EDITORIALS.

JUDICIAL BROWBEATING.

It is the implied duty of a judge to treat civilly behaved persons in court as citizens and gentlemen, until proved guilty by regular course of law. The jury is the equal of the judge, and he has no more right to abuse jurors than they have to abuse him. He cannot compel them to return any verdict according to his notion or wishes, nor can they compel him to rule as they wish. They with him are co-ordinate and in many respects co-equal and integral portions of the court, and neither judge nor jury has the right to usurp the other's functions. It is the duty of the judge to expound to the members of the jury the law bearing upon the case or cases before them, not to accuse anybody to them, nor to prejudice a case before trial, and tell the jury the defendant is guilty. It is none of the judge's business whether an individual is guilty or not guilty, until the jury renders the verdict. The grand jury has the sole right to indict, and the petit jury has the sole right to declare whether the indicted and tried is guilty or not guilty. The judge has no right to prejudice the minds of members of either grand or petit jury for or against any person, nor to say anything to them of a nature to bias their judgment, further than a proper explanation of the law touching the case and the duties of the jury may require. Especially has a judge no right to brow-beat a jury, or to threaten the members of a jury in the event of their not indicting certain persons named or generally indicated, or not bringing in verdicts of guilty in such and such cases. For *a judge* to do this is altogether extra judicial—it is monstrous.

Yet there are judges who browbeat and threaten juries, witnesses, and prisoners. There are judges who so far forget their exalted duties as to indicate to the jury the individuals who, they think, ought to be indicted and convicted, and, further than this, that if such classof persons are not indicted and convicted, it will be bad in a general way for the jurors. Is not this a most unwarranted stretch of the judicial power? We think it is, and we do not see how any person can think it is not.

It seems very evident to us that Judge Boreman, in his sermon to the grand jury at Beaver, acted in this kind of a way. Portions of that extraordinary document have an extremely partizan flavor. He told the grand jury that they knew that many men were living in crime, and indicated in a general way the class of citizens he meant. How did the jury know that? How did the Judge know that the jury knew it? What right had the Judge or jury to officially know that many persons in their district were living in crime, before either had heard any evidence on which to base their knowledge? The Judge did not say such things were matters of common report, he said the grand jury knew they were facts, he knew the jury knew it, which is *tantamount to saying* he knew it.

What right has a judge or a jury to officially know any man is guilty of crime, before the evidence has been officially presented? What right has a judge to tell the jury that they know any such thing when no evidence has been presented to them in any case?

But more than this. The Judge made distinct threats, in the name of the government and people of the United States, that if the grand jury did not do thus and so, laws of a more stringent (proscriptive) character would be made and enforced. This was a most extraordinary proceeding. Who authorized the Judge to be the official expounder of the intentions of Congress, of the government, and of the people of the United States, and to express those intentions in the way of browbeating and threat to the members of the grand jury, to spur them on to take a certain indicated course, to work upon their fears, to bias their action in investigating cases and finding indictments?

Is it usual, is it properly judicial, for judges to threaten grand juries, if they will not do so and so, with congressional action, with governmental action, with popular national action, of a proscriptive and vindictive nature? This is a point that would bear a little explanation.

ANOTHER POINT IN HIS FAVOR.

Our honored Chief Justice, through ignorance or prejudice or both, makes so many points against himself that it is really refreshing to see him make one in his own favor. Since his advent to this Territory he has been so extraordinarily unfortunate but successful in conducting himself in a manner to secure the ill opinion of the people, that, if only as a matter of charity, we do feel forward to make a note of anything that can be placed to his credit, and we take special pleasure in doing the same.

The other day we were pleased to record the fact of his honor reversing one of his decisions, which he had become convinced was wrong. This showed that he was susceptible to the fact of his fallibility, and was able to sit corrected and frankly acknowledge it. On Monday last, Sept. 14, in a *habeas corpus* case, *ex parte* Louis Orsher, his honor decided that sixteen hours, or two-thirds of the twenty-four, being from six o'clock in the morning till ten in the evening, was a sufficiently long time, in all reason, either for a publican to make himself rich by selling, or for the thirsty members of the great public to make themselves poor by buying and drinking intoxicating liquors of any kind.

