

EDITORIALS.

JUDGE BOREMAN'S INSTRUCTIONS.

To-day we present the instructions given by Associate Justice Boreman, Judge of the Second Judicial District Court, at the request of counsel for the defense in the case of the United States vs. J. E. Twitchell, unlawful cohabitation. They confirm the position assumed by the News in reference to the interpretation placed upon the Edmunds law by the Courts of this Territory. They also further show that such construction has been accepted. There appeared hardly room for doubt upon the question, and reference to the subject is only made now to indicate the extensive as well as conclusive character of the evidence sustaining the point, abundantly supplied both from the bench and aside from it.

The second point of instruction is particularly clear on the subject. It directs the jury to acquit in case of the absence of proof of the holding out to the world, announcement or acknowledgment, by the defendant of his plural wife as a wife. By parity of reasoning, the defense admitted because of the understanding they had of the construction put upon the law by the courts, that if evidence had been produced the acquittal of the accused would not have been expected.

Number four runs in the same channel. Conditions are stated that if proved, could not properly be made the basis of criminal inference. Among these, the recognition of a plural wife as a wife is conspicuous for its absence, indicating its inadmissibility, because at variance with the statute as construed by the courts.

The ninth point is linked with the two already referred to, recognizing as it does the fact that the courts interpret the law so as to render it imperative for a polygamist to treat a plural wife as if there had been a divorce. In such a condition the tie has been legally severed and the one has no claim upon the other, including a recognition or acknowledgment of any existing marital relationship. In this connection it may be appropriate to direct attention to Judge Powers' charge to the grand jury of the First District, which appeared in the News of Friday last. Let the candid reader peruse it to get the kernel of its intent upon this point, and he will at once observe that it means that a total renunciation of the marital relationship, in the complete sense, existing between a polygamist and his plural wives is demanded by the law as interpreted by the courts.

The third instruction serves to show what a jumble the supreme objective point of the anti-"Mormon" raid has thrown Utah jurisprudence into. It has also dragged other branches of the government into the perplexing maze. Judge Boreman recognizes the absurdity of any claim to the effect that a polygamist was under the necessity of divorcing his plural wives. The contract having no legal status, was not subject to legal dissolution. The subtle Dickson, however, set his wits to work to bridge this difficulty, which to ordinary minds would have been insurmountable. He insisted that there must be a separation of the relationship, and not finding any form of law to effect his purpose, he solemnly announced his "judicial adjudication" theory. This meant that the matter could be operated by a contract entered into between the accused in a case of unlawful cohabitation and the court. Hence the sorrowful spectacles that have been witnessed in the courts since the raid began.

If Mr. Dickson were to be asked upon what legal base his and the court's "judicial adjudication" theory is built, he would be at an utter loss to explain. In cases of unlawful cohabitation it takes the place of a decree of divorce, but is not attained by anything like the same process. In the "adjudication" business the Judge, to a certain extent, takes the place of the hapless woman who is ignored in the matter, so far as open recognition in the tribunal is concerned. In regular divorce business both of the parties to the contract which is sought to be severed have a judicial recognition in the process. In this "adjudication" business, if the woman has any voice at all, it is not known to the Court, only so far as it may be communicated by the person from whom she is to be separated by this new departure in jurisprudence. In that connection she is, therefore, so far as judicial recognition is concerned, a cipher. Yet in point of fact she is an equally interested party to the contract sought to be dissolved, while the Court, who assumes the position on one side in the dissolving process is not connected with it in any shape whatever.

The Utah Commission assumed to handle this point in its relationship to political status. That august body gravely announced that the only methods by which a polygamist could regain the standing of which he had been summarily deprived by the Edmunds act, were death or divorce. Of course it must be presumed that it was not held by those "most potent, grave and reverend" gentlemen that the polygamist should himself shuffle off his mortal coil, but that the destroyer would have to take away his wives. Otherwise the law must legally dissolve a contract which has no legal recognition. Were it not

for the political and presumed intellectual ponderosity of the Commission, common people might be led to look upon the latter proposition as tinted with a strong color of absurdity.

