

calculated to inspire belief in a coming war between the United States and the Mormon Church, two of which articles entitled "Exterminate the Mormons," and "Will the Mormons Fight?" appeared in your issue of December 27, 1890, as calculated to prejudice the future of Utah and destroy confidence in this rapidly growing region. The best gentile minds in Utah agree that there is no more danger of the breaking out of a war between the government and the Mormon Church than there is that the Methodists of New York City will rise and massacre the Presbyterians of that city. I doubt if you can find among the quarter of a million people in Utah one person who will adopt the fear you so emphatically express.

"In the interest of honest journalism if for no other reason, out of a disposition to be a just and truthful exponent of public opinion, and to use your own expression, that you may exist by the good will and co-operation of the citizens of this great nation, you ought not to continue the publication of so outrageous a misrepresentation of the people of Utah. Gentile, Jew and Mormon alike protest against your attempt to defeat their united efforts to induce immigration to this favored section of our common country."

H. C. LETT,

President of the Salt Lake Real Estate Exchange."

After some more talking Judge Colburn, as a substitute to Mr. Pembroke's resolution, offered one providing for a committee of three to draft a proper statement, have it signed by the federal, territorial and municipal officers and by the officers of the commercial and industrial organizations of this city. This resolution was adopted.

Mayor Scott appointed the following committee: Judge Colburn, Colonel Donellan and Mr. Pembroke.

The committee were to meet today and fulfil the requirements of the resolution.

A gentleman spoke for the Associated Press, saying that it would help in every way to promulgate the refutations to the outrageous libels of the illustrated paper.

The meeting adjourned subject to call of the chair.

DECISION IN THE VARIETY THEATRE LICENSE CASE.

Friday, January 30th the decision of the Supreme Court of the Territory on a writ of mandamus compelling the City Council to issue a liquor license to E. J. Perry & Company, delivered by Chief Justice Zane yesterday afternoon. The opinion is given below in full.

E. J. Perry, plaintiff, vs. Salt Lake City, defendant:

Zane, C. J.—This is an application by the plaintiff for a peremptory writ of mandamus to compel the Council of Salt Lake City to grant him a license to retail intoxicating liquors. In a verified petition he shows a compliance in all respects with the express requirements of the statutes and the ordinances in making his application for the license.

To the alternative writ the defendant makes its return, verified by Geo. M. Scott, its mayor, and signed by Samuel A. Merritt, its attorney and Charles S. Varian, associate counsel. On the return the defendant states the following facts and relies upon them as

a sufficient reason for not granting the license: That the city had issued a theatre license to Charles F. Reynolds & Co. with the express understanding that no intoxicating liquors should be retailed in the building, and that the plaintiff as is believed in collusion with that company in endeavoring to obtain the license to sell liquors in a room in its basement; that the building is situated on Franklin Avenue, a narrow street; that this street and the block through which it extends, is occupied almost exclusively by residences; that about twenty rods from the theatre are a public school and a house for religious worship, and fifteen or twenty rods from them is another church; that there is one saloon in the avenue opposite the theatre believed to be

SUFFICIENT TO SUPPLY ALL REASONABLE DEMANDS

there; that performances in the theatre are of the variety class and are attended almost exclusively by males; that the plaintiff, without license and contrary to law, sold liquor in the room on two nights after the first refusal to issue the license and that on the night of the 14th inst. a ring fight was permitted in the theatre.

In conclusion the defendant claims that it acted within its discretion in refusing to grant the license and that the sole purpose of its members in doing so was a desire to preserve public order and the morals and happiness of the people of the neighborhood.

In view of the foregoing facts, ought the court to grant the peremptory mandate?

If the refusal to grant the license was not within the discretion of the council the writ should issue; but if it was, then it ought not.

The power of the city Council with respect to the subject is found in volume 1 Compiled laws of Utah, 1888.

Section 1755 is as follows: "The city Council shall have the following powers: 40th—to license, regulate and tax the manufacturing, selling, giving away or disposing of in any manner any intoxicating liquors." The section also provides that the term of the license shall not extend beyond the municipal year in which it is issued, and it is subject to the restrictions of the general laws of the Territory, and a bond is required, and the sale to minors, idiots, habitual drunkards or persons intoxicated, is prohibited. Section 4518, volume 2, same compilation, forbids the selling or furnishing of intoxicating liquors to any person in the auditorium or lobbies of any theatre, etc.

THE POWER TO LICENSE, REGULATE AND TAX

the sale or disposition of intoxicating liquors within its limits is possessed by Salt Lake City except so far as it is regulated by the above provisions. The Council of Salt Lake City under the power to license, regulate and tax, has by ordinance required a petition by the applicant to be presented in which the place of business and some other minor facts are required to be stated, and also a bond in the sum of \$1,000, with sureties and provisions as provided. The license is required to be limited to three months and for a retail business \$300 is charged. The sale without license, and the sale to Indians, insane or idiotic persons or to

minors, and the sale on Sunday is forbidden and punished. And it is also provided that the mayor may, by proclamation, forbid the sale or disposition of such liquors on election days and legal holidays.

The question now comes, has the Council any further discretion with respect to granting such licenses? Under its power to regulate has it any discretion as to the person to whom licenses shall be granted, as to the place of business, or as to the number of licenses to be granted?

The legislature could have prohibited the traffic, but it did not do so.

However, it did give the City Council the power to license, regulate and tax it. The power is conferred on a deliberative body. And its authority with respect to the subject is not limited to mere ministerial duties. The power of the legislature was unlimited with respect to the business, and all of it except the power to prohibit, subject to a few restrictions named, was conferred by the charter upon the local legislature. And the will of such a body is expressed by a vote and with the right to vote upon any question is implied the discretion to vote for or against.

THE BUSINESS OF RETAILING LIQUORS

may be regulated in various ways. To regulate is to control, restrict and direct. To regulate the liquor traffic according to the purpose for which the power was granted would be to so govern it that it will be attended with good order and so far as may be consistent with the happiness and welfare of the people in the community in which it is conducted.

In *Chicago Pkg., etc. vs. City of Chicago*, 88 Ill. 221, the court said: "We are clearly of the opinion that the power to acquire a license is one of the means of regulating the exercise or pursuit of this business. There is, no doubt, a great variety of other means that might be adopted to accomplish the purpose, but these municipalities are not restricted as to the means they employ to regulate the business. In the various illustrations of the meaning of the word regulate, we find among others: To direct, to rule, to govern, to conduct. As the language is used in reference to the power of a city or village government, we suppose it was intended to mean that such bodies might rule or govern this character of business."

The general rule is, that public corporations and officials are required to do what they are authorized to do, when such performance would be beneficial to an individual or to the public. Upon the subject of

IMPERATIVE AND DISCRETIONARY POWERS,

Judge Dillon says: "It is often material to determine whether a duty imposed by law or charter upon municipal corporations or public officers is imperative or discretionary. This is always a question of legislative intention and therefore of construction. The general test to ascertain this intention propounded in the cases are of doubtful value. * * * Each case, we repeat, must be largely decided on its own circumstances and the legislative intent gathered from the whole act. No positive, inflexible or stere-