Full Full

ESTABLISHED JUNE, 1850.

DESERET EVENING NEWS.

9 to 12

TRUTH AND LIBERTY.

FRIDAY, MAY, 29, 1891 SALT LAKE CITY, UTAH TERRITORY.

THE OLD APPLE TREE.

Here's the old apple tree, where in boyhood I sported,
When my heart was as light as the blossoms it bore;
Where my old mother used to pick the purest was counted,
In her pink cap and gown such as ladies then wore.

On this rude seat beneath, with smile smiling beneath tender tears,
While the old tree was humming its song in the air,
There we children all knelt by our elders were seated
To share with their plump cheek rubes and wrinkles.

Look! here are the names of the many now sleeping,
Of dear parents and kindred long gone to the tomb;
The old apple tree, like a true friend, is weeping
The sick twigs they on us with beauty and bloom.

In the glad days of spring, when the spirit repines,
When the old apple tree seems so gay to a lyrist,
I could dream that I heard every son of the vines
Of the friends who sat here on the bench at my side.

Every rudely carved name has a story to tell me—
And that true lover's knot, I remember it well;
It was carved on the day when my sad grief fell me,
The day of my parting with sweet Isabel.

Oh! the old apple tree, where in boyhood I sported,
And the rude oaken bench, they are still in their place;
But the dear household faces whose welcome I courted,
They have vanished and left me the last in the race.

D. Cottle.

—*Field's Magazine for May.*

At the suggestion of Dr. Verincourt, of the department of agriculture in Russia, a large number of farmers have had recourse to blue spectacles in order to preserve the sight of their herds of cattle, and in one province over four thousand animals are now meandering about with thread of blue glasses. This has been found necessary because the reflection of the light upon the snow has been so blinding that tens of thousands of cattle have been attacked with ophthalmia. According to a dispatch from Vienna to the London *Times*, the entire supply of blue glass in Vienna has been exhausted, and it has been found necessary to obtain additional supplies from Paris and London. An English farmer now in Vienna says that the sight of thousands of cattle groping their way through the snow with their eyes incased in immense goggles is one that can neither be imagined nor adequately described.

Travel may broaden the mind, but it flattens the pocketbook awfully.

Jack—"Kiss rhymes with bliss," says the poet.

Tom—Yes, and kisses rhymes with Mrs.

THE NEW AMERICAN REVOLUTION.

Last week we showed that which is open and clear to every reader of the Declaration of Independence, namely, that the American principle of government is that the government is merely a piece of machinery which the people set up in order more fully to make themselves secure in the enjoyment of their rights. This principle of the Declaration is carried out in the Constitution of all the States of the American Union. These Constitutions, State and National, are simply expressions of the people as to the form of government which they will have, defining the powers and limitations upon the government which they have thus established. This doctrine of complete subordination and impossibility of the government, is one of the two grand elements that formed the American Revolution.

As long as this principle shall be maintained in its integrity, so long the beneficial fruits of the revolution may remain to bless the American people, and through them other nations; but if this principle shall be lost sight of and it shall come to that place where the government shall be personified and exalted above the people, then the design of the revolution will be frustrated or indeed undone. There will, in fact, be a revolution backwards and the re-establishment of the principles of European governments and of the position which it was the design of the revolutionary fathers for themselves and their posterity forever to escape. It may be news to the American people when we state that the revolution backwards has already been accomplished for the government of the United States. It may be news to the American people to be informed that the American principle and system of government has been supplanted by the British and Roman. such, however, is the fact. All this has already been done. The reversal of the American revolution has been already accomplished. Now to the proofs, and we sincerely ask the readers attention.

May 9, 1887, the Supreme Court of the United States rendered its decision in the case of the confiscation of the Mormon Church property appealed from the Supreme Court of the Territory of Utah. The case arose in consequence of the enforcement of what is known as the "Edmunds Law or act of Congress, February 19, 1887," forfeiting and escheating "to the United States the property of corporations obtained or held in violation of section three, of the Act of Congress, approved the first day of July, eighteen hundred and sixty-two." By the act of 1862 "any corporation for religious or charitable purposes was forbidden to acquire or hold real estate in any Territory, during the existence of the territorial government, of greater value than $50,000." By the year 1887, the Mormon Church corporation had become possessed of real estate to the amount of about two million of dollars, and personal property to the value of about one million. All of this property, over $2000 worth of real estate, was declared forfeited to the United States.

