THE UTAH PROBLEM.

A REPLY TO THE STATEMENTS MADE AND ARGUMENTS PRESENTED BY MOSES THATCHER.

THE LAW AND THE FACTS OF GOVERNOR MURRAY'S CONTROVERSY WITH THE MORMONS.

A REVIEW OF THE WHOLE CASE FROM THE LEGAL STANDPOINT—THATCHER'S MISTAKES.

SALT LAKE CITY, Feb. 11.

To the Editor of The Inter Ocean.

To those who have only casually given attention to the "Utah problem" there may seem to be a necessity for a reply to so elaborate a statement as that of Mr. Moses Thatcher, a proof of which is now before me. In deference to that view, I enter upon the discussion. While Mr. Thatcher assumes the authorship and responsibility of the letter, over his signature, its real paternity is known to be the labor of the Mormon lobby in Washington, consisting of Delegate Caine, Mr. Richards, a young Mormon attorney of much ambition, Mr. Thatcher, and at least one other apostle of the Mormon hierarchy, besides the regular church attorneys resident in that city. The substance of their letter has already appeared in the press dispatches in the shape of "an interview" with Delegate Caine, and in responding to it I am meeting the fire of the entire Mormon battery. This justifies what might otherwise seem an unnecessary notice of its contents, It is not often that we can "bunch the game," so as to make one shot do effective service, and now that the opportunity offers to make Mr. Thatcher suffer vicariously for the Washington Mormon agents in general, I propose to crucify this bantling of the crowd. For him, personally, I have the same pity that follows a weak sinner, who is the dupe of stronger men. In the language of the Western hunter, I don't intend to leave enough of the body of this nominal offender to warrant any effort to skin him for future use by any one.

TO BEGIN.

The letter is a labored attempt to refute certain portions of Governor Murray's message to that body, "which, by the grace of the General Government," is permitted to exercise the functions of a Legislative Assembly for the Territory of Utah, and when we reflect that in the conflict which Mr. Thatcher assumes exists between the Governor and that body, the former fairly represents the "General Government," of which he is the agent, while the latter only claims to represent a handful of people whose boast is that they are not "of the world," but are a "peculiar people." The fling in the opening paragraph of his communication seems as ludicrous as its taste is questionable. Passing this; Mr. Thatcher's prelude to the discussion of the message is a sad commentary on his subsequent statements, when he affirms, in such mock heroic style that, "He who stands on truth, though friendless and alone, is firmer and stronger than legions backed up only by religious and political expediency, resting on the crumbling and ever shifting foundations of insincerity and falsehood." He bunglingly strives to express the idea, which a reader of the Bible (as all apostles should be, and Mr. Thatcher is an apostle, according to the gospel of Mormonism), would have better stated, by quotation from that good old authority, "That the race is not to the swift, nor the battle to the strong." But such affirmations of self-devotion lose all their force, when he who indulges in them, assumes that his cause only is the cause of truth, when in fact the assumption is but the bluster of one, who while eulogizing truth in general, intends to enthrone falsehoods in its place. This, in the language of my priestly opponent, "I shall show further on." To one accustomed to the

MORMON METHOD OF CONTROVERSY,

the assertion of a direct falsehood for a litteral truth creates no surprise. Conversant as I have been for over a quarter of a century with the various forms of discussion, in which latitude of assertion is often used as argument, I never yet have observed the perfect abandon of falsehood exemplified to the extent as in the utterances of the champions of Mormonism. There is a depth in its depravity, and enjoyment of luxury of lying, which finds no illustrations by others. When one of them intends to distinguish himself, particularly in the perpetration of unusual misstatements, he will almost uniformly begin the work, as does our apostle, by an apostrophe to truth! I think I shall establish, before I close this letter, that your apostolic correspondent has not allowed the reputation of his brethren in this respect to suffer by any omission to conform to their regulation standard.

Mr. Thatcher charges Governor Murray with misstating the existing laws of the Territory in several instances, and his first specification under this assignment of errors, as a lawyer would put it, is that he "asks the repeal of the law making escheats result to the Perpetual Emigrating Fund Company."

