Correspondence.

UTAH AFFAIRS.

No. 4.

Judiciary and Juries--Utah Jury Law.

SALT LAKE CITY,
May 5th, 1874.

Editor Deseret News:

Well did Senator Thurman remark—

"We cannot conceal it from ourselves, we know it to be so, that in Utah Territory there have been judges who have been rather remarkable for a spirit of persecution than for a spirit of enlightened and impartial administration of the law."—*Cong. Globe*, 3rd sess., 42nd Cong., p. 1802.

George Alfred Townsend, an eye and ear witness of the Hawkins' trial for adultery, writing to the Cincinnati *Commercial*, Oct., 1871, thus summarises the argument of defendant's counsel in that case—

"The command, 'Thou shalt not commit adultery,' was delivered to a polygamous people, and engraved upon stone by the husband of three wives. The same public opinion and religious inculcation which enacted the statute against adultery, married the prisoner to his wives, and honored the children of them equally. The rulings of the courts in Utah, both probate and district, for twenty years, had been in accordance with this theory of marriage, and now, seven years after committing the act charged with his second wife, a rusty law is drawn from its antique sheath, and made retroactive upon this man. The polygamists on trial in the person of the prisoner had left civilized places and entered the desert, followed by the women, to attest their belief in this dispensation, and obey it out of the way of the people. Judge McKean delivered a harangue to the jury, answering every point made by the defense. It was a speech of three-quarters of an hour, and amounted to an exhortation to convict. As to the *intent* of the Territorial Legislature (thirty-five out of thirty-nine of the members practised plural marriage, who enacted the statute against adultery) he said, that was no more to be conjectured than that *Magna Charta* could be interpreted away because King John, its grantor, was a tyrant; a statute against gambling might be similarly disproved because the enactors were proven to play at chance!"

It is to provide this man with such power as shall *insure* conviction, and hide the infamy under the name of trial by jury, that the Government of this mighty Republic is asked so to debase itself.

Blackstone says of trial by jury—

"It is the glory of the English law. It is the most transcendent privilege which any subject can enjoy or wish for, that he cannot be affected, either in his property, his liberty or his person, but by the unanimous consent of twelve of his neighbors and equals; a provision which has, under providence, secured the just liberties of this nation for a long succession of ages."

Hon. W. H. Hooper, addressing the House of Representatives, March 23, 1870, against the passage of the Cullom bill, a similar measure, said—

"The trial by jury by this bill is worse than abolished, for its form—a sickening farce—remains while its spirit is utterly gone. A packed jury is worse than no jury at all. The essence of a trial by jury consists in the fact that the accused is tried by a jury drawn by lot from among his neighbors. A jury which will be a fair epitome of the district where the offence is charged, and thus such a tribunal, as will agree to no verdict, except such as, substantially, the whole community would agree to, if present and taking part in the trial. That no person shall be punished who, when brought to the bar of public opinion in the community where the alleged offence is committed, is not adjudged to have been guilty of a crime."

What Judge McKean, Governor Woods, and Baskin & Co., ask for is precisely the reverse of all this.

Senator Trumbull says—

"The object of a jury is entirely defeated and a jury trial goes for nothing if the judge selects the jury. And the clerk and marshal are really subordinate officers of the court, and are very apt to be influenced by the judge himself. * * The object of a jury is to be a check upon the judge. I think it is objectionable to have the officers of the court select the jury." P. 1785.

Senator Sherman says—

"The judge ought not to have anything to do with the selection of a jury. It seems to me some local authority whose power emanates from the people and does not emanate from the U. S. government ought to be selected to join these commissioners. There is the foundation of all trials and of all justice." P. 1786.

Senator Thurman, in an able argument, says—

"To prevent perversion of the law, in my judgment, the safeguards are not sufficient. I thought so in committee; I think so still. The more reflection I have given to the subject, the more I am satisfied of it. * * I will not say what kind of courts we have in Utah, for I am a little chary about making accusations against men for which I have no plain and obvious foundation; but I will say, that they are courts in which I have no confidence, or very little." P. 1782.

