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GEORGE Q. CANNON,

EDITOR AND PUBLISHER.

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SMITH vs. SALT LAKE CITY.

Opinion of Chief Justice McKean.

Territory of Utah, Third District Court in Chancery.

Jacob Smith Plaintiff, vs. Salt Lake City, Defendant.

SALT LAKE CITY, Aug. 6, 1872.

The defendant having brought several actions against the plaintiff before Jeter Clinton, Justice of the Peace, for alleged violations of "An Ordinance concerning Markets and Market Masters," the plaintiff applied to this Court for a writ of injunction to restrain the defendants from further prosecuting the plaintiff, on the alleged ground that the Third District Court, Mr. Justice Strickland presiding, has adjudged the said ordinance to be null and void. All other material facts will appear in the opinion of the Court.

George E. Whitney for the plaintiff. Snow and Hoge and Wm. Haydon for the defendant.

McKean, Chief Justice.—At the last March term of the Third District Court, Mr. Justice Strickland presiding, returns were made to writs of certiorari in several cases in which "Jeter Clinton, Alderman and Ex-officio Justice of the Peace," had rendered judgments for alleged violations of "An Ordinance licensing and regulating the manufacture and sale of spirituous, vinous, and fermented liquors;" and also in several cases in which that official had rendered judgments for alleged violations of "An Ordinance concerning Markets and Market Masters."

In the case of Charles A. Loomis vs. Salt Lake City, one of the cases arising under the first-named ordinance, judgment was rendered as follows: "Whereupon, after argument by respective counsel, the case was submitted to the court for consideration and decision; and, after due deliberation thereon, it was adjudged by the court that Jeter Clinton, Alderman and Ex-officio Justice of the Peace, had no jurisdiction in the premises, and that the ordinance of Salt Lake City, entitled 'An Ordinance licensing and regulating the manufacture and sale of spirituous, vinous and fermented liquors,' is null and void; said Ordinance not being in pursuance of authority granted in the charter of said city."

In the two cases of Jacob Smith, et al. vs. Salt Lake City, arising under "An Ordinance concerning Markets and Market Masters," judgments were rendered as follows: "This cause coming on to be heard on the 30th day of April, A. D. 1872, the plaintiffs appearing by J. Neely Johnson, Esq., their attorney, and the defendant by Snow and Hoge, Esqrs., its attorneys, and the said attorneys for the respective parties agreeing

that the argument now to be made by counsel in the case of Charles A. Loomis vs. Salt Lake City, and the decision of the court thereon, should govern, and be by both parties taken and received as the decision of this case. Whereupon, after argument by respective counsel, the cause was submitted to the Court for consideration and decision, and, after due deliberation thereon, it was adjudged by the court that Jeter Clinton, Alderman and ex-officio Justice of the Peace, had no jurisdiction in the premises, and that the ordinance of Salt Lake City entitled 'An Ordinance Licensing and Regulating the Manufacture and Sale of Spirituous, Vinous and Fermented Liquors,' snail and void, said ordinance not being in pursuance of authority granted in the charter of said city."

It will be seen that in neither of these judgments is the market ordinance adjudged to be null and void; but the counsel for the plaintiff claims that the reference in the last cited judgment to the liquor ordinance is a clerical error, and that the market ordinance was intended. Without pausing to inquire whether, if this be so, the record can be virtually or really corrected in this manner, let us see if the position is probably correct.

In the positions on which the writs of certiorari were allowed in the two cases of Jacob Smith et al. vs. Salt Lake City, exceptions were taken to the judicial authority of "Jeter Clinton, Alderman and ex-officio Justice of the Peace;" but no point is made as to the validity of the said market ordinance; and the returns to those writs do not show that any question was raised as to the validity of that Ordinance on the trials before the said Clinton.

This Court cannot assume that Mr. Justice Strickland intended to pass upon the validity of an Ordinance which was not questioned in the papers before him, and which was really not passed upon as appears from the entry of judgment. In the cases in which the plaintiff was a party, Mr. Justice Strickland decided against the judicial authority of "Jeter Clinton, Alderman and ex-officio Justice of the Peace," but expressed no opinion in favor of nor against the market ordinance.

