EXTREMES OF AGE.

PROBABLY in no part of the world is there so large a relative proportion of very old and very young people as in Utah. The children, who are bright, intelligent and healthy, are in hosts in all the settlements of the Saints. So also when there is any special gathering of the veterans—such as the annual old folks' excursions—they flock together in such numbers as to cause people to wonder where they all come from.

Speaking of very old people the correspondence in relation to the death of Mother Staker, at Mount Pleasant, Sanpete County, will doubtless be read with considerable interest. Centennarians are scarce in any part of the world. We believe the veteran lady named is the second person who has, in Utah, overlapped a century, a gentleman who reached the advanced age of 101 years having died in the 13th Ward, this city, a few years ago.

DEATH OF A CENTENNARIAN.

A REMARKABLE CASE OF LONGEVTY.

MOUNT PLEASANT, Sanpete Co., Utah, October 1st, 1884.

Editor Deseret News:

I am requested to write you a few items connected with the life of Sister Cornelia Snook Staker. She was born near Albany, New York, Nov. 6, 1783, and died at Mount Pleasant, Utah, Sept. 29th, 1884, making her one hundred years ten months and twenty-three days old when she died. I think she was the oldest person in Utah. She came to this place six years ago from St. Louis, and stood the fatigue of the journey remarkably well for one of her age. Deceased was baptized into the Church of Jesus Christ of Latter-day Saints when 95 years of age, the oldest person baptized into the Church in this dispensation. She was married to Conrad Staker, Feb. 23, 1801, being 17 years 3 months and 17 days old, was the mother of eleven children, all of whom are dead, but one daughter, Sister Draper of Moroni. Her Eldest son Nathan Staker died of old age May 31st, 1884, being in his 83rd year. It was quite a novelty to see the old gentleman going around leaning upon his staff with old age, and to know at the same time that his mother was still living. Sister Staker was truly a remarkable woman, and was in possession of all her faculties except sight, which failed her some years ago. Her memory was very good, enabling her to tell of events that occurred ninety-five years since She has lived to see her children's children into the fifth generation.

Two hundred and sixteen of her descendants live in Utah, and three branches of her family remain in the United States and Canada. The funeral services were held yesterday afternoon, at the home of her daughter-in-law. The writer of this, by request, made some remarks on the occasion and was followed by Bishop N. P. Madsen. Respectfully,

EDWARD CLIFF.

THE GRAND JURY QUESTION AGAIN.

MANY of our readers will doubtless remember the case of John Fowler, of Ogden, who was indicted five years ago by a grand jury which was generally conceded to have been illegally impaneled. Well, this case, which was allowed to remain out of sight so long, has now come up for trial, and on Thursday the defendant's attorneys, F. S. Richards, Esq., Judge R. K. Williams and Judge Harkness, made an elaborate and thorough argument in the Third District Court, in support of a motion to quash the indictment. This motion was originally made in November, 1879, and was published in full in the DESERET EVENING NEWS of November 13th of that year. The points were considered so well taken that District Attorney Van Zile allowed the case to remain in obscurity, fearing to bring it up because of the evident illegality of the grand jury which presented the indictment. The chief objections to the grand jury then set forth, and ably argued on Thursday, were these:

That the notice of the drawing of said grand jury was not given as provided by law. That nine of the grand jurors were drawn from the jury box without nay notice whatever. That a number of the jurors drawn who possessed all the statutory qualifications were unlawfully excluded from service. That the name of one of the grand jurors who found the indictment was not on the jury list for the year. That two of said grand jurors had served within two years next preceding the impanneling of the grand jury. That one of these was not a resident or tax-payer of the Territory. That five of said grand jurors had been drawn at the April term of 1879 and they were therefore ineligible to serve.

All these are fatal objections if the statutes of Utah in connection with the Poland law are of any force or effect. Some of them may require a little explanation. The jurors who were excluded from service were challenged by the Prosecuting Attorney as to their belief in the revelation on plural marriage, and as to whether they considered a law of God higher than a law of Congress. On answering in the affirmative, although they declared their willingness to indict a person charged with polygamy if the evidence showed that he had violated the statute, they were set aside.

