdiction are identical with those of Justices of the Peace. In most, if not all cities of the Union, Aldermen are ipso facto Justices of the Peace. The most comprehensive analogy, therefore, requires us to regard the act creating these Aldermen, as a valid exercise of power. This exception is also answered by the maxim of legal construction, De minimis non curat lex, which excludes mere nominal and immaterial objections. Finally it is negated by the implied sanction of Congress for more than five years. The judgment of the Probate Court ought therefore to be and is affirmed."

Chief Justice Titus had no special political object to serve; but simply acted as an honest judge in support of law and order.

Is it not singular that these rulings (except this of Chief Justice Titus) should ALL be in favor of violators of laws? How does this compare with the above quotations from our Probate Court? It seems that there needs a little praying done here by the ladies of the Temperance Reform Brigade.

If this was all, although bad enough, we might leave it to the ladies to correct; but the plot thickens as we proceed. I again quote from the Black Book—

"The following named persons were arrested, charged with various crimes, and committed to the Third Judicial District Court, and have not, to my knowledge, been called to answer—

"March 22, 1871, George H. Graham, seduction and rape.

"June 29, 1871, John Spiker, assault with intent to kill.

"August 31, 1871, Joseph Murphy, gambling.

"November 6, 1871, James Lewis, grand larceny.

"November 6, 1871, Charles H. Marrion, grand larceny.

"November 6, 1871, Jerry Crowley, grand larceny.

"January 9, 1872, Thomas Butterwood, passing counterfeit money.

"January 12, 1872, Charles Burgess, grand larceny.

"January 29, 1872, A. C. Bernard, receiving stolen goods.

"March 13, 1872, Samuel Nickens, assault and intent to kill.

"April 15, 1872, Joseph Silver, assaulting an officer.

"April 17, 1872, Charles Marrion, grand larceny.

"April 18, 1872, John Dowd, grand larceny.

"July 9, 1873, W. M. Sullivan, murder.

May 24, 1872, John W. Fagan, assaulting an office.

"I hereby certify that the within and foregoing abstracts from the Police Record of Salt Lake City are true and correct.

[Signed] "ANDREW BURT, Chief of Police."

Does the above need any comment? Territorial courts administer evenhanded justice to "Mormon" and non-"Mormon." The U. S. court appears as the protector and defender of the crimes of rape and seduction, of gamblers, thieves, counterfeiters, perjurers, of violent men and murderers.

It is a sorry thing to have to present such a record of any of our federal courts, and individually I would rather it had slept in eternal oblivion; but when the citizens of this Territory and our Territorial courts are maligned, misrepresented and outraged by some of these courts, by our governor and a clique of their sympathizers and abettors, and when this same party are moving heaven and earth to fasten upon this people more of these infernal infamies, it is time the veil was lifted, that men may be seen in their true light.

I am not yet through; there are more pages in this Black Book; but I must let this suffice for the present.

Respectfully, &c., JOHN TAYLOR.

SALT LAKE CITY, March 12, 1874.

Editor Deseret News:

SIR,—In my letter of the 10th inst. I said, there not having been passed a fee bill by the Territorial Legislature, and I having held a court which required an expenditure, I corresponded with the Hon. Elisha Whittlesey, Comptroller of the Treasury of the United States. This I did for the reason that it was my duty to certify to the Treasury Department, at Washington city, the accounts of the clerk of the court, and of the marshal and attorney of the United States. To do this I needed the practice of the United States. My first letter to Mr. Whittlesey was as follows:

GREAT SALT LAKE CITY, Utah, February 1st, 1852.

Hon. Elisha Whittlesey:

DEAR SIR—In relation to the practice of the United States in defraying the expenses of the territorial courts I am not well informed, and therefore do not know what my duties are relating to certifying to the Treasury Department, I therefore respectfully request you to inform me by answering the following questions:

1. Do the United States pay the jurors and witnesses, in prosecutions for crimes and misdemeanors committed in violation of the territorial laws?