

# EVENING NEWS.

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CHARLES W. PENROSE, EDITOR.

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## THE MANDAMUS CASE.

WE give in full the opinion of Judge S. P. Twiss in the mandamus case. He sustains the first, third and fourth points in the demurrer and overrules the second and fifth. That is in effect, that sufficient facts were not set forth to entitle the plaintiff to a peremptory writ; that the writ was imperfect because it did not fully set forth that the Governor was absent from the Territory; and that the Court has no jurisdiction over the Executive. The latter only is important; the other two rulings are in our view childish, and the objectionable points such as could be amended. The doctrine comprehended in the sustaining of the fourth point of the demurrer is that the Governor is above the law so far as compelling him to perform the duties of his office are concerned. We do not believe such doctrine will be sustained by a higher court. We hope the case will be appealed. It is of great importance, reaching beyond the present case and ought to be decided by the highest judicial tribunal. We have not space to-day to discuss the subject fully. Judge Twiss has not attempted to pass opinion upon the action of the Governor in the certificate case, but gives his ruling on general principles. The certificate case stands as before the proceedings, no better and no worse.

## THE SOPHISTRY CAN NOT SUCCEED.

There are a few papers, none of them, however, in the leading ranks of journalism except the *Courier-Journal*, which take sides with Governor Murray in what they call his treatment of the "Mormon" question. The paper alluded to, in "A Non-Mormon's Defence," says that this certificate affair is not a question of politics, not a question of civil liberty, but a question of public morality and of civilization. The *Deseret Tribune* thinks that Murray has taken "a square hold of the Mormon question."

Now the truth is, that what is properly known as the "Mormon question" does not enter into this election or certificate dispute at all. It is true that in one sense it is a question of politics. It does not involve any struggle of parties. But neither is it a question of morality, of "Mormonism," of Methodism, of Catholicism, or of any other creed or custom, or of social ethics. It is simply this: Shall a Governor of a Territory, an appointee of the Government, be permitted to annul the votes of nearly all the citizens of the Territory to which he is sent as its executive? Has he the right to sit in judgment on a question of citizenship? Shall he be sustained in an act which is clearly usurpation, and to justify which there is not a line of law or shadow of precedent?

Even Murray himself has not pretended to say that the "Mormon question" is connected with the dispute. He has assumed to decide judicially that Mr. Cannon is not a citizen. Supposing that what he says is true—which it certainly is not, as has been proved and will be again, beyond the shadow of a doubt—where can he find the authority in law making him the judge of that question? And going still further, supposing that Mr. Cannon is an alien and that the Governor has the right to decide that point, where is the law or precedent which authorizes him to give a certificate of election to a person who has not been elected?

To use the language of learned counsel in a contest case before the House Committee on elections, "The doctrine has never been adopted in this country, that because the majority candidate is ineligible, the minority candidate is thereby elected." And, "It is a fundamental principle in our system of government, that the majority shall govern, and so wide a departure as under any circumstances to hold the minority candidate elected, would be subversive of the system itself." Therefore to reject the candidate who by the Governor's own statement received 18,568 votes, and give the certificate of election to one having, as he admits, but 1,847 votes, is, in the words of the same authority, "a sublime illustration of popular representation." As an American president it would stand solitary and alone in its sublimity of impudence and simplicity combined.

It is only by invoking popular prejudice on a matter with which the subject has no connection, and mixing the two together in a confused mass, that either Murray or his friends can hope to hide his folly and infamy from public scrutiny. But in his own published decision on this point he has conceded everything but the question of citizenship. Polygamy, "Mormon" doctrine or practice, woman suffrage, the question of valid or invalid votes, and all other questions are admitted to be extraneous. The Governor has not held hold upon them in any way. He has taken neither a "square hold," nor a round hold, nor any kind of a hold on the "Mormon question." He has simply shown his own presumption, ignorance, and anti-republican bias. Neither has he afforded Congress any particular opportunity for taking extreme measures in relation to the "Mormon" for the satisfaction of a few fanatics who want the government to regulate the morals of other people.

The whole question turns upon a fundamental principle of our political system. In this respect it is purely a political question. If one Governor may arbitrarily set aside the votes of the people, and elect

do the same. If such an act can be performed in one part of the country, it may be done in another. It can be successfully committed against "Mormons." It can be made equally supreme against non-"Mormons." And thus the whole system of popular government may be entirely subverted, and States and Territories be placed under the sovereign control of their respective Governors. The chief officials will then no longer be the servants but the rulers and masters of the people, and the principles for which the fathers of our country fought and died will be swallowed up in re-established monarchism. It is of no use to try to avoid this; all the sophistry in the world will not make this certificate inquiry anything but an object for government to gratify and satisfy. It is a plain judgment and universal condemnation.