THE EXACT LANGUAGE OF THE MESSAGE IS,

"I ask the repeal of the law incorporating the Perpetual Emigrating Fund Company," and the repeal of all laws making escheats result to this company, bacause by this law the whole system of immigration is placed under the control of church authority," etc.

The apostle who condescends to enlighten you with his inspiration, adroitly declines to say that the law which the Governor assails, particularly in this quotation, has been repealed, but he introduces an incidental recommendation in it, viz., that all laws making escheats result to the company because, says he, this law was repealed eight years ago, and quotes section 713 of the compiled laws of 1876, showing that in the final distribution of an estate without heirs the property goes to the Territory for the support of common schools (as the common schools are but church schools, this leaves the Governor's objection to the same in full force, but no matter.)

What the message was seeking to overthrow will be seen in looking at the act found in the compiled laws of Utah, 1876, sections 569 to 572, inclusive (the same volume quoted by Mr. Thatcher), which reads as follows:

An act providing for the magnagement of certain property:

Sec. 1. Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That the probate judge in each county is empowered and required to take possession of all property left by any deceased or abscondent person, when there is no legal claimant known, or sufficiently near to see to it in season; and shall forthwith appraise and make two lists of said property, and keep one on file, and furnish one to the Treasurer of the Perpetual Emigrating Fund.

Sec. 2. It is hereby made the duty of every person having such property in his possession, or knowing it to be in the possession of any other person, to report the property forthwith, and the name of the person in possession thereof, to the probate judge of the county where said possessor is at the time; and said judge shall take possession of such property as soon as practicable, and proceed therewith as required above.

Sec. 3. At the earliest practicable date the probate judge shall place said property, or the avails thereof, in the possession of said fund, the value thereof to remain there until proven away by a legal claimant, when said judge shall give an order therefor on the treasurer of the fund.

Sec. 4. A failure to comply with the requisitions of this act may be punished by costs, damages, and fine, adjudged by any court having jurisdiction.

This act never in terms provided for escheat, but it did provide for the management of property of deceased or abscondent persons, and required that where no legal claimant is known it should be placed in the treasury of the company "until proven away by a legal claimant."

All that the act cited by Mr. Thatcher proposes to do is in the cases of deceased persons without kindred (not likely to occur often in Utah), wherein the Territory is made the "lagal claimant," who may prove away the property from the company. How that statute can be construed as a repeal of the first is past ordinary comprehension. The statute of 1876 only touches the final disposition of the unowned property, a thing not provided for at all before. The statute that was asked to be repealed was one that had not fixed the property finally, but had provided for its possession and use prior to its ultimate disposition. There is no repeal, implied or otherwise, of the act giving the use of property to the company.

But the act which Mr. Thatcher recites in relation to escheated estates professes to deal with the estates of deceased persons only. What has he to say to the Governor's objection to the law which enables the company to take the property of persons abscondent? Under this law, as it stands today, the company not only have the right to the use and possession of property until after a search for heirs and kindred, which can be made to cover half a life-time, has disclosed the fact to a Mormon Probate Court that the property should be deemed an escheat to the Territory, but may retain and use the property of an "abscondent" person without limit as to time. The Governor was not dealing with "escheats" alone in his message; he was treating of a line of legislation which had begun in 1851, was enlarged in 1854, and resenacted in 1876, by which this church creature,

LIKE A GIGANTIC CUTTLEFISH,

laid its strong hand upon the property of the living and the dead alike, and confiscated it for its own uses. Mr. Thatcher says it has consented to give up to the common schools such property as it has acquired from estates, after a decree has been entered in their favor, but he is discreetly silent on the real abuse to which the executive recommendation referred.

Escheats never did vest in the company, and it was the policy of giving it control and use of such property, and a far greater abuse, the right to confiscate to its use the property of the living, that he was seeking to have overthrown. Mr. Thatcher contents himself with the superficial criticism of a mere incident to the recommendation, which, when exposed, will be found as untruthful as it is trifling.

The apostle to the Gentiles proceeds to say that Governor Murray's statement "that the law vests the eclesiastical courts with authority which may only be exercised in the United States by the civil courts, is entirely without frundation in fact."

