

OPINION OF THE SUPREME COURT.

The following was rendered yesterday, in the Supreme Court—

In the Supreme Court of Utah Territory, June term, 1877.

Salt Lake City, respondent, vs. Henry Wagner, appellant.

Appeal from the Third District Court.

Boreman, J., delivered the opinion of the Court.

This cause was tried before a Justice of the Peace of Salt Lake City, and judgment was had against the defendant for \$20, for violation of a city ordinance providing for licensing and regulating the manufacture and sale of spirituous and fermented liquors. The District Court affirmed the judgment of the justice, and thereupon the defendant appealed to this court.

The appellant denies the right of the city to require him to take out license and pay a charge of \$100 per quarter for selling beer, his place of business being situated at a distance from the settled portions of the city.

The city requires the defendant to pay it \$100 per quarter. For this sum thus required of the defendant the city should grant an equivalent to defendant. It does not appear that any such equivalent is granted. Simply under a clause, therefore, of the charter authorizing the city "to license, regulate and restrain," the business, the city is not authorized to enact the fee or duty specified, as the benefits to the parties must be reciprocal.

But it is claimed that such power is granted to the city as a part of its general police regulations. If, therefore, such power is "for the health, safety and happiness of the inhabitants of said city, and for the peace, good order, regulation and cleanliness thereof," (charter, §70) it has been granted.

A municipal corporation is "one investing the people of a place with the local government thereof." The "local government" cannot be said to include that which is not local, nor in any way concerns the "local" affairs.

As applicable to a case like the one at bar, the police regulations are to restrain the noxious use of private property or business to the injury of the people of the city, to whom it is a source of harm, interfering with the "health," "safety," or "happiness" of the inhabitants of said city, or the "peace, good order, regulation," or "cleanliness thereof."

As a general proposition the sale of fermented liquors, as a beverage, is injurious to the public at large. It is not specially detrimental to a city over and above the general public, unless it be within the settled portions of the city or so near thereto as to cast its influence over the city more than over the public generally. The influence of the sale of intoxicating liquors at any point in the Territory is unwholesome to the public at large, but we could not be justified in saying that such influence was specially injurious to any particular locality unless it was contiguous, or very nearly so, to such locality. Unless we could say this we would not be justified in saying that the city could control it by reason of its general police powers.

The defendant's place of business was remote from the populated parts of Salt Lake City. The Camp Douglas military reservation, two miles square, lay between it and the settled parts of the city, and no streets, lots or blocks are in the neighborhood of his place of business, but farming and grazing lands surround it, and the ground is no part of that embraced in the "town-site" entry of the city. It does not appear that any supervision was taken over the place by the city except to claim the license fees or charges, and no bad effects of the business are shown to have extended to the city proper, and the locality is too remote for the court to conclude from the general bad character of the business that the bad effects extended more to the city than to the public generally.

The Kentucky case of Falmouth vs. Watson, 5 Bush, 660, is the case mainly relied upon by the respondent. In that case it appears that the statute gave the city of Falmouth authority to control the business of selling intoxicating drinks within one mile of the city, and the court said that this law did not infringe any constitutional right because the vending of ardent spirits was in such proximity to the town as to render its exercise liable to affect

the good order or peace of the local community. But we do not think that said language could be used in the case at bar. It would be straining the law too much, but it would be necessary to say this in sustaining the judgment. We consider that the city would be affected as a part of the general public, and the general public had given his authority through the county courts, from which he held his license. We therefore do not feel justified in saying that the city had the right to exact the fees or charges specified, the place of business being too remote from the settled portion of the city.

The judgment of the District Court is therefore overruled with costs.

Schaeffer, C. J., dissents and reserves the right to file his opinion.

Emerson, J., concurs, and may hereafter file a concurring opinion, showing additional grounds.

CORRESPONDENCE.

The European Mission.

LIVERPOOL, May 30, 1877.

President Brigham Young:

Dear Brother—Our passage across the sea was, on the whole, a pleasant one. We had four days of rough weather, the rest of the voyage was exceedingly pleasant.

