DESERET NEWS.
WEEKLY.
TRUTH AND LIBERTY.
WEDNESDAY, - JULY 9, 1879.

FAMILY GENEALOGIES.

WITH a view to arrange for obtaining correct familiy records for Temple work on the best possible terms—while the present opportunities are so favorable at the General Register Office in Edinburgh, and the parishes of Scotland—it has been proposed to extend a general invitation to as many of the Saints of Scottish birth or descent as may choose to take an interest in this work.

Individual effort in this direction is costly, and a proper combination will secure far more family history and records, and at much less expense, and avoid duplicating work, which to us as a people is a matter of considerable importonce.

To accomplish this union of effort, an invitation is now extended to all interested in this movement to meet in their respective wards, and make up a list of those who pesire to take part in the same and forward it to David McKenzie, Salt Lake City, or A. F. McDonald, St. George, and as many as can be present to take part in the arrangements needful to prosecute this desirable work are expected to meet in this city at some convenient time during next October Conference, which will be duly announced.

THE SUIT AGAINST THE ESTATE.

THE answers of President John Taylor and the executors of the estate of the late President Brigham Young to the complaint made against them, were filed yesterday in the Third District Court and published in full in last evening's NEWS. They are complete and to the point, reaching every allegation made in the complaint.

It will be seen on examination of this matter that this suit, entered by one of the heirs of the estate, does not proceed against the President of the Church of Jesus Christ of Latter-day Saints, nor against the Trustee-in-Trust for that Church, but personally against John Taylor. That gentlemen in his private capacity as a citizen has nothing whatever to do with the case in action. He only becomes a party to the suit from his official position as Trustee. Under these circumstances he was not in duty bound to make any specific answer to the allegations made in the complaint. But with his well known frankness and desire to have everything open and above board, President Taylor has given a square and ample explanation of his transactions with the estate as the representative of the Church.

From this it appears that considerable Church property, for reasons that most Church members understand, and which it is not necessary now to explain, was held by President Brigham Young during his life time in his own name. By the terms of his will it is very clear that he desired the executors to convey this property, after his decease, to his successor in office as Trustee-in-Trust.

When these affairs came to be investigated it appeared that there was due and owing to the Church from the estate, property to the value of nearly one million dollars. But to give all possible consideration to the claims of the heirs, the sum of three hundred thousand dollars was credited on this amount for services rendered by the deceased during many years of faithful labor in the interests of the people. Further, the property received in settlement was taken at much higher figures than it would have commanded in cash if placed upon the market. All of this was for the pecuniary benefit of the heirs of the estate. But there was considerable property vested in Brigham Young, the undoubted ownership of which could not be satisfactorily proven. The benefit of the doubt was given to the estate, and not a cent's worth of that property was taken.

It is clear, therefore, that the present Trustee-in-Trust had the disposition to deal most leniently with the estate and to claim nothing but that to which the Church had absolute and undeniable claims, and also to accord to his predecessor that honest intent which those who knew him best have always accredited him with. The property conveyed by the executors to the Trustee-in-Trust is specified in the "Answer," with the price at which it was received. But this matter had already received thorough examination. The executors had appeared in the Probate Court and given a full and complete account of this transaction, and the heirs, legatees, devisees, etc., including the person who has commenced this unhallowed and shameful suit, gave their receipt and acquittance to the executors and the Trustee-in-Trust, receiving from the latter a receipt in full for all claims of the Church against the estate. The transaction was fair, honorable and exceedingly kind toward the estate. We believe that no one but those who are interested in promoting this inexcusable litigation will take any other view of the matter, unless it may be a few who might think the representatives of the Church had been too easy in the settlement.

The executors also make a full answer to all that has been charged against them. They have done nothing that has not received the sanction of the Probate Court. Every transaction has been scrutinized. They have sought diligently and unweariedly to carry out the wishes of the respected testator. Some complaints have been made in regard to the valuation of various portions of the property. The executors did not make the estimate. Three appraisers, appointed by the Probate Court, made the valuation. When the mothers having an interest in the property and representing the minor children, according to the provisions made in the will, applied for a settlement of the estate's affairs and a division of the property, they selected the same appraisers as were appointed by the Court. When those of the heirs who had received deeds of property during the lifetime of President Young, considered that the valuation he had made of their property was too high, it was appraised at its then present value, and reductions made as justice dictated.

It is alleged that the executors improperly settled certain liabilities of John W. Young, one of the heirs, to the detriment of the rest. This is incorrect. They settled no such liabilities to any amount. The facts are that previous to the death of President Young his son John W. signed over to him all his right, title and interest in the Utah Western Railroad for and in consideration of his father assuming his liabilities, and all that the executors have expended, supposed to be in favor of John W. Young was actually the legitimate business of the deceased. All of this was also submitted to and sanctioned by the Probate Court.

