

IN FARRELL'S FAVOR.

He is Given the Weber County Treasurership.

On Saturday, Feb. 19, in the Territorial Supreme Court, Judge Borenman read the following opinion, giving the Weber County treasury over to the hands of William Farrell, the "Liberal" candidate:

At the general election held in August, 1884, one Robt. P. Harris was elected to the office of county treasurer of Weber County, under a statute which established the office, and provided that the term of office of the county treasurers should be four years and until their successors should be elected and qualified. Subsequently, on the 11th day of March, 1886, nearly two years after Harris' election, the statute was amended by "striking out the word four," and "substituting the word two in lieu thereof."

At the general election in August, 1886, the defendant (Pingree) was elected to the office of Treasurer of said county, for the term of two years, upon the theory that Harris' term had expired at that time, under the statute as amended in the preceding March. Harris, having been elected for a term of four years, had two years yet to run at that time, unless the amendment of March 11, 1886, had deprived him of the two years subsequent to the date of Pingree's election. Pingree entered upon the discharge of the duties of the office under his election in August, 1886, although Harris had not resigned nor been removed from office. In February following the date of Pingree's taking the office, Harris died. No one was appointed after Harris' death to fill the office, but Pingree continued in it. At the general election in August, 1887, the plaintiff was elected to said office, and received his certificate, and was duly qualified to enter upon the discharge of the duties of the office, demanding the possession of the books, papers and insignia of the office from the defendant, who was then in possession of them. The defendant having refused to deliver them up to him, the plaintiff brought this action, and upon the hearing of the case, the judgment being for the plaintiff, the defendant appealed to this court.

We learn from the appellant's brief that he claims the judgment of the lower court to have been erroneous, for the reason that the enactment of the 11th of March, 1886, operated at once as a vacation of the office then held by Harris, giving to the occupant the right to hold the office until his successor should be elected and qualified. The language of the brief is, "that the effect of the amendment of March 11th, 1886, striking out the word four, was to repeal the terms of office of all county treasurers then in office, so far as any term of years then unexpired might be, and simply to leave them to continue in office, or hold over until their successors should be elected and qualified." And the defendant further contends that upon this theory, the fixed term of Harris expired at the taking effect of the amendment, or repeal, on the 11th of March, 1886, and that therefore Harris could only hold until his successor should be elected and qualified, after that date, which he claims took place at the August election of 1886, when the defendant was elected to the office, and therefore qualified.

There was no vacation of the office, in express terms, by the enactment of March, 1886. The question then arises, was there such a vacation by implication? There was no repeal of the act creating the office. The amendment dealt only with the length of the term of office. It left all the residue of the statute intact, and in full force. If the Legislature intended to vacate the office, that intention must clearly appear before a court is warranted in saying it exists. The defendant claims that such intent is shown in the enactment declaring that the old statute "is hereby amended by striking out the word four." But all that the striking out clause vacates is the word "four." Nothing else is pretended in the act to be vacated. That word is dropped out of the statute, but the office is not dropped out. It is left to stand as it stood before, one word, "four," being repealed, stricken out, and the residue of the statute being allowed to stand; Harris would have found himself, upon the adoption of the amendment, on the 11th of March, 1886, in an office, the term of which had no end. His term would have been lengthened, instead of lessened by the repeal, or "striking out the word four," and there could have been no sort of ground for saying that under such circumstances any one else could have, by any election or appointment, a better right to the office. He had been duly elected to it nearly two years prior to that time, had not been removed, nor had he resigned, and the office had not been abolished. Only the time limit had been removed. But the true rule of construction is to take the whole statute, and consider all of its parts together, and not to take a fraction, and consider that by itself. The amendatory enactment of the 11th of March, 1886, not only contained the words "striking out the word four," but it also contained the words "substituting the word two in lieu thereof." The striking out and the substitution were simultaneous acts. With the word "two" in place of "four," we are to consider the effect of the change. There is no authority or sound reason for holding that such amendment took effect as of August, 1881, nearly two years prior to its enactment. The defendant contends that although the statute took effect on the day of its passage, yet that it related back to the August of 1884, the date of Harris' election. We are at a loss to know why this is so. The amendment says nothing whatever about the enactment relating back two years, or any other time, prior to its passage, and we see nothing in the amendment upon which to hang inference of that nature. We are not justified in adding to a statute something that the Legislature never intended, or had in contemplation, in enacting the statute. The Legislature had the power to have said so, but we are not now considering the power of the Legislature, we are considering whether they had exercised that power. The statute, with the interpretation sought to be placed upon it by the defendant, would be clearly retroactive. No court will hold a statute to be retroactive, and when the Legislature has not said so, and there is no reason why it should be so, and where the statute is only susceptible of another and reasonable construction, the general rule, as found in the books, is even stronger than we have stated. It is laid down in Broom's Legal Maxims that "laws should be construed as prospective, and not retrospective, unless they are expressly made applicable to past transactions, and to such as are still pending." (Broom's Legal Maxims, p. 34.) And Cooley states the doctrine very definitely, as follows: "And it is a sound rule of con-