The Mormon Church claimed that this property was held in trust by the corporation for individual members of the church who, by donations, bequests, etc., had placed their property in the hands of the corporation to be held in trust. The United States disputed this claim. The case was tried in the territorial court, and the whole sum was declared confiscated to the United States. The case was appealed to the Supreme Court of the United States, and the decision of the territorial court, confiscating the property, was confirmed.

It is not necessary here to enter upon any discussion as to whether the Mormon Church had violated the law of 1862, first because the Supreme Court of the United States decided that it was not necessary that the law should be violated in order that the corporation might be dissolved, but that "Congress for good and sufficient reason of its own, independent of that limitation, and of any violation of it, had a full and perfect right to repeal its charter and abrogate its corporate existence, which of course depended upon its charter," and second, because the merit of the question as between the Mormon Church and the United States is not material for the purpose of this article. The principle upon which the Supreme Court acted to all that is necessary to be discussed here; and principle is discernible without an examination or discussion as to the merit of the controversy.

The argument of the court proceeds as follows:—

When a business corporation, instituted for the purpose of gain or private benefit, is dissolved, the rule is universal that its property, after the payment of its debts, equitably belong to its stockholders. But, as to corporations that have been extended to public corporations, as to this, the ancient and established rule prevails, that when a corporation is dissolved, its personal property, like that of a man dying without heirs, becomes subject to the disposal of the sovereign authority.

Now with all due respect to the honorable court, it may be inquired, why should not the modern doctrine be applied to public corporations as well as private? Why should the ancient doctrine be adopted in such cases, when, to do it, it is necessary to proceed in the face of the principles and institutions of the government of which the court is but a part. When the ancient doctrine is adopted the principles of the ancient governments must likewise be adopted, because the ancient doctrine is but the expression of the principles of the ancient government. And the principles of all those governments were directly the reverse of the principles of this government. This will be seen more fully as we proceed. It is in fact seen in the above expression that personal property, in such cases as this under consideration, becomes subject to "the sovereign authority."

Up to this the question at once arises, Who, or what is the sovereign authority in this government? And to this question we have no answer that is certainly plainly expressed, and certainly true, if not absolutely authoritative. Recourse is the histories of the corporations and individual members of the church who, by donations, bequests, etc., had placed their property in the hands of the corporation to be held in trust. The United States disputed this claim. The case was tried in the territorial court, and the whole sum was declared confiscated to the United States. The case was appealed to the Supreme Court of the United States, and the decision of the territorial court, confiscating the property, was confirmed.

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Up to this the question at once arises, Who, or what is the sovereign authority in this government? And to this question we have no answer that is certainly plainly expressed, and certainly true, if not absolutely authoritative. Recourse is the histories of the constitutions and laws of the country, and upon this very point we find the following plain statement. "It is well who is the sovereign of the United States. The words sovereign and subjects are unknown to the Constitution."—*History of Constitution, Book V, chap. I, par. 19.*

By this it is evident that the Supreme Court sleps upon foreign ground when it supposes there is, in this country, of a sovereign authority. It is true that the people are sovereign; but the people do not exercise their sovereignty authoritatively as such directly, but of themselves. "The people of the United States have defined in their constitution that *the law which supposes there is no law, defies* that supreme law." *Id. par. 21.* In the foregoing quotation from the opinion of the court it is made manifest that the existence of a sovereign authority was necessary to sustain a decision confirming the judgment already pronounced by the territorial court. And so, according to the quotation given from Bancroft, there is no such thing known to the American principles or institutions, the court was necessarily driven beyond this government and its institutions to find a basis for this sovereign authority. Accordingly the decision proceeds:—

The principles of the law of charities are not confined to a particular people or nation, but prevail in all civilized countries prevailed in the days of Christianity. They are found incorporated in the civil law of Rome, in the laws of the European nations, and especially in the laws of this nation, from which our institutions are derived.