This decision, like the former, does honor to his honor, and we hope he will make many more equally creditable to him. There is the Tooele case, for example, in *which there may be excellent opportunity, and it is likely there* will be many others equally favorable, now that his court is in process of being fairly set a going. Meantime we await the next point in his honor's favor, and stand cheerfully ready to record it.

JUDICIAL LEGISLATION.

It is one of the many peculiar peculiarities of some of the judiciary for Utah that, instead of them setting themselves to administer the laws as they are, they set themselves to administer the laws as they imagine they ought to be. That seems to be their idea of administering the laws, but to ordinarily intelligent people it looks like the judiciary assuming the proper functions of the legislature.

In pursuance of this policy one of the judiciary opened his court, ignored the Territorial officers, ignored or sustained the territorial laws as it suited his purpose, and virtually announced himself as a judge on a religious crusade sent and bent, and therein specially representing the federal government.

This usurpative policy received a stinging check by the express action of the *Supreme Court of the United States*, and the judiciary in Utah had the opportunity of learning a most salutary lesson, which they would do well to profit by as much as possible.

It does seem, however, that the Judge of the Second District has not profited by that rebuke so much as he might have done, for in his recent charge to the grand jury, and in his previous action with that body, there appear unpleasantly distinct traces of that old, vicious, usurpative policy.

It is related that he discharged from sitting as grand jurors citizens who were alleged to be polygamists. We have not heard that he was equally careful that no adulterers should sit on his precious grand jury.

Now it is well known that the Senate of the United States, in its last session, refused to enact any such provision touching juries in Utah. Yet one of the very provisions which the Senate refused to enact as law, Judge Boreman, we hear, adopted as law, and as his rule of action in empanelling his grand jury! How was this?

In his notorious theological charge to the grand jury his honor told the jury substantially that they would be under no obligation, in polygamous cases, to require exact special evidence to sustain a charge and base an indictment, but that evidence of a very general kind would be sufficient.

Everybody knows that a provision of the nature of the Judge's doctrine in this particular was incorporated in the Poland bill when it reached the Senate, but that body threw it out, and refused to make it definite law. How is it, then, that the Judge insists that the grand jury shall act upon substantially the same provision? Has he the right to assume and act upon as law what the United States Senate expressly refused to enact as law?

JUDICIAL SUPEREROGATION.

It has been the fortune, good or bad, of this Territory, oftener than once, to have judges who, whether they have done their proper duties or not, undoubtedly have done a great many works of supererogation, though not in the best acceptation of that word. They have exceeded the requirements of duty, have done a great many things which it was their duty to do, some of which would have been much better left undone, in our opinion.

One peculiarity of some of our judges is that they are very hortative, given to exhortation, sometimes of a very pious, unctuous, fervent description. In the recent charge of the Judge of the Second District to the grand jury, are passages of this judicial exhortation. The Judge's duty is to expound and administer the law, but in the instance in question his honor went much further, he indulged in an exposition of the *nature of religion in some particulars, what was religion and* was not religion, venturing to define, in a degree, what belonged to the "Mormon" religion and what did not. He said, "Polygamy is a crime, whether admitted or not by these persons. It cannot be a part of a man's religion: there is nothing in it which gives glory to God; and it is nowhere taught that crime is a religious duty;" and much more in the same strain.

In the first place, his honor says, "Polygamy is a crime." The word crime has an awful sound, but not always an awful significance. It will be remembered that there are two classes of crime—inherent, such as murder, rape, robbery; and statutory, acts which are not criminal of themselves, but only as they are made so by public law.