struction that a statute should have a prospective operation only, unless its terms show clearly a legislative intention that it should operate retrospectively." (Cooley's Const. Lim. p. 456). See also Ely vs. Holtz, 15 N. Y. 593; State vs. Newark, 40 N. J. L. 257 and others.

It being clear, therefore, that the legislative intent that the amendment should be retrospective, does not appear, it is settled by an overwhelming weight of authority, that the enactment of the 11th of March, 1886, had no retrospective or retroactive effect, but its operation is entirely prospective. The well-known two years that Harris had held the office of county treasurer could not, therefore, be counted as part of the two years' term of office provided for in the amendment. The two years contemplated (in the enactment) were some two years to begin at a time subsequent to its passage. The amendment found Harris in office. It did not vacate his office, nor abolish it. The amendment, if made applicable to him at all, simply told him that thereafter he could hold the office for two years. The word "thereafter" would, of course, mean after the amendment should go into effect, which would occur when there had been a publication of the enactment. (Comp. Laws, p. 73, Sec. 2.) He would therefore be entitled to hold the office under the amendment, if it could apply to him, for the period of two years after publication of the amendment, and the time of such publication does not appear, nor is it material, as no doubt the publication took place shortly after its passage, and prior to the general election in August, 1886. But as we have seen that if the amendment be at all applicable to Harris, he was under it authorized to hold the office two years following the enactment, and consequently the election of the defendant to the office at the general election in August, 1886, and before such two years had expired, was unauthorized by law. But the statute was in no way applicable to Harris. He held his office under a statute which had not been repealed, nor had it in any manner been modified, except that the term of office after its passage was to be two instead of four years, as theretofore. No reference was made to the cases of persons then in office. The statute was wholly prospective, and related to terms of office in the future. People vs. Haskell, 3 Cal. 377; Cooley's Const. Lim., p. 456. In the well-considered case of Peters vs. Massey, (33 Gratt., 368) the Court of Appeals of Virginia, laid down this doctrine in plain terms, and the contest in that case was in some respects similar to that in the case at bar. Two cases are referred to by the defendant, the one in Texas and the other in California, as being of a contrary character. The Texas case of Wright vs. Adams, (45 Texas, 134) simply states the rule that where the duration of the term of office is a question of doubt or uncertainty, the shortest time is to be adopted. In the case at bar, the term of office is not a question of such uncertainty or doubt as was contemplated in that case. The principle enunciated by that decision was that where the statute has left a blank unprovided for by definite enactment, and there is a doubt as to whom such blank should be allotted, the rule should be that it should follow the policy of making the terms of office at the shortest periods which the convenience of the public will permit. It cannot, as we take it, be made to apply when the term of office is ascertainable from the statute under the ordinary rules of construction. If the ordinary rules of construction shall have been applied, and yet the matter is in doubt, the court must resolve that doubt in favor of the people, and adopt that rule that contemplates a reference of the election back to the people at the shortest periods consistent with the public convenience.

