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TRUTH AND LIBERTY.

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TERMS IN ADVANCE.

DAVID O. CALDER,
EDITOR AND PUBLISHER.

Local and Other Matters.

FROM WEDNESDAY'S DAILY, NOV. 17.

Progressing.—The walls of the new building being erected by Mr. Geo. Romney, immediately *south* of the White House, *in the* burned district in that *locality*, are up to the first *story*.

"Habeas Corpus."—The *habeas corpus* matter of President Brigham Young was being argued by counsel, on both sides, to-day, before Judge White, in chambers. The President was not well enough to appear in court in person.

No Business.—The Mayor and some of the members of the City Council met last evening, but not in sufficient number to constitute a quorum, so that no business was done, and an adjournment was taken till next Tuesday evening.

The Alarm.—Many of the citizens were startled last evening, about half past eight, by the ringing of the fire alarm. It was only sounded, however, for the purpose of calling the firemen together to extinguish the smouldering embers of the burned Bank Building, which were fanned into life again by the strong breeze which blew during the whole of the night.

Returned Missionary.—We were called upon to-day by Elder D. C. Johnson, who returned last evening from a short mission to Great Britain, on which he went last Spring. He spent three months in Scotland, a short time in London, and, on his way back, visited a number of his relatives at Hartford, Conn. He had excellent health during his absence, and enjoyed himself well.

Chicken Thieves.—We are informed that Brother Thomas Jack, of the First Ward, has had no less than seventy chickens stolen from him during the last few days, and last evening the thieves put the finishing touch to the job by making off with a couple of turkeys belonging to the same gentleman. The parties who perpetrated this sneak business had better report and return the poultry, or they will probably be exposed and punished. Brother Jack is pretty well convinced as to who the parties are.

Additional.—Besides the parties mentioned in yesterday's NEWS as having lost by the fire, we have learned of the *following*—W. P. Appleby, library and furniture, and D. R. Firman, furniture and other property, $2,000 each, neither insured. Both occupied premises over Watters & Brother's store. J M. Smith, real estate agent, whose office was on the same floor of that building, lost in the vicinity of $100 in furniture, etc. Other parties, whose premises were contiguous, suffered loss by having their goods removed and consequently damaged.

A New Industry — Yesterday John Hoy, late of Leeds, England, exhibited to us a number of small wooden boxes, such as are used by apothecaries for salves and pills. He has commenced the manufacture of those articles and can make them either round or oval, according as may be desired, he having been in that line of business in England, which country, he informs us, supplies the American market, there being, according to his statement, no manufacturer of the article in this country. There are four different sizes, and he says he can afford to produce them for two dollars a gross, nested, that is the three smaller sizes placed inside the largest one, making four gross of boxes to each gross.

Mr. Hoy came to Utah six weeks since and lives on Third South street, one and half a blocks West of the railroad track.

About Another Fire Engine.—The fire of yesterday morning has revived the talk about the necessity of another fire steamer, not a few asserting that it was the duty of the City to immediately telegraph for one.

Parties entertaining such opinions appear to forget that the prospect of having the water pipes on the streets of the business or more crowded part of the city, tapped by hydrants at suitable intervals, in the near future is good; and those hydrants, to which fire hose could be attached would make the engines now in use all sufficient. Providing another steamer should be ordered it would be some time before it would reach here, and if by the same time the water works, so far as the business center is concerned, could be brought into operation the object of having more efficient means for the extinguishment of fires would be accomplished without incurring so large an amount of expense as would be by the purchase of another engine.

The construction of the waterworks is in good hands and is being pushed along. The fall is sufficient to cause a stream from the hydrants to be thrown to the top of the highest buildings in the city.

"An ounce of prevention is better than a pound of cure." We are in hopes that the law which the committee to whom was referred the late petition asking for the establishment of fire limits, etc., will report such measures to the Council, for the adoption of that body, and that they will be adopted, that will be broad enough to cover the subject as well as it can be done legislatively, and that the law, when passed, will be most stringently enforced, so as to prevent, as far as possible, what are called accidental fires, but which are nearly always the result of carelessness in the construction of buildings or in the material used for that purpose. Of course incendiarism is the most difficult cause of fires to cope with, the most expeditious and practical way to meet it being to dispatch anybody caught in the fiendish work, without much ceremony, and, in the first place, to keep a good look out for such villains.

FROM THURSDAY'S DAILY, NOV. 18.

In Cincinnati.—C. W. Couldock is supporting Lotta at Woods' Theatre, Cincinnati, in her play of "Musette."

Stormy.—The fierce winds of the day or two previous gave way to steady rain last night, continuing, with a little snow, this morning.

Information wanted of the where abouts of Joseph Fowler. who emigrated to Utah in 1874, from Swansea, South Wales. Address—Francis W. Argust, Sacramento City, California.

Acknowledgement.—By courtesy of Chief Justice White we are enabled to publish a revised copy of his decision rendered to-day in the *habeas corpus* case. Its publication was the cause of to-day's NEWS being somewhat late.