The Elders accompanying me all arrived in improved and good health, and they are now all off to their fields of labor, except Elders T. G. Webber and H. B. Clawson, Jun., who leave to-morrow for London, en route for Switzerland and Germany.

Brother Franklin S. Richards, whose health seemed to improve all the way, but who is still feeling somewhat tender, will accompany Bros. Webber and Clawson to the Continent, to spend a short time, until the weather in England, which is now very cold and we for the season, moderates a little, when he will return and commence his labors in the ministry. Elder Carrington, wife and son, accompanied by your son Arta, set sail to-day at noon, on the *Idaho*, bound for home.

Elder Charles Nibley has taken Arta's place in this office, for the time being, or until you shall suggest or make a change. We shall keep him as much as possible in the ministry in this Conference, while he remains.

June 13th was fixed upon, and advertised in the *Star* by Brother Carrington, for the departure of the first company. The next will be toward the latter part of the month, which will embrace the Scandinavians and the Swiss, principally.

Your brother in the Gospel,
JOS. F. SMITH.

BY TELEGRAPH.

FOREIGN.

QUEBEC, 16.—A squad of the provincial police force left here by train, last night, in response to a requisition for aid from Oka.

MONTREAL, 16.—Not an Indian is to be seen about Oka. They are said to be secreted in the village, armed and determined to resist any attempt to arrest them. Rev. Mr. Pareat, Protestant Missionary at Oka, is endeavoring to pacify the Indians. The cause of the burning of the church remains a mystery.

The Indians have decided to appeal direct to the Dominion Government and demand inquiry into their cause of grievance. The Caughenqua Indians are taking a lively interest in the trouble of their brethren at Oka. The District Royal Orange Lodge, through its properly authorized officers, call upon Orangemen not to join any body of men who may propose to proceed to Oka, however much they may sympathize with the oppressed Indians, but to wait the decision of the courts.

RAGUSA, 17.—Intelligence has been received that there was a sanguinary engagement lasting throughout Saturday, between 10,000 Turks and 3,000 Montenegrins, at Rasnoglarka. The Turks were defeated and pursued to Shuz, leaving 2,000 dead on the field.

LONDON, 17.—Official inquiry at Edinburgh concerning the explosion on board the steamer *Sidonia*, resulted in a verdict declaring that the explosion was caused by over pressure on the safety valve, and that the chief engineer was principally blameable.

Slavonic advices via Ragusa, represent that Mehemet Ali had been completely defeated near the river Jalonika. The Montenegrins pursued him and burned all the Turkish villages in the Wassojevich district, and that the Turks have been compelled to completely evacuate Montenegrin territory.

A special from Berlin says the Czar is not well, in consequence of the unhealthy climate of Roumania, and will shortly return to Kieff, where preparations are already being made to receive him.

The *Standard's* Vienna correspondent reports that Nicsics was only victualled after tremendous carnage. The exact losses are not yet known.

Great inundations on the Don and Dnieper rivers are reported from Russia.

There has been a dangerous outbreak of from fifteen to twenty thousand mounted Arabs, in the district between Damascus and Aleppo. The country is almost denuded of troops. The governor of Syria has telegraphed for assistance, and until it reaches him the district will probably be given up to plunder. Such uneasiness is felt concerning Crete that six battalions are to be sent there, although wanted elsewhere.

Special dispatches from Paris agree that Saturday's sitting of the Chamber of Deputies was one of the most violent ever witnessed. The *Times'* correspondent says it extended over five hours and a half. During that long time there was one prolonged roar of vociferations. At one time, when Gambetta said that the power was in suspicious hands, the Minister of Public Works sprang, with a threatening air, towards the Tribune, and the members of the right and left dashed forward, the ushers had to separate the hostile armies. It really seemed as if there would be a hand-to-hand fight. All instinctively waited for the reports of revolvers.

LONDON, 18.—No vessel, whose repairs are likely to take any length of time, is to be docked either at the Devonport or Keyham yards, which are to be as clear as possible for any emergency.

The engineers who made the geological explorations and soundings for a submarine tunnel between France and England, report that a tunnel is perfectly practicable, as there is a continuous bed of chalk between the two shores.