The California case of [The People vs. Brehen] (3 Cal. 477) was a case such as we have described. The charter of San Francisco provided that the first election under it for city officers should be on the fourth Monday of April, 1851, and thereafter annually at the general election for State officers. The latter was then held in September, and at the first general election, in September of that year, the charter was elected Mayor. The defendant (Brehen) refused to yield it. The statute had made no definite provision as to whether the term of the mayor that had first been elected should hold on until the first general election, or to the next thereafter. No general rules of construction could solve the doubt, and the court was at sea. Under such circumstances the court held that the best rule to follow was that which was the established policy of the state, and it was to adopt the shortest period. These two cases cited by the defendant do not affect the general doctrine that the statute must be construed as prospective in its operations, and not retrospective. With that doctrine, which is so well settled, to guide us, the true intent of the Legislature is made manifest, and there can exist no such doubt or uncertainty as to require the court to adopt, as a last resort, another rule which is not to be called into requisition, except when a question of policy, and not a rule of law, is to govern in the interpretation of a statute. We find no error in the action of the court below, and the judgment is therefore affirmed.

Zane, C. J., concurs.
Henderson, A. J., concurs.

A CURIOSITY.—Museum Manager—You say you are an actor by profession and at present out of work?
Actor—Yes, sir.
"And you want an engagement?"
"Yes, sir."
"Have you ever written anything to prove that Ignatius Donnelly et al. are mistaken about Bacon being the author of Shakespeare's plays?"
"No, sir."
"Not a line?"
"No, sir."
"Go up and get on the central platform in Curiosity Hall."

DIFFERENT AUTHORITIES.—Minister—So you go to school, do you, Bob?

Bobby—Yes, sir.

Minister—Let me hear you spell bread.

Bobby—B-r-e-a-d.

Minister—Webster spells it with an A, Bobby.

Bobby—Yes, sir; but you didn't ask me how Webster spells it; you asked me how I spell it.—New York Sun.

SUNDAY SERVICES.

Religious services were held in the Tabernacle, Salt Lake City, Sunday Feb. 19, 1888, commencing at 2 o'clock p. m., President Angus M. Cannon presiding.

The choir and congregation sang: May we who know the joyful sound Still practice what we know.

Prayer by President Abram Hatch, of Wasatch Stake.

The choir sang: Lord, we come before Thee now, At Thy feet we humbly bow.

The Priesthood of the Tenth Ward officiated in the administration of the Sacrament.

PRESIDENT J. R. MURDOCK,

of Beaver Stake, addressed the congregation. The mission of the Latter-day Saints requires them to teach those principles which will tend to elevate and exalt the inhabitants of the earth. That mission extends throughout the whole world, and its object is to prepare mankind, not only for a happier condition in this life, but a condition of happiness and exaltation in the world to come.

The speaker dwelt upon the prominent situation in which God has caused the Saints to be placed. The Saints were entitled to the privilege of worshipping God according to the dictates of their consciences, and were engaged in teaching and advocating the doctrine of religious liberty, through their publications, as well as by their teachers.

It is necessary that the Saints should understand the true character of the work in which they are engaged. A period has been given us to live upon this earth, and in which to prepare ourselves to go hence into the presence of our Father in Heaven.

We should accord to all men the right to embrace that system of religion which they may choose, for we maintain the same right in behalf of ourselves. The Savior said that every plant which His Father had not planted should be uprooted, and if the religious system of the Saints has not been established by the Almighty, it will be overcome.

The speaker dwelt upon the teachings of the Latter-day Saints, showing that the founders of this government, and Columbus who discovered America, were led by the inspiration of the Almighty. He maintained that all men who had done good among their fellows, or who have accomplished any work tending to increase the welfare of their kind had been engaged in the work of God.

Temptations are multiplying among mankind. There are far more inducements to do evil today than existed fifty years ago. But it is the duty of each individual to withstand every temptation to do wrong, and conform their lives to the law of God. We are not required to rely upon man, for it has been given us to know for ourselves. It is no excuse for us to say that some one has led us astray. So long as a man's teaching and example are in accordance with the principles of truth and intelligence, we are justified in following the same, but only to this extent.

