DESERET NEWS.
WEEKLY.

TRUTH AND LIBERTY.

WEDNESDAY, - AUG. 6, 1879.

RESIGNATION.

SALT LAKE CITY,
July 19th, 1879.

President John Taylor, the Twelve Apostles and Councilors:

DEAR BRETHREN. — In consequence of the frequent absences from home of one of us, and the claims upon the time in other directions of both of us, which prevent us from bestowing that attention to the business of editing the DESERET NEWS, which it should receive, we respectfully tender to you our resignations as Editors and Publishers of the DESERET EVENING, SEMI-WEEKLY and WEEKLY NEWS.

Respectfully, etc.,
GEO. Q. CANNON,
BRIGHAM YOUNG.

SALT LAKE CITY,
August 2, 1879.

Editors Deseret News:

This resignation should have been forwarded to you for publication before, but owing to a press of business has been neglected.

JOHN TAYLOR,
On behalf of the Council of the Twelve Apostles

THE BOREMAN EDICT.

WE publish, to-day the decision, in full, rendered by Judge Boreman, in the pretended case of contempt, but which really is a conspiracy to effect the incarceration of some of our leading men, and placing certain property in a condition that it may become a prey to lawyers and their associates.

The Court in effect requires the Executors and Trustee-in-Trust to do something which it is impossible for them to perform, and then remands them to prison for not doing it. The Executors have personally appeared in court, and under oath have stated that they had already turned over to the Receiver all the estate property in their hands. Their sworn statements have been corroborated so far as it is possible to substantiate such matters by the testimony of others. The defendants show that they are unable to do anything further in the premises. The Court says they shall, or go to jail.

This writer, who is not a party to the suit in any shape or form, only so far as the "Mormon" people as a body are interested, confesses that he is not surprised at the decision, and would not be at anything Judge Boreman might attempt where a "Mormon" is placed in jeopardy. But there are many astonished members of the bar in town this evening who do not hesitate to pronounce the opinion not only an outrage but a legal absurdity. Further, it contains statements about the doings of the executors not warranted by the evidence and absolutely untrue in fact.

We advise our readers to be calm and patient, and not suffer themselves to be carried away with the indignation that is only natural under the circumstances. We are not living in a Russian province, where the edict of an autocrat is final and irreversible, but in the United States, where there are ways and means to plead for justice, and constitutional methods for the preservation of life and liberty. This is not the end of the matter by any means. Of all people we have the best inducements to bide our time and be patient. We have seen unjust and ridiculous judicial rulings before, beheld their effects, and noted that most of them have acted like a boomerang. This one has not yet begun to operate. Watch it to its final mark!

JUDICIAL IMPUDENCE AND ASSUMPTION.

THE Boreman decision in the so-called "contempt" case has been since its delivery the subject of common discussion. It is generally regarded as a piece of special pleading for the plaintiffs, in the iniquitous scheme that has been concocted by lawyers for the spoliation of the Brigham Young estate and the Church property which he held in trust. The suit is supposed to be a case in equity. It is really a plot for plunder under cover of alleged legal forms and professional technicalities.

Does any one suppose for a moment that President Young would sanction any of the proceedings which have been instituted in this case? Were not the Executors appointed by him for the purpose of carrying out *his wishes in relation* to the property in his possession at ihis decease? Were they not familiar with his desires and designs, frequently expressed by word in addition to the instructions contained in the will? Did he not often state his intention of securing the Church in its rights regarding property which he held as its Trustee? Is not this intention plainly shown in the 38th section of his will? And if he had not made this provision, would his failure to do so not be regarded by all acquainted with the facts as an act of treachery and fraud?

The fourth section of the will gives and devises to the executors, their heirs and survivors, all the estate "real and personal whatsoever and wheresoever, after payment of all debts, etc.," for the trusts named in the instrument; and the 38th section says:

"I authorize my executors to settle all trusts wherein I am trustee, and to pay any debts I may owe in respect of 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."

The executors, in pursuance of this authority and in accordance with the frequently expressed desires of the testator, made settlement with his successor in office of his liabilities as Trustee, and took proper indemnity and security as required. In this settlement the utmost lenity was shown to the estate. Out of generosity to the President and his family, the representatives of the Church yielded to a settlement very much in favor of the heirs, and for this the latter are indebted to the labors of the Executors, who are now placed in jeopardy for their solicitude and regard for the benefit of those immediately concerned.

Boreman calls the transfer of this property to the Church in conformity with the command of the testator, "a wanton and reckless waste of the estate of the deceased." Could anything be more untrue? If the Executors had not made a settlement with the Church they would have been derelict to their duty and be liable to suit on their bonds, would have been condemned alike by "Mormons" and non-"Mormons," and would have exposed the estate to proceedings for the recovery of the property which no one doubts belonged of right to the Church.