A lawyer might say, "Crimes are *mala in se*, or bad in themselves; and these include all offences against the moral law; or they are *mala prohibita*, bad because prohibited; which, unless prohibited, would be innocent or indifferent." In short, crimes, generally speaking, are such acts as are prohibited by the State.

If "Mormon" polygamy can be accounted a crime at all, which has not yet been judicially determined, it is a crime of the class *mala prohibita*, not bad of itself. It is of the same class of offenses as that of the Quakers in colonial times, when they refused to doff their hats in court or before any earthly authority; or that of the Mennonites, who, like the Quakers, are religiously and conscientiously opposed to engaging in war; or that of Daniel, who prayed to heaven in spite of a statutory provision to the contrary, and was punished by being thrown into a den of lions; or that of sturdy dissenters in England, who refuse to obey the law requiring them to pay rates to support the Established Church, and consequently sometimes have their property distrained and sold to pay the tax. So in regard to the matter of polygamy. It may or may not be made criminal by statute law in different countries, but it is not a crime of itself. It is not necessarily either a sin or a vice. It is compatible with the purest and most rigid morality, the strictest probity, the most exalted virtue. It is nowhere condemned in the Bible, but is established therein, and was approbatively practised by some of the greatest Bible characters. It has been established as part of the religion of Jews, Mohamedans, "Mormons," and others; has prevailed with four-fifths of the human race from the earliest times until now. Martin Luther, Milton, and other able and learned Christians have acknowledged that polygamy is not condemned in the Bible, and the foremost Christian nations of the day permit and protect it in portions of their dominions.

There is no truth therefore in the assertion of the Judge that "polygamy cannot be a part of a man's religion," etc., and the conviction is forced upon the mind of the public that, as a judicial theologian, the Judge is a failure, and that he would do better to confine his exponential efforts to the statutes of the land, and let religious exegesis alone. He is not qualified for that line of literature. It is a work of supererogation in which he does not shine to advantage.

No unprejudiced person thinks any the worse of a man for his conscientious and religious refusal to obey the law which does not cover an inherent crime, but merely an action *mala prohibita*. No one, except a bigot, thinks any the worse of the Quakers, or of the Mennonites, or of Daniel, or of the English Nonconformists, or of the "Mormons," because of their religious scruples. But the Judge does.

We have another judge who can equal Boreman in this line, when the opportunity comes.

There are several other points in which some of our Judges manifest their supererogative propensities, but our space is filled to-day.

MARRIAGE OF GENERAL SHERMAN'S DAUGHTER.

General Sherman's daughter, Miss Maria Ewing, better known as "Minnie," and Thomas William Fitch, Engineer Corps, U. S. N., are to be married, by Archbishop Purcell, of Cincinnati, assisted by Rev. Father Young, in St. Aloysius Church, Washington, D. C., October 1. The church will be beautifully decorated.

The Washington *Capital* says—

"The clergy from other churches in town will be present in large numbers. The music will be of the most 'exquisite quality,' so a prominent vocalist has told us, and the affair as a wedding will never have been equaled. There will be eight bridesmaids—Miss Lizzie Sherman, sister of the bride; Miss Phillips, of Cincinnati, whose brother and sister, Colonel and Mrs. Dayton, were so popular during the year or two he made Washington his home; Miss Patterson; Miss Marcy, daughter of General Marcy, U. S. A.; Miss Ewing, of Ohio; Miss Bartley, daughter of Judge Bartley and niece of General Sherman; Miss Bessie Smith, daughter of General Kirby Smith, and Miss Ellie Sherman. The groomsmen will be C. W. Rae, U. S. N. (Engineer Corps); Lieutenant Hunter, U. S. N.; Lieutenant Russell, U. S. M. C.; Paymaster Cochran; Edwin Wells, Engineer Corps U. S. N.; Lieutenant Wood, U. S. N., nephew of General Sherman; Mr. George Galvin, of Boston, and Mr. Tom Sherman.

