

I..... being duly sworn, depose and say that I am over 21 years of age; that I have resided in the Territory of Utah for six months last past; and that I am a native born or naturalized citizen of the United States; that my full name is.....; that I am..... years of age; that I am a..... man; that the name of my lawful wife is....., and that I will support the Constitution of the United States, and will faithfully obey the laws thereof, that I will obey the acts of Congress prohibiting polygamy, bigamy, unlawful cohabitation, incest, adultery and fornication; that I will not hereafter, in any territory of the United States, at any time, in obedience to any alleged revelation, or to any counsel, advice or command from any source whatever, or under any circumstances, enter into plural or polygamous marriage, or have or take more wives than one, or cohabit with more than one woman contrary to said laws; that I will not at any time hereafter, directly or indirectly, aid or abet, counsel or advise any person to have or take more wives than one, or to cohabit with more than one woman; or to commit incest, adultery or fornication contrary to said laws; that I am not a bigamist or polygamist; that I do not cohabit polygamously with persons of the other sex, and that I have not been convicted of any of the offenses above mentioned.

Mr. Midgely declined to take it, and the court was about to excuse him, when Arthur Brown, on behalf of the plaintiff, objected, as the oath was not in accordance with that prescribed by law, nor the one the court had been using. Judge Henderson remarked that if Judge Zane had adopted it he would not question it.

Mr. Brown suggested that Judge Zane

COULD NOT MAKE THE LAWS

any more than any one else. If a form of oath had been adopted it was when only one side had been urged, and that by Mr. Dickson. The members of the bar had had no opportunity of giving their opinions.

P. L. Williams, also of counsel for the plaintiff, stated that the law itself provided what the oath should be, and he did not think that the law should be departed from. If there was a copy of the law at hand, he would like to have the two compared. He thought it would be found that there was a

MATERIAL

difference between the oath in the new book and the old form.

Mr. Midgely stated that he would not take either form of oath until he had further considered the matter, and was excused.

Wm. C. Spence was next called, and stated that he could take the old form of oath but not the new. When asked to point out the difference he said he could not do so without examining both.

P. L. Williams then stated that he could point out the difference. The new oath was one which no Mormon could take, and one which he objected to, because it trampled

ON THE DOMAIN OF CONSCIENCE

and interfered with the conscientious convictions of persons who may have a belief in revelation and prophets. Such persons could not take such an oath. To take it was to subject a man's mind to an indignity, and make him swear in advance that he will disregard something that may come to him as a revelation that he devoutly believes. Congress could make no religious tests, and this court would not be justified in making a religious test of this act. They were not justified in departing from the language of Congress, when they interpolate, as was done in this new oath, the expressions, "will not at any time," "under any circumstances," in obedience to any revelation, etc. As he understood it, the juror did not object to the naming of the crimes in any language that might be chosen, but to the interpolation of a clause not intended by Congress.

Mr. Williams pointed out the difference between the two forms to a nicety. His speech would make interesting reading when compared with the advice to registrars, signed by Mr. Williams.

C. W. Bennett, of counsel for the Mammoth Mining Company, made a speech in favor of using the new oath, which he said had been framed by

THE POLITICAL AUTHORITIES

to meet the present circumstances. He thought it must be conceded that the act intended to keep out jurors who could not subscribe to the oath. The second oath did not differ from the first, except that it was more explanatory—it did not differ in its legal effect. The new oath simply brings a man face to face with his own conscience; the subterfuge under which the other oath was taken, that "it is not my present intention to disobey the law," though possibly not a device of the devil, it was a miserable evasion. By the new oath he said it was intended to make the jury do what Congress intended they should—swear not to commit polygamy or unlawful cohabitation at any time. The law was made to stop the beastly union between one man and more than one woman, and that must be stopped. The body which here controlled the great majority of the voters had lately printed advice to all their followers that all men might take the oath who had "no present intention" to violate it; taking such an oath was moral perjury, if not legal

perjury. If they are good, honest church members, they

CANNOT TAKE THIS NEW OATH;

it holds up before them the real responsibility they incur in taking the oath. He would be the last one to ask to have the law strained; he simply wanted the spirit and intention of the law-makers carried out. Any juror might believe what he chose regarding revelation and prophets, this oath does not touch upon that belief at all; he may show himself an ass by believing such things, but that didn't matter.