Presented to the Fire Brigade.—The members of the Fire Brigade were the recipients of $250 to-day; a gift from the Walker Bros. to the boys for their services at the late fire. We are pleased to know that this firm recognize the services of the Brigade rendered voluntarily, despite the growling of certain other parties around town.

Typographical.—Before us is a complimentary invitation to attend a social party, to be given at the Fourteenth Ward Assembly Rooms, Nov. 25th, under the auspices of "Deseret Typographical Union No. 115." The invitation card, which was printed in the job department of this office, is a model of delicacy and typographical neatness, in fact we have not seen anything in the line produced in the Territory to surpass it.

Returned Missionary.—We were called upon yesterday by Elder Ballinger, of Pleasant Grove, just returned from a mission to the States, on which he left last April. His labors were confined to Iowa and Missouri, where he held a number of public meetings and preached the gospel, and he conversed with many people on its principles and doctrines in a private way. He enjoyed his mission, returns in good health and is glad to get home.

Verdict for Kate Flint. — About five o'clock last evening the case of Kate Flint *vs.* Jeter Clinton *et al* was given to the jury, and about nine last night they came into Court with the following verdict—*Kate Flint vs. Jeter Clinton et al.* We the jurors find for the plaintiff and assess her damages at seven thousand dollars ($7,000.)

(Signed)

Lucien Livingstone, foreman; James Johnson, John Tingey, John A. Jost, Homer Brown, David Evans, James Eardley, Frank Cisler, B. F. Dewey, Samuel Woodward, Eli Ransohoff, W. T. Reynolds.

Salt Lake City, Nov. 17th, 1875.

The Habeas Corpus Case Decided.

PRESIDENT YOUNG DISCHARGED FROM CUSTODY.

This morning, in Third District Court, Chief Justice White delivered the following decision—

Territory of Utah, County of Salt Lake. } City of Salt Lake, Nov. 17, 1875.

Brigham Young, vs. George R. Maxwell. } At Chambers before Alex. White, Chief Justice of Supreme Court of Utah.

This case comes before the Court upon a writ of *Habeas Corpus*, sued out upon the petition of Brigham Young, claiming that he is unjustly imprisoned and deprived of his liberty in said County and Territory, by George R. Maxwell, United States Marshal for said Territory, on the charge of a contempt of Court, by a warrant of commitment, a copy of which is attached to the petition, as exhibit A.

The petition presents, in exhibits attached to the pleadings, an order of the District Court of the Third Judicial District of the Territory of Utah, in a case of Bill for Divorce by Ann Eliza Young *vs.* Brigham Young, as the authority under which petitioner is imprisoned and held by said United States Marshal.

The Marshal returns to the writ of *Habeas Corpus* that he holds the defendant in custody by virtue and authority of an order of said court, in said cause, a copy of which is attached to exhibit A, to the petition, and is dated the 29th of October, 1875. Among other grounds on which the petitioner prays to be released from said imprisonment, it is alleged that the order of commitment of the 29th of October, 1875, is void; because the District Court of the Third Judicial District had no jurisdiction over the subject matter at the time the order was made, for the reason that the same matters had been duly presented by the parties, and submitted to the Court, at a former term of the Court, and thereupon, that the Court had rendered a decree, at said former term, refusing the motion for an attachment and discharging the rule to show cause why the defendant should not be committed for a contempt of Court, in having disregarded the order and decree of the court, to pay $9,500 alimony *pendente lite*, to the plaintiff, Ann Eliza Young.

A judgment of a court of competent jurisdiction, when collaterally assailed, can only be impeached for a want of power in the Court to render the judgment. The record may abound in irregularities and errors, yet if the Court had jurisdiction, the judgment is valid and binding, until by some direct proceeding, by appeal or otherwise, instituted for the purpose, the judgment is brought before some revisory tribunal and, by the judgment of such revising court, is revised, set aside or annulled.

The propriety of the decree and order of the District Court, of the 29th of Oct., 1875, cannot be questioned or considered by this Court further than to investigate and determine whether the Court had jurisdiction over the subject, and the parties, so far as relates to the subject matter; in other words, over the case, then presented to and adjudicated by it. The jurisdiction must be over both the person and the subject matter; if either of these jurisdictional facts is wanting then the sentence or decree is void. In such case the whole proceeding is *cor am non judice*, and it may be successfully resisted in that or in any other court by either direct or collateral proceeding. Campbell and others *vs.* McCahan, 41 Ill., 49 Elliot *vs.* Pearson, 1 Peters, 328.

During the term, a court has power over its own proceedings, and can alter, modify or even annul its judgments, orders and decrees, as, in its judicial discretion, is consistent with the law and the advancement of justice. But when, by order of court or operation of law, the term of a court is closed, the court has no further power over its proceedings. They can only be reached or disturbed by an appellate or revising Court, or perhaps, in rare cases, impeached, by bill in chancery, for fraud.

It is insisted by the counsel for the petitioner that this question of contempt on his part, for disobedience to the order of the Court, decreeing the paying of $9,500 alimony *pendente lite*, to the plaintiff, Ann Eliza Young, made on the 26th of Feb., 1875, has been passed upon and adjudicated by the Court in the decree of 10th of May, 1875, and that, the term of Court having elapsed, the District Court had no power to re-adjudicate that question.

