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TRUTH AND LIBERTY.

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"UNIFORM AND IMPARTIAL."

LAST evening we printed the opinion of the majority of the Supreme Court of this Territory in the Tooele election case. This evening we give the dissenting opinion of Justice Boreman.

It is very difficult for a "Mormon" Legislature to please a Federal official, or indeed to pass any law, no matter how just and fair may be its provisions, which will suit those who are anti-"Mormon" in their sentiments. A great outcry was raised against the old election law, nominally because one of its features was the marked ballot. "Take this away," said the discontented, "and that is all we ask." When asked what means could be used in its absence to protect the ballot box from corruption, the answer was "Registration." But as soon as it became apparent that the Assembly contemplated passing a registration law, just as much of an outcry was raised against the measure as against the law it was designed to supersede. "We don't want any registration," said the malcontents, "it is cumbersome, expensive and unnecessary."

But the law passed and received the signature of the Governor, who considered it a good measure, honestly intended to remove the alleged grounds of hostility to the old statute; but not to play into the hands of designing persons of any party. Then a plot was laid to break it up by litigation; but that has failed and the only point made against it—and that is clothed in rather doubtful language—*is the* section requiring a different oath from a male citizen to that required of a female citizen.

Judge Boreman takes a different view to that of his confreres on the bench. But he is of a more radical cast of mind, and is committed to an anti-"Mormon" policy, which includes hostility to woman suffrage. Hence he may be expected to go to extremes in his opinions, and he not only carries his argument to a strained degree, but dogmatically asserts that what he does not approve of in the registration law is, "against common right and common reason," and that this is "*manifest to every one.*" When it is considered that his brother Justices do not so decide, the impertinance of his assertion, we think, must be "manifest to every one."

The main point of *objection* to the law, advanced by Judge Emerson, and carried to its extreme by Judge Boreman, is that it is not "uniform and impartial" because it imposes a qualification *upon* male voters which is not required of female voters. Now there is nothing in the Constitution nor in the laws of Congress, which requires an exact sameness of legislation for male and female citizens. But quotations are made by the Judges from recognized legal authorities to show that, "all regulations of the elective franchise, must be reasonable, uniform and impartial." *If* there is anything in the laws of Utah regulating the elective franchise, which is not in harmony with this principle, it will be found rather in the statutes establishing the qualifications of voters than in the law under consideration, which is essentially one to provide for registration and the conduct of elections. There is a statute which has been in force in the Territory without legal question for twenty years requiring an elector to be "a taxpayer in this Territory." The act conferring upon women the elective franchise, and which does not require that a female voter shall be a taxpayer, has been in force for nine years. If there *is* anything non-uniform in principle in our electoral system, it is in these two laws, and they should be attacked rather than the registration law, the oath section of which is in pursuance of the provisions of these older statutes.

But let us see if the objection of non-uniformity really applies to either of these laws. Is it contended that all laws must be equally applicable to both sexes in order to make them "uniform and impartial?" Why then should male citizens be required to serve in the militia of the several States while females are exempt? Why require men to pay poll tax and not women? The answer would be those laws are uniform in their application to the class of citizens which they are intended to reach. The law varies in many particulars as to different classes of citizens. For instance men of certain ages are required to do militia duty while others are not. So with the poll tax. A citizen twenty years of age may not vote, while a citizen twenty-one years old, under prescribed conditions, may vote. The laws of Congress require a male alien, in order to become a citizen, to take a specified oath and obtain papers attested by a court of competent jurisdiction. But they do not require this in all cases of female aliens, who may become citizens through marriage with a citizen, without taking the oath or obtaining the papers. Do the laws which make these distinctions lack uniformity or impartiality? No. Because all persons of the class they are intended to reach are equally affected by them. So it is with the laws of this Territory under consideration.

Valid reasons can be given why the laws of Congress are varied to meet different cases. So they can in regard to our statutes prescribing the qualifications of voters. Women generally do not hold property in their own right, because it is usually owned by their husbands, who pay the taxes upon it. The law, therefore, being framed with the intent of conferring the elective franchise upon women, very properly did not impose the tax qualification upon them, because that would have measurably defeated the object of the law. If that law had provided a different qualification for persons of the same class, the claim that it was not uniform might be reasonably set up.

Judge Boreman says: "The oath excludes all male persons from voting *who are not* 'native born' or 'naturalized,' yet it allows female persons to register and vote who are neither 'native born' or 'naturalized.'" The evident intention was to evade or ignore the Act of Congress." Not at all, Judge. The intention was to give the ladies all the benefits conferred upon them by acts of Congress, one of which provides that they can become citizens without being either "native born" or "naturalized," that is, by being married to citizens. If there is any lack of uniformity in this, blame Congress and not the Utah Legislature.

