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CHARLES W. PENROSE, EDITOR.

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IMPORTANT ISSUES IN CALIFORNIA.

THE people of California are agitated over a very serious question. We do not allude to the G. A. R. invasion. That is only a temporary and sort of junketing affair. It is a matter that affects the permanent welfare of the Golden State. It is the irrigation question, and grows out of a recent decision of the Supreme Court of the State in the case of Miller vs. Haggin, affirming the doctrine of riparianism. This requires some explanation to make the subject clear to the ordinary reader.

Under the old common law theory, and custom, the owner of land bounded on any side by the bank of a non-navigable river, is the owner of that portion of the bank included within his lines, and of the river bed down to the middle of the stream. He may divert the stream for various uses providing he returns it to the river without appreciable diminution. These rights to the stream are called riparian rights, from the word ripa, which means a river.

A modern custom, which is looked upon as law in the West, is the appropriation of water from natural sources of supply by *bona fide* settlers and landowners for domestic, mechanical and irrigating purposes, priority of appropriation and use giving priority of right, no person being permitted to go above the users of the water and cut off the source of supply. The claim thus established is not to absolute ownership of the water, but to its reasonable use for necessary purposes, with due regard for the mutual rights of claimants. A stream might be diverted and used for mill and culinary purposes, and turned back into the natural channel without material diminution. But for the purpose of irrigation it cannot be diverted without loss to the volume of water.

The litigation growing out of a dispute between Miller, a riparian owner, and Haggin, an irrigation claimant, was finally decided in favor of the former, and thus riparian rights triumphed for the moment over the demands of irrigation. The whole State was soon in an uproar. The Court was denounced unsparingly, the ruin of the agricultural interest was predicted, the hindrance to the progress of the State was pointed out, and the absurdity of the decision, although it seems to have been technically in accordance with law, was commented upon, and at last a pressure was brought to bear upon Governor Stoneman to call an extra session of the Legislature, to take up this question and solve it in the interests of irrigation.

The proclamation was issued, the Legislature has been convened and is now in session, and has to wrestle with three knotty problems: First, amending the State Constitution so that public and private rights shall be established and protected in reference to the rivers of California, navigable and non-navigable, public and private. Second, the reorganization of the Supreme Court. Third, the election of a United States Senator for the unexpired term made vacant by the death of Senator Miller. The last point is a disputed one, in the fullest sense. It is not included in the Governor's proclamation, and it is safe to say was not intended when he called the extra session. It is only a short time since he appointed George Hearst to fill the position, and under the State laws the Legislature can only consider, in special session, the designated subjects for which it was specially convened. But the Constitution of the United States in article 1 section 3 says:

> If vacancies happen by resignation, or otherwise, during the recess of the Legislature of any state, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

And to give this full effect, Congress has provided, in section 18 of the Revised Statutes that,

> "Whenever on the meeting of the Legislature of any State a vacancy exists in the representation of such State in the Senate, the Legislature shall proceed, on the second Tuesday after meeting and organization, to elect a person to fill such vacancy in the manner prescribed in the preceding section for the election of a Senator for a full term."

These provisions are very plain and explicit, and of course prevail over the local law on this point. The only way to escape from this requirement is for the Legislature to attend to the business defined in the Governor's proclamation, and adjourn before the second Tuesday after its organization. But as Senator Hearst is a Democrat and the majority of the legislators are Republicans, it is hardly probable that they will miss such a good opportunity to make a party movement and discomfit the enemy.

The irrigating question is of great moment to the State. If the free use of its flowing waters cannot be had by the owners of the soil, in many places the country will be given over to partial desolation. But it looks very much as if the proposition to amend the State Constitution was made in the interest of speculators rather than of the agriculturalist. The bill introduced aims to make the use of all water for irrigation a public use, subject to the control of the State by law, and to secure to any person, company or corporation rates of compensation, to be fixed every three years for the construction and maintenance of works and supply of water, a net return of at least 7 per cent per annum upon the amount invested in the construction and maintenance of such works.