But, returning to the mixed methods of the judiciary, Judge Boreman very properly instructed the jury as designated in number six. Judge Zane was asked to similarly instruct the jury in the Angus M. Cannon case, but he snubbed the learned counsel by ignoring the request. In the same line Judge Powers, in the case against Job Pingree, admitted testimony regarding the polygamous relationship of the defendant prior to the passage of the Edmunds Act. The reason he gave for this extraordinary proceeding was that, as the accused had made no public renunciation of the relationship he entered into with his plural wife, it should be inferred that it continued it after the passage of the law under which the prosecution was brought. This position, of course, is in direct conflict with the sixth and seventh points of Judge Boreman's instructions to the jury in the Twitchell case.

IMPRISONMENT AND HONOR.

The position taken by Bishop H. B. Clawson this morning will be endorsed by every true Latter-day Saint. He could assume no other and be true to his religion, his family and his own manhood. The dilemma in which he was placed was tersely defined by himself. He was left to elect between imprisonment and honor, and liberty and dishonor. To his honor be it said, in time and eternity, that he chose the former. No man under similar circumstances can consistently take any other course.

The reasons for adopting the stand he took were clearly though briefly given by the accused. They might, however, be elaborated indefinitely. There is one principle involved that makes the attitude, from the standpoint of the Latter-day Saints, infallible. Celestial marriage, including plurality of wives, has been accepted by them as a divine revelation. Those who enter into the covenant it involves, take that step with this understanding, and that God is recognized in the formation of the contract. This being the status of the principle, to presume that any persons who have entered into the relationship can consistently take part in an adverse contract with any other and necessarily lower power to render it nugatory, for any portion of time, is absurd. The agreement is for time and eternity, and it is therefore continuously in force, unless broken by one or other of the parties.

Yet such is the position in which the courts place Latter-day Saints in the present prosecutions. They demand that a covenant of renunciation be entered into with them. This is, speaking from the standpoint of the Saints, opposed to an infallible principle recognized in jurisprudence—that no agreement entered into under the direct supervision of a higher tribunal can be disturbed or nullified by one of a lower order. If this be the case in ordinary legal affairs, how much more force is given to it when applied to matters which God Himself has instituted for the benefit of those of His children who seek to obey His laws.

One point advanced by Bishop Clawson was evidently cruelly taken advantage of by the court, who dwelt upon it as if animated by a desire to make it appear the main basis for his position. The religious and conscientious principles involved were what influenced the conduct of the defendant. The sentiment of the community being against him had he recanted, would not have influenced him one way or the other. Recantation was opposed to his principles and convictions and would have blasted his hopes for eternal salvation. These considerations founded the basis of his attitude in accepting "imprisonment and honor" in place of "liberty and dishonor." Yet the sentiment of the community in which a man lives is entitled to respect when it is correct. The Court, however, caught at this straw in order to accuse Mr. Clawson of cowardice, when that gentleman was exhibiting an act of the truest heroism.

Perhaps we may here suggest that when a Judge or any other person, official or otherwise, takes advantage of his position to inflict an insult upon a person in his power, he cannot be classed among those who possess courage of the highest order, which is inseparably connected with magnanimity. But the gratuitous insults of his honor were not confined to his immediate victim; they were distributed among and poured upon the heads of innocent women and children who were not before him.

Before the learned Judge can consistently talk of cowardice, let him take some lessons in courage and temperance under ordeals from some of the "Mormons" who are brought into his court. This morning he was confronted by a courageous man who dared, in the face of threatened fine and imprisonment, decline to recan his religious principles and discard his family, while he snatched at the opportunity to inflict upon them a gross and unwarrantable insult.

