

DESERET NEWS:

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TRUTH AND LIBERTY.

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THE UTAH JURY QUESTION.

The new special legislation for Utah, among other unjust and impolitic measures, designs the overthrow, in this Territory at least, of one of the institutions which for many centuries has been established among civilized nations as essential to the well being of every community; that is, the right of trial by jury. The jury system has been preserved amidst all the changes that have taken place in the forms of governments and the affairs of nations. It has been rightly considered one of the chief bulwarks of justice, and the safeguard alike of accused persons and of violated law.

The founders of American liberties, while casting out many of the customs of the old world, retained this time-honored institution, and preserved it in the framework of the Constitution. Article six provides that, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

The grand object of the jury system is to insure a fair and impartial investigation into any alleged offense; and while upholding the majesty of the law, to protect the person or persons at bar from the effects of prejudice, calumny and charges unsupported by convincing evidence. In the formation of a jury much time is generally consumed, especially in important cases, because impartiality is absolutely necessary in all its members, this being the very essence of their proper qualification. Freedom from bias, either for or against the accused, is the great desideratum. Care and caution in this respect are carried so far that intelligent jurors are frequently set aside, simply because they have read newspaper articles concerning a case at issue, and the possibility is recognized of their minds being influenced by the relation of the facts or the comments of journalists. Without impartiality, in its strictest sense, a panel of twelve men sworn to try a case, is not truly a jury such as is contemplated in the law and required by the Constitution.

Now, what is the point aimed at in that part of the special legislation designed for Utah, which relates to juries? Simply the subversion of this essential principle. "Mormons" are to be placed in legal jeopardy for the practice of an article of their religious faith against which a law has been enacted. The bills now introduced to Congress provide that the selection of juries to sit in trial upon "Mormon" cases shall be left to the ipse dixit of an officer arbitrarily appointed by the Government, and who will have power to pick just such persons for jurors as are hostile in spirit, belief and desire to the persons to be placed on trial. The judge on the bench, the prosecuting attorney at bar, the marshal who makes the arrests and selects the jury, and the jury, chosen to convict, sitting in the box, all to be of the class arrayed against the cause, community and system with which the accused is connected, and of the number of those who worked to obtain the special legislation necessary to effect this condition of things. How much impartiality could a "Mormon" expect under such circumstances? Is this the kind of trial which justice, or the jurisprudence of any civilized nation, accords to an individual accused of crime?

It must be understood that this Territory presents a peculiar condition of affairs. The very large majority of the people here are of the class vulgarly called "Mormons," while a small minority, less than one-tenth of the population, are commonly denominated "Gentiles." A portion of the latter class are arrayed in direct and avowed antagonism against the former, and seek their overthrow as well as the complete control of the Territory and all its affairs. As the jury law now stands, each class has the

chance of equal numbers in the juries that may be empaneled. Passing by the injustice of giving a number to this small minority as the great minority receive, what can be thought of a bill that contemplates giving the whole panel to the few to the entire exclusion of the many?

This arrangement is called by its promoters "a proper jury law." That is, a law to enable a few persons who are hostile to a large number to try as many of the latter as they choose, for high crimes and misdemeanors, before a jury chosen specially from the avowed enemies of the accused. Can anything be more opposed to the spirit of American institutions, to the letter of the Constitution or to the purpose and intent of trial by jury in any nation upon the face of the earth?

But, what pretext can be offered for this attempt to subvert the jury system and introduce this preposterous scheme? Simply this. It is stated that a "Mormon" jury will not convict a "Mormon" of crime. That "Mormons" are under some secret oath or agreement to screen each other from legal punishment. The answer to this may be found on the records of the courts. Perhaps it is useless for us to state that no such oath or compact has any existence, save in the minds of those who are foolish enough to be deceived by the promulgators of the nonsense, the latter do not believe it themselves. The records of all the courts in Utah, Justice's, Probate, and District, will show that "Mormon" juries, so-called, have convicted "Mormons" of crime, whenever the evidence was sufficient; that in civil cases when "Mormons" and "Gentiles" were parties to suits, "Mormon" juries have rendered verdicts against those of their own faith and in favor of the opposite parties. Statements to the contrary are only fabricated for outside effect. The facts are matter of record and can be easily substantiated. All the talk about secret obligations to screen crime and favor one party above another, about "Mormon" disregard of the sanctity of an oath, about Church instruction against the lawful performance of official duty, is sheer invention, without any foundation in fact.

True, it may appear that more "Gentiles" than "Mormons" have been convicted of crime in Utah. But when the truth is made clear this will speak to the praise of the "Mormon" people. They are naturally a law-abiding people. Their religion inculcates obedience to law. They are proverbially honest, peaceable, industrious and domestic. They have come to these valleys on religious impulses, to serve God and build up His kingdom. The other class have principally been adventurers. A few honorable "Gentile" gentlemen and ladies have dwelt here from time to time since the early settlement of the Territory. Latterly more of them have made their homes amongst us, because of increased openings for legitimate business; but the bulk of the non-Mormon class who have passed through or sojourned in Utah have been reckless, roving persons of the kind which makes trouble in all newly-settled localities. Naturally they have figured in the criminal courts far more largely than the quiet, permanent settlers.