The application for a writ of injunction is based upon the supposed ground that the Market Ordinance had been adjudged to be null and void. This position being erroneous it is unnecessary to enquire whether, were it correct, this would be a case in which an injunction could issue. Nor would it be proper in this case to express any opinion as to the validity or invalidity of the said market ordinance. The judgments cited above decide against the judicial authority of "Jeter Clinton, Alderman and ex-officio Justice of the Peace;" but the actions since brought against the plaintiff have been brought before "Jeter Clinton, Justice of the Peace," an official whose authority was not then under consideration. If the plaintiff is suffering wrong, no doubt there is a remedy for that wrong; but, upon the present state of facts, the writ of injunction is not that remedy.

The motion is denied.

Correspondence.

MONTROSE, Lee Co., Iowa,

August 1st, 1872.

Editor Deseret News:

Dear Sir:—Since writing to you from Polk Co., Iowa, Elder Porter and myself felt led to direct our steps eastward. The last meeting we had the privilege of attending was a sort of combination or communion of sects. We had the privilege of thirty minutes. I saw pleasant countenances and very easy and quiet feelings and a very full house. We had a good time.

On our way to Burlington, Iowa, we visited several scattering Saints. While waiting at Burlington for our mail to be forwarded, we took the cars down the Mississippi to Montrose, dropped off and visited a few friends, and my old home where I first settled down in married life. Stepped up on a high point, where once the Nauvoo

temple could be seen four miles east, but alas now gloom and ruins.

Twenty-seven years ago I helped to mark this spot where now rest the ashes of Josiah Porter, and where several others sleep. It is now known as the Mormon burying ground. We recognized the place by the tomb stones, otherwise we were lost, for groves of timber now cover the spot which then was bare, and where houses were are groves of straight trees, ten inches in diameter. I observed cherry, hickory, elm, black walnut, butternut, and the various kinds of the sturdy oak. On the very centre of the grave mentioned, we measured one tree 28 inches in circumference, and one more 18 inches from the same root of black oak. Near by, where was once a small lake, is now a great gully that has washed its way down through the fields, and so great is the change that it is difficult to realize that this was once the home of Saints. Scarcely could we find in the whole neighborhood an old friend, most have died, moved, or gone. We were kindly entertained by the widow of Mirek Reed. We visit Nauvoo.

E. STEVENSON.

[SPECIAL TO THE DESERET NEWS.]

By Telegraph.

GENERAL.

NEW YORK, 7.—The following dispatches were received this evening:

To Hon. Wm. E. Chandler:

WILMINGTON, N. C., 7.—There is no longer any doubt. We have carried the State ticket by about 2,000.

(Signed), J. C. ABBOTT.

RALEIGH, 7.—A glorious victory. Our whole State ticket elected, majority nearly 2,000. State safe for Grant and Wilson. Now rejoice and be glad.

(Signed), J. J. YOUNG.

QUEBEC, 7.—No further disturbances in this city. The police were posted last night to intercept any raid from either party, but none was attempted.

LOUISVILLE, 7.—The Democratic executive committee have issued a circular to the Democrats of the United States urging immediately a reorganization for the purpose of supporting the principles of the party as they will be proclaimed by the September convention at Louisville. The committee say that the utter abandonment of principles as evinced by the coalition between the spoilsmen and the place-hunters in the attempt to elevate Greeley to the Presidency is a sad evidence of demoralization and corruption, and is based, as a bargain, upon fraud and hypocrisy, the utterance of one set of sentiments in the North and another in the South.

NEW YORK.—A Boston special says Gen. Butler states that he will make no particular effort to secure the nomination of governor, but if the labor reform or Republican party nominate him, he will not decline.

All the specials from North Carolina confirm the news of Caldwell's election by one to two thousand majority.

At a meeting of the Marble Manufacturers' Association last evening it was announced that the workmen, after three months useless struggling for the 8-hour regulation, had returned to work upon the old system and at the same time rates.

