

qualifications of jurors, but explicitly directs how and by whom they shall be selected, as well as how they shall be drawn and summoned. This legislation is undoubtedly exclusive and covers the entire ground. So far from leaving any implied authority in the court to select jurors, or procure them by open venire, the statute clearly negatives that right by giving the selection of them and the making of the jury list to the clerk of the court and the probate judge. After the selection of jurors is made and the names are put into the jury box and thoroughly mixed and mingled, the judge directs the number of names to be drawn from the box, and the law declares that the jurors so drawn and summoned shall constitute the regular grand and petit juries for the term for all cases. There is no exception to the rule. All jurors must be selected and drawn in this manner.

There was no power in the court to use an open venire by reason of an implied grant of power incident to the exercise of its jurisdiction. An implied authority can only exist when there are no means expressly authorized. And we deny that there ever was any common law in Utah on the subject of the selection of jurors, or any custom or usage resting on common-law authority or principles, and say that from the time of the first legal organization of the Territory and the adoption of jury trials the subject has been governed by statute regulations. But if there ever was any such common-law power it was, by the acts of the legislature before referred to, entirely taken away, and since 1850, at least, the law on this subject has been fixed wholly by statute.

The statute of 1874 provided for talesmen to be taken from the jury box for all foreseen contingencies, and did not intend to leave anything to implication. The resort to the open venire here is on a contingency more remote than in any case cited. It was resorted to not only after a failure of the means provided for the regular panel, but also after a failure of the means provided by statute for talesmen.

In the case at bar if there was any implied power to furnish additional names for jurors it would reasonably rest in the clerk of the district court and the probate judge, whose duty it is under the statute to make the jury list; but if they had added to the original list of two hundred the names of persons summoned by the marshal on the open venire, would there be any doubt as to the illegality of the list? Certainly not.

But it has been urged by counsel on the other side that the courts in Utah must have the power to supply juries by open venire or else they will be powerless to try jury causes and during a great part of the year will utterly fail in their jurisdiction. The present case is cited as a striking illustration of the correctness of this view, but when we come to know the facts it becomes apparent that the seeming necessity on the part of the court to exercise this power or lose its jurisdiction has been very greatly exaggerated. The jury list is made in January. This case was first tried in October and no difficulty was experienced in obtaining a jury; it proved, however, to be a mistrial and upon the disagreement of the jury, the case was brought on for trial again immediately, against the objection of the defendant. It was on this second trial that the jurors became exhausted, the first trial having been one of great public interest, and some of the remaining jurors having formed an opinion from it as to the guilt of the defendant, were disqualified from sitting on the case, but there was no necessity for an open venire for the general business of the term. There were sufficient regular qualified jurors in attendance for all general business, and only this case would have had to be continued. The accused was not demanding a speedy trial, and that an immediate trial could not be had was no ground of complaint by the prosecution; the defendant alone was entitled to avail himself of it, which he did not do, preferring to have his case continued till he could be tried by a legal jury.

A speedy trial does not mean a trial within any particular time, but a trial within a reasonable time, having reference to the state of the law, the means of trial provided, the times of the sessions of the courts, the opportunities of the parties to get witnesses, and the extent of other court business of equal importance, or having preference.

There is no court for the trial of a criminal case until a legal jury can be obtained, and until this is done the time for a speedy trial has not arrived. The judge of the court may be sick, or the office vacant, or by some other unlooked for contingency the term may not be held, and this would not authorize the holding of an irregular court. Continuances are provided for in the criminal procedure act of Utah.

The questions involved in this case are of very grave importance, not only to the plaintiff in error, but to every citizen of Utah, because the principles involved lie at the very foundation of the right of trial by jury. Under the present statute the judge of the court determines how many names shall be drawn for each jury at each term, and the law says that the names so drawn shall not be returned to the jury box; by drawing an unnecessarily large number each time, the jury list may be exhausted at a very early period in the year, and the court by issuing open venires, without statutory authority and contrary to the legislative intent, may revolutionize the jury system of the Territory and open the door for those abuses of this very dan-

gerous power, which followed its exercise in England, and gave rise to frequent and grievous complaints about 'packed juries' and illegal convictions. The officer who goes forth armed with an open venire for a panel of jurors, in a particular case, has it in his power to make such a selection as will either convict or acquit the defendant, as he may choose, and in a Territory where the marshal himself may be imported from a distant State, and his deputies neither may be the most conscientious nor responsible of men, there certainly is great danger in conferring upon them this important discretion and almost unlimited power.