Nor can it be truthfully asserted that this was only the case when the "Mormons" held more judicial power than at present. With judges, prosecuting officers, marshals, deputies and the machinery of the District Courts all in "Gentile" hands, the records will now show that the bulk of the criminals are non-"Mormons," and that very few cases of actual violation of law are brought home to persons connected with the "Mormon" Church. Putting aside those trumped-up charges, absurd on their very face and impossible of proof, against prominent "Mormons," even the indictments against those of the latter class are rare when compared with those against the former. These are facts of which court records bear incontrovertible testimony.

In view of all this, then, the attempt to bar out all "Mormons" from the jury box is simply infamous. There is no good reason for such a measure, unless the end desired is admitted to be good, that is, the conviction of "Mormons" for alleged offences, without proper evidence, by juries composed of their acknowledged enemies chosen for the express purpose of bringing them to grief.

We believe that though Senators

and Representatives can be found to present bills containing such unjust and unconstitutional provisions, and, under pressure of certain influences, to go so far as to advocate them, Congress is composed of too many gentlemen who have regard for the common principles of right and equity, to permit of the incorporation of such proposed enactments among the statutes of this great and free country.

A PIECE OF IMPERTINENCE.

"It is madness for the Mormon people to stand out against the balance of the nation. It is their duty to become homogeneous or to leave the American Republic altogether."

That is the kind of patulum which is dealt out to the readers of the *Beaver Square-Dealer*. We clip it from that paper of the 15th inst.

The same remarks might have been and no doubt were offered to the early Christians. Also to the believers in every creed or system which has been regarded in the light of an innovation. To float with the popular stream may be the most comfortable and easy method of motion, but it has never found favor with the class of minds which has introduced great truths or inaugurated important reforms. Standing out against the balance of a nation or community may be termed madness by superficial thinkers, but it is just such "madness" as has inspired the promulgators of all ideas and the promoters of all systems that have been counted new and strange. By the same rule the *Square-Dealer* writer and the small clique to which he belongs are afflicted with "madness" in standing out against the balance of the people among whom they live.

But the arrogance of the latter part of the above-quoted paragraph is as laughable as it is impertinent. It is the "duty" of the "Mormons," forsooth, to melt into the common mass and lose their identity and peculiar distinctiveness, or clear out of the country. If this is not "madness" on the part of the *Beaver scribe*, it is consummate impudence akin to craziness.

It is the old spirit of the anti-Mormons in Missouri and Illinois: "Give up your religious views and practices, which make you different from your neighbors, or leave." They enforced their instructions, similar to those of the *Square-Dealer*, by the power of mobocracy, just as the class in Utah who entertain similar sentiments would do if they had the power. Thank God, the day is past when such intolerant ideas can be backed by physical force.

We have just as much right to differ with other portions of the people of this Republic as Catholics have to differ with Protestants, as Democrats with Republicans, or temperance people with liquor drinkers. The proposition of the *Square-Dealer* is contrary to the spirit of American liberty, and smacks more strongly of a spirit of violence and persecution than anything else except pompous impertinence. We would advise the writer to practise his own doctrine if we cared in the least degree whether he stays in Beaver or goes to Jericho.

THE CHRISTIANCY BILL.

The following, which we clip from the New York *Herald*, is the text of the bill of Mr. Christianity to provide for challenges to jurors in trials for bigamy and polygamy in the Territory of Utah, and to amend section 4 of the act entitled "An act in relation to courts and judicial officers in the Territory of Utah," approved June 24, 1874:

"Be it enacted, etc., That section four of the act entitled 'An act in relation to courts and judicial officers of the Territory of Utah,' approved June 24, 1874, be and the same is hereby amended by adding at the end of said section the following, namely: In all prosecutions for bigamy or polygamy under section one of the act entitled 'An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, disapproving and annulling certain

acts of the Legislative Assembly of the Territory of Utah,' approved July 1, 1862, it shall be sufficient cause of challenge and for the rejection of any juror, first, that he has more than one wife living and residing in said Territory, whether married to any of them by the ordinary rites and ceremonies of marriage, or by the rites, ceremony or proceeding, known as sealing, or any other ceremony or proceeding claimed or understood, by bigamists or polygamists of said Territory, to create either an ordinary, a merely temporal or a spiritual marriage, and by reason of which he may recognize her as either a temporal or spiritual wife.

Provided, that they cohabit together as husband and wife usually do in that Territory; second, that he believes it morally or legally right for a man to have more than one living and undivorced wife at the same time, he knowing them to be alive and in the Territory, or to cohabit habitually, as with a wife, with more than one woman.