This is strongly opposed by many influential papers and a large portion of the agricultural population. They contend that the monopolies that will be created under and grow out of the guaranties this provided, will bring the public into bondage to the speculators. It is argued that it would be better to have all the streams placed under State control with a State scheme of irrigation works. The power of eminent domain gives the State this right, and water, it is believed, can be supplied much cheaper than under the method proposed, which, it is thought is promoted by speculating capitalists, who have by prior appropriations secured the great bulk of the water supply and are now working for legal control and profit.

State Engineer Hall has prepared a pamphlet, in which he sets forth his views in a very intelligent manner, and advocates a law something similar to that prevailing in this Territory, organizing farming districts into irrigation districts "with the powers of quasi-municipal corporations." We make the following extracts from his sensible suggestions:

> "Riparian privileges should rest, not upon the, so-called, natural ownership of streams, but upon statutory enactment, and be subjected to the same measure of control that those of the public, or other individuals, are subjected, in the matter of diversion of waters and management of streams, as they are in other irrigation countries.
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> Riparian proprietors should have grounds for actions at law to recover for actual damage consequent upon diversions above.
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> They might be given preferred rights to water for stock and domestic purposes.
>
> They might be given authority to appropriate, and thus hold water in streams to the extent of their actual, demonstrable and economical use thereof.
>
> They might be given preferred privileges of appropriation for diversion and irrigation.
>
> In other words they *might*, by statutory law, be given all the advantages which, as now claimed, the situation of their lands naturally commands for them, to the extent of actual benefit availed by them, or to any other extent, if equitable and the people as represented chose to make the law.
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> But they never can be given the ownership of the streams and of the waters in an irrigation country, as is contemplated by a recent decision of the Supreme Court of this State, and have recourse by injunctions against all diverters of waters, not riparian proprietors, without its proving an incalculable hinderance to the development of the country, and almost an insurmountable barrier to the inauguration of a proper public control of watercourses.
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> The affirmation of the riparian rights doctrine might drive water appropriators to an opposite extreme ground in order to combat it, and in the endeavor to escape this incubus of private ownership of natural streams and waters, an unregulated right of unlimited appropriation might be set up which might lead to monopoly of waters, in private canals and reservoirs. But this result may very readily be averted in legislative action.

The proposition to remove the judges of the Supreme Court, because they have rendered a decision that is unpopular, is quite startling. And to attempt this under cover of a constitutional amendment, looks like a dangerous piece of business. Legislating a whole bench of judges out of office, appears to be a disturbance of the relationship between the legislative and judicial branches of the Government, not at all in harmony with venerated institutions, and savors of an attempt to coerce the judiciary. They have probably given a decision in accordance with narrow and contracted views of the law. But the idea of abolishing a court for this reason smacks of imperialism; or it may be viewed as a public notice that judges must decide not upon their convictions but to suit the popular whim.

The California Legislature is placed in a trying situation, and its members have an opportunity of exhibiting the qualities of true statesmen; of acting according to the true interests of the State and the principles of justice and equity, or of imperriling the public safety and peace by pandering to prejudice and playing into the hands of speculators. Their course will be watched with interest in every State and Territory of the Union.

DYING KICK OF A GRAND JURY.

OUR faithful Ogden correspondent enables us to present in full the report of the late grand jury of the First District.

Like all other similar bodies in Utah now-adays, the pre-requisite for membership was the degree and intensity of "sympathy with the prosecution" when "Mormons" are pursued by the terrors of the law. The less of the usual qualifications which constitute what might be correctly termed "good men and true," the better. Scrupulous men are not wanted on juries. Such persons are thorns in the side of the prosecution, which includes the courts as well as the District Attorneys.

As customary in the Utah judicial raid, the First District body of inquisitors acted largely as if there was no other offense except that of men sustaining and acknowledging the wives they had married long years before a law existed to make their marital associations *malum prohibitum*. So completely covered were their eyes with anti-"Mormon" blinders that they failed to see that there were any houses of ill-fame in Ogden. "There are none so blind as those who are not willing to see."

