The Deseret News.
TRUTH AND LIBERTY.

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EDITOR AND PUBLISHER.

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THE verdict in the Hawkins case is now public property. With the merits or demerits of the quarrel between husband and wife we have nothing to do. As is generally the case in bad family quarrels, there may be faults on both sides, but that is no concern of the public's. It is a private matter, and like all such matters, the less it is meddled with by those who have no proper business with it, the better. But the proceedings of the trial are public, and the public is interested in it, hence we make a few remarks upon it.

The defendant was charged with adultery under a Territorial statute, and the verdict was rendered accordingly. The verdict was eminently an unrighteous one. It was not in accordance with the letter of the law, as understood by the legislature which made the law and by the community for whom it was made. It was a verdict rendered not in accordance with the interpretation of the law received by those to whom the law applies, but in accordance with the interpretation, if received at all, received by communities at a distance and to whom it has no application. It was a verdict rendered by a jury that does not represent the community, but one generally believed to be chosen with the special view of securing verdicts of guilty in a certain class of cases. All these things are perfectly well known to the Judge, the jury, all the officers of the court, and every person of ordinary intelligence in the Territory. Hence we maintain that Mr. Hawkins was not tried by a jury of his peers, but by a jury of his enemies, and that *really* the verdict was in accordance neither with the spirit, the intent nor the letter of the law. Therefore, in our opinion, the trial was a farce, the verdict an injustice, a dangerous precedent, and a disgrace to American jurisprudence, and the whole proceedings, aside from the defence, we believe were only a portion of a pre-arranged plan for the purpose of producing a certain political effect.

Some people may, but we do not, consider that it is a good policy to make courts simply courts of law and not courts of justice in any sense of the word, and that law twisted and wrested to an interpretation entirely foreign to that understood and received and acted upon by the whole community by and for whom it was enacted. We must enter our protest against any such mockery of justice, as it manifestly is, so long as the power and privilege of protest are left to us.

DR. GEO. L. MILLER, editor of the Omaha *Herald*, is one of the few honorable men who are not afraid to have convictions of their own upon either popular or unpopular subjects, and not afraid to state those convictions when the interests of the right appear to demand such statement. We clip a few extracts from a late issue of the *Herald*, confident that they will be appreciated by friend and foe in this locality—

A SUGGESTION.

Judge McKean's Grand Judicial Circus in Salt Lake, of which Strickland and Hawley are the clowns, seem to have an itching desire to get their clutches on the Mormon newspapers. If they want a real newspaper quadrille, let them come down to Omaha. Our experience with public persons who have sought to stifle the free utterance of the press enables us to assure them that a little saltatory exercise at this time would be not only lively but exhilirating.

Here is another hint for a certain class of gentlemen too numerous hereabout for the public good—

THE PRICE OF PEACE IN UTAH.

The motives to the politico-judicial raid upon the Mormon people are not misunderstood by those who know the adventitious mercenaries who are engaged in it. On our late visit to Salt Lake we were furnished data for ascertaining, with tolerable accuracy, what the cash price of peace in Utah would be if the Mormon people could be persuaded to enter the market to buy it.

Our idea is that $100, 000, with incidental additions of "feet" in lodes of argentiferous galena, such as would cost little and count much, would make Polygamy a comparatively moral institution, and procure a peace as lasting as the tenure of Mc Kean, Woods & Co., in office. Brigham Young would cease to be a murderer, George Q. Cannon and General Wells adulterers, the wives and mothers of Utah concubines, in "the jerk of a lamb's tail," and the Church of the Latter-day Saints would be permitted to fall by the natural causes, through which alone the fanaticism on which it is founded can be undermined and overthrown.

The next is a manly assertion by the editor of the determination to stand by his friends, by his convictions and by the deserving—

STANDING BY ITS FRIENDS.

We learn from the Salt Lake —— which quotes them with unction, that various radical editors are giving us much more credit than we deserve for standing by our friends in Utah. These are such rare compliments, that we regret the inattention which, from a sort of chronic habit of not reading such sheets as the Davenport *Gazette*, Laramie *Sentinel*, &c., &c., has led us to overlook them. This paper always stands by its friends without asking the consent of the wandering itinerants who drift about the country in occupations which would be more respectable if they would turn their attention to rag-picking.

But the *Herald*, whilst standing by its friends, takes jealous care to stand by its convictions. It has less fear of public clamor, if this be possible, than it has contempt for those who delight to vilify and slander it. It has fallen to our lot to know the Mormon people, and much of their institutions. We have known them in their homes and life, and have made their peculiar institutions something of a study. We have watched their work, and have admired the monuments of the enlightened skill and industry which converted a sagebrush waste into a vast, beautiful and productive region. We have also made ourselves acquainted with the purposes and aims of the utterly corrupt scamps who seek, under cover of efforts to reform a people who are their betters in every element of human virtue, to ride into political notoriety and power upon their ruin. And, with this kind of knowledge, we have decided opinions upon the Mormon question, which are our own, and which we shall at all times express; nor can any man or set of men deter us, in this yet free land, from speaking our sentiments upon that and upon all other public questions, as we actually hold them.—

The gallant colonels mentioned below will accept the compliments in the following paragraph in the spirit in which they were penned—

COL. MORROW.