It must be remembered that this was before the passage of the Edmunds law. There was not then even the presumption that the provisions of that law for challenging trial jurors could be construed to cover the case of grand jurors. There was not a line of law, local or congressional, to justify their exclusion. They possessed all the qualifications required by the statute. The Edmunds law was enacted nearly three years after, with a provision to justify the challenging of trial jurors in a prosecution for polygamy, on the ground of their belief. But when those grand jurors were so challenged, it was without authority or color of law. Is it not therefore a simple and plain proposition, that they were illegally excluded, and therefore that the body from which they were excluded was unlawfully impanelled? The question as to the relative attitudes of a divine and human law was a catch question. There is no standard authority on law or theology that will dispute the assertion that a law of God is superior to and therefore higher than a law of man. Every Christian would answer as did those rejected jurors. No such question is proper in a proceeding of that kind. The point to be reached is the willingness of a juror to indict or convict, as the case may be, on the evidence presented; his view on an abstract question of ethics is not to be considered. If he possesses the statutory qualifications and will be governed by the evidence, it is unlawful to set him aside.

But apart from the exclusion of jurors who were qualified by law to serve, there were other fatal defects in the grand jury that indicted John Fowler, a man, by the bye, so nearly blind that one eye is entirely sightless and the other almost as bad. Thompson Ritter was one of the grand jurors who found the indictment. No such name was on the jury list for the year; therefore he was not a lawful grand juror within the meaning of the statute. Thompkins Ritter was not Thompson Ritter, any more than he was Theophilus, or Tom, or Titus, or Timothy or Telemachus Ritter. Then there was Alexander Majors, whose residence was in California, and who acknowledged that he was not a taxpayer in this Territory. The law requires a juror to be a male citizen of the United States, over the age of twenty-one years; who can read and write English; who has resided in the judicial district in which he is called upon to serve, six months next preceding the time he is selected; who has not served on grand or petit jurors within the term of two years next preceding, etc. Mr. Majors was only here as an occasional visitor to do business; his home and family and taxing place and consequently place for jury service was in California and not Utah. Besides this he served as a juror in the Miles case in May of the same year and was therefore disqualified even if he were a resident.

C. M. Gilberson had also served on the same case, and his name was illegally returned to the jury box, contrary to the provision of the Poland law, and he was therefore by both the law of Congress and the law of this Territory disqualified to serve at the term when John Fowler was indicted. Besides these jurors who had actually sat as jurors in a case tried in the District Court at the April term of that year, here were five of the grand jurors who had been drawn and summoned and had attended Court for jury service at the term before mentioned, and they were also disqualified by law to act at the October term.

District Attorney Dickson made an argument in answer to the reasoning of the defendant's attorneys, but as that has been adopted by Judge Zane and can be found in his Opinion, which was given this morning, and which we publish in full this evening, we need not allude to it further. Neither have we space today to take up the Judge's fallacies and expose them at length. But those who have ordinary intelligence will be able, on perusal of the document, to perceive its weakness. It will be seen that the argument of His Honor drawn from rulings of the higher courts, only applies to trial jurors and not to grand jurors; that his *opinion* is in some instances placed above the plain language of the law in relation to jurors which needs no construing; that in the case of Alexander Majors, he acknowledges the juror's actual domicile was in California—which virtually settles the question of his ineligibility to serve in Utah—but invents a new kind of residence, namely, a "residence for the purpose of doing his duty as a juror." If Solomon were alive to-day he would not declare "there is nothing new under the sun;" Judge Zane's double residence is surely a new thing in law.

His ruling in regard to service on juries is quite as peculiar. Because a juror sat but upon one case and has not actually served on juries during a whole term, he argues that he is eligible for service at the following term, while the law gives as one of the qualifications for a juror: "who has not served on grand or petit juries *within the term of two years* next preceding." The language cited by the judge, "for the term," is not in the law. If a juror has served within two years before the time he is again drawn he is ineligible and all the judicial word twisting in the world cannot alter the plain signification of the statute. (See Laws of 1878, p. 85.)