Bishop Clawson has gone to prison, but he has been rendered a criminal merely by prohibition, the offense for which he is punished being in no sense *malum in se*. He goes with the best

wishes of a host of friends, including the whole body of his co-religionists.

It is with sadness that one turns from the noble and manly picture presented by the conduct of Brother Clawson to its reverse, as exhibited in the craven course of T. O. Angell, Jr. It is a transformation from sunshine to gloom, from the heroic to the contemptible. Had the gentleman climbed to any height in the walks of religion and other departments of life, he might have been designated a fallen angel. As it is he probably but carries out the highest idea he has of greatness, and may not be open to censure as severe as would be the just due of minds of greater advancement. It does not appear that Mr. Angell can possess anything like a correct conception of the grandeur of being consistent. Let him pass.

"LIBERTY AND DISHONOR."

This afternoon Mr. Septimus W. Sears, as will be seen by a statement elsewhere, went before the Court with the same alternative as Bishop Clawson. He chose "Liberty and Dishonor." There is but little need for comment on the case. Let the reader peruse what we have said in relation to Mr. Clawson, and he has but to imagine its opposite in order to understand our estimate of the position.

BISHOP H. B. CLAWSON

ENTERS A PLEA OF GUILTY AND SHOWS HIMSELF A MAN.

IMPRISONMENT AND HONOR RATHER THAN LIBERTY AND DISHONOR.

The Third District Court room was crowded at the opening hour this morning, the time set for the trial of Hiram B. Clawson, who had been indicted for having cohabited with his wives, contrary to the provisions of the Edmunds law.

Shortly after the opening of court, Judge Harkness, of counsel for defendant, stated that his client desired to withdraw the plea of not guilty formerly entered by him, and enter one of guilty to the charge.

The request was granted, and Bishop Clawson was then asked what plea, if any, he wished to make, to which he replied "Guilty."

Court—Do you wish to take any further steps now?

Harkness—It is in the hands of the prosecuting attorney.

Court—You are entitled to a couple of days, if you desire to take it.

Harkness—No, he does not care for any time. We waive the time.

Court (to Mr. Clawson)—You understand, I suppose, what the indictment is; you have plead to it?

Clawson—Yes, sir.

Court—Have you anything to say further before the judgment is pronounced?

Clawson—Yes, sir.

The Bishop then arose, and in a firm, clear voice made the following statement:

With your honor's permission, I would like to say a few words in regard to this matter. I am arraigned before this Court to answer to the charge of a misdemeanor in this: That I have been living in polygamy, and that I have been living with those that I have claimed and do claim to be my wives.

I have been in the Church, or rather, I have been identified with the Church of Latter-day Saints for forty-five years, and for thirty years and over I have lived in my present marriage relations. When I entered those relations I believed that I was doing just exactly what I ought to do. I believed that in doing that, I was doing something in this life that in the life to come would be for my benefit. I have endeavored through this life, up to the present time, to live a life that would justify that belief. When I married these, my wives, they were young and I was young. They believed the same thing that I did. We made the most solemn covenants that men or women can make in regard to this marriage, and I and they have endeavored, up to the present time to live those covenants. Now they are along in years; streaks of gray show in their hair; they have families of children that have grown up and married and have children; and now, at this time, at my age and at their age, to ask me to renounce those ties and cast these women off and leave them and my children and say that I will have no more to do with them—your Honor, it is a thing that seems impossible for me to say. When I believe as I have believed, and I say now, that what I believed thirty years ago and over, I believe to-day just as I did then; and I believe, that were I to say that I will cast them off, that all I have done in all these years has gone for nothing. It is better, your Honor, far better for me to go to prison, if that is the decision of your Honor. Again, let that be one reason why I plead guilty to this indictment, and why I am now standing before this court.