Now, what was said in the message is this: "I ask the repeal of chapter 5 of compiled laws of Utah (1876), because unwarranted and dangerous process are therein granted to a church corporation; because it is a law respecting the establishment of religion, because it vests ecclesiastical courts with authority which may really be exercised in the United States by the civil courts, and, if for no other reason, because Congress by express statute, approved July, 1862, disapproved it, and yet the Legislature of Utah re-enacted it in the compiled laws of 1876."

Out of this paragraph the apostle picks the sentence I quoted from him, and then denies the statement. I affirm that in doing so he not only falsifies the law, but it must have been done with the knowledge of not only the law but the practice under it. The statute reads, section 3, page 233, compiled laws (1876), * * *; "It is also declared that said church does and shall possess and enjoy continually the power and authority in and of itself to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions for the good order, safety, government, conveniences, comfort, and control of said church, and for the punishment or forgiveness of all offenses relative to fellowship, according to church covenants; that the pursuit of bliss and the enjoyment of life, in every capacity of public association and domestic happiness, temporal expansion or spiritual increase upon the earth may not legally be questioned."

Now if these powers are to be exercised, and this statue is passed to the end that they "may not legally be questioned," and it is part of the system that a judgment of an ecclesiastical "court is binding as a church covenant," is not the statement of the message beyond a question correct? Let me give a

PRACTICAL INSTANCE OF ITS EXERCISE.

Some years since a gentleman came to my office in this city, stating that he had a controversy about a town lot with another party, and desired my professional services. I found in his possession a judgment drawn in the usual form attested by the hand seal of the Clerk of the "High Council" (the highest tribunal of the Mormon Church, except the command of its President), adjudging the property in dispute to belong to his opponent, and ordering my client to make a conveyance of the same. My client was a Mormon and wished to know if he could disobey this judgment. I advised him that while the church claimed authority under its charter, to control all its members. I did dot regard it as binding, to resist it if he chose. Upon this advise he acted, and on his refusal a suit was brought in the United States Court to compel him to make the conveyance. The case was tried in the District Court, where my client was successful; was appealed to the Supreme Court of the Territory, where the judgment was affirmed. There as I supposed the matter was ended as my client had established his rights by the judgment of the highest court of the United States in the Territory, but to my utter surprise about a year after I found that the church authorities had forced my client to obey the mandate of the ecclesiastical tribunal after the civil courts had sustained his rights at every point. The decree and judgment which proved itself superior to the deliberate adjudication of the Supreme Court of Utah I have now in my possession. When therefore an apostle of the latter-day church undertakes to deny to those who, like myself, have had a taste of "church arbitrators" in questions of "fellowship," we know the value of the denial. It is made for the "marines."

THE DOWER QUESTION.

The apostle says "that the Governor's comments on the dower question give an entirely false idea of the property rights of women in Utah."

For once he does not say that the Governor misstated the fact, when he said there was no dower in Utah. After admitting that there is no dower, nor in the language of the message, "any equivalent" for it, he flies off to discuss the "property rights" of married women. It is very poor satisfaction to a married woman who has no property to tell her if some one will give her property it shall be her's; that is the snbstance of Mr. Thatcher's statement. The Governor asked that the faithful wife should have a right to a certain portion of the property of the marriage recognized and secured to her. Mr. Thatcher replies, that if she has property of her own, she will not be molested; and this he asks intelligent people to consider as an answer to the demand.

He refers to certain provisions of the law of descent, to show that the widow, in certain cases has provision made for her, but he just as well knows, that the husband has the power by will, to devise every dollar of property which is not the separate estate of the wife, to whom he pleases, and leave the widow without enough to buy a breakfast, or shelter for a night. When the Governor calls attention to the multitude of helpless wives who have struggled hard for a lifetime by the side of their husbands, but have no separate property in their own right, and asks that they may be made secure in their declining years from the caprice of a husband who is probably solacing himself with fresher charms, it is answered that women who have property of their own are permitted to enjoy it free from the control of the deceased husband's will.

THE MARRIAGE QUESTION.

The apostle tells us that the executive recommendation in regard to marriage, as he quotes it, "is the common law which, in the absence of a statute on the subject, prevails in Utah."