The report is a fair indicator by which to gauge the extent of the originality of the defunct body. It is largely made up of a quotation from a similar exhudation from an Idaho grand jury, in relation to which the Ogdenites were ready, in an aplsh way, to say "ditto," or "them's my sentiments," or to grunt out the ordinary assent of commonplacers—"me too." They quotiagly complain of certain "Mormon,' men being in hiding, just as if it were a matter for surprise that persons who believe they are marked for ruin, and liable to be sent to prison for any period in the whim of those who hate them, should not rush with coat tails on a bee line straight into the arms of their avowed enemies. Then it is remarked that many of the witnesses are not of the willing sort. They do not make feverish haste to give information to send their husbands, brothers and friends to prison. Very remarkable, isn't it?

The quotation from the report of the Idaho grand jury was appropriate. No wonder the Ogden jury said—"same here." In Idaho U. S. Marshal Fred. T. Dubois boasted of having got a jury which "would convict any 'Mormon' brought before it on a charge of unlawful cohabitation, innocent or guilty. It would convict Jesus Christ himself if he were placed on trial on that charge." The infamous Dubois doubtless spoke the truth. It was also doubtless quite appropriate, for the late grand jury of the First District to quote largely from the language of Idahoans engaged in similar business. The aping was by no means confined to words.

The insipid vaporing of the deposed associate justice in the taffy-exchange betwixt himself and the jury, was rich. His talk about obedience to the laws, in the light of the reasons for his removal, reaches the highest pinnacle of impertinence, mingled with unblushing hypocrisy.

OH! WHAT A "JUDGE!"

MR. W. H. DICKSON must be bilious. A black draught and a blue pill would probably relieve him. His harangue in the rink gave symptoms of his condition. A strong cathartic properly administered might save his body from much sin. He might tell less falsehood if he was treated with a purgative. His spleen is out of order and his tongue must be in a terrible state. He is very fond of accusing the "Mormons" of perjury. The only thing that saved his speech from that characterization was that he was not formally under oath.

We challenge Mr. Dickson—falsely introduced as "Judge," to name and prosecute the man to whom he referred as having married a girl and her mother and grandmother, and having begotten children by each. We do not believe that he believes there is such a person, although he claimed to *know* of his whereabouts. We challenge Mr. Dickson to produce the order which he told the crowd in the Rink was published by the Presidency, "commanding office-holders to take 'more wives than one or sacrifice their positions." We challenge him to produce a person who has been "boycotted by the 'Mormons' for promising to obey the law." When he stated these things we believe he knew they were not true, also when he said "There was never an election held here but what the ticket was voted for solidly by all the Mormons." It was the same in effect when he said "there was never a man convicted of polygamy but could have escaped punishment, both of fine and imprisonment, by promising to obey the laws of his country." He knows that what men are required to do is to obey the the law *as construed by the courts*, and that the courts have so construed the law that no honorable man could make such a promise. By leaving out that qualifying clause his statement was rendered about as big a falsehood as the others.

It is a great argument in favor of the truth and justice of our cause, that its enemies cannot fight it with truth. They invariably attack it with untruth often wilfully and maliciously concocted for the occasion. Their statements seldom fit well together. For instance, in one breath Mr. Dickson denounced the "Mormons" as a set of "perjurers," and in the next breath said they could escape punishment, even when convicted, by simply making a promise. Perjurers who will not make a promise to save themselves from prison would be a new kind under the sun.

We do not intend to waste space on Mr. Dickson's further attempts to vent his bile and pour out his venom. If there were any sensible people in the crowd they could perceive his contradictions and see through his sophisms, and readily understand that only in a community of law-abiding, peaceable and patient people would he be permitted to belie and abuse good men without chastisement and without notice. If he had the least sentiment of honor, or the smallest spark of manhood, he would be ashamed to show his face among truthful people, after such an exhibition of brutal mendacity.

JUDICIAL FALLIBILITY.

WHEN a "Mormon" points out the fallacies uttered by courts on a question relating to his religion and his liberty, he is assailed as a seditious person, and his dissent from judicial rulings is construed into lawlessness, rebellion, disloyalty and other dreadful things. But other people may take issue with courts as with congresses, and there is not a murmur of disapproval. The people of California, as explained in another article, have been berating the Supreme Court of that State and calling the Judges all kinds of hard names over a decision upon riparian rights, but we hear no word of reproof against their indignation.