This harrangue was continued for some time, in the same strain, and the attorney finally sat down.

Arthur Brown, of counsel for the plaintiff, replied as follows:

May it please your honor, I would like to inquire, if it be possible to find out, who are the "political authorities" of this Territory, that have interpreted this oath, that my brother has referred to. When he says here "the political authorities" have determined it, who are they? What does he mean by "the political authorities?" Does he mean himself? Or a committee of some

SECRET ORGANIZATION?

Or the Governor? If he means the Governor—the executive authority, where has the executive ever acted upon it? If he means the judiciary, where is the decision upon which they have acted? If he means the Commission of this Territory, why doesn't he cite it? It is manifest—it is within the knowledge of my brother, that this form of oath has not been prescribed by the Commission. It is right the other way; and my brother says we are to take note of the circumstances that are surrounding us, and of the facts as they are, and hence he has gone outside of the question here to discuss the political situation here at this time, and on this occasion. Now, who is it? I want to know who it is that he means when he says the "political authorities" have determined what this oath shall be? Who are they who have

THIS GREAT AUTHORITY, I

this great power to determine? We think your honor is here to determine something, but not to make any law—to determine what the law now is in this Territory. And counsel is right when he says we are to take notice of the surrounding circumstances. I agree with him; this law is to be interpreted in view of the situation here in Utah, plainly put and plainly considered; and what is it? Your honor knows full well that when this law was proposed to be passed by Congress it was attempted and desired by my brother here, who has just made this argument, and by others that think as he does, that an oath should be formulated that no Mormon could take, and that it was asked of Congress that the act be directed against the Mormons, prescribing that no member of that church should take it, and prescribing certain religious tests—certain things

AGAINST THEIR RELIGION,

certain points, that they couldn't take the oath. It is within the discussion and the debates in Congress, it is within the facts, that the committee expressly put aside an oath of that form, so that any Mormon could take this, and not, as my brother says, for the purpose of excluding them, but that they might take it, and that they passed the law changing the form of oath which had been laid before the committee, and which was desired to be passed, and an oath was laid down there which was singularly free from any hint at that belief. This oath that has been read here, which this act of Congress prescribes, prescribes no word in it that is derogatory to any religion, particularly to that which was prevalent in this Territory—particularly to the Mormon Church. It is evidently designed on purpose that any Mormon might take it. All the act of Congress prescribed was that the Mormon and Gentile alike should swear to obey the law; but my brother, and the few uneasy spirits like himself, are

NOT SATISFIED WITH THE ACT

of Congress, but they want to bring into it an express slur upon the religion of the Mormons, and they add, "in obedience to any revelation." Why that particular clause put in? My brother has explained it. He has explained it, because, he says, "these Mormons believe in a revelation, and we want to make a ring at them"—he doesn't use it in those words, but he says "We want to shut off the Mormons." Precisely. Congress didn't want to make any such claim; but he did; he wanted to make the slur and so he has drawn up this oath, and added those words for the purpose of making it disagreeable to any Mormon to take it. Not that, in real fact, there is any grave distinction, but they wanted to insult the Mormons so that they wouldn't want to take the oath. That is the object of that oath; that is the distinction, "in obedience to any revelation." Why shouldn't they put in any other particular fact which might induce some person to violate the oath which he has taken? There is an oath here against committing adultery. It is understood—frequently understood—that the Mormons are particularly free from committing that offense, and that there are some Gentiles (a few) that occasionally

COMMIT THAT OFFENSE.