It was expected that if the motion to quash the indictment could be set aside by hook or by crook, that would be the ruling; it has taken a good deal of judicial crook to accomplish it, but it has been done. That a higher court will in turn set aside the ruling there can be little doubt, That Judge Zane's Opinion might be carefully perused, would be all we should ask if we desired him to appear as a weakling in law and a baby in jurisprudence.

THE FOWLER CASE.

THE MOTION TO QUASH SET ASIDE.

FULL TEXT OF JUDGE ZANE'S OPINION.

The defendant in this case moves the Court to set aside the indictment for a number of reasons, that he should not be held to answer the indictment found by the grand jury in his case. And one objection is, "because the following named persons, namely—John Barton, O. D. Hendrickson and others were each and all illegally rejected from said panel of said grand jury, because they believed that polygamy was authorized by divine law; although they stated on their *voir dire* that they would, if on the grand jury, find indictments under the United States statute against polygamy or bigamy, if the evidence before them showed that any person had violated said statute and was liable to prosecution under it."

I have been referred to the Second Utah Reports, U. S. versus J. H. Miles. In the trial of that case before the District Court, those who belonged to and were members of the Mormon Church were asked if they believed in the doctrine of polygamy, and they answered that they did, but that they would agree to enforce the law against it. The Court commenting on the point now under consideration said:

"A religious belief takes strong hold upon the individual. If a person believes it is his religious duty and privilege to do an act, he would not, as a consequence, look upon such act as criminal. Looking upon the act as innocent, he would naturally, but perhaps unconsciously, be averse to inflicting punishment therefor. He would not like to find a man guilty of a crime for doing that which he thought the Almighty authorized him to do. In such a case he would naturally lean toward an acquittal, and would possess that state of mind which would lead to a just inference that he would not act with entire impartiality in the case."

And the Court held, without reading further, that the objections to the question asked the jurors mentioned was properly overruled, and held further that the jurors were properly excluded. Reference was also made to U. S. Reports, 13th Otto, page 304, Miles vs. U. S. I presume it was the same case, although I have not examined into it, (Attorney Dickson—Yes, the same case your honor) which considers the point I have referred to, as decided in the Utah Reports. The Court says;

"It is evident from the examination of the jurors on their *voir dire*, that they believed that polygamy was obedience to the will of God. At common law, this would have been ground for principal challenge of jurors of the same faith. 3 Bla. Com. 303. It needs no argument to show that a jury composed of men entertaining such a belief could not have been free from bias or prejudice on the trial for bigamy, of a person who entertained the same belief, and whose offense consisted in the act of living in polygamy."

The Court in this case also held that the objection to this question was properly overruled. It seems, therefore, that this objection has been settled by the Supreme Court of this Territory and also by the Supreme Court of the United States, and that it is not now an open question in this Court.

Another reason assigned by the defendant to set aside this indictment is: "the defendant also assigns as further and additional reasons why said indictment should be set aside, that Thompson Ritter, a member of the grand jury that found said indictment, was not at the time said jury was empanelled, nor when said indictment was found, an eligible juror, as provided by law, because his name was not on the jury list prepared by the Probate Judge and the Clerk of this Court for the year 1879, nor on the jury list for any other year, and his name was not drawn from the jury box of this Court."

It appears from the evidence in this case that the name of Thompkins Ritter was in the list prepared by the Probate Judge and the Clerk. In that list Tompkins Ritter's place of residence was given as Riverdale—a village, as I understand—and the name of Tompkins Ritter was drawn out of the box. The Marshal served the summons on him, and he appeared in answer to the summons and stated—I suppose that he was sworn and accepted—that his name was Thompson Ritter. He also stated here yesterday that there were but two persons by the name of Ritter in the place where he resided, himself and his brother George. While the name of a person of course is given to describe that person, the mere name of a person sometimes is a very imperfect description, and unless you can couple something with it the description would not enable you to find a person always. The name of John Smith, without locating him, could be answered by several thousands of men, I presume, in the United States, and it would be as perfect a description of one as another. When the Clerk of the Probate Court and the Probate Judge selected this name, they also connected with it the location, and from that and the evidence of the witness that no other person except George Ritter and Thompson Ritter lived there, it is quite clear who they intended, and it would hardly do to say that they intended George Ritter because that is so unlike Thompson; while Thomkins is very much like Thompson in sound though not the same. The name of a person of course and the person himself are different things. The man whom the officers had in their mind when they placed the name upon the list was undoubtedly, from the evidence, Thompson Ritter.