Another reason is: How is this thing? How is it looked at? What is there in it? If I make any promises so far as regards the future, I am ostracized; I am looked down upon; I am dishonored in this community among my brethren—

those that I respect and honor; and amongst all honorable men. There is not a man, I believe, in this court room who has occupied the position I have, but what, were he to stand in my place, to-day, would do just as I say that I feel to do to-day. Can I bear the scorn and the indignation and the feelings that these my wives would cast upon me, after all these years if I can say that I will turn them away and have no more to do with them; and can I bear what my children would say, and how my children would feel in regard to this matter? I say no. It is only a few years that I have to live and I had better do something else than go back on what I have said I believed is true.

To me there are only two courses. One is a prison and honor, the other is liberty and dishonor. Your Honor, I have done.

The speaker was calm and earnest in his demeanor, betraying no sign of fear or anger, his words and action manifesting the sincerity of his belief in the righteousness of the course he was pursuing. His speech was listened to with wrapt attention, and at its close, after a short pause, the court proceeded to pronounce the judgment. His Honor was evidently nettled because the defendant showed no disposition to cower and quake, and in passing sentence exhibited a degree of vindictiveness in this language that surpassed anything in that line manifested by him on any similar occasion in the past.

The Court proceeded as follows: Mr. Clawson, it becomes the duty of the Court now to pronounce the sentence of the law against you.

You state as a reason for your present course that you formed the relations for which you are now to be punished thirty years ago, and that you then believed it was right.

A man's beliefs do not justify a willful violation of the law. It appears to be the opinion of at least some of the members of the sect to which you belong, that polygamy was lawful previous to the Edmunds law and the law of 1862. There never has been a time in the United States anywhere when polygamy was lawful. Probably the greatest commentator upon the common law who has ever lived, more than a hundred years ago in commenting upon the common law (which has been in force in this Territory since it has been acquired by the United States), after referring to the disabilities which prevent the contract of legal marriage, used this language: "The first of these legal disabilities is a prior marriage, or having another husband or wife living, in which case, besides the penalties consequent upon it as a felony, the second marriage is to all intents and purposes void; polygamy being condemned, both by the law of the New Testament and the policy of all prudent States, especially in these northern climates." And then refers to a remark of Justinian condemning polygamy.

1 Blackstone's Com. Page 435.

And it is believed that under the laws of Mexico, before this Territory was even acquired by the United States, polygamy was not recognized. It was unlawful, and at the time that you state you formed these relations the law of the land prevented you from doing it. When you formed them they were utterly void, as if they had never been contracted. The second wife, in the eye of the law, was nothing more than a concubine, and the children born of those relations were bastards. The law condemned it and principle has condemned it in the United States.

The fact that you claim it to be your religion (and I infer that you think because that is so you ought not to be punished) is no defense.

The law does not attempt to regulate the internal relations of a man, so to speak. That is to say, his faith, his beliefs, his feelings. He can exercise his faith, he can exercise his belief, but when that belief and those feelings become external and attack the institutions upon which society rests, the law takes hold of it, and it is not protected. A man may believe and worship as he pleases. Religion, that part of it, at least that the law protects is internal. It consists of faith, feeling and worship. When a man, however, claims that the formation of relations such as you profess to believe in—when he forms such relations as you have formed, then the law acts upon it. It does not allow the institutions upon which society rests to be attacked by religion any more than by any other means. So that that is no defense. The framers of the Constitution so understood it; the Supreme Court of the United States has so interpreted it, and the Congress of the United States, in the law which you have violated, have so interpreted it; and your faith is no justification for your unlawful acts.

The American people, and the whole civilized world, with the exception of this sect and probably some other few—such as free love organizations—believe in the monogamic marriage, and repudiate polyandry—the marriage of one wife to a number of husbands.

