FAIR PLAY FOR THE MORMONS.

The jury of Salt Lake City, in the case of Hawkins, the Mormon charged with adultery because of his having more than one wife, have brought in a verdict of guilty. This is said to be the test case, and one that will place every Mormon polygamist at the mercy of his first wife.

In our remarks upon this subject, we wish it to be understood that we have not a word to say in favor of the polygamic system, but that we simply wish to have the United States authorities look well to their Constitution and laws before they commit a blunder in direct violation of law and right. In the Constitution of the United States it will be admitted that there is not a word having reference to the marriage relation; and, in the laws of Utah, there is not a word that would justify any judge or any jury in defining polygamy as necessarily involving adultery. The attempt, therefore, so to define it, is simply a high-handed breach of law and of common sense, which can only lead to violations of justice that will rather confirm the Mormons in their ways than have the effect which some of the antagonists of polygamy anticipate. Mr. Hawkins is no more an adulterer, because of his polygamy, than were Abraham and those other patriarchs of the Old Testament, whom to stigmatize as the court have stigmatized Mr. Hawkins, would be pronounced flat blasphemy by all who believe in the Bible as the Word of God.

There is no evidence that polygamy was prohibited, either under the old dispensation or the new. Milton has proved this in the most exhaustive manner, in his various treatises on the subject. Luther and his Synod declared that there was nothing in the whole Bible adverse to polygamy or concubinage.

"It is not allowable to argue," says Milton, "from 1 Cor. vii: 2, '*let every man have his own wife*,' that, therefore, none should have more than one; for the meaning of the precept is, that every man should have his own wife to himself, not that he should have but one wife. That bishops and elders should have no more than one wife is explicitly enjoined, 1 Timothy iii: 2, and Tit. i: 6, 'he must be the husband of one wife,' in order probably that they may discharge with greater diligence the ecclesiastical duties which they have undertaken. The command itself, however, is sufficient proof that polygamy was not forbidden to the rest, and that it was common in the church at that time."

Dr. Channing, a name reverenced in this part of the country, says, in his article on Milton, "We believe it to be an indisputable fact, that, although Christianity was first preached in Asia, which had been from the earliest ages the seat of polygamy, the apostles never denounced it as a crime, and never required their converts to put away all wives but one."

"On what grounds," asks Milton, "can a practice be considered dishonorable, which is prohibited to no one even under the gospel? Reverence for so many patriarchs who were polygamists will, I trust, deter any one from considering polygamy as fornication or adultery; for 'whoremongers and adulterers God will judge;' whereas the patriarchs were the objects of His especial favor, as He himself testifies. If, then, polygamy be marriage, properly so called, it is also lawful and honorable, according to the same apostle: Heb. xiii:4. Let the rule received among the theologians have the same weight here as in other cases: 'The practice of the saints is the best interpretation of the commandments.'"

We quote the religious argument because it is evident that the judge and jury who condemn Hawkins, rely more upon the common religious prejudice for their authority than they do upon anything in the Constitution of the United States or in the laws of Utah.

Here are men—sincere men and women—who maintain, (and from abundant biblical authority,) that their marriage system is at once in conformity with natural and revealed religion. They further maintain that the system is far more conducive to social purity than the corrupt monogamy under which prostitution and all the gross sexual evils are bred and kept up in all our large cities except Salt Lake. The honest convictions of these men and women must be respected; and any attempt to tread them out by illegal and violent measures should be resisted by every true friend of liberty, whatever his opinions on polygamy may be.

Under the Constitution of the United States any State of the Union would unquestionably have the right to legalize polygamy, if the majority of the people of the State so willed it. How contrary to the spirit of our institutions is it, therefore, to say that in Utah, where a very large majority of the people favor or practice polygamy, the laws, fairly construed, can make it a penal offense!

Those who confound polygamy with adultery, as the Salt Lake jury seem to have done, must do it either in utter ignorance or in utter defiance of the meaning of words and of all past history, sacred and profane. If anything can be shown beyond all dispute, it is the fact that polygamy was sanctioned and practiced by the patriarchs and saints both of the Jewish and Christian Church.