If the particular seductive reasons which would apply to Mormons are to be put in, why not put in some particular seductive reason that will apply

to Gentiles? Suppose the oath had been worded, "And I promise that I will not hereafter, ever in this world, under any circumstances of provocation or seduction, commit the crime of fornication, not even if the handsomest woman in the world should get in bed with me," and that should be added to the oath, what would my brother say to it? Wouldn't he say that that is an unnecessary fling at a man? It might be that most men would fall under such circumstances. It might be that a man might be scared out of taking the oath, saying, "Well, if I was actually forced into it I might possibly commit fornication." That is not the object of the law. The law simply asks a man to promise to obey it. These particular points of seduction, the reasons or occasions where he might violate it, are not to be treated upon or spoken of. Here is a juror that says, "I am willing to take the oath that I will not commit any of the offenses, polygamy, bigamy, adultery," and so on, reciting the names of all the offenses. Why isn't it enough? It isn't enough because, my brother thinks, he is a Mormon, and because he thinks if he can bring in or wring in the

FLING ABOUT REVELATION,

it might prevent his taking the oath. Not that there is any very great difference, except that clause, "in obedience to any pretended revelation." There is this further distinction: As I understand the second oath, it is unlimited, as to whether the law is repealed or not. The first oath, the oath prescribed by Congress, is limited to the existence of the law. Of course, as soon as the law should be repealed, the oath is no longer binding upon anyone, in any sense.

Now, may it please your honor, to look at this thing in a plain way, as it seems to me we would look at any other act of the Legislature, aside from the feeling which this political discussion seems to evoke; that is, if it had been an oath for a taxpayer, he would understand that it was formulated. If what a taxpayer must swear to do to have his tax regulated had been prescribed in this language, we would say it was formulated. It is not formulated in the first person; simply formulated in the third person. That is all it lacks of being formulated. Just what a man must swear to is prescribed. Every item of it is written out in this law. Every male person, 21 years of age, a resident of the Territory of Utah shall, as a condition precedent to his right to register or vote at any election in said Territory, take and

SUBSCRIBE AN OATH

or affirmation before the registration officer of his voting precinct, that he is over 21 years of age, and has resided in the Territory for six months last past, and so on. Each item that he has to swear to is there specified. Who can add to that oath? Can the judiciary? Can the judiciary say, "we will prescribe something else; that the situation here is such that we want to wash out these Mormons from the jury, and therefore we will put something in that they cannot take?" That would not only be to legislate, but it would be to legislate in the teeth of contrary legislation by Congress; it would be to appeal from Congress, and override their express legislation on the subject. I take it the courts cannot do it; the courts cannot make law. They have no greater rights than the commonest individual. And this oath, your honor, I don't believe has been made by the court; it has been made by a secret organization, and they propose to ram it down the throat of the court whether the court will take it or not, and ram it by terrorism down the mouth of every jurymen that may come into this court room. It seems to me, may it please your honor, it is

CONTRARY TO THE LAW

to ask the juror to take it. There is another reason in this case. Here are ten jurors who have been accepted, and sit here, that have not taken it. Now, why not? They have taken the oath that has been read to your honor. Mr. Darling, one of the regular panel, your honor, has read this particular oath, and the others have taken it. Now, why is it proposed to ask this juror to take a new and different one? We object to it. The juror says, "I have examined the oath that has been administered to jurors in this court; I am prepared to take it." That is enough. But no, Brother Bennett says, "We have got up a new wrinkle now, and we propose he shall take that." We object to it, may it please your honor.

Mr. McBride asked whether the court would like to hear any further discussion.

