

## EDITORIALS.

## NOT A COMMON REVERSAL.

THE rebuke which the District Attorney and the courts of Utah have received by the recent decision of the highest legal tribunal in the land, is a great deal more than an ordinary reversal of a judicial ruling. An attempt is being made to class it with the common differences on legal points between the lower courts and the higher. But this will avail nothing with the thinking portion of the public. They can see in the overthrow of a deliberate attempt to prostitute the law for the gratification of personal malice; a sturdy blow at the unlawful exercise of judicial authority; a vindication of the rights of accused persons even though they are classed as "Mormons."

To err is human. It is nothing new for judges as well as attorneys to make mistakes. And no man or official is to be severely condemned for an unintentional blunder. The intricacies of the law and its liability to different interpretations is proverbial. The records of appellate courts are largely made up of points of difference between judicial authorities. But the case just decided, which is but one out of a very large number of a similar character in the main aspect, involved not merely a difference of opinion about the rendering of a clause or the definition of a paragraph, but the liberties of men suffering from false imprisonment. An Act of Congress limiting punishment for a certain offence to a given period, was deliberately disregarded in that respect and the penalties were multiplied at the option of a vindictive official. And the courts of Utah sustained this high-handed outrage, feeling secure in their supposed immunity from supervision by a higher court. What could be done towards blocking the way to a final adjudication by a court of review, was accomplished. But it was all in vain. The obstructions failed and the reversal was complete.

The decision of the Supreme Court of the United States means that the courts here greatly exceeded their authority. That they punished men outside of the law. That all who have thus been incarcerated beyond the time specified by statute are victims to official and judicial assumption, and that to gratify personal animosity expressed upon the bench, the law has been trampled upon by those who claim for it the highest veneration.

The peculiarity of this case, too, is further marked by the fact that the course of the Utah courts was utterly indefensible. The law itself is so plain that it is not open to doubt. The authorities and precedents are all against the course pursued. There was not an inch of solid ground on which they could base their theory and practice. When the case came before the deciding tribunal it could not be defended on its merits. There was no attempt at argument to show that the lower courts were right, or that they had any fair reason for punishing men for violation of a statute, beyond the penalties which that statute imposed. But the endeavor was made to prevent the Court from inquiring into the matter at all.

The jurisdiction question was sprung to stop investigation. The plea was not made that the lower courts had such and such reasons for their remarkable proceedings, but it was in effect: "You have no right to look into this affair. No matter if the Utah courts have declared that black is white, or white is black. You have no authority to question their decision." The fact is, the case was beyond defense and therefore obstruction was the only chance left for the attorney who appeared for the courts below.

Therefore we say, this is not to be classed with cases which disclose a mere variance of opinion as to the construction of terms or the bearing of a sentence in a statute, but is in the nature of a complete overthrow of a position assumed by the District Attorney and the District and Supreme Courts of Utah, in which they proceeded to punish persons without authority of law, on the personal theory that the punishment, in their view, as limited by law was inadequate to the offense. In other words, the Attorney and the Judges did not look at it with the same eyes as the men who made the law, and therefore they proceeded to make it operate to suit their own notions of vengeance against offenders.

We have no doubt whatever that if other vital questions ruled on by the Utah court and involving the liberties of men, could be subjected to the same authoritative criticism, they would meet with a similar reversal. The cobaltation chameleon needs its colors fixed by sticking a Supreme Court pin through it. The absurd and contradictory opinions of the Utah courts on the same question, render them open to ridicule and contempt. They have stood as law because they could not be brought up into the higher light. The obstruction to inquiry concerning them has been so far effectual. But the tremendous overturn which the segregation question has given to judicial assumption in Utah, suggests the utter wrong and error of other important rulings bearing in the same direction.

At present there seems no relief from the difficulty. But the presence of the evil is a constant reminder that some

means ought to be devised for remedy, and the minds of the most intelligent and reflecting should be turned in the direction of its discovery. It is the province of law to right that which is wrong in practice, and it is certainly wrong that a palpable wrong should exist without a remedy.