We are no upholders of polygamy. We think that, except in very rare cases, the effect of the system must be unfavorable to the best moral development. But let us not blink the fact that the Mormons are consistent Christians, and that to stigmatize polygamy as adultery is unphilosophical, untrue, and contrary to the Christian religion. Let us have fair play. Our own rights are jeopardized in those of our Mormon brethren.—*Banner of Light.*

LIFE AMONG THE MORMONS.—Bishop Tuttle, of the diocese comprising Utah, Montana and Idaho, preached in Christ (Episcopal) Church, Rye, on Sunday morning, and gave an interesting account of his labors among the Mormons. Bishop Tuttle asserts that it will be no little task to extirpate Mormonism; that should Brigham Young be disposed of, Mormonism would still flourish. He felt convinced that the completion of the Northern Pacific Railroad would do more to put down Mormonism than anything else, for it would encourage emigration to Utah, and the fertility of the country and its rich mineral resources would induce thousands of people from the East, to settle down there and thus crowd out the Mormons by outnumbering them and depriving them of their influence and power. The Episcopalians now have a fine church, which cost about $50,000, at Salt Lake City, and from its tower may be heard the only bell to call citizens to worship on the Sabbath day. In connection with the Church is a Sunday-School, attended by 360 scholars, which is self supporting. The Episcopal mission, under Bishop Tuttle, has received $72,000 from the Eastern States, and he is now securing additional aid. Converts from Mormonism have contributed $46,000 for the spread of the gospel among the Mormons. Bishop Tuttle preached in St. Peter's Church, at Port Chester, on Sunday evening and the congregation contributed a handsome sum to aid him in his missionary labors.—*New York World, Oct.* 31.

ABOUT THE MORMON TRIALS.

The editor of the Stockton *Independent*, for the reason, probably, that he is as much wanting in matter to fill his editorial columns as he is of a knowledge of law, differs with us on the Mormon trials. That he should differ with us is not strange at all. We should expect nothing else, and would pass it as a matter of course. But when he tries to fuddle the brains of his readers as his own are fuddled, for the sake of the people having a correct understanding of the Mormon trials we expose his want of knowledge of the matter whereof he writes with such an assumption of wisdom. Speaking of the law of 1851, passed by the Mormon Legislature, and under which Hawkins has been convicted and sentenced, the *Independent* says:

"As we understand the law, it is similar in its provisions to those in force in other States, and in consequence thereof must be observed by both the Mormon and Gentile residents of Utah. If it had directly sanctioned the doctrine of plurality of wives it would have been in conflict with an act of Congress and consequently of no binding effect whatever; but as there is no such provision in the law, it can only be construed by the court in accordance with its wording. It prohibits the perpetuation of an unlawful act, and that act is plainly defined. The court can only act in accordance therewith, and certainly ought not to heed the alleged intent of the Legislature to make it mean something else entirely different. We think the condemnation of a judge who has shown his determination to use every effort to put a stop to the practice of polygamy by the Mormons is unjust and unwise."

The nature and intent of the Mormon law of 1851 have been fully explained in these columns. That it was not intended to apply in such a case as that of Hawkins is so plain as to need no argument. Its intent was to discourage vice in one form and to encourage rather the practice for which Hawkins is made to suffer. The similarity of the phraseology of the law to statutes in other States has no force, because the clear intention of the law determines its meaning. It is true, the rule is to be governed by the general understanding of the object of a law as derived from the letter of it, and in cases of ambiguity to resort to cotemporaneous evidence at the time the law is passed. But in the case of the Mormon statute of 1851 the intention is known to everybody not to be the same as in States where different institutions prevail, and the rule will not apply. What would have been thought of a judge or lawyer fresh from the East, in the early days of California, attempting to give his own meaning to the Mexican phrase "denouncing a mine," without caring what the Mexican law intended should be meant. The object for which a law is made is of first importance when it is to be applied. The Mormons went to Utah, where no laws extended, and made statutes and established institutions of their own. Those statutes were the only laws in force in the Territory till Congress undertook jurisdiction. It is not true that if a law of the Mormons had sanctioned a plurality of wives it would have been in conflict with an act of Congress, for Congress had passed no act on the subject till very recently and there was no law but the Mormon law intended to bear on the polygamy question. The Federal officials in Utah make no pretense of acting under any law of Congress which is in conflict with the Mormon statutes. No law of Congress is alluded to. And why? If a trial in any other shape had been attempted there would have been a chance to appeal. If the suit with Hawkins had been for one thousand dollars or over, he could appeal from Judge McKean's Court to the Supreme Court of the United States, but the right to appeal in cases where life and liberty are at stake was taken away by the reconstruction acts of Congress. The object of McKean and his confederates in ignoring the Federal laws, and bringing action against Hawkins under a Mormon statute, to which the court could give a false construction, was to convict without a chance to appeal except to himself and others in league with him. The case would have been entirely different if an attempt had been made to execute Federal laws, instead of reversing the meaning of a local law. The province of a judge is to declare a law according to its intent, and not to torture it, and the course of judge McKean smacks of the qualities of a Jeffreys, and he should be condemned for it, and not lauded, as the leatherheads would have him.—*Sacramento Union.*

THE MORMON QUESTION CONSIDERED FROM THE LEGAL POINT OF VIEW.

Were it not from the fact that great reforms have seldom or never been brought about by judicial action alone, we might see in the events now passing in Utah the promise of a brighter dawn for that polygamy-ridden people. Chief Justice McKean has certainly shown himself an uncompromising enemy to the peculiar institution of the saints, and has initiated measures that may well fill them with apprehension.