Boreman further assails the Executors without reason in stating that "they made these transfers without asking direction of any Court; that they paid claims barred by the statute of limitations; that they borrowed money from the estate themselves and took money out of the estate without even giving their notes, but simply charging the same to "self." It is astonishing that a judge sitting on the bench could stoop to the utterance of such abominable falsehoods. The Probate Court, which by law is the proper court to regulate such proceedings, did sanction the transfer of the property. The claims referred to as being barred by the statute of limitations were valid claims, being open accounts, which, according to the statute, are not barred from enforced collection until two years after the account is closed or the last item agreed upon by the parties has been entered. They have borrowed no money from the estate in the manner alleged and described, and there is nothing in the evidence produced in the case which would warrant such statements from the bench. Yet it is on such reckless and incorrect assertions and assumptions that the Executors and the Trustee in-Trust are committed to prison.

It is possible that in the winding up of the affairs of the estate, and their anxiety to render justice to all claimants, the Executors may have overlooked some trivial legal technicalities. We do not know that they have, but considering the extent and value of the property handled, and the peculiar circumstances surrounding the estate, such may have been the case. But it has not been shown and cannot be proven that there has been any "waste" of the estate, intentional or unintentional, "wanton and reckless," or by mistake and carelessness. And when a judge makes use of such aspersions in an attempt to justify a gross perversion of judicial power, and cover over the bigotry of the sectarian in an attack upon leading "Mormons," he exposes himself to public censure and general detestation.

This pretended matter of contempt is merely a side issue from the main cause, and was arranged to prejudice the case and place the defendants where they could be squeezed so as to become a prey to the attorneys for the plaintiff. There was no necessity for it. The Executors were and are under bonds of $100,000 each for the faithful performance of their duties, and if the allegations against them were true, or could be proven, they could have been proceeded against with their bondsmen until satisfaction was obtained.

It is clear from Boreman's own language that his decision is one-sided and partial. He says:

"When the court has appointed a receiver, it is to be presumed that a sufficient showing was made at the time, when nothing to the contrary appears. But in the case at bar, no such presumption is needed, for the complaint itself upon its face shows a wanton and reckless waste of the estate of the deceased. The complaint was the only pleading to guide the Court at the time."

Boreman knows as well as we that no opportunity for any showing was given to the defendants, for the complaint was received, Star Chamber fashion, in a sly and secret manner, an injunction issued and receivers appointed before the defendants were even notified of any action against them. Yet because the complaint alleges "a wanton and reckless waste," he assumes the statement to be correct, endorses it, emphasizes it and sneers at the defendants because there was no showing to the contrary. He further jibes them because no application was made by the defendants for a revocation of the order of the Court. The fact is, the defendants' attorneys saw that there was no hope for justice, in view of the manner in which the complaint was entertained, and had no confidence whatever in a Court that would lend itself to such a nefarious scheme.

The name of Boreman was sufficiently infamous in this Territory without this latest ebullition of bigotry and exercise of autocratic power, which, in any other country would cause his removal from a position that he disgraces, and the ruin of his reputation as a lawyer and a citizen. The writer of this article has no disposition to assail anyone personally, nor to say anything in defense of wrong. But the public acts of public men are open to public criticism, and when they are subversive of human rights and common justice, plain talk is demanded, and he utters these views as his own, without reference to the opinions of the executors, neither of whom should be held responsible for these expressions. He has no doubt that justice will be done in the end, but does not expect it in the local courts while such men as now occupy the bench remain to distort the law, legislate when they cannot find statutes to suit their intentions, and avail themselves of the protection of the bench to insult and assail with groundless accusations those who are unfortunate enough to be placed within their jurisdiction. But the day of their power is drawing to its evening, and their final night is close at hand.

JUDICIAL FALSEHOOD NUMBER ONE.

BOREMAN'S decision in the so-called "contempt" case contains a number of direct and wilful falsehoods, such as if uttered in any other capacity than that of a judicial officer would have exposed him to the charge of lying, and an action at law for libel. We do not think that because that conscienseless bigot avails himself of the protection of the judicial ermine to fulminate falsehood, he should be permitted to slander and abuse honorable and respected citizens without exposure and without blame.

Here is falsehood No. 1; we quote from the decision: "The abuse of the trust imposed in these executors, is unparalleled for its recklessness and utter disregard of law throughout the whole administration" If the Executors had squandered the entire estate placed in their care, if they had given the heirs nothing, but had diverted both the real and personal property to their own individual use, a worse accusation could not have been made against them. And this is no enraged heir or legatee, greedy for more than his proper share of the estate, or wrathy because of some imagined injustice, who uses this language, but a judge sitting on the bench, who is supposed to deal out impartial judgment and not to indulge in personal spleen nor in passionate epithet and invective.