## THE MCGLYNN TROUBLE.

SOME time since, during the mayoralty campaign in New York City, it was announced in advance of the candidacy of Henry George that he had 50,000 votes pledged to him, with a probability of obtaining as many more, thus securing his election as far as such a thing could be done on paper; it meant not a majority, for even the least thinking of the zealots who supported him had the presumption to suppose that more voters of New York City endorsed the George theory of political economy than opposed it; but the fact that it was a triangular fight, with the forces of the Democrats and Republicans both well marshaled and losing only such votes as came their way, was regarded as the means by which success would be accomplished—not a majority over all, but a majority over either of the others, that is, a plurality. This would have answered the purpose very well if the promised plurality had made its appearance, but, although George was second in the race, it came nowhere near the visible point, Hewitt leading him some 30,000 votes. But then came the inquiry after the battle, from both wings of the opposition to the quasi-Socialist, as to where such a force was raised and how it was done—a force outnumbering the Republican party 10,000 votes and growing up as it were in a day. At this juncture, the solution came as soon as those who asked the question could comprehend it—McGlynn. As rector of St. Stephen's Church (Catholic) in New York, inferior in rank to Archbishop Corrigan but immensely superior to him in popularity and influence, he it was who created the phalanx, so nearly successful, which cast a united ballot for Henry George. By what means? Through the direct agency of his spiritual calling mostly, and through appeals to the unthinking rabble, by presenting to their eyes the picture of a social Utopia in which the rich would be lowered and the poor raised until absolute and fixed equality was attained; that was the other means. Then the headquarters of the church at Rome took a hand in the affair and removed Dr. McGlynn from his position, but the angry parishioners more than ignored his successor, they would not allow him to enter the building and on the regular contribution day they gave up of their substance not anything; subsequently the Doctor was ordered to Rome to explain his conduct to the Papal Senate, but he would not go—he wrote all he had to say and sent that. He claims that he has a right to be a politician as well as a churchman if he so elects; that he will not submit to disciplining for having political preferences or making political speeches. The Church, however, are not disposed to look at it that way.

That is the way the matter stands now; neither the Doctor nor his adherents will yield; in fact the latter propose to build a church for him independently. It is already well known that the investigating committee of St. Stephen's have exonerated and even endorsed him.

## HOW IS THIS?

It is no wonder that District Attorney Dickson feels sour and ugly; he is confronted with a dilemma. He is compelled to accept of a universal verdict against him upon one or the other of two propositions. (1) That he is a scrub lawyer. (2) Should that fail, that he is a petti-fogger and persecutor.

The recent decision makes it inevitable that the formulation and application of the theory of segregation of the offense of unlawful cohabitation were the result of ignorance of the law or the existence of malice in the heart. He is left to elect which of the propositions he will stand upon. There is no getting away from it. Professionally it is looked upon by some to be as great a crime to be a poor lawyer, as it is to be a consummate scoundrel. We do not share in this view, as there is no essence of criminality in ignorance unless it be the result of neglect to take advantage of attainable sources of information to better qualify the individual for the discharge of sacred official duty. If the conduct of Mr. Dickson has been the result of ignorance it is possible that he is entitled to at least a small degree of commiseration, providing he exhibited due diligence to inform himself. But even this moiety of sympathy would seem liable to be dispelled, in view of the plain language of the statute which fixes the maximum penalty for unlawful cohabitation, and the palpable fact that the offense is necessarily continuous.

If the proposition involving the ingredient of malice be settled upon the situation of the unfortunate man is appalling—a malicious man is invariably unfortunate. That very ingredi-

ent itself renders him so. He also makes other people unfortunate—the class whom he makes the victims of his devilry. It is a question whether, even in that case, all the sympathetic feeling can properly be bestowed upon those on whom—in yielding to the impulses of an evil nature—he inflicts suffering and wrong. Is he not entitled to some degree of pity on the basis of his unenviable situation? But we must not become abstruse, but return to the point we desire to present.