Col. Morrow supersedes General De Trobriand in command of Camp Douglas. This is by order of the President, and was dictated by the judicial junta at Salt Lake, who never had any particular love for the Frenchman. Col. Morrow is a good soldier and an accomplished gentleman. If he has the courage to assert independence of the junta, he will be true to his duty and preserve his record untarnished. But if he yields to the clamor of McKean & Co., he will fall by the wayside.

DISTRICT COURT.

In the brief report which appeared in the NEWS yesterday, of yesterday's proceedings in the District Court, it will be seen that the Court ruled in favor of applying the Territorial statute in reference to the peremptory challenging of the jury.

The following, in brief, is the line of argument adopted by the defense, on the question, which it will be seen, was based wholly on the previous action of the Court:

This Court has ruled that it is a United States Court; that the Territorial Legislature has no authority to prescribe rules in the conducting of criminal cases in this Court; that the code of criminal procedure must be such as is prescribed by act of Congress or by the judge under the authority of an act of Congress; that this Court decided first, that in drawing and impanneling juries it would follow the mode indicated by act of Congress, and not the mode prescribed by the Territorial Legislature; that on the point of compelling the prosecution to elect as to which count of an indictment they would proceed upon, the Court held that, as the act of Congress provided that several offenses might be charged in one indictment in United States courts, therefore its discretion was taken away, and that it must follow the rule prescribed by the act of Congress. Then, if the drawing and impanneling of the jury, the form of the indictment, and every step hitherto taken in these criminal cases are such as are prescribed by the act of Congress, and the Territorial statute governing such things is to be utterly disregarded, upon what hypothesis can the prosecution claim that the act of Congress giving to the defendant ten and to the prosecution two peremptory challenges in criminal cases be now disregarded and set aside, and the outcast and despised Territorial law, hitherto held as invalid and worthless, adopted as a rule for this Court? The learned counsel, Mr. Fitch, referred to the Territorial law which prescribes that the prosecution and defense should each have six peremptory challenges, but said that if the decision of the Court upon the manner of drawing juries and the form of the indictment were consistently followed it must result that the act of Congress with respect to challenging juries, after they were drawn, should also be followed; and if it were held in consonance with previous rulings that the Territorial statute had not authority, and that the act of Congress prescribing a mode of challenging juries was not authority, and this Court was at liberty, as perhaps was the case, to exercise its discretion in forming a rule regulating the number of challenges, then the defense asked that that discretion be exercised as it had hitherto been exercised, and that the practice be assimilated to the rule prescribed by Congress and not to the rule prescribed by the Territorial Legislature.

The following is the ruling of the Court on this point:

This Court has, and counsel on both sides admit that it has, two kinds of jurisdiction. One is in cases arising under the laws of Congress; the other is in cases arising under the laws of the Territory; there is no dispute about that. The grand Jury of this Court finds, and always has found, two kinds of indictments: one for offences against the laws of the United States, the other for offences against the laws of the Territory. In the first class of cases the indictments are entitled 'The United States *vs.* John Doe;' in the other class of cases the indictments are entitled 'The People of the United States in the Territory of Utah *vs.* John Doe.'

Now, the act of Congress cited here, under which it is claimed that the prosecution shall be limited to two peremptory challenges, and the defendant allowed ten, expressly applies to offenses against the United States, in so many Anglo-Saxon words. The indictment at bar is for an offense against the laws of the Territory. There you have it, gentlemen, after all the argument, plainly and distinctly, so that a child cannot misunderstand it. The act cited here applies expressly to indictments for offenses against the United States, there is not any doubt about it. The indictment here is for an offense against a Territorial law.

I think I need no admonition from counsel to be consistent with myself. I intend to be without any lecturing on that score. The act cited does not apply, hence the act of the Territory applying to such a case as this, not coming in conflict with any act of Congress, does apply. That is all there is about it. Each party is entitled to six challenges."

At the session of the Court, on Friday afternoon, the assistant prosecuting counsel in the Hawkins' case closed his argument, and was followed by Messrs. Miner and Fitch, who made an eloquent and powerful defense for the accused. The Court then adjourned until seven o'clock last evening, at which hour it again assembled, when the argument for the prosecution was closed by the acting U. S. Attorney.