And if your Honors could be persuaded to believe, as has been suggested by counsel, that this condition of things is good enough for the 'Mormons,' and that by sanctioning it, you should show them that in the 'campaign which has opened they need expect no fan,' there is a very serious obstacle in the way of adopting this rule for their exclusive benefit. If the court can obtain a jury by open venire in a polygamy case, it can do the same in a prosecution for murder, or in any other case, and when the rule is once established no man's life or liberty will be secure in the Territory of Utah. It is true the unpopular 'Mormons' are the individuals against whom this mighty engine of oppression is now directed, but who can tell how soon it might be turned by malice, spite or hatred against the life or liberty of some innocent person, not of the 'Mormon' faith, whose unprincipled accusers might seek thereby to wreak upon him their malicious vengeance. I cannot believe that you will sanction such an outrage done in the name of justice, by sustaining this open venire process which has never been favored by our legislatures nor encouraged by our judiciary until now, and where resorted to at all it has only been to provide talesmen for filling occasional deficiencies in the regular panel, and not as a means of obtaining eleven out of twelve jurymen, as in this case.

With the confident assurance that these grave questions will receive the careful consideration to which they are entitled, and that the decision of this honorable court will fully vindicate and sustain the sacred right of the plaintiff in error, and of all citizens of Utah, to be tried by legal and impartial juries of their peers, this case is most respectfully submitted.

CORRESPONDENCE.

POINTS ABOUT MICHIGAN.

THE MORMON QUESTION.

ANN ARBOR, Michigan, April 10th, 1885

Editor Deseret News:

The Press generally deals with the question as far as its writers can get at the truth and as far as their comprehension goes. It is principally the "Christian" papers that contain the most absurdities—comparing the "Mormons" with Mahomedans, etc.—ministers giving vent to their spleen at a rising Godlike people. They are blind to the fact that pure lives are led in Utah, worthy their example, and that the kingdom of God is growing up in these western mountains, although they can but admit that we are becoming a mighty people; but under the cloak of Christianity they seek to assail every principle of truth and trample down those free and religious statutes that were dictated by the God they pretend to serve.

The ministers must give it a blast occasionally from the pulpit, to keep the question alive, for fear some of their congregation might forget there was such a people. The Young Men's Christian Association have lectures on "Polygamy and the Mormons," and the colleges also must have a subject for deliberation, so "Mormonism" is being preached by every society, class and people.

Our chief defender in the University from Utah, is Mr. Moyle, known as the "Mormon defender." He has taken such a bold stand against the assaults that, notwithstanding he is a "Mormon," he has won the respect thereby, of his fellow-students, and has become a leader in classes and societies.

POLITICAL.

The defeat of T. M. Cooley, the great jurist, has created no little indignation with the law students, not only because they will lose his signature to diplomas and admissions to the Supreme Court, but because of the absurdity of the idea of raising a barrister unfitted for the position, to the supreme bench, and one who seems to have been elected by a demagogic issue and partizan zeal.

Judge Cooley was one of the first to establish the Michigan University, and has labored unceasingly ever since. All law students and legal professors are more or less familiar with his compilations, especially Cooley's Blackston. A great English jurist was once rejected when the king asked him to serve his party because he replied that he would do his duty, but he lived to become illustrious, while the man appointed to serve the party never was known afterwards. So Mr. Cooley's work will live long after him. The principle seems to be to elect a man for party purposes, not because of his fitness, and there needs to be civil service reform in State elections as well as in the Union.

Parties are becoming divided and intrigues and rings are being formed for the purpose of defeating worthy

men for favorites and political shy-sters. By such measures government becomes weakened, society is made corrupt, and everything is in a state of instability and dissatisfaction.

WOODBURY.

CROYDEN ITEMS.

An Asperston Denied.

CROYDEN, Morgan Co., Utah, April 12, 1885.

Editor Deseret News:

It is sometime since I read anything in your columns from this place, so I thought I would pen you a few items.

Since the snow disappeared the farmers have been busy planting their crops and rejoicing over the promising prospects of an abundant harvest.

Lost Creek is rising very high, insuring an abundance of water for irrigation.

The people generally are enjoying good health and prosecuting their labors with vigor.

The ward meetings are well attended by the people. We also have a good Sunday school running, where the youth of Zion assemble to be taught the principles of the Gospel.

During the winter the Y. M. M. I. A. was running in full blast, but its meetings have now closed for the summer season, having done much good.

A very contemptible fabrication appeared in the "Liberal's" organ of slander, of the 9th inst., respecting a fire in this place, which burned the home of Mr. Thomas Walker to the ground. The writer—a friend of Walker's—asserted that he had conferred with Mr. Walker and learned that the conflagration started 15 feet from where any fire had been kept in the house, and that it was purely incendiary, but that Mr. Walker could not as yet swear to the parties, though he was threatened some years ago to be cleaned out, etc., all of which is an infamous falsehood.

Mr. Walker stated before witnesses that the fire was caused by a defective flue, and an eye witness also declares it burned around the chimney first. The noise like a blast, or the explosion of a coal oil can, heard by Mr. Walker, was not the least extraordinary or suspicious, as part of the house was used for a store, in which I understand some gunpowder was exploded by the fire.

A great many silly allusions are used in the article referred to for the purpose of casting suspicion on the peaceful people of Croyden, and making it appear that they had started the flame and destroyed a "government official's" home, which, however, are not worth replying to; but I will state that I have resided in Croyden over 18 years, and know of nothing in the teaching or practice of the people here that would justify such insinuations against their character.