That courts are not infallible any more than individuals is frequently made apparent, and that the people have just as much right to criticize the judicial as any other branch of the government, ought to be conceded by every person possessing common sense. And there is no "rebellion" in it. If a thing is wrong, it is not made right by the united say so of three or a dozen or any number of judges. A matter of controversy may be settled so far as the law is concerned, when adjudicated finally by a court. But a question of religion, morality and truth is not affected by the dictum of any judicial officer or body, neither can it be.

The Californians dissent so strongly from the decision of their Supreme Court that measures are in progress for its dissolution. Nearly everybody is hostile to it, and the opposition is so great and the animosity so intense that the judiciary is danger of being brought generally into contempt. Judges after all are only mortals, and they are prone to error. Respect should be accorded them even when they make mistakes if they are sincere. But when they evade responsibility pander to popular prejudice or are governed by religious or political bias neither their judgment nor their personality is entitled to the worship which some people desire accorded to them.

OUR OGDEN LETTER.

PROCEEDINGS IN THE FIRST DISTRICT COURT.

OGDEN CITY, Utah,
July 27th, 1886.

Editor Deseret News:

This morning the First District Court room was again densely packed with persons who gathered there expecting to hear the sentence pronounced upon young A. C. Greenwell, convicted of perjury. The usual "hear ye" was drawled out by the bailiff and the court was duly opened,

CHIEF JUSTICE ZANE

occupying the judgment seat. When the defendant was called Mr. James N. Kimball, of counsel for the defense, arose and made a motion for arrest of judgment and for a new trial. Some of the grounds for his motion were that the indictment does not set forth sufficient facts to constitute the charge of the crime of perjury; that the statutes require that 12 or more must be present to authorize them to hold a legal or regular session of that body—this the report did not show; that the accused was not tried before a competent court, as Judge Powers had no authority to appoint Chief Justice Zane to hold a session in the First District, etc. Counsel read extensively from statutes and authorities both foreign and United States, among which were the Poland bill and the session laws of Utah of 1884.

Mr. Dickson replied that the jury was competent, duly authorized and were in proper session at the time that defendant was called and appeared before them; that an oath was duly administered to him; and that he did take and subscribe the same, and in his statements then and there did commit the crime of perjury. He argued that their investigations and proceedings in the case were all regular and valid. In relation to the competency of Chief Justice Zane to hold a session of court in this district, he said there was not the least doubt, and quoted statutes in support of his statement. Counsel also read copiously from many legal authorities to sustain his several positions in opposition to the motion. Mr. Dickson further said that while there was nothing in the law, in the strictest sense, to prevent Judge Powers from holding court, and trying the case, yet it would have been held as a most unseemly proceeding in him.

He, therefore, was both legally and morally and

EVERY WAY JUSTIFIED

in calling one of the other Justices to sit in this district and try the case. He considered the grounds for the motion as set forth by the defense insufficient.

After a brief rejoinder by Mr. Kimball, the Court, in a brief speech, sustained the position taken by the prosecuting attorney and overruled the motion of the defense for a new trial.

Recess was then taken until 2 o'clock p.m.

Judge Powers then took the bench, the grand jury were present, answered to their names, and handed a report of their labers, which was then presented and read by the Judge. During their sittings for the term they had found 26 indictments against persons who had violated the laws of the United States—notably the Edmunds law; they also found 16 indictments against persons for violation of Territorial statutes. One passage seems to have been inspired by the remarks of the prosecuting attorney.

Following is a full

REPORT OF THE GRAND JURY:

The Honorable District Court of the First Judicial District of the Territory of Utah:

The grand jury empanelled for the May term of this court respectfully beg leave to make the following report:

The grand jury was empanelled the 3rd day of May, 1886, and immediately entered upon its duty as such.

After its organization it appointed a committee to investigate and report, to-wit: On the various matters of public concern of which it ought to take cognizance in accordance with the charge of the court to the grand jury upon its organization. The conditions under which the grand jury have labored have been such that it has been unable to examine all the matters within the district of which the grand jury ought to take cognizance respecting the manner in which the various city and county officers are or have been performing the duties of their several offices.

The grand jury in its labors has been compelled by press of business to almost exclusively confine its attention to the consideration of public offenses against the laws of the United States and the laws of this Territory.