He therefore moved an amendment, providing that three jury commissioners be chosen by the Territorial Legislature, to act in conjunction with the judge, marshal and clerk, the last three to make up the list until the Legislature shall meet.

Senator Frelinghuysen moved to substitute "two," instead of "three" commissioners, and the amendment as amended was agreed to. P. 1787.

Senator Stewart moved that until the Legislature meets, the two commissioners be selected by the district judge from the probate judges. That amendment was also agreed to. P. 1797.

And still another by Senator Casserly, that the 200 male citizens from whom the jurors are to be constituted shall be "qualified electors within the provisions of this act."

Senator Trumbull would have gone further; he would have excluded the judge and substituted the governor, to which proposition Senator Sherman objected. He said—

"I see the objection to the governor being consulted. He is the executive officer of the Territory, called upon to execute the laws, and he is a man who necessarily takes sides on political questions. He may be a man of strong partisan feelings, and from the nature of his office, I think, he ought not to be called to administer anything in connection with the courts." P. 1786.

To which Senator Trumbull replied—

"If there is objection to the Governor having this power, take the surveyor general, or any person other than the judge."

If there could be any fairness at all in taking purely local matters out of the hands of local legislation, there would be some fairness in those amendments, but they have all been carefully omitted in the bills now before Congress. Since the virtual demise of the McKee bill, however, Merritt & Co. have received fresh instructions. "The Judge, Clerk and Marshal packing process is an ugly pill, coat it with sugar, make it *look* less ugly, and Congress will swallow it." Hence the amended Poland bill. But it has the same object in view under a fairer face, and what cannot be reached openly must be reached by circumvention.

Had honest juries been wanted, he could have had them in Sept., 1871, and ever since, under the Territorial jury law, which Chief Justice Chase said McKean's Court "wholly and purposely disregarded," a law which the National Supreme Court declared, in Dec., 1871, was "obligatory upon the district courts of the Territory."

Hon. Thos. Fitch, in his address to the House Judiciary Committee, Feb. 10, 1873, said of this law—

"The mode of obtaining grand and petit jurors in Utah is the same as that pursued in many parts of the country. The county court of each county, at its first session in each year, selects (at least) fifty names from the assessment roll of persons eligible as jurors. These names are written on slips of paper and deposited in a box, the box is shaken up, and the jury panel drawn therefrom promiscuously. * * * Inasmuch as nine-tenths of the persons eligible to jury duty are Mormons, it is difficult to comprehend how this can be remedied without either converting or disfranchising the Mormons. It is scarcely within the scope of congressional power to accomplish the first, and it certainly does not seem right to perpetrate the second. * * I venture the assertion that no jury list has ever been made out in Utah in which the non-Mormon element has not been accorded a larger representation than its numbers entitled it to expect. It has not been asserted, except by inuendo, that this 'Mormon control' has ever been improperly exercised."

The jury law was made in Jany. 1859. At that time the counties had comparatively a sparse population, some of them could hardly furnish fifty eligible jurors, hence the limited number; in larger counties the practice has been to increase the list in proportion to the population, and as there are nine counties in Judge McKean's district, the least number must be 450, while it may be, and is, in practice, much greater. Last February, the Utah Legislature sought to amend the jury law by requiring each County Court, each year, to "take from the assessment roll the names of all persons known or believed to be eligible to serve as jurors, write each name in full on a separate slip of paper, or ticket, and fold the same so that the name thereon cannot be seen, and place all of said papers, or tickets, in a box prepared for that purpose, thoroughly mix said tickets, and not select, but draw from said box, at least one hundred names, to serve as jurors, and make a list of the names so drawn, which list shall be filed with the clerk of the county court, who shall keep in his office a box, in which he shall deposit the names on the list, having previously written each name on a separate ticket, and so folded said ticket that the name thereon does not appear. *Provided*, if in any county there are less than one hundred persons eligible to serve as jurors, the names of *all* persons eligible to jury service shall be drawn by the county court."