May the "Liberals" learn to mind their own legitimate business, is the wish of one who desires fair play.

GIBSON A. CONDIE.

HIS THEORY.

PAYSON, April 23rd, 1885.

Editor Deseret News:

The reason why the well mentioned in yesterday's News stopped flowing is, I believe, that the boring was extended below the surface of the water into some permeable non-water bearing material, so that the water took a flow downward instead of upward.

I had the same trouble with a well 135 feet deep, bored on the so-called Indian Reservation, six miles north of Payson. The only remedy is, boring deeper for another water vein. Raising the pipe will be useless, as the water found another outlet, and cannot be brought back again.

Respectfully yours, J. C. ABEGG.

JOSEPHITE CONFERENCE, ETC.

INDEPENDENCE, Mo., April 20, 1885.

Editors Deseret News:

Thinking that it would be interesting to your many readers to hear from this place once in a while, I will commence by giving you a short account of the conference held at this place by the

JOSEPHITE CHURCH.

The conference convened here Monday April 6th and adjourned to Tuesday, April 14th. Delegates from nearly every State in the Union were present, and a great deal of business was transacted. There was considerable interest manifested on the part of the public in attending their services. Reporters were present during the whole session, and the whole business was published daily in several papers. On Sunday the 12th, an article of four columns appeared in the Kansas City Times giving a partial history of the rise and progress of the Mormon Church, with a wood cut of young Joseph. These papers were eagerly sought by the Josephites, who manifested great delight in having so much favorable notice taken of them. They were also allowed to preach in the court house three or four nights, and they had large congregations.

On Sunday, April 12th, Joseph Smith preached in the Opera House, both morning and night, to

CROWDED HOUSES.

A great many went through curiosity to see a "Mormon" prophet, and to

discover, if possible, the doctrine of their church, but they had to go home as ignorant as they came, because he never mentioned anything unorthodox in his sermons.

If there is any godliness in the desire and attempt to become popular in the eyes of the world, then you can find it in the Josephite church. If there is any Christianity in pretensions, then you can find a Christian church among the Josephites.

I attended their meetings several times, and heard Joseph Smith preach Sunday night at the Opera House, and I noticed that he tried to make his discourse as savory as possible by omitting everything that was unpopular in its nature. He forgot to mention anything concerning the work performed by the

GREAT SEER.

his father, and during his whole discourse he did not mention the names, "Joseph Smith," "Mormon," "Doctrine and Covenants," "Zion," "Saint," or anything that would enlighten the minds of the audience concerning the doctrines of the Church, with the exception of revelation, healing, etc.

Such was the nature of all the preaching done to the public during this conference, and the person who did not know from rumor that he was listening to a "Mormon" Elder, would never have discovered it from the preaching.

Among the business that was transacted was the

CUTTING OFF

from the quorum of Twelve, two of the members, viz., Gurley and Briggs, who were cut off by direct revelation through the prophet (or so it was declared).

Those two apostles had failed to report, and one of them had, through the Herald, manifested considerable opposition to the doctrines of the Church, and according to my idea of Scripture, he was equally correct with, if not more so than, the Church itself.

Several revelations were given during the session, one of which was concerning the removal of David Smith from the office of counselor to the president, as he is demented and unable to attend to his business. He is confined in an asylum at Elgin, Ill. A 24-hour fast was proclaimed for his recovery.

Thus ended the conference of the Josephite Church, which was adjourned to meet next April at Lamoni, Ia.

I don't know of anything more that would be interesting. We are having fine spring weather here, and everything is lovely. The spring is unusually late, but the prospects are good for crops so far.

Respectfully, E. PETERSON.

BOX ELDER STAKE CONFERENCE.

This Conference was held in the Tabernacle at Brigham City, April 25 and 26, 1885.

We had an excellent time, a rich flow of the Spirit of God, and an abundant amount of the choicest instruction, counsel and exhortation, which were highly appreciated by the congregations assembled, and no doubt much lasting good will be the fruit thereof. Apostle H. J. Grant and Patriarch John Smith delivered addresses, giving striking illustrations of the extremes of humanity as shown in certain cases of religious professors, comparing them with the potent fact that our religion is a practical one, requiring of us an unflinching integrity to contracts and covenants, and an unflinching response to obligations and duties, although our fellow-men may threaten us with prison cells, fines and penalties therefor.

We know that our religion is of God, and all the living should know and acknowledge Him supreme, for He stretched out the heavens, and made the earth, and ruleth in the kingdom of men, and setteth up over it whomsoever He will. He will reward every man according to his works, and measure to every man as he has measured unto his fellow-men. It therefore behooveth us to forgive and ask God to forgive those erring and misguided men who seek to force us to abandon our honest, religious convictions, and our sacred marriage vows, and cast adrift loved and loving ones, and those eternal principles of truth that the God of heaven has made known unto us, and which his friends of old practised, receiving his acknowledged sanction and approval in covenants, and promises of possessions and endless increase in posterity, glory and dominion.

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