## A NON-MORMON'S DEFENCE.

THE Hudson County (N. Y.) *Democrat*, having published some very foolish and bitter remarks concerning Utah, in which this Territory was referred to as "Our National House of Prostitution," a New York physician, well acquainted with the social condition of that great and corrupt centre of "Christian" civilization, wrote a reply to the stricture of the *Democrat*, and sent it to that paper for publication. The letter was not inserted, and has therefore been forwarded to us. The writer is not a "Mormon," but takes a just view of the situation, and we here append his letter, verbatim:

"To the Editor of the Hudson County Democrat:

Sir—In your impression, dated January 29th, 1881, I notice an article entitled, 'Our National House of Prostitution,' in which you designate the Territory of Utah as 'Our National House of Prostitution.' Now, sir, do you not think this is going a little too far? Are you not using the liberty of the Press to stigmatize a thrifty, industrious, persevering people, of whose manners, customs and religion you are evidently totally ignorant?

Perhaps you need not have gone to Utah to find a 'national house of prostitution' when you are morally certain that it is here in your immediate vicinity, on a most gigantic scale, and coupled with it the terrible crimes of abortion and infanticide. 'G' will not think of the 'dark' and 'sinful' streets of New York, even at the very 'horns of the altar,' raising its head with unblinking frontality, defying alike religion and morality. You can find anything like this in Utah?

When you speak of Utah as a 'national house of prostitution' of course you refer to the principle of polygamy. Now, sir, I would like to ask you ever read and study your Bible? If so, can you show me one passage, or even word, that forbids polygamy? You cannot. On the contrary, it incites it, and teaches it in a most marked way, for the most favored of God's servants were the children of polygamists. Take for instance the history of Joseph, Samuel, Solomon and a host of others. Now the Bible is the inspired word of God, and an example to all generations that are to come, in all justice and fairness can you conscientiously brand with such an epithet a people who have the courage to follow its sacred teachings and examples, literally and truthfully? 'A people who do not twist and turn the words of God, and any particular denominational fancy, but accept in faith, and trust it, as the whole and undivided word of the ever-living God from whom no 'one lot or title shall pass away till all be fulfilled.' O. S. O.

## BY TELEGRAPH.

PER WESTERN UNION TELEGRAPH LINE.

## AMERICAN.

Telegraph Suits.  
New York, 23.—The *Times* says: An order for the examination of defendants before trial was granted yesterday by Judge W. C. Wood in the Western Union Telegraph Co., to prevent the issuance of new stock. All interested parties of any prominence were directed to appear to-day. The defendants are the plea that they should be protected since they were exposed to the possibility of a criminal indictment by the examination of their records. 'edgwick reserved decision on the motion to vacate the order of examination made by defendants.

## DOREY DON'T KNOW.

The *Tribune* interviewed Dorey, who said he knew no other names than Garfield's cabinet, and all press statements attributed to him were bogus. He had not said a dozen words about his Mentor trip. Mr. Wheeler of New York City, at same time said he was not a candidate for any position under Garfield. At this point the reporter left the two happy miners to visions of their bonanza.

## APATHETIC GOTHAM.

At the regular meeting of the exhibition committee, Gen. Grant expressed surprise at the indifference in the movement, and thought some action must be taken to arouse the ardor of the citizens. He recommended another effort to secure Central Park, but a committee of selecting another site was delayed till March 1st. The committee goes to Washington to secure additional legislation for the purpose.

## TWO MARINE LEADS.

The agents of the steamship *British Columbia*, which sailed from this port for Bristol, 23rd, and which has not been heard from since, fear all hopes of safety must be abandoned. The vessel is believed to have been captured by a pirate crew, and carried off to sea. The vessel was commanded by Capt. John A. Peters, and had a crew of 25, mostly married men. The vessel was carrying passengers, her cargo was principally provisions. She was an iron vessel, built in 1872, was known as the *British Columbia*, 230 feet long, owned by C. Hill and Sons, Bristol, England.

The Norwegian bark *Thor*, commanded by Capt. Thorsen, sailed from this port, with a cargo of 777 for Antwerp, Oct. 24, and not having been heard from, fears are entertained that she is lost. She was a wooden hull, built and owned in Norway.

The Chilians cannot find anyone to sign peace, as Plerola had refused to come to Lima for that purpose, and no pronouncement had been taken place at either Lima or Callao.