Judge Henderson replied—Well, yes, I will hear what you have to say about it. I can say this to you, Judge McBride, I don't myself see the difference between the oaths; but now, as to whether the second oath correctly states the substance of the two acts of Congress referred to, technically, I don't know; and I see that Judge Zane has not used that form of oath. I do not want to undertake here to adopt new forms. He has impeached a jury here, and they have been working under it for some weeks, and he has administered a certain form of oath here, and I hardly feel (that is my present impression) like departing from it and introducing a new form for jurors to take. While I myself

DON'T ACCEPT THE VIEW

that the oath seems to prescribe

that it continue always; (it says, "under any circumstances;") that that would mean to apply after the law had been repealed, or that it may not rescind these acts of Congress in some other formal manner, as I understand it, that has not been presented to Judge Zane, and he has not determined that. If he had, after a hearing, adopted that form, I should proceed with it without question or without determining anything at all about it; but my present judgment is that I ought not to change the practice that he has been adopting here.

Judge McBride then made a few remarks after the style of Mr. Bennett's argument, and Mr. Spence stated that he would prefer not to take either form of the oath and was excused.

Court then adjourned to 10 a.m. to-day.

THE SUIT COMPROMISED.

Last evening the prospect of a fourth legal battle over the Mammoth indebtedness to Mr. Morris was swept away, as was made public in court to-day. Judge Henderson, after court opened, asked the attorneys what their pleasure was in regard to the case, when Mr. Williams arose and stated that it had been settled by compromise. He moved that it be dismissed, each party paying its own costs. This motion was granted.

The amount paid for a settlement was \$15,000, which was handed to Mr. Morris last evening. This is barely half the amount sued for, but was accepted by the plaintiff rather than continue the litigation, which has now lasted about five years.

Mr. T. J. Murphy, '61 DebaVOICE Place, Brooklyn, N. Y., says: I was afflicted with sciatic rheumatism and found St. Jacobs Oil very efficacious." Sold by Druggists and Dealers everywhere.

STRAYED.

A THREE YEAR OLD DARK BAY MARE, branded C on left shoulder; left home Sunday, May 1st, 1887. Any information will be thankfully received and properly rewarded.

JOHN W. TAYLOR, 19th Ward, City.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION. One brown mare MULE, 12 or 13 years old, brand resembling a diamond on left hip.

Which, if not claimed and taken away on or before Saturday May 14th, at 2 o'clock p.m., will be sold in the estray pound in Levan, to the highest cash bidder. SOREN P. JENSEN, Precinct Poundkeeper. Levan, Juab Co., May 4, 1887.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One bay MARE, 6 or 7 years old, white spot on nose, some saddle marks, and a brand resembling a boot on left shoulder. One sorrel yearling horse COLT, branded U on left thigh.

If said animals are not claimed and taken away within ten days from date, they will be sold to the highest cash bidder, on Tuesday, May 10th, 1887, at 10 o'clock a.m. O. LE CHEMINANT, Poundkeeper. Pleasant Green, S. L. Co., May 1, 1887.

PATRONIZE HOME MANUFACTURERS.

GET MATTHEWS & CO'S. ESSENCE OF JAMAICA GINGER!



This Essence is warranted to possess all the qualities of the Jamaica Ginger, and is pronounced superior to anything of the kind yet put on the market. Good in cases of Cramp, Weakness of the Stomach.

This Ginger took the Prize at the Territorial Fair, in Salt Lake City.

For sale wholesale and retail by Z. C. M. I., and all Ward Stores. d&slm

FIRST-CLASS EXCURSION TO EUROPE, Leaving May 30, 1887.

ROUND TRIP TICKETS, good from Salt Lake City, Ogden and Provo, to Liverpool and return, first-class on the Railway and intermediate on steamer, \$140.00

ROUND TRIP TICKETS, first-class on the Railway and steamer passage on the steamer, from Salt Lake, Ogden or Provo, to Liverpool and return, \$120.00

TICKETS good to return any time within six months, on the following steamers of the Guion Line: Wisconsin, Wyoming and Nevada.