On the part of the defendant it is urged that the order of the 10th of May was a mere interlocutory order, and one that might be reviewed so long as the decree granting alimony *pendente lite* and ordering its payment remained uncomplied with, whenever, upon proper predicate it was pressed upon the consideration of the Court. It is further urged by the defendant that the matters adjudicated on the 10th of May and those adjudicated by the Court on the 29th October were not the same, but different, and that the judgment of the Court on the 10th of May did not preclude the Court on the 29th of Oct. from adjudicating upon the matters then passed upon by it.

The order of the 10th May was an order in the cause, made after the filing of the bill, and before final decree, and in that view it was an interlocutory order, in the common acceptation of the term. Interlocutory orders usually are mere orders in advancement of the cause and necessary in the preparation of it for a final hearing and decree, but there are interlocutory orders which are final in their character and which settle rights as conclusively as the final judgment and decree. The order of the court of 26th of February, 1875, settling the right of plaintiff to alimony *pendente lite*, and the amount of that alimony, was a judgment of the Court upon both of those questions, and was final and conclusive upon the District Court after the adjournment of the term of court. The Court had decided the question and given judgment, and what more could it do? Would it be contended that it could decide the question and give judgment again? If so, when would the repetition end? It would give no additional force to its mandate to render the same judgment a second time or oftener; or if it rendered different judgments, at different times, in reference to the same subject matter, the question would then be, which was the judgment of the court?

There cannot be a question but that that order of the 26th of Feb., 1875, was an order settling rights, consummating the end proposed, closing the controversy, as to the subject matter and that, so far as the District Court was concerned, it was final and conclusive.

That the order of the 10th of May is not equally clear as a final order grows rather out of the indefiniteness of the subject matter than any inherent uncertainty or want of binding force in the order.

The rule to show cause why an attachment should not issue and why the defendant should not be committed for a contempt, for disobedience of the order of Court, is the mode provided by law to the Court, for the enforcement of its decree. The decree could not be enforced by execution, because the case was *in fieri*, and no execution could issue until final judgment. But the law, in providing this extreme and summary mode in enforcing obedience to the mandate of the Court, gives to the defendant an opportunity to show cause why the motion prayed for should not be granted, and upon his answer an issue is made up and presented to the Court for its decision, and the judgment of the Court on the issue thus presented has the binding force and conclusiveness of any other judgment. The Court tries the issue, determines the facts, applies the law, and renders judgment.

The charge which is alleged usually in such cases is that the defendant has been guilty of contempt of court. This is the only issuable matter presented. The issuance of an attachment or commitment for a contempt is a summary mode of punishment adopted by the Court for the contempt, and as the means employed for the enforcement of its interlocutory decree. They do not in any sense or degree constitute or enter into the issue which is tried by the Court upon a rule to the defendant to show cause why an attachment should not issue, or why he should not be committed for contempt.

If in such a case the defendant shows good cause, then the judgment of the Court is that he be discharged, and in the language of the old books, that he go hence without day; if he fail to show cause, then the judgment of the Court is that he be attached or committed, as to the Court seems meet, until he comply with the order of the Court, or otherwise purge himself of the contempt.

In this view of the question it will be readily seen that the issue which was presented to and determined by the Court on the 10th day of May, 1875, and the issue which was presented to and determined by the Court on the 28th day of October, 1875, was the same.

If there were room for doubt as to the correctness of the conclusion, it is put to rest by the record offered in evidence by both parties.

In both motions the parties are the same, and the subject matter is the same. In both, the affidavits are made by the same person acting in the same capacity, and the affidavits and motions are substantially the same. Both charge a contempt of Court, consisting of a disobedience of the same order, and both seek a commitment of the defendant for such contempt. The judgment of the 10th of May, 1875, discharges the defendant from the alleged contempt in disobedience to the order of the 26th of February, 1875, requiring him to pay to the plaintiff $9,500 alimony *pendente lite*, and the judgment of the 29th of October commits him to prison for contempt of Court in failing to pay the identical $9,500 alimony *pendente lite*.

It is not possible, legitimately and logically, to come to any other conclusion than that the issue which was presented and passed upon by the Court on the 10th of May, and the issue presented and passed upon by the Court on the 29th of October were identical, and that the subject matter of both decisions was the same.

A motion is refused when the effect of the motion moved for — to vacate a foreclosure sale — would have been to review a judgment on motion after the term, making the motion perform the office of an appeal. Hartsborn *vs.* Milwaukee R. R. Co. 23 Wis., 692.

The conclusion of the Court is, that the judgment of the Court of the 10th of May, 1875, was final and conclusive upon the question of the right of the plaintiff to a commitment of the defendant Brigham Young, for a contempt of Court in failing to comply with the order of Court of 26th of February, 1875, to pay the plaintiff $9,500 alimony *pendente lite*, and that, upon the adjournment of the term of Court, it became *res adjudicat a*, beyond the power of the District Court. From this it follows that the order of the District Court of the 29th of October, 1875 was *coram non judico* and void, and that the petitioner is wrongfully imprisoned and should be discharged.