Affairs in Utah.

Washington, June 8.—Mr. Howard called upon President Hayes in company with the Attorney General and presented a note from Governor Emery, of Utah, renewing his application for an additional military force in the Territory. Mr. Howard assured the President that the Governor was not needlessly alarmed, and that a reinforcement of the detachment of troops in Utah would be a wise measure. It would give the United States officers confidence and restrain the Mormons.

The reports of Generals Crook and Smith to the Secretary of War in deprecation of the alarm of Governor Emery, while made in the best of faith, were not reliable. General Smith lived in camp several miles out of town, and neither he nor his subordinate officers was the inside of Mormon life, but the District Attorney, through his marshal, deputies, detectives and like agents possessed a knowledge of the secrets of the system which the military could never acquire.

He knew that the Nauvoo Legion was drilling, recruiting and arming for an ulterior purpose, and that was to protect the chiefs of the Church and, if necessary, escort them to the mountain fastnesses of Lower Utah should the law ever seek to put its hand upon them for trial and punishment. The population of Lower Utah is wholly Mormon, and the fugitives might there defy the United States for an indefinite time. It is proof of the alarm of the Gentiles that Judge Boreman, of the Beaver district, has also written to the Secretary of War asking for arms for his people.

Mr. Howard says that there is undisguised joy among all classes of responsible Gentiles (such as merchants and well to do men) that a crisis has arrived which must determine now and forever whether the Territory is to be ruled by one man—Brigham Young. He, therefore, pronounces untrue the reports that this class of men deprecate the work of the *Herald* in exposing the villianry of Mormonism. On the con-

trary the *Herald's* beneficent enterprise is hailed with delight by these men, and its correspondent will have every help in getting at and exposing the evil deeds of Brigham Young and his priests. He thinks from the reception given his statements by the President that the military force in Utah will be increased.

Mr. Howard left Salt Lake on Monday, the 28th ult. He saw Mr. Stillson immediately after the attempted assassination of the previous Saturday, and conversed with him about it, but on confidential terms, and he believes that Mr. Stillson would have kept entire silence about it so far as the public are concerned had not the second attempt been made upon his life. He advised him not to go to Southern Utah or to expose himself unless in the company of a United States officer or other competent protector. — *New York Herald*, June 9.

EUROPEAN SCRAPS.—The *New York Herald's* cable dispatch from London, June 9, has the following—

The great event of the sporting week has been the meeting of the Four-in-Hand Club at Hyde Park, under the leadership of the Duke of Beaufort. Twenty-one drags paraded. Thirty thousand spectators witnessed the spectacle, which was really imposing, and the favorite coaches, with their loads of manliness and beauty, attracted many admiring comments from the well-dressed throng. The coaching season, indeed, is in full blast, inspired, perhaps, by the gracious summer weather. Coaches now run regularly out of London to Box Hill, Guildford, Richmond, St. Albans, Tunbridge, Sevenoaks and Windsor.

Lord Falmouth has presented \$5,000 to Archer, the jockey who rode the winning horse at the Derby.

The clipper *Canterbury* has sailed a race from New Zealand to London in sixty-five days, the fastest time on record.

The courts have decided that a British subject has an indefeasible right to get as drunk as a boiled owl in his own house, without the interference of the police. The authorities cited by the learned judge are numerous, there being at least nine thousand Scotch decisions on the point.

The Pope received during the jubilee \$1,100,000 in hard cash, not counting the innumerable articles of value presented.

The French clergymen want to have their salaries raised, the archbishops receiving only \$4,000 and the bishops \$3,000 per annum.

—An exchange says, "A pleasant family party assembled, several nights ago, at the Star and Garter, Richmond, England, to celebrate the birthday of the head of their household, Mr. Edward Morgan, who had just completed his one hundred and sixth year. Of his one hundred and two children, grand-children, and great-grand-children, sixty-seven managed to be present, and joined in wishing the venerable pere many returns of the day."