It has been made the reproach of the law, that while it is said to be the perfection of human reason, sometimes some technicalities defeat or are opposed to human reason. And it would seem to me that this objection can have no substantial reasoning upon which to stand, and it ought not to be sustained because the man, as it appears, who was actually intended, did appear, and he was a competent juror, and nobody in the light of the evidence could have been injured because the probate judge and the clerk of this court happened to make a mistake in his first name, calling him Tompkins instead of Thompson.

Another reason assigned is:

"Because Alexander Majors, a member of said grand jury, was not at the time said jury was empaneled, nor when said indictment was found, an eligible juror as provided by law, because he had not resided in this Third Judicial District six months next preceding the time when he was elected by the Probate Judge and the Clerk of the District Court of said district, to serve as a juror; and because was not then, and has not since been, a taxpayer in this Territory; and because he had served in this court as a petit juror within two years next preceding the impaneling of said grand jury and the finding of said indictment, to-wit, at the April term, 1879, of said court, as appears from the record thereof; and his name was illegally returned to the jury box and again drawn therefrom as a grand juror for the September term, 1879, of this court."

It appears from the evidence that the family of Majors—whatever family he had—resided in the State of California; that he was here on business for a near or about two years, going home—as I think the evidence warrants the inference—occasionally, and the question is, was he a resident within the meaning of the law?

I have been referred in Wendells Reports (Vol. 19, page 11), to the case of Frost & Dickinson vs. Brisbin. Chief Justice Nelson delivering the opinion—which appears to have been a unanimous opinion—of the Supreme Court of New York says:

"In the matter of Fitzgerald (2 Caines 317), it was decided that a person coming into this State and remaining for a special and temporary purpose, without any intent of settling here, was not a resident within the meaning of the act for relief against absconding debtors. In the matter of Thompson (1 Wandell, 43) the court held under the same act, but in respect to an absent debtor, that residing abroad, engaged in business for a time, whether permanently or temporarily, was 'a residing out of the State,' within the meaning of the Satute: that the actual residence of the debtor was contemplated, which might be distinct from the place of his domicil. In the matter of Wrigley (4 Wendell, 602, 8 id 134), it was held that a person remaining temporarily for a month in the city of New York and Brooklin, intending to commence business in Canada, was not an inhabitant or resident, within the meaning of the insolvent act of 1813. In Roosvelt vs. Kellog (20 Johns. R. 210, 11) a *resident* of a place is said to be synonymous with an *inhabitant*, one that resides in a place. It may, I think, be doubted if this position is strictly accurate, as the latter term implies a more fixed and permanent abode than the former; and frequently imports many privileges and duties which a mere resident could not claim or be subject to. Approved lexicographers give a more fixed and definite character to the place of abode of the one than the other. Be this, however, as it may, the cases cited above, establish that the transent visit of a person for a time at a place, does not make him a resident while there; that something more is necessary to entitle him to that character. There must be a settled, fixed abode, an intention to remain permanently at least for a time, for business or other purposes, to constitute a *residence* within the legal meaning of that term." * * *

Omitting a portion of this opinion the Court says further:

"One of these cases expressly, and all of them virtually, decide that *actual residence*, without regard to the *domicil* of the defendant, was within the contemplation of the statutes. * * * The domicil of a citizen may be in one State or Territory, and his actual residence in another."

That seems to me to be sound reasoning. The duty of a juror is a burthen imposed upon a citizen, and one which he owes to society, and of course if he is, for the purpose of business, out of the state where his domicil is, in another state doing business, and actually living there, he cannot discharge the duty which he owes to society at the place of his domicil, and if he is otherwise unobjectionable, I see no reason why he should not perform that duty at the place where he actually lives and resides, among the people with whom he is doing business and associating, and who know him; I see no good reasoa for it; and it would seem to me that this opinion is based upon sound reasoning, and that on the principle there laid down I am disposed to hold that Mr. Majors, while his domicil was in California, his residence for the purpose of his doing his duty as a juror was in the Territory of Utah. It appears that Mr. Majors had served on a jury before in this court within two years or within the time that he had actually lived here.