If the Executors had been thus guilty, Boreman would not have been justified, when issuing this interlocutory order, in thus passing upon the whole case, nor in uttering such abuse. But the statement is utterly false and malicious. It has not been shown that the gentlemen thus accused have abused the trust imposed upon them, exhibited any recklessness, nor disregarded the law in any instance. Yet Boreman says these evils are exhibited throughout their "whole administration." Facts show to the exact contrary of this. In their settlement with the Church they studied the interest of the estate, and made terms that any unprejudiced person on investigation would pronounce most favorable to the heirs and legatees. In paying the honest debts of the testator they showed a proper regard at the same time for justice to the creditors, for the preservation of the good name of the deceased and for the positive instructions contained in the will. In the settlement with the heirs, due forms of law were subscribed to—as we shall show before we have done with this subject—and the sanction and instructions of the Probate Court were obtained in every important matter which they undertook. The statement of the the Judge, then, is entirely false, as well as improper, coming from the beneh, and exhibits the small-souled being who uttered it in the light of a cowardly defamer.

That despicable person has made it a point at every favorable opportunity, when on the bench, to go outside of the record in cases before him, to malign leading "Mormons" and attack the Church of which they are prominent members. His libels are on record. They have been published to the world with his name attached. They can be easily produced when neecessary. They are of the same character as the baseless attack on the Executors in his latest decision, and, coming from such a source they are simply infamous.

The practice of some attorneys, when in court, of personally attacking the character of individuals on the opposite side, in cases at bar, is exceedingly reprehensible and disgusting to every well regulated mind. It ought to be frowned down by the occupants of the judicial bench and suppressed if necessary by severe penalties. For, an attorney in court has no more right to assail a witness or a defendant by provoking and abusive language, than has a private citizen to thus insult another on the street. It is taking a cowardly and ungentlemanly advantage of a person who cannot retaliate. But if this is mean and contemptible in a lawyer, what can it be thought of in a Judge? is the course of a pettifogger, a mark of a small mind, a gross outrage upon the individuals thus assailed, and a plain proof that a poltroon who descends to it is not fit for the squabbles of a low room than the calm discussion of legal questions or a seat upon the judicial bench.

We have only touched upon falsehood number one. There are others to be noticed in their turn.

HE SHOULD INVESTIGATE.

JUDGE BOREMAN was in a quandary on Friday. When Attorneys for President Taylor for a reduction in the amount demanded to be turned over to Receivers, particulars of which will be found in another part of this paper. He did not seem to be familiar with the contents of his own decision, and had to examine it at great length, being evidently of the opinion that there were provisions in it which it did not actually contain.

It was with great surprise that his decision was received not granting the reduction desired. But it was remarked by some who had been watching his perturbation and hesitation, that if he had been able to get the cue from those who pull the wires in this case, it is probable that the decision would have been different. As it was, he had to make up his mind from the showing made by the Attorneys for the defence, who presented a good point and made a stick, in spite of the efforts of the opposite attorneys to turn it aside by sophistry and technical objections.

Perhaps if Judge Boreman were to make himself familiar with the case, instead of hunting for words against the defendants might gain a little more time and save himself from much difficulty.

JUDICIAL FALSEHOOD NUMBER TWO.

THE second falsehood in Boreman's decision which we propose to consider is the following, in relation to the Executors:

"They have assumed to do that vast amounts of the property left by the testator as his, was his property, and without asking the direction of any Court have transferred such vast amounts of estate."

There is no necessity to go over the ground again to explain the position which was occupied by President Young in relation to the large amount of Church property. It is well known that he held it in trust, and that it was not and could not be considered as his property in his own right. Part of it is the Temple Block with the Church buildings thereon. We do not think any one, unless it be a commission judge, will have the hardihood to say that this was the private property of President Brigham Young, or of any other individual living or dead. The act of the Executors in transferring the Church property from the estate to President Young's successor in office was well understood to be right, in accordance with the instructions contained in the will, and performed on a basis greatly to the advantage of the heirs and legatees.

But the Court not only brings this up as a charge against the Executors, but accuses them of doing it without authority, "without asking the direction of any Court." In answer to this judicial falsehood we cite the bill of the Trustee-in-Trust for $999,632.90 sworn to before a notary public, endorsed by two of the Executors, and which has already been published in their answer in the so-called "contempt" case. It is endorsed:

"Approved and allowed, April 10, 1878.

E. SMITH, Probate Judge."

This is attested by the seal of the Probate Court, and the signature of the Clerk.