It has, however, taken occasion to investigate the police and sanitary condition of Ogden City and we find that the same is all that could be desired. Particular credit is due to the Fire Department for its efficiency considering the appliances which it has at hand for the work to be done.

The grand jury desires to recall the attention of the public and of the city authorities of Ogden to the subject of the continual danger the traveling public is subjected about the Ogden railroad depot. And, in their behalf we earnestly recommend to the city authorities the consideration of the question of whether the charter does afford some remedy for the abatement of the dangerous nuisance to which, on a former occasion, we have called the attention of the court and public.

In the matter of examination of charges concerning persons charged with public offenses, the grand jury reports that it has found twenty-six indictments against offenders against the laws of the United States and sixteen (16) indictments for offenses against Territorial laws and has also had under consideration and ignored a large number of other charges.

In the matter of investigations for offenses against the laws of the United States respecting polygamy and unlawful cohabitation, the grand jury desires to say, as being particularly applicable to the condition here, what was recently reported by the grand jury of the Third District Court of Idaho Territory.

"We beg leave to state that we find a condition of affairs in the several counties of this district which has been a surprise to the members of the grand jury. Polygamous marriages and cases of unlawful cohabitation are much more prevalent than we had good reason to suppose. We are confident we could go on piling up indictments in this class of cases almost indefinitely only for lack of time and funds in the hands of the United States Marshal to pay for sending officers out for witnesses.

"We find also that there are numerous cases all through the district, of men dodging the officers, and that it is the general practice among members of the Mormon Church especially, to use every endeavor to prevent the subpoenaing of witnesses in the class of cases above mentioned, and also to prevent the arrest of persons charged with these offenses. We are also of the opinion, from the developments and evidence before us, that there is a concerted action on the part of the sect, above mentioned especially, to prevent either the court or the jurors from getting proper testimony in polygamy or cohabitation cases; and that perjury and intimidation of witnesses are being advocated and advised by the teachers of the sect aforesaid, and in some cases, as we believe, actually perpetrated, and in all, with scarcely an exception, we find members of this sect unwilling witnesses."

Continuing this the grand jury desire to say that no matter what difficulties may be thrown in the way of those whose duty it is to see that the laws of our country are enforced and obeyed, they should never weary in that duty.

The grand jury further report that in accordance with the instructions we investigated the subject of the existence within the limits of Ogden, of houses of ill-fame, and after investigation we find that there are none of such places within the limits of Ogden City.

The grand jury in conclusion desires to express their thanks to the Judge of this court for the many courtesies extended by him and also to say in this public manner that the high courage and public spirit which he has always manifested in the administration of the laws against offenders have been to the grand juries an example as well as encouragement to the performance of the duties which the laws have enjoined upon them.

It is a great to every law-upholding and abiding citizen in this community that the moral and social conditions are such that a merely perfunctory administration of the laws by those whose duty it is to see that they are faithfully executed will never make the laws of the United States paramount in the community. To do this there must not be any faltering with offenders on any pretense or consideration whatever.

It is a part of the current history of the community that the judge of this court is about to be superseded. We can only express the hope that his successor will bring to his duties the same ability, industry and moral courage that the present judge of this court has at all times shown in his career in that capacity, and we also extend our thanks to the assistant District Attorney of this District, Ogden Hiles; he has performed his duty before us with faithfulness, honesty and efficiency, and we commend him to all law abiding and upholding citizens.

The grand jurors further desire to express their appreciation of the efficiency which the marshals and bailiffs of the court have shown in the performance of the laborious duties of their offices under circumstances of great difficulty, hereinbefore mentioned.

W. J. WOOD
Foreman Grand Jury.

OGDEN, UTAH, July 27th, 1886.