It is not unreasonable to expect that the greater proportion of those who view the situation dispassionately will lean to the theory of malice, in the exhibition of which the most remarkable indifference to human agony has been shown. As for instance, in the case of a victim (O. P. Arnold) where the offense was divided into three counts, the counsel for the defendant spoke in eloquent and pathetic terms of the sufferings inflicted not only upon the men thus pursued, but also upon innocent women and children. This appeal fell upon Mr. Dickson's heart like the gentle rain of heaven upon a slanting plank, there being no soil from which the moisture could cause to sprout an infinitesimal twig of that most delightful plant—human sympathy. The substance of his response was that it was true, women and children might have to suffer, but it "could not be helped." Now it is demonstrated that it could "helped." It could have been immensely mitigated if not abolished but for a maladministration of the law, accessarily the result of ignorance or unmitigated villainy.

If it be true that the District Attorney knew that his theory was not good law, and that he formulated and applied it under the belief that it could not be taken before the United States Supreme Court, the situation is still more hideous in its unadorned peridy. It is positively ghastly in its utter unscrupulousness. If that be the position, and if a human being should receive sympathy on the ground of a disposition to diabolism, then Mr. Dickson is entitled to an ocean of tender sentiment. Fortunately, however, segregation has suddenly assumed the shape of a boomerang which, in its rebound, has struck the man whose hand threw it at those whom he regarded as his helpless hand-tied victims. He now stands naked before the gaze of honorable people as a striking example of segregation, his diabolic constituents being divided so as to enable the onlooker to analyze the ingredients without difficulty.

If the theory of malice be accepted, how flatly now would fall the scathing accusations so profusely showered by Mr. Dickson on helpless women and children called to testify against their husbands, fathers and brothers. He was wont to designate them as liars and perjurers. If he knowingly departed from the law in order to inflict illegal imprisonment and fine upon people placed in jeopardy in the courts, then was his oath of office violated, and he would in that case stand popularly if not legally convicted of the charge which he was in the habit, in his official capacity, of hurling against the most tender victims who came within the range of his spluttering spleen.

This brings us to a point in issue. If the course pursued by Mr. Dickson in procuring the illegal imprisonment and fining of numbers of people, and the creation of untold suffering among a larger number still, was the result of ignorance of law, is he a fit representative of the United States in this Territory? If so the United States are in an unenviable situation.

If the gentleman's conduct was the result of malice and the spirit of persecution, is he then fit to officially represent this great country? If so, then the United States are still worse off.

If there is anything in the foregoing to which Judge Zane is entitled, he is at liberty to appropriate it.

## THE MARKS OF A SMALL SOUL.

It is often said that straws show which way the wind blows. So, little acts indicate the mind that prompts them. District Attorney Dickson appears to be greatly upset by the complete overthrow of his segregation system of inflicting false imprisonment upon "Mormons." That perhaps is quite natural, for the rebuke he has received is severe and his chagrin is not to be wondered at. But he shows the marks of a small soul in his vindictive but fruitless efforts at prosecuting "Mormons" without any evidence against them, and in his vain endeavors to bar the way of release to the prisoners illegally detained in the penitentiary through his perversion of the law.

The petty stumbling blocks and objections and strainings at lit technicalities, for the purpose of keeping those gentlemen a day or two longer in durandio vile, which Mr. Dickson has put forth during the past few days, still further exhibit the character of the official who shines as the terrifier and insulter of helpless women and the brow-beater of nervous invalids. We notice that the spiteful attorney is careful to do all his bullying and hectoring, his calling of names and personal vituperation, behind the cover of the courts. He is smooth-tongued

enough outside where his abuse might meet with deserved retaliation. This is cautious if not brave, and shows a certain amount of shrewd discretion.