Another objection that is made to Mr. Majors as a juror is, that he was not a taxpayer. It appears that he was examined before he was taken on the jury, and that he was interrogated as to whether he was a taxpayer or not, and among other things he answered that he was not; but was asked by the States Attorney if he did'nt own a watch—and I think the inference is that reference was made to the watch and chain that he had on; it is reasonable to assume at least that the watch was with him—and he said that he had, and so far as the examination shows as to that particular point it ceased; the evidence did not show with any certainty or clearness that he may not have been a taxpayer in the Territory of Utah, according to his answer. I am inclined to think he was according to the answers of other witnesses. The presumption is that those jurors were competent, and of course the burthen is upon the defendant to show clearly that they were not—to overcome the presumption by the clear weight of evidence. It is pretty clearly shown that this man Majors did'nt pay taxes here. It is shown that he was not assessed, and that he did not pay taxes; but the Supreme Court of this Territory—1st of Utah Reports, in the case of the United States v. Reynolds say npon this question.

"It is likewise asserted that one of the jurors did not pay taxes. He had taxable property, however, and was ready to pay taxes. If he was not assessed, and not thus allowed to pay taxes, it was not his fault, and he cannot be excluded from the jury box for failing to pay taxes."

This opinion, therefore, holds that it was unnecessary that a juror should actually pay taxes if he has property that is taxable. The point was made that his (Majors) domicil was in San Francisco, and that, therefore, his watch should be assessed there. I am inclined to hold under the laws of this Territory that the fact that he was here, as shown, and had his property with him, authorized the revenue officer to assess it; it was taxable here. It was true that under the general law of the land, where not otherwise provided by statute, that assessable property is at a man's domicil, the place of his abode. But the statutes of this Territory I am disposed to hold—without referring to them more particularly—have changed that rule, and it applies to all personal property, except such as was excepted by the statute, and this watch, as I understand, is not excepted. There is a question, however, that may be suggested by this *one* as *respects* the qualification that he should be a tax-payer, and as respects his having served on a jury within two years; there is some room, I thing, for controversy here, which I simply call attention to.

It would seem that this act of Congress provided the method of the selection of jurors; it provided for the list being made up by the Probate Judge and the Clerk of the District Court.

[The Judge read Sex. 4 of the Poland Bill providing the manner in which jurors are to be drawn, etc.]

The territorial statute says that notwithstanding they may answer the description of persons mentioned in the United States law, still they are not competent, and they must answer another qualification, which is, that they must be taxpayers, and that they must not have served on a jury within two years. These are additional qualifications to the ones mentioned in the United States law. It occurred to me as I was examining this statute—and I do not know whether there is any decision on it or not—I am confident that the question has not been passed upon; but it wouuid seem to me that if the Territorial Legislature can impose other tests, they may cut down this 200 names very materially, so that there would be very few left. They are limited to 200, and it is found that they do not last half the year.

The other objection made to this indictment is, that the evidence shows that the juror Majors, and another juror, had served on a jury in a trial of a case within two years next preceding the time they were selected by the Probate Judge and the clerk of this court, and I infer within two years from the time they served on a grand jury.

[The Judge read the law on this point].

Proceeding he said: "You will observe that the language here is, that he has served as a grand or petit juror within two years next preceding the time they were selected. It does not state whether it is a juror that has served for a term, or whether his name has simply been drawn as a juror and examined and found incompetent, or whether he has actually served in the trial of a case. The description is general, that he has served as a grand or petit juror within two years next preceding the time of the selection. Now, there are different classes of jurors. One is what is known in common parlance as the regular panel; another class is termed talesmen, who serve in one case. These jurors (Majors and the other) it seems had, within a year, or within two years at least, their names drawn out of the jury box, and they had served in