A little "common right and common reason," which the Judge prates about, would show any reasonable person that the terms "uniform and impartial" as used by Cooley, were not intended to be stretched in any such way as they are handled in these judicial opinions upon the Tooele case. And a strict rendering of the law in relation to this subject will substantiate the validity of the whole "Act providing for the registration of voters, and to regulate the manner of conducting elections in this Territory," because it was passed by the Legislative Assembly, under the powers conferred by the Organic Act and the United States Revised Statutes, and does not overleap the only restrictions to which those powers are made subject by congressional law or by the Constitution of the United States.

MAGISTRATES AND MATRIMONY.

WE are in receipt of a communication from a Justice of the Peace in this Territory, requesting information through the NEWS in regard to the authority of Justices of the Peace to officiate in the marriage ceremony. He says there are some people in his neighborhood who think that a Justice *must* marry a couple seeking matrimony when formally applied to for that purpose. He wishes this question settled, and also whether it is lawful and right for a Justice of the Peace to marry parties in his own office.

So far as we can learn Justices of the Peace in this Territory have no more authority under the law to solemnize marriages than a private individual has. There is no statutory law of the Territory authorizing any one to officiate in the marriage ceremony. And we know of no such common law authority conferred upon magistrates. Marriage at common law is viewed as a civil contract, made and entered into by a man and woman who are able and willing to engage to live together as husband and wife during their lives. No particular ceremony is required to make the contract valid. It may be formally acknowledged before a Judge or Justice of the Peace, or informally before unofficial witnesses. The contract may be made in writing or verbally. Whatever is sufficient to prove any civil contract or agreement is enough to prove a marriage contract. This, it must be understood is under the common law.

In most parts of the United States marriage is regulated by statutory law. The marriage laws of the different States vary in many particulars. But generally it is required that marriage must be celebrated in presence of a minister of some religious body or a magistrate. Justices of the Peace in the States are usually autherized to officiate in the ceremony. It is by usage, then, that they take the authority to solemnize marriages in Utah But as there is no statute conferring this power upon them in this Territory, and the common law giving them no general authority of this kind, it follows that their celebrations of marriage add nothing to the validity of a contract entered into between a man and woman to live together as husband and wife. It is equally clear that not being authorized by law to thus officiate, they cannot be compelled by law so to do. They may, therefore, if they are so disposed, decline to act as ministers of marriage.

Marriage being a matter in which the public are somewhat interested, it is customary for a public ceremony to be performed, that it may be known that the contracting parties are united as husband and wife. A Justice of the Peace has the right to receive and certify to acknowledgments and to administer oaths and he can therefore officiate in this way, when the parties desire to establish their contract by oath or by written agreement, and he may give a written certificate of the transaction.

We make these remarks for the benefit of those in this Territory who have no faith in the ordinances of the Church of Jesus Christ of Latter-day Saints. It is not to be supposed that members of this Church would wish to engage in a ceremony or enter into a contract which would affect their whole lives, to say nothing of their eternal welfare, and which would, at the same time, be in violation of sacred principles and solemn covenants. Marriage, according to the doctrines and plainest teachings of this Church, is a sacrament. It is strictly and essentially an ordinance of religion. It is ordained of God. No one but an authorized and appointed minister, holding the holy priesthood, can rightfully administer it. Acting in such capacity he stands in the place of God, and it is therefore said, "What *God* hath joined together let not *man* put asunder." In its full and proper form, marriage is solemnized for time and eternity. The parties are sealed in an eternal covenant, and, when rightly administered, that which is sealed on earth is sealed in heaven, or, in other words, is of equal validity before God as though performed by Deity in person.

Marriage should be entered into, solemnized, and regulated perpetually under religious influences. It is only under such influences that it reaches the conditions designed by the Great Father of our race, for the happiness, increase, exaltation and eternal glory of His obedient children. When there is strife, contention, distrust, discord and misery in the masriage relation, it is because the designs and instructions of the Almighty concerning it are not carried out by one or both of the parties thereto. If all the proper conditions to it were complied with there would be no divorce, and even that great divider, Death, would have no power to separate, except perhaps for a very brief period, the loving souls really and truly made one by the blending force of pure affection, and sealed together by the fiat of the Almighty.

Latter-day Saints have no need to go before a Justice of the Peace, nor any other civil officer, to enter into a mere civil contract of marriage. Such a ceremony has no virtue in law, it has none whatever before God. But when marriage is properly solemnized by one clothed with the authority of the everlasting priesthood, and the parties are suited by nature, faith, love and truth for each other, it is a sacred, binding, eternal union, and for evermore the pair are "no longer twain but one flesh," and while the marriage is acknowledged of heaven it has all the validity that can be attached to the civil contracts made before any dignitary of the civil law.

Let those who are not members of the Church, *then*, understand their *rights* and privileges under *the law;* let Justices of the Peace act wisely and according to the duties of their office; and let those who have made covenant to keep the commandments of God abstain from everything which would do violence to the spirit and letter of the gospel, and take especial care that in a matter so important as marriage they are not precipitate, and do not involve themselves in relations and contracts which God will not approve, and which will have an end when men are dead, and thus cut off their prospects of endless lives, in which are increase, exaltation, dominion and the glory of the Gods.