The amendments passed both houses, but were vetoed by Governor Woods. If fair play were wanted, what could be fairer?

VERITAS.

Peculiarities of Utah Bills before Congress.

No. v.

Editor Deseret News:

The provisions of nearly all of the Utah bills before Congress for impanelling juries are extraordinary, unconstitutional, and anti-republican. They place in the hands of men, in whose selection the people have no voice—may be unscrupulous men—an almost absolute power over the highest rights of person and property; a power that is simply despotic, unless a corresponding breadth of appeal be provided from every decision of such courts to the supreme tribunal of the land.

An appeal to the supreme court of the Territory, particularly in polygamic cases, amounts to nothing. The terms of those bills virtually pronounce polygamy to be a crime, and in a great degree the same power that creates the law appoints its administrators and holds them responsible for its administration. Moreover, in refusing citizenship to aliens, and the right of sitting on juries to citizens, solely for believing the doctrine of plurality of wives to be a divine revelation, judges of that court have, practically, prejudged the merits of all such cases already.

The objections raised in the Senate, Feb. 26, 1873, to Mr. Thurman's amendment providing for appeals, were—that it would overburden the national Supreme Court with business; that it would delay punishment; that it would call in question the judgment of the President of the United States and that of the Senate, as if they sent to Utah Judges who were impure in their lives and not learned in the law; and that while, in civil cases, complicated questions of property sometimes arose, criminal statutes, as a rule, were directed against plain offences.

All of these objections were ably answered, a synopsis of which is taken from the *Congressional Globe*, 3rd session, 42nd Congress, page 1802 and succeeding pages—

Mr. Thurman. "It is of the utmost consequence that the administration of the law shall be such as to command not simply the obedience but the respect of the people of that great Territory, and I do think that nothing would tend more to secure for the laws a faithful observance, and to procure for them a sincere respect, than to allow cases to come up to the Supreme Court of the United States, under reasonable restrictions. There is nothing in this world so dangerous as unrestrained power, and judges are but men. I think it is a disgrace to our laws that upon the sentence of one single man, a district judge of the United States, whom the Senator (Frelinghuysen) would not employ, if he were at the bar, to collect a $500 note, a man may be sentenced to death, and there is no opportunity to review that decision. There is a writ of error to the supreme court of the Territory, but how is that court constituted? The district courts are held by the members of the supreme court. A single judge of the supreme court holds a district court.

"It is said that these judges are nominated by the President, and confirmed by the Senate. Ay, sir, they are, but does not the Senator know full well, for he belongs to the Judiciary Committee, the trouble we have had to obtain men fit to hold judicial station, not simply in the Territories, but in the States? Does he not know what difficulty we had at this very session to determine who should be a judge in Utah Territory? I can speak no more plainly, because I cannot speak of our proceedings in executive session; but will he tell me that the fact that the judge is nominated by the President and confirmed by the Senate is any sufficient guarantee that there will be no error in his decision? No, sir; that will not do.

"Again, he says there is danger of overloading the Supreme Court of the United States. Sir, if we are to protect that court from having an excess of business, we had better begin at some other end of its calendar; we had better curtail its jurisdiction somewhat in civil cases, in order that it may have time to decide the criminal cases that ought properly to be brought before it."