But when the fact was established beyond question that a number of prisoners in the penitentiary were detained without any authority in law, we really expected to see Mr. Dickson make some show of magnanimity in ordering their release as quickly as possible. We heard that this was his intention and gave him credit accordingly. We were a little premature. We might have known that a person exhibiting such traits of character as have cropped out from him in court, would be as mean and contemptible as possible in the exercise of authority to release a "Mormon." We thought there were some elements of manhood about him. We apologize to our readers for the error of our anticipation.

Judge Zane has acted like a man and a gentleman in this turn in the tide of affairs. He has shown no resentment in any public way, but has pursued a calm and steady course, and in every instance when applied to has issued the order which the disgruntled and coarse-minded attorney refused. This is greatly to his credit and will do him no harm in any quarter. It was the right of men unlawfully detained in custody to be released at the earliest possible moment, and Judge Zane recognized that right and allowed no personal animus to stand in the way of their discharge. It shows the difference between the two individuals, and the contrast is not favorable to the District Attorney.

Change is a law of nature. It comes to individuals as well as things, and officials are affected by it as much as anyone. When the change that is inevitable overtakes this Territory, and some who now swell with vanity and exercise authority like scrubs have to bow to the inexorable, and step down and out or be smitten from their high places, it will be no detriment to any of them in future to have behaved like gentlemen while in power, and to have secured the respect, if not the affection, of the people who for a season had to suffer under their authority. Justice, even to an enemy, will be accorded by a square man, and only a small mind will allow defeat to sour him into snobbishness and uncivility.

## A GENTLE HINT TO THE MARSHAL.

It is stated on the authority of Marshal Dyer that it is his intention to reinstate the deputy who shot and killed Edward M. Dalton in Parowan. Of course, the majority of the people of Utah will greatly disapprove of this movement. And it is not to be expected that the Marshal will be very careful to consult the feelings of the people likely to be affected by his official action. But we think Mr. Dyer would do well to ask himself whether such action would be wise, politic or necessary. There is no scarcity of men, able and willing to act as deputy Marshals. It is not needful to pick out persons for that position whose chief recommendation is recklessness and disregard for human life. Prudence is or should be a qualification in an officer under the United States, and ought to be exercised in the selection as well as the conduct of officials.

Thompson has been acquitted of the crime which he committed, and in the eyes of the law may be said to be clear of it. But throughout this community he is regarded as a murderer. The deed he performed was not only a bloodthirsty, but a mean and cowardly and contemptible act. A creature who would crawl up under cover, wait till the man he was authorized to arrest had passed him and then shoot him in the back with a rifle, is a wretch to whom it would be a compliment to designate him as a dog. He is totally unfit to be associated with honest men. His presence would be an insult to decent deputies detailed to work with him. He would not be a safe man to send on raids after accused persons or witnesses, in any sense of the term.

People are not going to submit to being shot down at will by an assassin armed with a warrant and a gun. Every man has the right to protect his life and person from unlawful violence. The employment of a man-slayer to execute legal process, will be a standing caution to the public to prepare for emergencies. If Marshal Dyer wants to inaugurate a campaign of blood instead of pursuing a peaceful execution of the law, he should certainly appoint and continue ruffians of the Thompson and McLennan stripe.

The last named individual seems anxious to shine in the Thompson role. He has acted on several occasions like a low-lived bully and dime novel desperado. The Marshal will gain nothing by permitting himself to be bulldozed by the rule-or-ruin scoundrels who are plotting for strife, and taking the course which they urge in regard to his deputies. We are well aware that he does not want "Mormon" dictation nor "Mormon" suggestions. At the same time, we consider it nothing but right to hint to him that anti-"Mormons" ought not to gain such control of him as to push him to his own disaster. We do not want to interfere in the slightest degree with the performance of his official duties, but we know that we are talking good sense when we point

out the impropriety of employing, in a peaceable community, such cold-blooded assassins as ex-deputy Thompson and such bragging bullies as deputy McLennan.