The Saints have begun a great work, and nothing should deter them from striving to attain the object they have set out to win. The Lord took the only way He could have taken to induce us to come to this far off and desolate mountain regions. Ostensibly, the reason why the Saints were driven from Missouri and Illinois was because the people of those states were opposed to the principles they taught; but in reality the Lord aimed to bring the Saints to these mountains, and in pursuance to this plan, He permitted His people to be driven.

It is a mistake to suppose that only those who have embraced the Gospel are laboring to advance the work of God. There are many good and honorable men on the earth who are carrying on the work and purposes of the Almighty. Joseph Smith was chosen to perform the great work of introducing among men the fullness of the Gospel; but preparatory to his mission God raised up many great and good men to prepare the way for the establishment of His work. The acts of individuals should not be taken as a gauge of the principles they profess; but the principles themselves should be examined, to see if they are correct. The Latter-day Saints are not perfect

in the knowledge of their own duties; neither have there ever been men upon the earth who were. But we will progress in this respect. The Creator has a programme to work to in governing the affairs of this earth and whenever individuals or nations cease to perform their allotted part, they will be removed and succeeded by others.

PRESIDENT W. G. SMITH of Morgan Stake, next addressed the congregation. He referred to the condition Utah was in in 1846, when it was generally thought that it would never be inhabited by civilized man. And yet in the early part of that same year, a people were preparing to remove hither. He described some of the circumstances under which the Saints began their westward journey, and pursued it, and the hardships they endured. The speaker was one of the hundred men who, when the Saints were in the straits he had just described, volunteered from among them, in response to the call of the United States Government, to go to Mexico to fight for their country. At the time that call was made Senator Benton thought the Saints would refuse to respond to it, and thus that they could be charged with disloyalty. It was also expected that the Saints would be destroyed by the tribes of savages among whom they were going.

But the ways of God are different from the ways of men. The Saints came to the barren and desolate valleys of Utah. The scanty waters were increased, and the elements were modified for their benefit. Since that time they have grown and prospered and are spreading in every direction.

Let us remember that we belong to the great family of man, that man is our brother in the Spirit and that we have no right to hate him. The agency of man gives him the right to choose the religion he will adopt, and the constitution of our country guarantees protection in the enjoyment of this right.

ELDER ROBERT HEYBORNE, of Iron County, next spoke. He was thankful to bear the testimonies which had been borne here today, concerning the goodness of God towards the Latter-day Saints. The speaker felt that the Saints do not fully realize the importance of the position they occupy. They do not realize that they are the individuals whom God has chosen to bring to pass the marvelous and wonderful work which His Prophets have foretold. The Saints are the most liberal of all religious teachers in the world for their liberality extends not only to the living but to the dead. When we consider the important position we occupy, it will become apparent that we should watch well our course day by day.

Notwithstanding all that the Saints have passed through, our brethren are prepared to stand forth and testify that God is still with this people, and to urge the exercise of liberality towards all men. Look at the changes which have taken place in this Territory. It was not expected, when the Saints came here, that they could subsist, but they are now surrounded, on every hand, by prosperity.

The Saints should seek to grow in grace, increase in charity, and live in such a manner that they may enjoy the light and inspiration of the Holy Spirit. When they first embraced the Gospel, the Saints had the principle of gathering revealed to them, and they could not rest until they had come to the home of the Saints. It is well for us to recall those days, and see if we are still actuated by the spirit we received through obedience to the Gospel. Do we enjoy the gifts and blessings of the Gospel? God is unchangeable, and if we do not enjoy the Holy Spirit and its gifts and powers as we once did, the fault is ours, and not His.

The speaker had passed through experiences by which he knew that this was the work of God, and that the Gospel as taught by the Latter-day Saints is true. He had been associated with the Saints the greater part of his life, and in their teaching he had never heard a doctrine which did not tend to elevate mankind.

The choir sang an anthem: "O, Be Joyful."

Benediction by Elder Oliver Workman.

A Card.

PROVO CITY, Utah, Feb. 17, 1888.
All normal graduates of the Brigham Young Academy, engaged as teachers in this or adjoining Territories, will confer a favor upon the undersigned by reporting to him at once their respective places of labor, and any additional remarks which they deem proper to make.

KARL G. MAESER,
Principal B. Y. A.

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