The Court then delivered the following charge to the jury:

GENTLEMEN OF THE JURY—

After you shall have deliberated there will be one of two things for you to say:—either "guilty" or "not guilty." If you say "not guilty," that is the end of the case. If you say "guilty," then all the other consequences rest with somebody else and not with you. If you say "guilty," then it will be for the Court to say whether the prisoner shall be imprisoned and fined, or imprisoned only, or fined only; and it will be for the Court to say whether he shall be imprisoned for twenty years or for three years, or any number of years between the two; it will be for the Court to say whether he shall be fined three hundred dollars or one thousand dollars, or any number of dollars between the two. And if you say "guilty" and the Court pronounces sentence, then, whether the prisoner shall be pardoned or not is neither for you nor the Court to say: that belongs to the executive department of the Government. Each department has its duties. It is for you to weigh and pass upon the facts; it is for me to pass upon the law. I have no more business to invade your province than you have to invade mine. I shall express no opinion upon the facts, no juror has ever heard me do it. As to whether you ought to believe a certain witness and disbelieve another; or whether the evidence given by a certain witness proves such a fact or not, is not for me to say, it is for you to say. What is the law applicable to the case is for me to say, and then you are to apply the facts which you find to be proved, to the law and render your verdict.

And as to law, how shall it be construed, how interpreted, how applied? There is an instrument known in English history, called Magna Charta. Centuries ago it was granted to the English barons, and signed by King John. It is the foundation of English liberty and of American liberty. Suppose we were to look into that document and find that it guarantees the right of trial by jury; then suppose some man in England who had demanded trial by jury when accused, had been met by the objection of a lawyer that he had no right to it. "But Magna Charta secures me that right." "No matter," says the lawyer, "the king who gave that charter was the most odious tyrant that ever deserved and received the hatred of Englisnmen, therefore it must not be construed to secure to you the right of trial by jury, that king was a despot and arrogated to himself all power." What, think you, the Court would do? The Court would simply look at the letter of the law, and, if it were clear, plain, unambiguous, distinct, would say, "I care not for the character of the king who signed the decree or charter, there is the plain letter of the law, the prisoner shall have the benefit of it."

Suppose, in the reign of King Henry 8th of England, parliament had passed an act prohibiting adultery, and pronounced penalties upon it. Some men were indicted under it and objection is taken that the construction of the law given by the prosecution is not the just construction. Why? Because King Henry 8th was one of the most licentious adulterers that ever sat on the English throne, and when he signed and approved that act of parliament he could not have meant any such thing. What would the courts do? They would read the act, and if it were plain, clear, distinct in its terms, so that there was no opportunity for misunderstanding it, the court would say, "I care nothing about the character of the King who signed the act, there is the law, it must be enforced."

Suppose the legislature of some State were to pass a stringent act against gambling, and, when some man is indicted under that act, his counsel interposes the objection that the prosecution had not given a just construction to that act because five-sevenths of the members of the legislature were gamblers. What says the Court? "Read the law. Is it clear, distinct, plain?" "Yes." "Very well, then, I care nothing about the character of the men who passed it."

These, gentlemen, are the rules of the application and construction of law. If the law is so worded——and sometimes men get into legislatures who are inartistic in drawing acts——if it is so worded that it is uncertain what it means, it is very ambiguous, indistinct, so that one may understand it one way, another another way, then you may go outside of the act; you may take cotemporary history, and from all the lights you can get, try to make out what the law means; and the courts will do so under such circumstances. But when the law is plain, distinct, clear, so that it can not be misunderstood, the Courts do not go outside the law.

Gentlemen, the Legislative Assembly of the Territory of Utah has, by enactment, applied this very same rule which I am laying down, and which has been recognized by courts for centuries, in an act entitled an act in relation to crimes and punishments—the very act under which the prisoner at the bar is indicted; and in section 118 is this provision: "All words and phrases shall be construed according to the context and the approved usage of the language." Then in section 31 of that same act is this provision: "Every person who commits the crime of adultery shall be punished by imprisonment not exceeding twenty years and not less than three years; and by fine not exceeding one thousand dollars and not less than three hundred dollars, or by both fine and imprisonment at the discretion of the Court."

Is there any ambiguity about it, any uncertainty? Is there a single word used in it that is not used in common parlance, in every-day talk? Gentlemen, that statute means exactly what it says,—exactly, in plain English words.

There is no proof here, gentlemen, when any so-called revelation in favor of polygamy was ever given to anybody. There is not only no proof when it was given, but there is none that it was ever given. There is no proof here, whether or not there was a single member of that legislature at that time in polygamy; there is no proof one way or the other on that subject; and if there were that fact would make no difference in the construction of that act, for there are the plain unambiguous words of the act. And would learned counsel have us understand that if, as counsel said or assumed, though there is no proof, that if seven-eighths of that legislature were polygamists that they meant that law for all other people except themselves and their particular friends? Certainly learned counsel would not be willing to follow the premises to such a conclusion. No, that statute admits of no such supposition or conjecture. I say to you gentlemen, that I have no right, and certainly you have no right to go outside of these plain English words for the interpretation of that statute.

Some years ago Congress passed an act specifying certain crimes, and then providing that they should be barred, or outlawed, or to use words of common import, within three years after they were committed; and certain other crimes that should be barred or outlawed within two years after they should be committed; but Congress did not name adultery among these crimes. Congress has never legislated upon the subject of adultery. Congress, not having legislated upon this subject there-