He adds: "No polygamous marriage has ever been claimed, even by the Mormons, to be valid in law." Mr. Thatcher cannot be unaware that it has often been asserted by Mormons that until the act of Congress of July 1, 1862, forbidding polygamy, such marriages were valid, because the act of the Legislature incorporating the Mormon Church expressly says (section 3, page 233, compiled laws, 1876, passed first Feb. 8, 1851), "That, as said church holds the constitutional and *original* right *(not given by law, but by revelation)*, in common with all *civil* and religious communities, to worship God according to the dictates of conscience; to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ; for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all; it is also declared that said church does and shall possess and enjoy continually the power and authority in and of itself," etc., as given in the first quotation on the first point discussed in this letter, polygamy was not forbidden by the common law.

THE OFFENSE IS STATUTORY,

and it has been often urged and claimed that polygamous marriages entered into prior to the Congressional statute were valid and legal.

Mr. Thatcher says: "They have never been enforced or annulled by procees of civil law."

He must be strangely forgetful. The writer of this article was an attorney in the noted case of Ann Eliza Young vs. Brigham Young, the father of Mr. Thatcher's polygamous wife, * and well recollects, if Mr. Thatcher does not, that the Chief Justice of Utah, after three years of expensive litigation, entered a decree anulling the polygamous marriage involved in that case, at the cost of the defendant.

Mr. Thatcher ought to know that the probate courts of Utah have never made the slightest distinction between monogamous and plural marriages, when divorces were sought by the parties, and have made decrees dividing the property without any reference to the difference between polygamous and other connections. In all this it would seem that the apostle's letter "is a paper gotten up with a view of influencing public opinion outside of Utah," not with any reference to the facts.

Mr. Thatcher takes issue with *The Inter Ocean* on the subject of "the scope and meaning" of the act incorporating the church. He says "that act simply makes the church a body corporate, and in defining its powers expressly provided that they should not be inconsistent with, or repugnant to, the Constistution of the United States." With the cunning that seems to be characteristic of a priest affecting the politician, Mr. Thatcher, in the act which I have quoted in part, the powers of the church are "declared," not defined, a distinction which the Mormon understands not as conferring a power but as recognizing its existence.

THE MORMON THEORY IS

that, independent of law, the church "does" as it is expressed, "and shall possess the power and authority, in and of itself, to originate, make, pass, and establish rules, regulations, ordinances, laws," etc. Section three, already quoted. It is in this portion of the act that the pretense of defining the power of the church is found. At the close of the section is a provision including the words quoted by Mr. Thatcher, which reads: "Inasmuch as the doctrines, principles, practices, or performances support virtue and increase morality, and are not inconsistent with or repugnant to the Constitution of the United States or this State, and are founded in the revelation of the Lord."

Even Mr. Thatcher held his breath before he reached the last sentence, and forbore its quotation. When the Legislature of Utah solemnly declares that the doctrines of the Mormon church "suport virtue, increase morality," and "are founded in the revelations of the Lord," it is not establishing religion by law, then argument is useless, and, when the same act says that this is done so that the said doctrines "may not legally be questioned," I think his attempt to parry the force of *The Inter Ocean's* allegation that it made the Mormon the "established church," may well be said to be funny in the extreme.

Mr. Thatcher pretends that this act of 1851 was not re-enacted in 1876. In 1876 the Legislature of Utah authorized the compilation of all the laws "then in force" in one volume. The act in question was originally passed in 1851. So much of it as conflicted with the anti-polygamy act of Congress was annulled in that act. With the knowledge of this the Committee of Revision, in 1876, all Mormon, included the old act entire in the revision, and in order that

THE VALIDITY OF THE REVISION

might not be in doubt, the Legislative Assembly in the session of 1878 (session laws, page 26, chapter 10) formally adopted and approved it as a whole. The Governor was substantially correct when he said this act was re-enacted in 1876. It was compiled under the laws of 1876, but was formally valedated in 1878. As Mr. Thatcher was a member of both those bodies in 1876 and in 1878, the value of his reverence for truth in general may be estimated by the standard he erects in this particular instance. He evidently does not intend that the reputation of his brethren shall be permitted to suffer by any deviation in favor of the facts while he is representing their cause. Again, when Mr. Thatcher has disputed the accuracy of the Governor to the adoption of this law by the Mormon Legislature, after it had it, had been by title distinctly annulled by Congress in 1862, in so far as it purports to "establish, maintain, protect, or countenance polygamy," he proceeds to say that the Legislature had not the power "to re-enact that or any other law after its disapproval by Congress, as the validity of its legislation depends upon its consistency with the acts of Congress."