QUININE and arsenic form the basis of many of the Ague remedies in the market, and are the last resort of physicians and people who know no better medicine to employ for this distressing complaint. The effects of either of these drugs are destructive to the system, producing headache, intestine disorders, vertigo, dizziness, ringing of the ears, and depression of the constitutional health. Ayer's Ague Cure is a vegetable discovery, containing neither quinine, arsenic, nor any deleterious ingredient, and is an infallible and rapid cure for every form of Fever and Ague. Its effects are permanent and certain, and no injury can result from its use. Besides being a positive cure for Fever and Ague in all its forms, it is also a superior remedy for Liver complaints. It is an excellent tonic and preventive as well as cure, of all complaints peculiar to malarious, marshy and miasmatic districts. It acts directly on the liver and biliary apparatus thus stimulating the system to a vigorous, healthy condition. For sale by all dealers.

"I never saw such a restless child!" exclaimed the mother as she tried to fidget the boy with a new jacket. The little fellow grew quiet and thoughtful for a moment, and then suddenly exclaimed, "I know why I'm so, ma; the day God made me I guess the dust was a-flying awful."

Healthfulness.

A distinguished physician says: "After a careful examination of Dr. Price's Cream Baking Powder, I am satisfied that it is a wholesome preparation. I have introduced it among my patients, and have yet to learn where a convalescent patient could not indulge in warm biscuits made with it, and feel the better for it."

THERE are hundreds of persons of free habits who in their dissipation indulge in excesses which proclaim themselves in cutaneous eruptions that disfigure the face and render it repulsive. GLENN'S SULPHUR SOAP is the very best agency for removing those deformities, and restoring the skin to its natural and healthy color. A cake of that soap in such cases is better than a whole faculty of medicine or than a whole college of apothecaries.

Hill's Hair and Whisker Dye, black or brown, 50 cents. deadw

"By their Works ye shall know Them."

The Irishman who thought the druggist stingy because the emetic was so small, is only surpassed in his parsimonious drollery by those who persistently adhere to the use of those nauseating, disgustingly large and drastic pills, while Dr. Pierce's Pleasant Purgative Pellets, which are sugar-coated, and little larger than mustard seeds, will, by their steady and gentle action on the liver, correct all torpidity, thus permanently overcoming constipation. In South America they have almost entirely superseded all other pills, and are relied on fully by the people, and often used as a preventive of the various affections of the stomach, liver, and bowels, so prevalent in that climate. Pierce's Pocket Memorandum Books are given away at drug-stores.

Smyrna, Aroostook Co.,
Maine, Nov. 6, 1876.

R. V. Pierce, M. D.:

Dear Sir—I write to inform you that I have used your Pellets for some time, and find them to be the best medicine that I ever used. I have also used your Favorite Prescription in my family with entire satisfaction. I have seen your People's Common Sense Medical Adviser and I think it is the best thing that I have ever seen.

Yours truly,
dsw C. SHERMAN.

Most Remarkable

In its effects, and most useful in its application, the fragrant SOZODONT has become the most popular Dentifrice in existence. 'Tis used and praised by everybody.

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Patronized by the Ladies

Dr. Price's Special Flavoring Extracts are used by the most intelligent ladies in this country. A few cents additional cost does not deter ladies who are mindful of the health of their family, from procuring that which is known to be pure and wholesome.

NOTICE.

In the Probate Court in and for Salt Lake County, Territory of Utah.

In the matter of the Estate of }
EZEKIEL LEE, deceased.

A petition, with a document purporting to be the last Will and Testament of Ezekiel Lee, deceased, having been filed in this Court by Orrin J. Lee and Fanny F. Lee, praying that said proposed Will be admitted to Probate and that Letters Testamentary be issued to petitioners.

Now, pursuant to an order of said Court, notice is hereby given that Thursday, the twenty-eighth day of June, 1877, at 10 a. m., at the County Court House in Salt Lake City, has been appointed the time and place for the hearing of said petition and the proving of said proposed Will, at which time and place all persons interested may appear and contest the Probate of said Will.

Dated at Salt Lake City, this 16th day of June, A. D., 1877.
D. BOCKHOLT,
Clerk Probate County, Salt Lake County,
Utah.