But the principles of the government of Rome and of all the European nations, and especially that nation from which the court says our institutions are derived—the British—have always been directly the reverse of this. In those governments there were sovereign authorities. They were not governments of the people, but governments of the sovereign, and the people were subjects. That of Rome was absolutism solely. The Emperor was supreme in everything. He was supreme in point, that is, ruler of the country, and father of the people in the simple and fullest sense. He fed the people, he gave them money and whatever else they desired, or whatever some political demagogue decreed, and took from them whatever he himself was pleased to demand. It was so also in England, at the period of the revolution, though there the sovereign had not the absolute character that attached to the Roman; yet, what the King said was the supreme, Parliament passed, so that the system of absolutism and of paternalism prevailed there, as formerly in the Roman government.

Nor is it correct to say, as did the court, that our institutions are derived from England. Our governmental institutions are as far as possible the opposite of those of England and were intended to be so, when they were established. The government itself, as we have seen, is directly the reverse of that which existed in England when this government was established. When the United States government was established the governments of Europe were ruled by sovereigns who held their power by "divine right." In the Government of the United States that system was revolutionized and governments were declared to derive their just powers from the consent of the governed.

As that time the governments of Europe were all paternal. The Government of the United States is of, and from the individual. For "the distinctive character of the new people is, as a whole, free individuality, so to say, was the principle of colonizing which prevailed among them or of land members before. . . . The Constitution establishes nothing that interferes with equality and individuality. . . .

"It leaves the individual alongside of the individual. No nationality of character could take form except on the principles of individuality, so that the nation might be free, and every family have the unlimited opportunity for its development and culture. . . . The foundations and base of the country rise out of the process of individual thought, which, like the waters of the ocean, are rolling evermore."—*Bancroft, M. par. 7, 9.*

In England, and all other European governments, religion was held to be an essential element of civil government; but when the government was formed it was entirely separate from religion, and disavowed not only any connection, but any right to any connection with religion.

The Supreme court itself is an institution which so far from having been derived from any of the institutions of England or any other European nation, was a new creation entirely. The very form of government, that is, the distribution of the power into legislative, executive and judicial, enforced in theory by the illustrious Montesquieu, and practiced in the home government of every one of the American States, becomes a part of the Constitution of the United States, which derived their mode of instituting it from their own happy experience. It was established by the People assembled in a right consistency that were begotten by the example of Britain where one branch of the legislature still remains a court of appeal. Each one of the three departments proceeded from the people.—*Bancroft, M. par. 13.*

The manner in which the due adjudication, and application of statutes or laws, is secured, depends upon the judicial institutions and machinery of the particular government to which they are subject.

This statement is certainly clear enough; and in view of it, it is proper to inquire, Why then should the court find it necessary to go to the judicial institutions and machinery of the governments of Europe, and even to that of Rome which has been dead more than twelve hundred years? However, instead of adhering to the judicial institutions and machinery of our own government, the court in the very same paragraph proceeds as follows:

"In England, the court of chancery is the ordinary tribunal to which the rules of law is delegated, and there are certain principles which are well established by precedent. . . . There are some cases, however, which are beyond its jurisdiction, and which are known as a gift or certain sum is demanded, and the law may pass to the king. In such case the king is considered as the parent of the country or father of the people, under his care is secured, disposes of the fund to such purposes as they were intended, as seems to him expedient and wise.

Now in this country there is no king; nor is there anything anywhere among the institutions of this country that can fill the place or exercise the office of parent of the people. Here, instead of the Government or any part of it being the parent of the country or father of the people, the case stands just the reverse. The people are the parents of the Government and everything in connection with it. Because the inalienable rights of men this Government was established, deriving its power from the consent of the governed, and whenever the form of government which was established by the revolutionary fathers becomes destructive of the ends for which it was created, "it is the right of the people to alter or abolish it and to institute a new government, laying its foundation on such principles and organizing its power in such form as to them shall seem most likely to effect their safety and happiness." So that, in this political system, and according to American doctrine, there is no such thing as parens patriæ, and there is no place for such a thing, even if the thing should be proposed.