Parties wishing to take this trip should, without delay, deposit the amount of fare with B. H. Schettler, Esq., Cashier Zion's Savings Bank, Salt Lake City.

For further information apply to the undersigned, Box B., Salt Lake City.

W. A. ROSSITER, W. C. SPENCE.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One flea-bitten grey MARE, about 8 years old, branded HB combined on left thigh. If not claimed and taken away within ten days from date hereof, it will be sold to the highest bidder, at the Lehi estray pound, at 1 o'clock p.m., on Saturday, May 14th, 1887. MICHAEL VAUGHAN, City Poundkeeper. Lehi City, Utah Co., May 4, 1887.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One bay MARE, 6 years old, strip in face, three white legs, branded C on right thigh.

One light bay YEARLING, hind legs white, branded C on right thigh, and has a large strip in face.

One black MARE, 5 or 6 years old; some white on nose, branded C on right thigh.

One black yearling horse COLT, small white spot on forehead, branded C on right thigh.

If the above described animals are not claimed on or before May 13th, 1887 they will be sold at public auction, at the Estray Pound, in Tooele City, at 10 o'clock a.m., May 13th, 1887.

M. B. NELSON, Poundkeeper. Tooele City, Utah Territory, May 4, 1887.

FORFEITURE NOTICE.

TO J. K. SMEDLEY and J. B. WARREN.

YOU ARE HEREBY NOTIFIED THAT you are indebted in the sum of Three Hundred Dollars each, for money expended and labor performed upon the Vulcan Mine, in Rush Valley District, Tooele County, Utah, from January 1st, 1872, to December 31st, 1886, said indebtedness being your just and proper proportion of an assessment duly incurred by reason of expenditures and outlay necessary to the proper working and development of said Vulcan Mine, in which you are part owners. This is therefore to notify you, that unless your assessment of Three Hundred Dollars each, be paid on or before the tenth day of July, 1887, to the undersigned, your interest in said mine will be forfeited, and become my property, as provided by law. CHARLES AUER, Salt Lake City, Utah, April 8th, 1887. alt w904

LEGAL NOTICE.

In the Probate Court of the County of Salt Lake, Territory of Utah.

In the Matter of the Estate of Edward E. Brain, Deceased.

Order appointing time and place for settlement of final account and to hear petition for distribution.

ON READING AND FILING THE PETITION of O. J. Brain, administrator, with will annexed, of the estate of Edward E. Brain, deceased, setting forth that he has filed his final account of his administration upon said estate in this Court; that all the debts have been fully paid, and that a portion of said estate remains to be divided among the heirs of said deceased, and praying among other things for an order allowing said final account and of distribution of the residue of said estate among the persons entitled. It is ordered that all persons interested in the estate of the said Edward E. Brain, deceased, be and appear before the Probate Court of the County of Salt Lake, at the Court Room of said Court, in the County Court House, on the 4th day of June, 1887, at 11 o'clock a.m., then and there to show cause why an order allowing said final account and of distribution should not be made of the residue of said estate among the heirs and devisees of the said Edward E. Brain, deceased, according to law.

It is further ordered that the clerk cause copies of this order to be posted in three public places in Salt Lake County and published in the DESERET WEEKLY NEWS, a newspaper printed and circulated in Salt Lake County, three weeks successively prior to the said 4th day of June, 1887.

ELIAS A. SMITH, Probate Judge. Dated May 2d, 1887.

TERRITORY OF UTAH, County of Salt Lake, ss.

I, John C. Cutler, Clerk of the Probate Court in and for the County of Salt Lake, in the Territory of Utah, do hereby certify that the foregoing is a full, true and correct copy of an order appointing time and place for settlement of final account and for distribution in the matter of the estate of Edward E. Brain, deceased, as appears of record in my office.

In witness whereof, I have hereunto set my hand and asked the seal of said Court, this 2d day of May, A. D. 1887.

JOHN C. CUTLER, Probate Clerk.