AN ENEMY TO BE FOUGHT AT ONCE.

THE warm and pleasant weather of the past few days has started the grass, and made the buds on the trees begin to swell with anxiety to come forth and smile at the sun. It has also given animation to a little intruder into this Territory whom all people desire to eject, but few make any practical efforts to expel.

If our friends who have trees in their gardens will take the trouble to examine under the loose bark and in the forks of the apple trees, they will find numbers of small worms just ready to move into active duty. They are the grubs which, after a little while, will develop into a small grey moth, and these will deposit eggs in the blossoms as soon as they come forth, which in turn will evolve into worms to spoil the fruit, of which Utah could once boast as the best in the world. These worms under the bark are the grubs of the codling moth.

What is to be done about it? Common sense, self-protection, good counsel, all say go to work at once and destroy them. But which is the best way to proceed? Bro. A. L. Hale, of Grantsville informs us that he and his neighbors have been scraping all the loose bark from their trees, for some days past, and destroying it. Every orchard owner in this city should do *likewise*. A good way is to spread on the ground under the tree a cloth, or sheet, or anything of the kind that can be used for the purpose, slitting *it to the* centre so that it may be drawn close around the *trunk*, scrape off *all the loose bark* from the trunk and limbs, and particularly the forks of the tree, and then burn the scrapings, worms and all together. If this is done with every apple tree in the gardens, thousands upon thousands of worms representing millions of eggs to be laid, will be destroyed in the very nick of time.

If this matter is left much longer, it will be too late. The movement upon the destroyer should be general. Let every gardener seize his knife and advance upon the foe. Our apple crop for several seasons has been almost entirely ruined. It need not be in the future. If good advice had been unitedly followed three or four years ago, we might have been entirely rid by this time of the enemy. Let us not repeat the folly of past supineness. All hands to the trees, and let us scrape out and burn out the interloper, which has wasted many thousand of dollars' worth of our most healthful and toothsome fruit. Reader, if you will do this and urge your neighbors to follow your example, you will do more good to yourself and the Territory, in a little time, than by lamenting over hard times, discussing the plague, the Zulu war, or the Chinese question, listening to lawyers in court rooms, waiting for the wet to come out of the ground, or speculating on the possible future for a thousand years. Try it.

"STUMPAGE" AND THE TIMBER LAWS.

WE are in receipt *of* a letter from a lumberman asking for *information* about the stumpage law and the amounts that may be *lawfully* charged per stump, to the operators of sawmills in the cañons. From this we are led to the supposition that "stumpage *fiends*" are again at work. A vast amount of imposition has been *practiced on the* hard-working men who have toiled on the steep mountain sides to get timber for the absolute necessities of the settlers, by men pretending to have authority from the Government to collect a tax on the stumps of all the timber cut down for any purpose.

We know of no law of Congress imposing any such tax as this upon the people of and State or Territory in the Union. The timber laws of the United States make no reference to a system of this character. The *old timber law* was passed for the protection of timber upon *government lands* which might be used for naval purposes, but came to be so interpreted as *to* take effect in regard to all *the* timber on the *public domain*, even if located on the almost inaccessible peaks of our rugged mountains.

We believe there was a regulation of the U. S. Land Department in reference to stumpage, but on recent application to the Land Office in this city, we were informed that there was no such regulation known here at present.

An Act of Congress was passed in 1878, being approved July 3rd of that year, authorizing the citizens of Colorado, Nevada, and the Territories, to fell and remove timber on the public domain *for building*, agricultural, mining or other domestic purposes. But this *has* reference to what are *called* mineral lands not subject to entry under the existing laws of the United States, except for mineral entry. We believe that most, if not all, the surveyed portions of the mountains in this vicinity come under the denomination of mineral lands, and the timber thereon may be cut for the purposes named above, but the privileges thus granted *do not extend* to railroad corporations. There is also a provision in the bill, that for the protection of the timber, the Secretary of the Interior may pass such rules and regulations as are necessary. The following regulations, which we have before published in part, have been issued and are in force:

1. Section 2461, Revised Statutes, is still in force in all the States and Territories named in the bill, and its provisions may be enforced, as heretofore, against *persons* trespassing upon any other than lands which are in fact, mineral, or have been withdrawn as *such;* and in all cases where trespasses are committed upon the timber upon public lands which are not mineral, the trespassers *will be prosecuted* under said section.

2. It shall be unlawful for any person to cut or remove, or cause to be cut or removed, from any of the mineral lands of the United States any timber or undergrowth of any kind whatsoever, less than eight *inches in diameter*, and any person so offending shall be liable to be fined, in compliance with the provisions of the third section of said act, in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

3. It shall be the duty of the Register and Receiver of every local land office in whose district any mineral land may be situated to ascertain by personal observation, or by sending persons to examine the same from time *to time*, whether any timber is being cut or used upon any such lands except for the purpose of building; or for agricultural, mining, or other domestic purposes, or whether any timber is cut in violation of these rules and regulations within their respective land districts, and if they shall ascertain that there is any