The Judge then, finding there was no necessity for keeping the grand jury in session, discharged them. He delivered an address, in which he congratulated and complimented them on their fidelity in the performance of their duties while they remained intact as an inquisitorial body, assuring them that the day will come when the people of Utah, the "Mormons" especially, will learn that they, like the rest of the people of this great nation, must honor and obey the laws—every man must do it, no matter who he is or to what religious or other body he may belong to, whether it be to the

"MORMON" CHURCH

or to any other religious sect. His Honor seemed to take considerable satisfaction in giving the kick at this "Mormons" before he is relegated to realms of insignificance, as his inglorious course in this Territory is nearing its termination. He goes east on Saturday, and probably will never return to the fair valleys of Utah. Well, it can be said of him as the nigger said in a toast, of the Governor of a certain State: "He came into office mid much opposition; but he goes out without any at all."

At 2 p. m. Judge Zane called upon Greenwell to "stand up," which he did while the large audience held their breath, seemingly, to listen to the sentence as it was pronounced. The judge consumed some time in reading to the defendant a homily on the perils of false swearing and denounced in unmeasured terms the crime of which he had been convicted, reminding him that when before the grand jury he was sworn to "tell the truth, the whole truth and nothing but the truth." Greenwell interrupted the Court and insisted that he had told the truth, but that "somebody else had done some false swearing."

At the close of the remarks the Court said "I will make an example of you," and sentenced him to

FIVE YEARS IMPRISONMENT

in the penitentiary, and to pay the cost of the prosecution of the scandalous suit. The severity of the sentence created quite a sensation in all, or nearly all who heard it, as it was thought by many that he would not receive to exceed two years, and some thought possibly the sentence would be suspended. Greenwell seemed considerably moved when he heard his fate. He did not believe it would be so severe. He is 27 years of age, has a wife and several children. I expect he will be taken to the "pen" this evening. There is a variety of feelings on the matter. Many regret that he has been sentenced for so many years, while others express their satisfaction at it, still others again say the court has been too lenient, and that he ought to have had more.

WEBBE.

CORRESPONDENCE.

HENEFER, July 26, 1886.

Editor Deseret News:

Our celebration on Pioneer Day passed off very quietly in the forenoon, but in the afternoon the people turned out *en masse* to witness a match game of base ball between the first nine of Henefer and the second nine of Croyden clubs. The game was to have come off at 9 a.m., but the Croydens were not on the ground till 2 p m., when all hands, both great and small, repaired to Owen's Cañon, a beautiful summer resort hard by. In the meantime, the Henefer Brass Band was discoursing sweet strains of music under the able leadership of Brother Thomas Britton, junior.

The game was played till 7 o'clock, when it was called by the umpire, at six innings, when the score was 54 for Henefers and 22 for the Croydens. Everything passed off quietly and in the evening a social party was had in the school house till 12 o'clock.

The election is nearly upon us and we expect to have a close tally, but the People's Party are confident of success. It is the duty of every voter to see that every vote is polled. The health of the people is good at present.

Respectfully,
ROBERT A. JONES.

[Published by Authority.

AN ORDINANCE

Relating to Petit Larceny.

Be it ordained by the City Council of Salt Lake City: That if any person shall be guilty of petit larceny within the limits of said city he shall, upon conviction thereof, be fined in any sum less than ninety-nine dollars, or be imprisoned in the City Jail for a period of not to exceed one hundred days, or both.

Passed July 13th, 1886.

FRANCIS ARMSTRONG,
Mayor.

Attest:
HEBER M. WELLS
City Recorder.
[SEAL.]

TERRITORY OF UTAH,
SALT LAKE CITY, } ss.

I hereby certify that the above is a full, true and correct copy of an ordinance entitled, "An ordinance Relating to Petit Larceny," passed by the City Council of said city, July 13th, 1886, as appears of record in my office.

Witness my hand and the Corporate Seal of said City, this 27th day of July, 1886.

[SEAL.]
HEBER M. WELLS,
City Recorder.

NOTICE.

NOTICE IS HEREBY GIVEN THAT I have purchased of Horace Rockwell, and am the owner of the following Brands and the stock branded therewith, viz.: O Q. and O. P. upon the right thigh, and F. L. upon the left shoulder; said stock ranging in Tooele County, Utah; and the public are hereby cautioned against purchasing any stock branded with any of the above brands, except from the undersigned.

Any information desired concerning the above brands, can be obtained from Hall & Marshall, Attorneys, Salt Lake City.

J. TROWBRIDGE BAILEY.

July 26th, 1886.