In reference to the objection of Senator Edmunds who said, "If you are to provide in criminal cases in general in this Territory or in any other that there shall be an appeal to the Supreme Court of the United States before the sentence of the law shall be executed, then you say in effect that there shall be no punishment at all, because the time between the commission of the offense and the trial and the verdict of the jury and that final sentence of the law which is to carry it into effect, is so great that all the theories upon which penal laws are framed, excepting one of the many, are entirely dissipated and have gone to naught," Mr. Thurman replied—

"I can imagine that if any of the safeguards that we and our fathers before us for many centuries deemed not only necessary, but to be the brightest page in the judicial history of the United States and of Great Britain, were pressed upon the attention of the Sultan of Turkey, or the Shah of Persia, or the Khedive of Egypt, he would answer in almost exactly the terms employed by the Senator from Vermont. He would say, 'Why the criminal law is plain; there ought to be speedy trial and speedy punishment. Why have a jury? Why not let the cadi convict, sentence, and execute on the hour, on the minute? Why not have speedy justice like that? Why trammel it with a jury trial, with an indictment, with lawyers to puzzle and bother and confound the trial?' Sir, the argument is simply the argument of despotism the world over, the argument that despotism always has employed.

"Why, sir, how ignorant, how unwise were our fathers. Our fathers adopted the Constitution of the United States without a bill of rights, and so dissatisfied were the people that almost every State that had ratified the old Constitution said there should be a bill of rights, so much so that ten sections, all bills of right, were proposed by the conventions that ratified the Constitution and were adopted within a year or two after the Constitution was ratified, by nine States, and among them we find—

"'No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury * * nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law.'

"And again—

"'In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.'

"Why, how unwise, how foolish were our fathers to put that in the Constitution if the argument of the Senator is correct.

"The Senator says that the questions that arise in a criminal trial are plain. Are the legal questions plain? Are not your books of reports full of the most difficult questions arising in criminal cases, and full of cases in which the court of last resort has revered the decisions of the inferior court?"

After citing a number of cases, Mr. Thurman inquires—

"Why, sir, can there be no question whether a law is constitutional or not which arises in a criminal trial?"

That is precisely the question as to the law of 1862 against polygamy; and there is no provision for appealing it.

Mr. Thurman. "I say that it is a *reproach* that no writ of error lies from the Supreme Court of the United States to the Federal inferior judiciaries in criminal cases, and I say further, that this is the only civilized country on the face of the globe in which such a state of things exists. I affirm that this is the only civilized country on the globe in which a man can lose his life by the judgment of an inferior court and no appeal, no revision whatever, be had." Page 1811.

VERITAS.

By Telegraph.

AMERICAN.

CHICAGO, 11. — The village of Radgeway, Iowa, was totally destroyed by fire, on Saturday night; between thirty and forty families were rendered houseless. The loss is estimated at $100,000.

BARING CROSS, Ark. 11. — This morning Genl. Churchill and King White, of Baxter's army, crossed the river to Argenta, with a large number of mounted men, and immediately afterward General Augur sent Col. Clayton with 300 men across the railroad bridge at that place. Clayton left part of his men here to protect the telegraph office. Half an hour ago Baxter's men advanced and firing became general along the skirmish line, and was kept up very lively for about twenty minutes. Two of Brooks' men were seen, from this office, to fall; they were probably killed.

Later.—Firing has commenced again in earnest, and the operator says we will have to leave the office.

KEY WEST, 11. — Havana dispatches say that an American, named William Lauten, acting consul for England and Germany at Manzanilla, has been ordered to leave the Island in ten days, for communicating with the insurgents.

NEW YORK, 11.—The aldermanic committee appointed to investigate the street cleaning frauds, have agreed to make specific charges against the commissioners, and to request their removal.

The city debit increased over four million during April.

Weston commenced a five hundred mile walk at the American Institute Hall, this morning; he expects to finish on Saturday next, making a hundred and fifteen miles to-day, within twenty-four hours.

BOSTON, 11.—The Probate Court, to-day, granted the petition of Mrs. Alice Mason Sumner, formerly married to the late senator, to change her name to Alice Mason.

BUFFALO, 11. — Forest fires are ravaging Erie and Wyoming counties; farmhouses, barns, stables, &c. have been burned, and the loss of property is very heavy.