Therefore, as there is in this government, neither king nor parens patriæ to which the property in question might go, it follows logically from the statements of the court that the administration and application of the estate involved, depends upon the judicial institutions and machinery of the particular government to which they are subjects, that the decision of the territorial court should have been reversed and the money involved restored to the individuals to whom it belonged. Such is the logic of the case, according to the principles and institutions of the Government of the United States. But this logic was not followed. Instead of it, the court proceeded to create and establish a sovereign power, and clothe it with the office of the parent of the country and the father of the people.

The Court then quoted a number of decisions, Roman, Spanish and English, to sustain the principles which it had adopted from Rome and England, every one of which is of course strictly in accord with the character of sovereignty and paternalism which is part and parcel of all those governments but not one of which is applicable under American institutions, nor can it be sustained according to American principles. Then the decision says:

"The authority thus exercised, either by the King or his delegate, by the Court of Chancery over trusts, and in part from the right of the government as sovereign as parens patriæ. . . . If it should be asserted that a case like the present transcends the ordinary jurisdiction of the Court of chancery, and requires for its determination the interposition of the government power of the State, it may be said that in this country, there is no royal sovereign to act as parens patriæ, and to grant the power for the application of charities which cannot be administered in the courts. But this we have to say, that in this country, the legislature is the parens patriæ, but into the legislature is the power vested by constitutional provisions, the legislature possesses all the powers in this regard which the sovereign possesses in England."

This at once creates a sovereign power and clothes it with paternal authority. And if this doctrine shall be maintained, so that it becomes a principle of American law, and shall become established as a principle of government here, then the revolution backwards is completed, government of the people is gone, and that of a sovereign put in the people's place. Thus the doctrine of the Declaration of Independence and of the Constitution of the United States is subverted and the doctrine of sovereignty, absolutism, and paternalism, is established in its stead. Then also Hancock's liberty in the place where which will need to be revised so that it shall read as follows: "Is it asked who is the sovereign of the United States? The Legislature is the sovereign and the people are subjects."

To prove the correctness of its position the Court quoted from Chief Justice Marshall, in the Dartmouth College case, the statement that "By the Revolution, the nation, as well as the powers of government, devolved upon the people." This is true enough, but it is particularly to be noticed that this Court has made these devolve upon the Legislature. It is a singular piece of logic that would prove that certain powers devolve upon the Legislature, by citing a passage which declares that those powers have devolved upon the people. Again, the Court quoted a statement from Chancellor Kent, that "in this country the Legislature or government of the State as parens patriæ has the right," etc., and further from Justice McLean, that "when this country achieved its independence the prerogatives of the crown devolved upon the people of the State." Justice McLean's statement like that of Chief Justice Marshall's is strictly correct in saying that those powers devolved upon the people. But that of Chancellor Kent, like some other legal expressions of his, is utterly false and contrary to American principles. Among American institutions there is no king, and aside from the people there is nothing that corresponds to a king. And even in the people all that corresponds to a king is in the individual; for each individual American citizen is sovereign and king in his own right.

Again, the Court says:—

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Our Entire Stock of Korah Moires offered at 15c. per yard.
100 pieces Beautiful Dress Ginghams, best quality made in this country, guaranteed fast colors, at 8½c. per yard; our former price was 15c.
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A Large Lot of Remnants of White and Cream Nottingham Nets, in 6 and 7 yard lengths, at 75c., 90c., $1.00, $1.25 and $1.50 per Remnant.
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Ladies' India Gauze Jersey Vests, Sleeveless and Low Necks, at 25c.; Reduced from 75c.
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PARASOLS!!!
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Beautiful Plaid and Striped Colored Silk Parasols, very Handsome Handles, at $2.25; worth $3.00.

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