Any person challenged as a juror on either of the foregoing grounds may be questioned upon his oath as to the existence of either of them, but as to the first ground he shall not be bound to answer if he shall say upon his oath that he declines on the ground that he fears his answer might tend to criminate himself; and if he shall answer as to that ground, his answer shall not be given in evidence in any criminal prosecution against him; but if he declines to answer on the ground that he fears his answer might tend to criminate himself, he shall be rejected as a juror. If by reason of the rejection of jurors upon either or both the grounds above mentioned, the panel of jurors drawn for the term shall be exhausted, the marshal, or any deputy, shall, by order of the Court, proceed to summon talesmen to serve on such jury, until the requisite number of competent jurors shall be obtained in the cause.

The *Herald* commenting editorially on this measure, says:

"This bill makes it a good ground for the rejection of a juror that he is actually a polygamist himself or that he believes it morally or legally right for a man to have more than one living and undivorced wife." This would cover apparently all the difficulty of convicting polygamists in Utah. All Mormons are not actually polygamists themselves, but all believe in that institution, and perhaps hope to be polygamists some day or another. To endeavor with such persons on a jury to procure the enforcement of laws for the destruction of that vicious usage must, therefore, be hopeless, and outside of Utah there cannot be two opinions as to the propriety and necessity of this enactment.

It is evident from the wording of the bill that it is intended to exclude all "Mormons" from the jury box, and put their persons and property at the mercy of their enemies. And that this is the view of it taken by the *Herald* is very plain from the above remarks.

Whether these unjust and anti-American provisions will ever become law is extremely doubtful. Challenges for mere belief as to the morality of a certain practice is a long stretch of the disqualifying power, and it is not likely that it will find much favor in Congress. We have already expressed our views on the main questions touching this attempt against the rights and liberties of the people of Utah, and now only give the text of the bill with the *Herald* comments, that our readers may be posted on the progress of the new crusade.

NEW ANTI-POLYGAMY BILL.

The New York *Herald* gives the following as the text of a bill to be introduced into Congress by the promoters of the new Utah crusade:

Be it enacted that every person having a husband or wife living who shall marry any other person, whether married or single, in a Territory of the United States or other place over which the United States have exclusive jurisdiction, shall be guilty of polygamy, and upon conviction thereof shall be punished by a fine of not exceeding \$500 and by imprisonment for a term not exceeding five years, and if any person who has a husband or wife living shall continue to cohabit with such other persons after the passage of this act, he or she so

cohabiting shall be deemed guilty of polygamy and shall be punished as aforesaid. And it shall not be necessary to prove either of said marriages by the register and certificate thereof or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and proof of cohabitation under either of said marriages shall be held sufficient proof of either of said marriages, and the prosecution may be had either where the alleged illegal marriage was solemnized or the cohabitation may be shown to have taken place. But this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage has been absent for five successive years and is not known to such person to be living, nor to any former marriage which has been dissolved by decree or any former marriage which has been pronounced void by decree of a competent court on the ground of nullity of the marriage contract, and provided that this act shall not affect any prosecution for offences committed under the act of Congress of July, 1862, for the crime of bigamy.

It will be observed that this bill proposes to punish any person who marries and cohabits with more than one wife. The promoters and abettors of the measure may cohabit with as many females as they can lead astray from the path of virtue, either in Washington or Utah or elsewhere, but no man must marry and live with more than one. The offence is thus in the ceremony not in the cohabitation. Continuance of cohabitation is made a penal offence, but it must be with persons to whom he is married in order to make a man liable. Yet, though the offence is thus originated in the ceremony, no proof of that ceremony is required for conviction.

Take this bill and the bill designed to put all accused "Mormons" at the mercy of juries composed of their avowed enemies, and what a sweet little scheme is disclosed! To get a "Mormon" into the toils all that would be needed would be to challenge "Mormon" jurors on their belief in the rightfulness of plural marriage, pack a jury of Mormon-eaters eager for mischief, show by general reputation, the testimony of neighbors or the public understanding, that the accused lived and cohabited with two or more women as his wives, and with the court and all its officers and paraphernalia arrayed against him, his case might be considered settled from the start.

But these propositions are only propositions, at present. Congress is not yet crazy, and prejudice is not so violent at this juncture as to override reason and right, so we think the plot is rather unlikely to succeed. In any event Providence is over all, and while the wicked work for evil, He who controls the results of all acts and combinations will overrule for good the schemes designed for wrong.

CHRISTMAS 1877.

To-morrow will be the day celebrated throughout Christendom as the anniversary of the birth of Jesus—the Son of God and Mary, the Savior and Redeemer of the world. A day sacred to all people who have any faith in the sinless Christ. A day of gladness and merry-making, of feasting and dancing, of family re-unions, forgiveness, reconciliation and general union.

We hope it will prove such to our patrons. If any of our readers have cherished anger against any living mortal, we hope it will be buried in the good feelings which the day shall develop. That if relatives and friends have been estranged because of grievances, real or fancied, sweet Christmastide will break down the barriers of pride, enmity and jealousy, and bring them together in peace and fraternity.

Let the children be remembered, and Santa Claus furnished with good gifts for them all, that their young hearts may cherish bright memories of the blessed day. Forget not the poor. Let no widow's heart ache for lack of food for the fatherless, and while the smoking cheer graces the ample board, let the hand of charity be not cramped nor held back from the needy.