## MENTOR MENTIONS.

The *Herald's* Mentor special says: Garfield is a curious man. He has a broad, open face with a smiling welcome for every one, a big head, with a heavy shag for hair. He impresses you as being a frank, open mouthed, tell-it-all sort of a person, but he isn't anything of the kind. I predict that the men now talked of as certain to be in the cabinet won't be there and that nobody will be able to show the state until the last is made out for transmission to the Senate. You may rest assured that no man yet mentioned in connection with the Treasury Department as representing the State of New York, will be a member of the cabinet. As to this connection, let me say, that while General Garfield is as anxious to gratify and satisfy all others, it is the role of law that applies in all cases, that is to guide the executive. The issue of the certificate of election, or about to pursue, a course contrary to the views of the court. If the Governor in determining who has the greatest number of votes thrown by the voters of the Territory qualified to elect members of the Legislative Assembly, and the issuing of the certificate of election, is not a judicial act, it is far from being merely ministerial; it is at least an executive duty of a political character, and it requires the best and soundest discretion. The State of Nevada *et al.*, Selden Heitzel vs. the Board of Commissioners, 8 Nev. 302.

An *Examiner* from France says: At a Land League meeting to-day a letter was read from Egan now in Paris denouncing Shaw's manifesto as an audacious assumption of leadership, and saying that in Ireland ever for a moment he believed that the handful of renegades who followed Shaw represented the country. He adds, 'Do the Shaw, Egan, and the rest of the traitors who desert the Irish leader in the face of the enemy think that they can turn the country back into the slums of corruption and whiggery or that they will induce the people to adopt the 'Bombs' Club. The League of the exiles is not to be taken for the executive in the performance of a duty purely and exclusively belonging to the Legislature. The Judiciary is independent of the executive. Each is independent of the other solely within the sphere of its powers, and the language of Mr. Justice Wagner in State *ex rel.* vs. Governor 39 Mo. 288, giving the opinion of the Court says: 'The Legislature of either branch with the other would imply dependence and inferiority, when by their peculiar frame of government there exists no such relation.' If in reply to this it should be said that the Governor of a Territory is not the Governor of a sovereign State, it may with equal propriety be said the Supreme Court of a Territory is not the Supreme Court of a sovereign State. Both are the creatures of the Federal Government, and each has the same relation to the other in its sphere and functions of government as the executive and judiciary of a State, and therefore the opinions of the Supreme Court in the Territory are as binding on the executive as the opinions of the Supreme Court of a State.

## BRIEF TELEGRAMS.

Telegraphers have organized a New York electrical society.

The governor of Massachusetts appoints April 7th for a day of fasting and prayer.

The four national banks of Lafayette, Ind., reduced circulation from \$720,000 to \$180,000.

Senator Matt. H. Carpenter of Wisconsin, died at his residence in Washington at 9:30 this morning.

Louis Alfred, an acrobat fell from a trapeze in Tony Pastor's New York City, last night, and was seriously injured.

In the divorce case of Katharine Chase Sprague vs. Wm. Sprague the respondent to-day filed an answer denying all the petitioner's allegations.

Rabbi Marks, unaided, induced the Governor General of Canada to commute the sentence of the Narbonne murderers to imprisonment for life, in the case of a couple over 80 years of age.

The Rock Island R. R. made a heavy cut on rates between Chicago and the Missouri river for Colorado, business to-day so that the rate on that route is now 80 cents.

A private letter from Capt. Engineer Smith, on board the *Lackawanna*, now cruising along the coast and returning to New York City, says: Boyton alias Senator Jackson rendered to the Chilians on the day previous.

## THE MANDAMUS CASE.

### THE OPINION OF THE COURT.

At 2 o'clock this afternoon Judge Twiss, in the Court Room of the Third District Court, delivered his opinion in the above case. It having been announced that the opinion would be delivered at this hour, the court room was nearly filled by the public anxious to hear the decision.

Judge Twiss said that the demurrer would be overruled as to the second and fifth grounds, and sustained as to the first, third and fourth grounds. As to the fourth ground—the most important one—he would read his opinion, as follows:

The alternative writ of mandamus charges that the last general election in the Territory was held by a large majority, the greatest number of votes cast for Delegate to Congress; that he was a resident of this Territory, and qualified to receive votes for said office, and to be elected thereto. That due demand was made upon Mr. H. Murray, Governor of this Territory, that he should issue a certificate of election, and that he refused to do so; that he was a resident of this Territory, and qualified to receive votes for said office, and to be elected thereto. That due demand was made upon Mr. H. Murray, Governor of this Territory, that he should issue a certificate of election, and that he refused to do so; that he was a resident of this Territory, and qualified to receive votes for said office, and to be elected thereto. That due demand was made upon Mr. H. 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