The first and severest blow was struck when the chief justice decided that the courts of the territory were courts of the United States, to be governed by the rules and practice of the federal courts, and that all processes were to be served and juries selected by the United States officers. Theretefore, the laws and regulations of the territory had been paramount; Mormon officers had selected Mormon juries, and justice had been administered quite in accordance with Mormon notions. But with "Gentile" juries and the "second Daniel" came a new order of things. Men holding opinions favorable to polygamy were refused certificates of American citizenship; Mormon laws and Mormon ordinances were set aside, and the entire polygamous rhiearchy was put on trial.

The present status of affairs seems to be about as follows: Brigham Young, the successor of Jos. Smith, has been indicted on several charges, among others for "lascivious cohabitation." The Mayor and several of the elders are under arrest, and Hawkins, a polygamist, has been convicted of adultery and sentenced to pay a fine of $500 and to be imprisoned at hard labor for a term of three years.

The trial of Brigham Young has been postponed for several months, during which his counsel hope to get a decision of the United States Supreme Court on the question as to whether the Territorial or federal laws are to govern in the selection of juries. The question is, of course, of the first importance, for, with a jury composed entirely of "Gentiles," there would be little hope for the "prophet." The remark of the chief Justice, that "the system of polygamic theocracy would be tried in the person of Brigham Young," has served, we are told, by a correspondent, to knit together the entire Mormon community, and men and women are alike offering their contributions to secure counsel to defend their leader and their doctrines. Should the trial take place it will be one of the *causes celebre* of the country.

The indictment of Young and the conviction of Hawkins were brought about under a statute against adultery and lascivious conduct passed by an exclusively Mormon legislature in 1852. That the act was intended to cover cases of the kind no one believes, and it may fairly be questioned whether polygamy can be treated as a crime under it. But it is a question we do not propose to discuss. We are of the opinion, however, that it would have been more becoming, considering the decisions already made, for the court to have proceeded under the statutes of the United States against polygamy.

That Chief Justice McKean is a pure and honest man, we know, having known him for years before his elevation to the bench; but we know him also to be a man of strong convictions and unyielding prejudices. These latter qualities he has displayed in his present position in a manner scarcely becoming the ermine. Justice ought to be severe, and awful, too, but it ought at the same time to be impartial—to sit calm and unmoved above the storms of prejudice and passion that rage beneath. His decisions we do not question, but the language accompanying those decisions has been often so intemperate and partial as to remind one of those ruder ages when the bench was but a focus where were gathered and reflected the passions of the people.

Of the Mormon people much may be said in praise as well as in blame. They have no doubt trampled upon one of the strongest traditions of civilization, but they have also done some service to the State. Driven from one point to another by mobs as bad as the worst of them, they at length made a hegira, quite as memorable as the "Flight of the Tartar Tribes," to the wilderness of Deseret, and established a commonwealth which has prospered almost beyond example. Aside from polygamy, they have obeyed the laws quite as well as most new western communities, and they have never failed to respond promptly to any calls made upon them to aid in defending the country or prosecuting its wars. For a quarter of a century their peculiar institutions have been tolerated by the government; so long indeed as to justify them in assuming that they had become legalized by prescription. In view of these facts we have no hesitation in saying that the justice that is now meted out to them should be tempered with mercy, and that neither the chief justice nor his followers will gain imperishable renown by an uncompromising crusade.—*Albany Law Journal.*

IN the New York *Herald* of Nov. 3 appeared what purported to be a report of an interview with Hon. W. H. Hooper. The Washington correspondent of the Philadelphia *Press*, speaking of that gentleman, says, same date—

He denies, most emphatically, the truth of the statements which appear in the New York *Herald* of to-day in an alleged interview with a correspondent of that journal.

Mr. Hooper is a thorough believer in Mormonism, and, as he says, for him to be talking of sweeping away polygamy, is simply ridiculous. The correspondent who pretends to have interviewed him evidently was not familiar with Mr. Hooper's sentiments on the subject.

The Washington correspondent of the Cincinnati *Times*, writing also Nov. 3, says—

The Mormon Bishop Sharp, now here, says Brigham Young has not fled from Utah, but has gone to the region south of Salt Lake for his health, in pursuance of a plan formed months ago. Sharp declares that the jury was ——, that Young has no idea of abolishing polygamy, and that very few Gentiles sympathize with the prosecution of the Mormons.

The Washington correspondent of the New York *Herald*, the same day wrote—

It is likely that there will be a considerable reaction among republican politicians, especially Congressmen, and it is understood that the Cabinet is not a unit in sustaining the course of Judge McKean. Senator Trumbull strongly disapproves of the action