The power of the Legislature to pass an unconstitutional act is aside from the point. The Governor was insisting that this act had always been invalid, and asked its repeal because it not only had been once annulled by Congress, but was invalid from the beginning. It is no answer to any one but a Mormon priest or pettyfogger to say if it is not constitutional it is invalid.

The act of the Legislature of Utah giving the Probate Court jurisdiction co-extensive with those of the United States was invalid from its origin, but for twenty odd years these church tribunals held the lives, liberty, and property of the people of Utah in their power, and the invalidity of the act did not prevent its enforcement during all this time. It is

ADDING INSULT TO INJURY

to permit a void act to remain on the statute book because its repeal does not affect its legal validity, and then assert the validity of the act itself.

It is this system of shuffling that the Mormon disputant always adopts. And it is this want of common honesty that universally impresses one who has to deal with their intellectcal gymnastics.

From this last point onward in his letter Mr. Thatcher spreads himself in a general way, the main purpose being to assail Governor Murray, on the theory that to defend Mormonism and its infamies it is wise to direct attention to its opponent, a very old trick, and a very cheap one. He says the Territorial Legislature of Utah recognize that they "are a body created and existing by virtue of Congressional law." Pray when have they recognized the obligation except when they receipted for their compencation from the United States Treasury? Did they recognize it when within two years from the time they were created, they, in violation of the organic act, which prohibited them from interfering with the primary disposal of the soil, granted to a dozen individuals every drop of water, every acre of timber lands, and every canon road in two of the most populous counties of the Territory, Salt Lake and Tooele? Did they recognize it when they granted to Brigham Young the exclusive use and

CONTROL OF ANTELOPE ISLAND,

containing 22,000 acres of land? Did they recognize it when they organized the militia, under the exclusive control of a lieutenant general, when the Governor was by the organic act commander-in-chief? Did they recognize it when they provided that all Territorial officers should be chosen by a joint vote of the Legislative Assembly, instead of being appointed by the Governor, as provided in section 7 of the organic act? Do they recognize it now, when the act of Congress of June 23, 1874, requires "the costs and expenses of all prosecutions for offenses against any law of the Territorial Legislature shall be paid out of the treasury of the Territory," and yet persistently refuse to appropriate for keeping their own criminals, and the Territory stands charged with these expenses on the books of the Department of Justice to the amount of over $200,000? I might cite instances by the score in addition to these, showing the defiance of the laws of the United States by this loyal (?) body, which Mr. Thatcher defends, but I forbear. They are known by all men familar with the subject, and by none more fully than by their defender, Mr. Thatcher.

He speaks of the absolute veto power of the Governor as an illustration of the "one man power," and a thing offensive and unjust to Mormons. Mr. Thatcher was a member of the Legislature, I believe, of 1873-4, when the appropriation bill of $200,000 was vetoed by Governor Woods, and well knows that, in disregard of the veto, the money was paid out of the Treasury by the Mormon officials.

THE APOSTLE SAYS

that the Mormon Legislature recognize the fact that they are paid out of the Treasury of the United States, "except when, as it happrned in one instance, they served without compensation." Here is another specimen of apostolic veracity: In 1875, the legislature having failed to appropriate money for enforcing criminal laws, Congress authorized the use by the courts of justice of the money appropriated by it for legislative expenses in Utah. When the legislature of 1876 convened there was no money to pay them, as it had been used by the courts, and a loud outcry was made that the members were compelled to serve "without compensation." Like true missionaries they boasted of serving the people without pay, going forth to the discharge of public duties without purse or scrip. But, lo, the sequel! A railroad tax suit between the Territorial revenue officers and a Gentile railroad company requited the public records in the United States Court. The Mormon officials refused