These transactions although not the business of the public are such that they need not be covered up from the gaze of the whole world. They will bear the closest scrutiny. They are honest and equitable. But they concern principally the family of the testator and should properly have been confined to their investigation and settlement. The person who has planted this suit appears to have no regard for the wishes of a kind and indulgent parent, the scruples of immediate relatives, nor the dictates of common prudence but rashly rushes into court with a cause which has no intrinsic merits and which promises to be profitable only to lawyers and court officials. This course is greatly to be regretted, but we believe that good will grow out of the apparent evil.

In addition to the answers filed in this case, a demurrer has been entered to the complaint, with a motion to dissolve the injunction and dismiss the receivers. These will have to be argued at a time which the Court will determine, and meanwhile the inquisitive public will have to wait for further developments. But we think that all who read the "Answers" and are at all acquainted with the facts will feel some astonishment at the summary issuance of the injunction, the appointment of receivers, the acceptance of a bond of only $1,000 from the complainant, and the secresy with which the whole business was transacted, the defendants not having been served with any notice of the affair until after the Court had granted the request of the plaintiff. The affair is now to a great extent the property of the public, and it is to be hoped that those who have anything to say about it will examine both sides before forming any conclusions. Further than this we have no favors to ask.

MEXICAN SOLDIERS' EXTRA PAY.

SINCE publishing the notice to soldiers who served in the Mexican war, in relation to the three months' extra pay to which they are entitled, we have received several inquiries in regard to the manner in which applications are to be made. As there seems to be some misunderstanding of the subject, we think it will expedite matters if the applicants obtain a blank form, properly made out, which they can fill up with name, address and necessary particulars. Brother Daniel Tyler, of Beaver, offers to furnish such a form to all who will forward to him One Dollar and a postage stamp for reply. But if Brother Tyler will send us the blank form *pro bono publico*, we will publish it in the NEWS, gratis, and then give all an opportunity of availing themselves of it without expense.

JUDICIAL PREJUDICE AND ASSUMPTION.

WE publish in full in this issue of the NEWS the Opinion rendered by Judge Boreman in the Miles appeal case, in order that it may be made a matter of record among our people, and that those who are able to weigh the matter with the balances of legal authority and unprejudiced judgment, may see the weakness of the argument and the disposition manifested by the Court to jump at conclusions, and its determination to give the prosecution instead of the defense "the benefit of the doubt."

The first point disposed of is the exclusion of "Mormons", from the jury because of their religious belief. The Court assumes that, "If a person believes it his religious duty or privilege to do an act, he would not, as a consequence, look upon the said act as criminal." This bald assumption is in direct conflict with the evidence in the case. The jurors who were challenged and excluded made the matter very clear. They said in effect, on oath, that while they believed it might be religiously right under certain circumstances for a man to marry more wives than one, yet if evidence were given to prove a defendant guilty of breaking a law of the land forbidding such an act, they would convict. They would not attempt to reconcile the law of God and the law of the land, nor assume the consequences of the conflict. As jurors they would find according to the evidence; as Latter-day Saints they would believe according to their convictions. But their faith in the revelation on plural marriage would not affect the discharge of their duties as jurors. The Court then had no grounds for the notion here expressed, except its own imagination. And so with the following, which we clip from the Opinion:

"One belonging to a church holding the offense charged to be of divine sanction, and above the civil law, might also be influenced by the probable action of his Church toward him if he failed in the jury box as well as elsewhere to uphold its doctrine."

This is nothing but bare conjecture. "The probable action of his Church." What do the learned judges mean by this? If they wish to insinuate that the Church would take any action towards one of its msmbers for faithfully performing his duty as a juror, even if it consigned a brother member to the gallows or a prison, we say that they have no right and no reason to utter such a libel. We defy Judge Boreman or his associates to adduce anything from our articles of faith which will give the least color to such an idea. We spurn the implied accusation as utterly false and atrocious, without foundation and without excuse.

The ruling of the court establishes this point—if it proves to be sound on further appeal—that there is no such thing as an accomplice in bigamy. That is, if two women agree to marry one man at the same time, and the plural marriage is so contracted, neither of those women is an accomplice to the offence against the law. This will be satisfactory no doubt to the ladies, but whether it will stand the test of competent judicial scrutiny remains to be seen.

Webster defines an accomplice to be "an associate in crime. An "abettor; accessory; assistant; associate; confederate; coadjutor." Sec. 273 of Criminal Procedure (see Laws of Utah, 1878, p. 118,) says:

"A conviction cannot he had on the testimony of an accomplice unless he is corroborated with other evidence which in itself and without the aid of the testimony of the accomplice tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense or the circumstances thereof."

The Court avoids this requirement of the statute by ruling that the witness could not be an accomplice because the statute provides no punishment. The Court further holds that because the rule fails, therefore the statutory provision fails. Is it possible that a Court can legislate away the positive enactment of the statute, simply because in this particular case the Court can see no reason for the rule?