Besides, this institution which you profess to believe in is an unjust one. Marriage is looked upon in the eye of the common law as a contract. If it is like all other contracts, it should be equally enforced. Now, if a man and woman make a contract relating to property or to services, the law enforces that contract equally against both. To say that it could be enforced against the woman, and that the man might divide whatever might be the consideration of

the contract between a number of other women would be unjust. When a man and woman enter into the marriage relation, all that is to that relation, besides the feelings of devotion and love to each other, consists in the duties and obligations which they owe in consequence of relation; and if the woman is held to it, and the man may say these duties owe you I will distribute among a hundred, or, if you please, a much larger number—two or more—if the sanctions that it is unjust, it makes a binding contract upon a woman, not upon a man. Or if you say, neither is bound by it, then this institution of marriage is a rope of sand that binds nothing. This institution upon which the family rests, which the welfare of the community and its progress, as we trust, means all ages, depends, means nothing. If the woman, notwithstanding, marriage may go and contract and associate with a dozen men as they were her husbands, and a man do likewise, then the institution of marriage is broken down and destroyed. The civilized world believes that that is the most important in the great fabric that shelters and protects humanity and all that is good and virtuous in it; and no sacred creed will be allowed in the United States to overthrow it.

You and your followers who believe with you had just as well submit to the laws of your country as good citizens; because obedience to the laws is the highest duty of a citizen. I understand you profess to be a citizen of the United States, and you say you will not promise to obey and respect its laws; and that you do not promise to persuade others to disregard and defy the laws of your country. Thousands of as brave as ever lived have died in defense of those laws and that government; it don't do for you to stand up here court or anywhere and treat those laws with contempt and that government with contempt which shelters and protects us all.

As a man, I have nothing to say whatever against you. I regret that you have not the courage and the manhood to stand up in defiance of laws and say that you will obey the laws of your country, and that you will not other men to abide by them. Arrogance and cowardice is no coming to an American citizen, or seem to acknowledge that this second reason, because you say you would be ostracized and would come an outcast if you were to obey the laws of your country—if you do promise to obey them; though men have died—not become outcasts—but died in its defense, that constitutes no justification. I am of the fact that you profess to be a polygamist; to continue polygamic relations; to continue adulterous connections with women who are not your legal wives; how much I may respect you as an individual, my duty, representing as I do a great and a glorious government, I do not allow me to indulge in personal feelings; but the discipline which I possess must be so used as to strike down these crimes of polygamy and unlawful cohabitation.

When men will not agree to obey the law, my duty, as the Judge of the Court, requires that the extreme penalty be imposed upon them. You will be sentenced, therefore, to imprisonment in the penitentiary for the term of six months, and to a fine of \$300 and costs, and be confined until the term of your imprisonment has expired and the fine and costs paid.

Bishop Clawson was then placed in charge of a deputy, and was allowed to visit his family and friends. He left in the best of spirits, and at 3:30 p.m. left for the penitentiary, accompanied on the way by members of his family.

MORE CRAWFISHING.

T. O. ANGELL, JR., PLEADS GUILTY TO "PROMISES."

About 11 o'clock this morning T. O. Angell, Jr., who has been employed assistant Church architect on the Lake Temple, was arraigned before the Third District Court, on an indictment found September 26th, charging grand jury, charging him with unlawful cohabitation with Elizabeth Angell and Johanna Gregory, contrary to the provisions of the Edmunds law. The clerk read the indictment, which the defendant pleaded "guilty" and then followed a scene of wrangling and cringing, which it was difficult to listen to, and pitiable to witness.

Court—Do you wish a time for judgment, or are you willing to be judged now? Have you any attorney?

Angell—No, I have not.

Court—Do you now wish the judgment pronounced?

Angell—I presume as well now as time.

Court—Well, have you anything to say?

Angell—Simply one thing: I and Johanna Gregory and Elizabeth have mutually agreed to live with the provisions of the Edmunds law. I believe that is all I have to say.

Court—You propose then to obey the laws against polygamy and unlawful cohabitation? You propose to obey the law?

Angell—We have agreed.

Court—It does not matter your agreement. The question