The World's special says the North Carolina Legislature will probably stand 20 Democrats majority.

A Saratoga special to the Sun says there is authority for the statement that the Republicans meditate the nomination for governor of a prominent Democrat, with a view of checking the Liberal movement.

CHICAGO.—The third race at Buffalo yesterday was won by Jim Irving. The Green horse never trotted in public before the last heat, which he won in 2:24, and trotted the last half of it in 1:06. His owner, James Irving, of New York, offers to match him for 20,000 against any horse in America.

A Washington special says a telegram was received from the Interior Department yesterday from Secretary Delano's family at Mount Vernon, Ohio, stating that he was seriously ill, and fears were entertained concerning his recovery.

ery. His son and other members of his family have been summoned home.

CONCORD, 8.—Horace Greeley arrived here at noon, and was received at the depot by the mayor of the city and a delegation of citizens, who escorted him to the State house where a short reception was held. M. W. Tappan made a welcoming speech. Greeley briefly replied, he was then escorted to the Phoenix hotel where he dined and afterwards held a reception. He proceeded to Bradford this afternoon, where he will remain over night.

TOLEDO, 8.—A meeting of colored citizens this evening resolved that the advice of Charles Sumner to vote for Horace Greeley is ill-timed, unwise, delusive, and detrimental to the best interests of every colored citizen.

NEW YORK, 8.—Buffalo, Syracuse, New Haven, Hartford and Norwich are firing guns in honor of North Carolina.

WASHINGTON, 8.—The Republicans, this afternoon, fired a salute of two hundred guns in honor of the North Carolina election.

John Delano telegraphs from Ohio that his father is better.

A Greeley ratification meeting was held to-night in front of the city hall, which was brilliantly illuminated and festooned. Subsequently came a torch-light procession and fire-works.

CITY OF MEXICO, 1.—There were some demonstrations at Jamaica, on the reception of the news of the death of Juarez, in favor of Diaz against Tejada. Congress meets for an extra session September 15th. Tejada is candidate for election to the Presidency, and the names of several competitors are mentioned. Lerdo has voluntarily ordered an investigation of the outrages committed on American citizens. It is believed the revolutionists will disband when informed of the policy of the administration. The funeral of Juarez was an imposing spectacle, and was witnessed by 70,000 people. His death is generally regretted in Mexico. Angel Iturbide, son of the ex-emperor, died at the capital the same day as Juarez.

NEW YORK.—J. W. Forney is announced to go to the Pacific coast, and will be absent two months.

Three sun strokes yesterday, one was instantly fatal.

A dispatch from Augusta, Me., says that Secretary Boutwell and Speaker Blaine made speeches at a Republican meeting there last evening. The address of the former, was a defence of Grant's administration.

There were three cases of sunstroke yesterday, one fatal.

The board of Aldermen passed a resolution yesterday, requesting the Park Commissioners to furnish sacred music in Central Park on Sundays.

Recently a number of heavy robberies have been committed at Greenwich, Stamford, Norwalk and other places along Long Island. Detectives are now working up the case, and it is alleged that suspicion points to the crew of a United States steamer engaged in the coast survey.

The arrival of German emigrants here last month was 11,335, being an increase of 2,661 over July, '71. The total since January is 178,336, being an increase of 36,821 over the same period last year.

CHICAGO.—The mercury has stood at from 90 to 95 in the shade the past few days.

SAN FRANCISCO.—Rebecca Cotton, yesterday, obtained a divorce from Ben Cotton, the minstrel, on the ground of adultery.

The subscribers to the Atlantic and Pacific R. R. stock now number 1321, and their subscriptions aggregate \$716,000.

The Gould and Curry has levied an assessment of \$15 a share.

District Attorney Murphy is doing his utmost to compel the defense in the Fair case to be ready for trial the first Monday in September. Dr. Lyford, the medical counsel for the defense, who kept out of the way when the case was set for trial and compelled a postponement of it, was arrested on a bench warrant yesterday, on motion of the district attorney, and is required to give security for his appearance at the coming trial.