The question of the examination of Counselor D. H. Wells is handled in much the same spirit as the religious test question, It is assumed by the Court that Emily Spencer, having been seen in the Endowment House, dressed in a certain manner, must have been there either for the purpose of being married or receiving her endowments, and the statement is flatly made that "she could have been there for no other purpose." How does the Court know this? No evidence was offered at the trial which would warrant such a supposition. It is false in fact, and unsustained by anything before the Court. The Court also states that Emily Spencer had taken her endowments prior to that time in a similar house at St. George. Whence did the Court derive this information? There was nothing in the evidence which established this point. Caroline Owen—or whatever her name is—said that Emily had told her she had received her endowments. That is all. There is no "similar house at St. George," and the unsupported hearsay statement of one unreliable witness the Court adopts and utters of itself as if it were an established truth.

It was shown at the trial that the wearing of the dress referred to was no proof that the wearer had been or was about to be married, because it was worn for other purposes. The irrelevancy of the question in relation to the dress was therefore established. But the Court comes in with its presumptions again and says:

"If she were not dressed in the mode required the presumption would be that she was not there for the purpose of marriage. With this view the question was certainly proper."

Wonderful sagacity! Stupendous logic! But this was not the point at issue. The question is, if she were dressed in the mode alleged, would that be any proof that she was there for the purpose of marriage? The negative of this being proven, as it was, the queries propounded to the witness were certainly *improper*.

It is a well settled principle of evidence that in prosecutions for bigamy the second wife cannot be admitted to testify until the first marriage is clearly proved. As long as the first marriage is a controverted fact, the second wife is incompetent to testify. In proof of this see 3rd Greenleaf Sec. 206 and note; also 1st Greenleaf Sec. 339, and first Phillips Evidence page 84 and Roscoe's Cr. Evidence p 150.

This plain principle of law the opinion neither admits nor expressly denies but practically ignores. It says that the rule in question "can not possibly have any effect in this case, for here the admissions and corroborating circumstances showed clearly the first marriage before the second wife was offered as a witness." A review of the testimony, however, clearly shows that the prineipal admissions of the defendant, and nearly all the corroborating circumstances, were established simply by the testimony of the alleged second wife. Discard her evidence and no jury however prejudiced could have arrived at the conclusion that the defendant first married Emily Spencer.

There is another statement of the Court's to which we desire to call attention:

"When he came to the room Carrie late at night, evidently left the room of Emily, his language indicated the same thing" [i.e. marriage with *Emily* Spencer].

Still more gratuitous assumption. There was not a particle of evidence showing *any* such thing. On the contrary, a witness was on the stand for the defence who would have certainly shattered such a supposition to the wind, but her mouth was closed by the Court. The insinuation was made by Carrie Owen, but it was not established by word or circumstance, yet the learned judge declare it was an evident fact!

We have not space at our command to-day to refer to this voluminous document further. But as it is greatly composed of unproven notions of the authors, incongruous statements and very doubtful law, and that it is dyed through with *prejudice against* the appellant must be evident to all who give it careful perusal. When the case goes up to the higher legal tribunal it is to be hoped that it will receive impartial attention and fair and just adjudication.

THE SUIT AND THE WILL.

As there is considerable interest taken by the public in the suit now pending in the Third District Court involving the interests of the Church and Executors as well as the estate of the late President Brigham Young, we draw attention to the concluding sections of the will of the respected deceased which bear on the questions that are under discussion.

"36. I appoint to be executors and trustees under this will, George Q. Cannon, Brigham Young, Jr., and Albert Carrington, with all the authority therein contained; and I authorize them to take as their joint commission three per cent. on principal passing through their hands, to be charged but once on the same principal, and five per cent on income; but they shall make no charge as on a rent for any homestead occupied by my legatees.

37. I authorize my executors and trustees with the consent of the said mothers, or mother, surviving, and of all their children of the age of twenty-one years, to wind up and close the entire trust of my estate, reserving and keeping at interest the shares of all *minors*, until they shall respectively arrive at said lawful age; and the aquittances of said legatees shall be a full discharge to the executors and trustees; and every trust shall be closed within twenty-one years after the decease of the surviving mother of my children aforesaid.

38. I authorize my executors to settle all trusts wherein I am trustee, and to pay any debts I may owe in respect to the same, and to receive whatever claims may be due my estate therefrom; and to make conveyance and assignment to the proper party or parties, of the trust estate, and to take proper indemnity and security as to all outstanding liabilities, I may be under for such trust estate, so that my private estate shall suffer no loss by reason of my liabilities for such debts.

39. To prevent any failure of trustees, should a surviving executor, or trustee, original or substituted, die, leaving executors, or a executor, they, or he, and the survivors, or survivor, of them shall be the executors, or executor, and trustees, or trustee, to complete the trusts of this will, with all the authority and powers therein stated; and should the surviving executor, or trustee, have left no executor, or should he or they, die before the complete execution of the trust