"The bride's dress, imported from Paris, is white gros-grain silk with crepe finish, which gives it the most velvety appearance. This is trimmed with white satin and point lace, looped with orange flowers and clematis. The attendants will wear dresses of some white diaphanous material relieved by colors.

"The nuptial mass will last one hour, that is from 11 until 12.

"Army and navy officers need scarcely be told that they are expected to appear in full uniform—not only out of compliment to the gentle bride, but as a mark of respect to her distinguished father, who, with his family, leaves Washington the day after the wedding for St. Louis.

"Gentlemen will appear in morning reception dress and ladies in full 'carriage visiting' costumes, with light opera bonnets. Even the family will have light head coverings of lace or illusion, for the reason it may not be *comme il faut* for ladies to remain an hour in church with uncovered heads. The bride's trousseau is spoken of as being very elegant, and includes everything that an American lady should have.

"General and Mrs. Sherman are respected, if not beloved, by our people as a nation. He for his grand soldierly qualities, his contempt for snobs and snobbishness, his brave American heart and pride, which carried him through his European tour with such *eclat* that he may be reckoned the only American of note who has never sought audience with king or emperor. Mrs. Sherman has done much for society in Washington, and we can but sigh for more like her; and Miss Sherman has scores of friends, gained by her gentleness and amiability.

"However, it is not improbable, and indeed quite possible, that some day not far in the future the Shermans may return and make their home in the White House. General Grant, it has always been believed, would come in for a third term, but his speech at New Bedford a few days ago disabuses the public mind of any such idea. We are told that in the course of that speech, lasting some three minutes, he expressly declared that he will not be a candidate for re-election, but intends enjoying his *otium cum dignitate* for the rest of his days. That's what we thought he'd been doing for several years. It seems he has not, but is reserving it for life after this term."

SENSIBLE OF ONE'S FAULTS.

It is sometimes a good thing to be sensible of one's faults. Our honored Chief Justice is one of these sensible and fortunate individuals. Like all other specimens of humanity, he has his failings, and of some of them at least he seems sensible. To be sensible of our shortcomings is among the beginnings of wisdom and it may be, though it is not necessarily, the beginning of reform.

The other day his honor rather lamentingly observed that a judge in Utah had great need of patience, evidently with the *intent of indicating that he considered himself not* overburdened with that excellent quality.

This fact has many times been painfully apparent to those who have happened to be in his honor's court room when court has been in session. They are painfully aware of his honor's unpleasant irritableness, and his sharp, curt, crusty, and almost spiteful manner at times, and they have repeatedly regretted the unseemly bursts of passion in which his honor has indulged, and which, apparently, he has not the *self-control* to repress. Yesterday, for instance, we are *informed*, his honor was in an uncommonly ugly state of irascibility, which all his Methodist meekness was not sufficient to repress, to the great grief of many of his friends and supporters. We sympathize with the Judge in his infirmity. A bad temper is a very unenviable, unamiable, and unlovely endowment, and perhaps nowhere is it displayed to worse advantage than on the judicial bench.

We may also be permitted to remind his honor that not only do judges in Utah need much patience, but the *people need it too.* They need extraordinary patience, because they have to put up with the Judge's lack of patience, without a murmur, for the reason that the law will not allow them to resent it like men, when his honor, with his ermine on, may talk to them as if they were dogs.

Everything considered, then, the people deserve even more sympathy than the Judge does, and accordingly they may consider it herein extended.

RATHER FREE WITH PARDONS.

Our dispatches yesterday stated that President Grant had pardoned Geo. Ellis for "misapplying" $50,000 belonging to the National Bank of the Commonwealth.

As related in the dispatch it is rather a curious proceeding. The party was to have been tried on the charge next month. If he has not been tried, it has not been legally established that he was guilty, and therefore that he needed any pardon. A person is legally held to be innocent until he is convicted of crime, therefore Mr. Ellis, not having been tried, had nothing to