That the disagreeable duties of the office of deputy Marshal can be performed in a lawful and gentlemanly manner, has been demonstrated in the course of several members of his force, and we are sure that greater success will attend his exertions with such subordinates, than by pandering to a set of howling conspirators, and hiring wretches whose hands are stained with human blood. Time will show that these are words of wisdom, fairly offered in due season.

## THE FATE OF UNTAUGHT SOULS.

THE cruelty and inconsistency, not to say diabolism, of the old theology, which dooms all the millions of the earth's inhabitants to endless torment who have not, while in the flesh, accepted Christ as their Savior, continues to stir up strife among the various sects and to perplex the preachers of the great religious denominations. The strictly orthodox doctrine is that the final condition of souls is fixed at death; that salvation can only come through faith in Christ as the Redeemer; that those alone who die having this faith enter into the kingdom of heaven; that there are only two places or conditions in the great hereafter—heaven and hell; that, therefore, the vast multitudes of heathen peoples and others who have never had the opportunity of hearing about Jesus of Nazareth, have been consigned to ceaseless torment in an everlasting and burning hell.

Against this the rational mind revolts and the natural sense of justice rebels. It is only through the pressure of cast iron creeds that any thinking persons can subscribe to such a horrible doctrine. Warrant for it is supposed to be found in the Holy Scriptures. But these have to be read with the bias formed by the creeds of men, or they would not give any authority or support to the outrageous belief. It has been a fruitful source of infidelity for hundreds of years and has caused multitudes to reject the Bible and all religions professing to be founded upon it. The idea is so preposterous and so monstrous that it becomes incredible as soon as the soul is emancipated from the thralldom of orthodoxy. And if men and women reared in the atmosphere of so-called Christendom, trained from their childhood to accept this as an indisputable dogma, and impressed with its divine origin in catechism and discourse, are led to discard it upon independent reflection, what can the millions of the heathen think of it when the missionaries of the sects proclaim it as their doom, and as the fate which overtook their ancestors in countless millions?

This is one of the great obstacles in the way of sectarian foreign missionaries. It has occasioned research into the origin and soundness of the doctrine. And the consequence is that many of the most active laborers in the field abroad, have come to the conclusion that there may be hope for people who have died without faith in Christ if they never had the opportunity of hearing the Gospel in this life. But they have no positive ground to stand upon. They must not teach this for doctrine, as it is contrary to the creeds to which they have subscribed. And the idea of a "probation after death," which has been advocated as a probability, is so disturbing to the ruling and dictating powers ecclesiastical, that the very mention of the "new theology" as they call it, sets them in a phrenzy.

A case now pending before the Prudential Committee of the American Missionary Board, illustrates the position. A missionary to India named Hume has been prevented from returning to his post by the Prudential Committee, because of his utterances, while visiting this country, on the future of untaught souls. Mr. Hume was regarded in India as one of the most useful, active and successful laborers in the field. His coadjutors have earnestly pressed for his return. Wider and animated discussion has ensued, but the committee do not seem inclined to take action, for they cannot endorse any views except those of the orthodox character, and the simple fact that Mr. Hume entertains, without preaching, the future probation idea, seems in their minds to disqualify him as a missionary to the heathen. He must believe that all who have died without Christ are eternally damned, or he is unfit in their view to be a preacher of the gospel of salvation.

It is noticeable that in the dispute that has arisen on this question, no one seems to take a solid and substantial stand for the grand truth which is forcing itself upon the souls of the progressive. The missionaries who appeal for the return of Mr. Hume, and others who urge the Committee to favorable action, do not affirm that his position is right and openly dissent from the horrible dogma which he regards as doubtful. They ask for his return on condition that he does not go for the purpose of teaching the disturbing doctrine. Their position is defined in a communication from Dr. Blodgett, a missionary in Peking, China, to Dr. Vose, of Rhode Island. He says: